

UNHCR RECOMMENDATIONS

FOR THE EUROPEAN COMMISSION'S PROPOSED PACT ON MIGRATION AND ASYLUM

January 2020

OVERVIEW

UNHCR welcomes the European Commission's plan to develop a new Pact on Migration and Asylum. We welcome the indication from the Commission that the Pact will take a comprehensive approach by addressing the internal and external aspects of these issues. We understand the Pact will set out some next steps for the reform of the Common European Asylum System and deal with the issues of solidarity, return, border procedures and protection-sensitive entry systems, and support to countries outside of the EU. We also understand it will include a strong commitment to resettlement and complementary pathways.

UNHCR stands ready to support the development of a fair and efficient asylum system within the EU and the development of responses to tackle forced displacement globally. The new Pact provides a key opportunity to advance the implementation of the pledges and commitments from the Global Refugee Forum, held in December, which marked a key milestone in the implementation of the Global Compact on Refugees.

UNHCR takes this opportunity to set out some recommendations for the future Pact and to renew its vision for how the EU can achieve a bold, imaginative and workable approach to overcome fragmentation and manage refugee movements effectively in accordance with international law.

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1

AN EU THAT IS ENGAGED BEYOND ITS BORDERS

In the past decade, the global forced displacement crisis has increased in scale and complexity. The displaced population has increased by over 50 per cent since 2007 – from 42.7 million to 70.8 million in 2018. Developing regions are hosting 95 per cent of displaced persons globally, with the least developed countries providing asylum for one-third of the global total. Only a very small fraction of the displaced population may eventually move to OECD countries.

The focus on strengthened burden and responsibility sharing in the context of forced displacement enshrined in the Global Compact on Refugees (GCR) and the European Commission's 2016 Communication 'Lives in Dignity' recognizes that there needs to be more complementarity between the approaches of humanitarian, development and peacebuilding actors to overcome the challenges of displacement, as well as to address root causes of displacement. Global burden and responsibility sharing mechanisms are at the heart of the GCR. The first Global Refugee Forum (GRF), convened to facilitate contributions towards the objectives of the GCR, indicated a strong international commitment to come together to work in the spirit of the UN's 2030 Agenda for Sustainable Development and help refugees and their hosts to live lives in dignity.

The European Union (EU) – the largest donor globally – has a critical role to play to help displaced persons thrive rather than only survive. The forthcoming Pact on Migration and Asylum presents a major opportunity in this regard. The EU can build on its development-led approach to forced displacement which has translated into concrete support. UNHCR welcomes the European Green Deal launched by the Commission in December 2019. At the global level, UNHCR looks forward to engaging closely with the Commission on the issue of climate change induced displacement.

Building upon these positive developments, UNHCR proposes an approach that would strengthen further EU engagement beyond its borders to protect, assist, and find solutions for forcibly displaced persons and their generous hosts through:

- ✓ Developing sustainable asylum systems
- ✓ Providing needs-based support for humanitarian operations
- ✓ Adopting a development-oriented approach to address forced displacement
- ✓ Expanding opportunities for safe pathways
- ✓ Piloting a common, regulated approach to migration

1.1 Developing sustainable asylum systems

As an expression of solidarity, the EU and its Member States can further support strengthening national asylum systems and enlarging the protection space in countries which host the majority of refugees, in countries through which refugees tend to transit and in EU candidate countries. UNHCR will continue to provide and coordinate support for the development of protection space in these countries including through the recently established Asylum Capacity Support Group mechanism as envisaged in the Global Compact on Refugees.

1.2 Providing needs-based support for humanitarian operations

The EU and its Member States would allocate funds globally according to needs assessments, in line with the principles of good humanitarian donorship and the Grand Bargain. This would include predictable, flexible, multi-year funding based upon sustained engagement with responsible and expert agencies, and in close consultation with host countries when possible. The EU would lead by example by providing core funding, light earmarking, and lifting cumbersome reporting and other procedural requirements. EU funding instruments would be complementary and coordinated to prevent gaps in support.

1.3 Adopting a protection-centered, development-led approach to address forced displacement

Making long-term investments that improve the social and economic opportunities for both displaced persons and the communities that host them is an essential part of the long-term solution to this growing challenge. Such support is critical to achieve the UN Sustainable Development Goals and end extreme poverty, while ensuring that support to displacement populations is more sustainable and impactful. It can equally play a critical role in expanding protection space in hosting countries and communities, with support which goes as much to the hosting communities as it does to the refugees. A protection-centered, development-led approach to forced displacement aims to help the forcibly displaced to overcome their vulnerabilities such as loss of assets and lack of a planning horizon, so they can rebuild their lives with dignity and security, with greater stability in an inclusive manner. Due to the demographic shock of refugee emergencies on local service delivery, natural resource consumption and labour markets, support for affected communities is also required to enable social and economic recovery and cohesion.

The EU could follow the World Bank's example and pursue a systematic protection-centered, development-led approach. The next Multiannual Financial Framework for the period 2021-2027 is of relevance in this regard. New financing modalities should in particular address the impact of forced displacement on host communities and the root causes in countries of origin and transit. With more and predictable funding available for large refugee hosting countries, the EU can also use its political leverage consistently to advocate for better policies at local, national and regional level, to support host communities and ensure that refugees are included in development plans and national services, such as health, education and the labour market.

1.4 Expanding opportunities for safe pathways

The new Pact presents a great opportunity to advance the Three-Year Strategy on Resettlement and Complementary Pathways (2019-2021) which was adopted in 2019. The Strategy calls for: more actors to be engaged in Resettlement and Complementary Pathways; the expansion of the scope and size of existing programmes; and, improving the protection focus, impact and the quality of programmes and solutions. Specifically, the Strategy calls for the resettlement of 1 million refugees and for 2 million individuals to benefit from complementary pathways over the next 10 years. The EU could build on its existing leading role in resettlement and galvanise support for this strategy.

1.4.1 Resettlement programmes

UNHCR welcomes the commitment made by the European Commission at the Global Refugee Forum in December to provide financial and other supports for the resettlement of over 30,000 refugees into the EU in 2020. With a reduction in commitments to resettlement by other States and a rise in commitments by EU Member States, the EU is now the lead actor in resettlement. To build on this leadership role, we encourage the EU to:

- Implement the commitments to resettle over 30,000 refugees in 2020 and increase annual pledges in the years to come. More EU Member States need to take part;
- Focus on the most vulnerable and include urgent/emergency cases in resettlement commitments (at least 10 per cent of pledges);
- Support the Emergency transit Mechanisms and the Central Mediterranean Situation, including in response to UNHCR's call to all resettlement countries for 40,000 resettlement places for refugees in this priority situation;
- Develop additional programs for the resettlement of unaccompanied minors;
- Adopt an EU Resettlement Framework which ensures resettlement remains driven by the imperative to provide protection and solutions to refugees. Resettlement cannot be considered as an alternative to providing access to territory to asylum seekers.

1.4.2 Complementary pathways to access protection and solutions

Complementary pathways include humanitarian visas and corridors, labour mobility schemes, third country scholarship opportunities and community sponsorship programmes. The EU and EASO can assist in achieving the goal set out in the 3-Year Strategy to provide such pathways to 2 million individuals within the next 10 years by:

- Providing increased funding to support Community Sponsorship Programmes run by civil society and other partners;
- Work in collaboration with UNHCR, universities, employment sector and agencies and civil society to develop and expand third country labour mobility and educational programmes;
- Improving labour mobility for refugees including by helping to remove refugee-specific barriers, for example through acceptance of refugee qualifications certified under the Council of Europe's certification passport, the UNESCO initiative and other measures.

1.4.3 Effective family reunification arrangements

The desire to join close family members is one of the main reasons why refugees may wish to go to Europe. While the right to family unity is enshrined in international and regional instruments, many obstacles to family reunification remain. The Global Compact on Refugees calls on States to put in place effective procedures and referral pathways to facilitate the family reunification of refugees. The new Pact presents an opportunity to tackle some of these obstacles by proposing some innovations including:

- Proposing the streamlining of family reunification procedures and facilitating access to procedures, information, legal advice and support. This could include from EU Member State Embassies and Consulates where the family members of the refugees are located;
- Ensuring that beneficiaries of subsidiary protection also have access to family reunification;
- Avoiding excessive legal requirements which go beyond what is necessary to preserve the right to family unity.

1.5 Piloting a common, regulated approach to migration

The EU could gradually develop a common approach to regular migration, building on existing cooperation and partnership arrangements with targeted non-EU countries. The Global Compact for Refugees and the Global Compact on Migration provide openings to engage further in this area. IOM will be a key partner in this endeavour and UNHCR and IOM will work closely together to ensure complementarity between the two Compacts. A coordinated approach could enable people to apply for work and residence permits from abroad. Managed migration schemes that provide routes for migrants to the EU can also help to reduce pressure on the asylum system and ensure its proper use and functioning. This would help to address irregular mixed movements of refugees and migrants towards the EU more effectively in a manner that is mutually beneficial to both parties and avoids the disproportionate loss of qualified human capital in the countries of origin.

2

AN EU THAT PROTECTS THROUGH A WELL-MANAGED COMMON ASYLUM SYSTEM

The reform of the Common European Asylum System (CEAS) has stalled largely due to a lack of agreement between Member States on two main issues: the nature of the asylum procedure in the proposed Asylum Procedures Regulation and intra-EU solidarity in the proposed revision of the Dublin III Regulation. This has led to a number of proposals aimed at externalizing asylum processing away from the EU and shifting responsibility to third countries through the mandatory use of admissibility procedures.

UNHCR takes the view that safe third country concepts are currently not the most efficient way to address the prevailing situation in the EU. UNHCR proposes an alternative vision for a well-managed and common European asylum system that upholds the right to seek asylum and the principle of *non-refoulement*. This vision was first outlined in [Better Protecting Refugees](#), and further developed in the publications [Fair and Fast](#) and [Left in Limbo](#), and includes the following elements:

- ✓ Preparedness and contingency planning
- ✓ Access to territory and a streamlined process upon arrival
- ✓ Prioritization of family reunion
- ✓ Accelerated and simplified procedures for asylum determination
- ✓ Sharing, not shifting, responsibility: a distribution mechanism for EU Member States under pressure
- ✓ A common approach to unaccompanied and separated children
- ✓ Incentives for compliance with the new system
- ✓ A humane and sustainable system for return

The implementation of this vision should be accompanied by better compliance with the existing Common European Asylum System and international law and enhance funding, monitoring and accountability procedures to that end.

2.1 Preparedness and contingency planning

In order to ensure an EU that is prepared, regular contingency planning based on early warning and well-coordinated needs assessments are required to establish mechanisms that can be activated in case an influx continues, guaranteeing access to 1) comprehensive and efficient registration/identification upon arrival, 2) adequate reception capacity and safe and dignified reception conditions, as well as 3) fair and efficient asylum procedures for all asylum-seekers on the territory of the responsible Member State, in line with EU and international law. Although EU Member States have the primary responsibility, EASO and Frontex are well placed to lead with such early warning, needs assessment and contingency planning, in close coordination with UNHCR.

Contingency planning could benefit from EU funding and coordination by the European Commission, with a view to ensuring clear, harmonized and coherent implementation strategies from the onset to avoid sub-standard reception conditions and asylum procedures, particularly in Member States under disproportionate pressure. The extended role of EU Agencies will provide for a more flexible and coordinated allocation of staff and resources as well as contribute to a more effective planning from arrival to protection or return.

2.2 Access to territory and a streamlined process upon arrival

Access to territory for persons wishing to seek asylum, including those arriving irregularly, should be assured in the EU in compliance with the right to seek asylum and the principle of *non-refoulement*. Access should be complimented by swift identification, registration, and the frontloading of resources to support referral to appropriate procedures.

UNHCR recommends that efforts to harmonize Member States' registration systems continue with a view to ensuring they all include:

- Individual biometric registration and recording of relevant information of the applicant and family members;
- Security screening;
- Identification of specific needs and family links, especially within the EU, which may lead to the prioritization of the claim;
- Referral to reception centres;
- Counselling and information provision, interpretation and other support services;
- Legal assistance/representation from the onset of the procedure;
- Triaging and referral to the appropriate procedures, whether for the purposes of first instance status determination or other legal alternatives as appropriate.

EU Agencies are well placed to assist with the development of such registration systems and their implementation, with the support of UNHCR. UNHCR stands ready to advise based on its long-standing registration experience in field operations world-wide. The interoperability of EU databases and information management systems needs to be enhanced to support the efficient processing of asylum claims across the EU. Safeguards will need to be maintained to ensure that information relating to an asylum application is not shared with an applicant's country of origin. UNHCR welcomes the pilot projects proposed in the forthcoming Regulation on Community statistics on migration and international protection and encourages Member States and EU Agencies to collect data that can provide further insight into border procedures, inadmissibility, manifestly unfounded claims and legal assistance and contribute to evidence-based evaluation and targeted support.

2.3 Prioritization of family reunion

Family reunion would be facilitated immediately after the registration phase. Streamlined links between the registration phase and case processing would allow for an early capture of the information required for family reunion in a form that can be shared with other EU Member States. Such streamlining, with the support of EU Agencies, could help address some of the obstacles to family reunion under the current Dublin Regulation. Pending any future reform of the Dublin Regulation, proactive use should be made of its existing “discretionary clauses” under which asylum seekers can be facilitated to transfer from one Member State to another.

2.4 Accelerated and simplified procedures for asylum determination

The next step in the procedure would be the use of “Fair and Fast” accelerated asylum procedures to determine swiftly whether asylum applicants are in need of international protection. Accelerated and/or simplified procedures would be used for the processing of both manifestly well-founded and unfounded claims, with applications interviewed, assessed and decided on their own merits, in light of the applicant’s personal circumstances and irrespective of the character of entry or stay in the asylum country and as outlined in [UNHCR’s paper “Fair and Fast”](#). Other cases would go through the regular asylum procedure. Accelerated procedures can reduce backlogs, waiting periods and costs, guarantee quick access to international protection for those who need it, and facilitate swift returns for those who do not.

The “Fair and Fast” approach can be tailored to specific operational contexts and could be implemented with the support of EASO and UNHCR. EASO could coordinate procedures, work flow and quality assurance to ensure harmonized approaches and outcomes, in close consultation/coordination with UNHCR. Financial support for any upfront investment costs could be accessed under AMIF or otherwise provided by the European Commission. An embedded quality control system supported by EASO and UNHCR could help reduce processing time at the appeal stage.

2.5 Sharing, not shifting, responsibility: a distribution mechanism for EU Member States under pressure

The principles of responsibility sharing and solidarity are at the heart of the Global Compact on Refugees. They are also enshrined in Article 80 of the Treaty on the Functioning of the European Union. They remain essential for the building of a sustainable and fair EU asylum system and for supporting Member States under pressure.

EU Member States facing a disproportionate number of arrivals need to be supported by intra-EU solidarity measures. To take account of the different forms of such measures, a toolbox could be developed detailing the types of supports Member States could extend to each other. These could include supports to the reception and asylum systems in other Member States, financial supports and contributions to the EU Agencies. While the toolbox can include measures in both the internal and in the external dimension, it would be important that the external dimension does not take priority over intra-EU solidarity measures.

An essential feature to support any toolbox would be a distribution mechanism to support EU Member States receiving a disproportionate number of asylum seekers. According to a proportion deemed fair by EU Member States, the mechanism would be triggered to distribute cases above this share to other EU Member States. Applicants with manifestly well-founded and complex cases could be relocated, with due respect for family unity, whereas those with manifestly unfounded claims would not. In cases of extreme pressure, defined by Member States, special arrangements could be foreseen for relocation to be applied to all those disembarked. Such a mechanism could address the competing concerns of countries of first arrival and countries with the greater number of asylum applicants. Pre-requisites to

success would include substantial investment and EU Agency support to procedures in countries of first arrival and a functioning returns system. Inspiration can be drawn from the Malta Declaration of September 2019 and developing practice on ad hoc disembarkations in line with the Declaration.

At the same time, and in the immediate term, there is a need to revitalize a rescue at sea arrangement, in line with UNHCR's non-return position to Libya.

2.6 A common approach to unaccompanied and separated children

UNHCR welcomed the Commission's policy guidance on the "Protection of Children in Migration" as an important milestone for the protection of refugee and migrant children. In line with the UNHCR/UNICEF/IRC "Roadmap" to support EU Member States and institutions in putting standards for the protection of unaccompanied and separated children into practice, UNHCR and its partners continue calling for:

- Early identification and biometric registration;
- Immediate provision of safe and age appropriate care arrangements;
- A best interests procedure (BIP) to identify protection needs and follow-up;
- Appointment of a guardian without delay;
- A common method for age assessment;
- Family tracing;
- Legal representation;
- Case management systems.

Children should never be detained for immigration-related purposes. Accessible and appropriate care arrangements need to be in place to ensure adequate reception of children and their families.

2.7 Incentives for compliance with the new system

In line with UNHCR's recent guidance on irregular onward movement, incentives for compliance with the new system by EU Member States and asylum-seekers would include:

- Transferring asylum-seekers whose claims are manifestly well-founded or channeled into the regular procedure to an EU Member State where the asylum-seeker may have family or other connections. This could address one of the reasons why some asylum-seekers engage in irregular onward movement. It would also improve their prospects for integration and be done in a balanced manner;
- After six months in the State which granted their protection, permitting refugees who have the means to be self-reliant to establish themselves in another Member State. A pilot could be conducted to evaluate this approach;
- Transferring asylum-seekers who have moved onward irregularly to another Member State back to the responsible Member State;
- Following up on recent initiatives by the European Commission, EMN and the Council of Europe, the use of Alternatives to Detention (ATDs) should be further explored. UNHCR has published two Options Papers on the use of ATDs.

2.8 A humane and sustainable system for return

Accelerated procedures to swiftly identify persons not in need of international protection will help to build trust in the integrity of the asylum system when coupled with a functioning return system. Throughout the asylum procedure, asylum seekers should have the opportunity to avail themselves of voluntary return assistance. If this is not taken up, returns can take place following a final negative asylum decision reached in a fair procedure. Due consideration should be taken of humanitarian and statelessness-related aspects. Any use of detention can only be applied where it pursues a legitimate purpose and has been determined to be necessary, reasonable and proportionate in each individual case. The use of ATDs in advance of return operations should be promoted. Monitoring mechanisms need to be in place to ensure any readmissions agreements with third countries are compliant with the principle of *non-refoulement*. The recently enhanced Mandate for Frontex on returns provides additional supports and resources of which Member States should avail themselves.

3

AN EU THAT WELCOMES AND INTEGRATES REFUGEES

At the Global Refugee Forum held in December 2019, the European Commission highlighted EU legislation which sets standards to strengthen access for refugees to education, social welfare, healthcare, accommodation, and the labour market. To further develop such standards, the new Pact provides an opportunity to incorporate key aspects of the European Commission's Action Plan on the Integration of Third-Country Nationals of 2016.

Integration poses both challenges and opportunities. The ability for refugees to live and build futures for themselves wherever they are in the EU not only enhances economic growth and social cohesion within the bloc, but also can contribute to an effective asylum system by reducing pressures for onward movement.

UNHCR advocates for:

- ✓ Secure status to be granted, with access to long-term residency in the EU
- ✓ Increased funding for integration programmes
- ✓ Legislation and policy adopted that promote long-term integration
- ✓ Promote welcoming and inclusive societies

3.1 Increase funding for integration programmes

The Global Compact on Refugees calls on States to invest sufficient resources in integration. In line with UNHCR's comments on the EU Proposal for a Regulation establishing the Asylum and Migration Fund (2021-2027), spending on integration would become mandatory, and all EU Member States would be required to allocate at least 30 per cent of their annual EU Asylum and Migration Fund (AMF) to support integration. Adherence to this spending requirement would be monitored by the EC.

- The EU would develop an assessment tool to measure integration outcomes in the EU. AMF funding would be tied to these outcomes;
- Funding would be made available and increased for local integration actors (local and regional authorities, NGOs);
- Funding and/or in-kind support would be sought from non-traditional actors (e.g. private sector, universities).

3.2 Support national and local authorities to establish long-term integration policies

The ability to live in security, provide for one's family, and interact with one's community is essential to the integration process. It enables refugees to use their resilience, determination, and resourcefulness to contribute to their local communities and economies. It is therefore essential that refugees and host community members alike are involved in the design of programmes to ensure that local and national policies respond appropriately to their needs. Effectively managed and quality integration programmes can reap enormous benefits. The arrival of refugees can trigger positive social and economic changes. When helped to find work quickly, new arrivals are likely to give back to their communities many times over the investments made initially in their integration. It is important that:

- National and local authorities adopt strategies that promote inclusiveness, embrace diversity and foster the engagement of a broad range of actors;
- Models that harness refugees' contribution and positive impact on host communities and societies are promoted;
- Integration-related legislation, policies and frameworks are supported and promptly address refugees' specific needs and abilities;
- Quality preparedness programmes for refugees and receiving communities are co-designed and implemented in collaboration with local authorities, refugees, and receiving communities.

3.3 Fostering welcoming communities

The arrival of refugees can trigger positive social and economic changes, transform civic culture and local institutions and promote social cohesion, engaging local communities. Direct and sustained engagement between refugees and host communities connects people. It builds knowledge, familiarity, and understanding. It allows opportunities for building relationships and accepting one another, bringing a sense of mutual responsibility and social cohesion. It is important to:

- Support grassroots initiatives and organizations, including initiative by local authorities, host communities, the diaspora and refugees;
- Support models that promote the direct engagement of citizens and local communities such as volunteer programs, civic orientation courses, and community-based sponsorship programs;
- Support existing local authorities' coalitions and networks to nurture a leading role in integration programs;
- Engage non-traditional actors such as the private sector, academia or media.