

EUROPEAN UNION ASYLUM: BEYOND 2014

# Strengthening refugee protection and meeting challenges: The European Union's next steps on asylum

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## EXECUTIVE SUMMARY<sup>1</sup>

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While great progress has been made towards creation of a Common European Asylum System (CEAS) that establishes shared standards for refugee protection in the European Union (EU), important obstacles to its full and effective operation remain. The evolving global context of conflict and displacement, highlighted by the Syria crisis, failures by many States to protect their citizens, and mixed migration more broadly will continue to throw up new challenges in the asylum domain in the years ahead for the European Union and Member States, requiring robust systems and policies that can be adapted to meet them.

At the end of June 2014, the European Council, comprising the heads of state and government of the European Union's 28 Member States, will adopt strategic guidelines for the Justice and Home Affairs (JHA) area, including asylum. The guidelines, which will define the way forward on the JHA portfolio for the 2014-20 period, have the potential to offer clear direction for the further development of asylum policy and cooperation at the EU level. To achieve this, however, the guidelines will need to address key priorities in practical and principled terms, and accommodate widely differing perspectives among Member States, EU institutions, and other stakeholders. Looking beyond the guidelines, European policymakers will need to explore the ways in which these priorities can be translated into action. The Migration Policy Institute Europe and the International Migration Initiative of the Open Society Foundations, through their ongoing project on the future of asylum in the European Union, are examining a number of the current challenges as well as possible ways to address them.

This policy brief identifies the main issues that should be included in the strategic guidelines on asylum, and emphasises the need for a strong basis for future action. The brief recommends increased engagement by Member States in practical cooperation as a way to strengthen implementation and consolidation of existing EU laws and achieve more consistent, high-quality asylum decision-making. It further calls for a common understanding of 'solidarity and fair sharing of responsibility', and concrete measures to put these key principles into practical effect; expanded resettlement to the European Union; investment in integration strategies for those granted protection; and work towards deepened cooperation and more joint approaches in the longer term, to meet the significant challenges ahead for the European Union in the asylum field.

## I. INTRODUCTION: THE CURRENT ENVIRONMENT

The European Union (EU) today has more tools to address challenges in the asylum area than ever before, and there is a crucial opportunity beginning in mid-2014 to define the way forward for the next few years. EU policymakers come to the table facing an array of pressures in the asylum area, ranging from an increase in perilous crossings in the Mediterranean to rising Syrian asylum claims and resulting tensions between Member States.

EU Member States in 2013 received more than 400,000 asylum applications, an increase of some 30 per cent compared to 2012.<sup>2</sup> While this total remains well below the historic peak of more than 670,000 in 1992,<sup>3</sup> the system is not yet able to deliver consistent, high-quality asylum decisions and protection to all those who are entitled to them. This is despite almost 15 years of efforts to establish common refugee protection standards, policies, and practice across the Union.<sup>4</sup> Refugee recognition rates vary widely between Member States for asylum seekers of the same nationality and background, burdens and responsibilities are not evenly shared, high costs and delays undermine public and political support for asylum, and some question whether many of those genuinely in need of protection can effectively and safely gain access to EU territory and procedures at all.

The European Union has received a steadily increasing number of Syrian asylum applicants since the conflict began in 2011, rising to a total of almost 90,000 claims by May 2014 for the 28 Member States and immediate Western European neighbours,<sup>5</sup> of which some 51,000 claims were made in 2013 alone. However, with nearly 2.7 million Syrian refugees being hosted in Lebanon, Turkey, Jordan, Iraq, and Egypt, this number is arguably well within the European Union's capacity to manage. Syrian asylum seekers are concentrated in Sweden and Germany, which have close to 60 per cent of the European Union's total.<sup>6</sup> While most Member States are granting protection to most Syrian asylum seekers, there are continued reports of denials of access to territory at EU borders, excessive use of detention and prosecution of Syrians for illegal entry, and other problems, demonstrating that the common EU system has not yet proven its ability to deliver protection to those displaced by the largest refugee crisis since its inception.

Imbalances are also evident in the varying pressures felt

by different Member States from asylum seeker and migrant arrivals at borders. States at the Union's southern and southeastern frontiers, especially Italy and Greece, but also Malta, Cyprus, and Bulgaria, repeatedly ask for 'solidarity' from other Member States to help them respond to the needs of those arriving, including for accommodation, food, medical treatment, asylum claim processing, and protection in the longer term for those found to be refugees. Italy launched a major maritime operation codenamed *Mare Nostrum* in late 2013, aimed at rescuing people in distress at sea, following several highly visible incidents in which hundreds of people—mainly Eritreans, Somalis, and Syrians—died trying to make the hazardous journey across the Mediterranean from North Africa. Between October 2013 and May 2014, Italy had rescued some 40,000 people,<sup>7</sup> most of whom had claimed asylum. The Italian Interior Minister, who expressed concern that hundreds of thousands of irregular migrants and asylum seekers were waiting in North Africa to make the journey, accused other Member States and the European Union of 'not helping enough'<sup>8</sup> as Italy carries out border control and protection responsibilities at the Union's southern external frontier.

The debate among Member States on solidarity is complicated by the fact that while several smaller countries close to EU external borders have felt considerable pressures—due to increased arrival numbers combined with weaknesses in their systems which leave them unable to cope<sup>9</sup>—other Member States, notably in Western and Northern Europe, point to the fact that they receive by far the greatest absolute numbers of asylum seekers. In 2013, UN High Commissioner for Refugees (UNHCR) figures indicated that approximately 64 per cent of total EU asylum claims were registered in just four countries: Germany, France, Sweden, and the United Kingdom.<sup>10</sup> These countries also receive some of the highest numbers of asylum seekers relative to population, with Sweden hosting 19.2 asylum seekers per 1,000 inhabitants, Luxembourg 17.3, and Austria 9 per 1,000.<sup>11</sup> While Malta (20.2 per 1,000) and Cyprus (9.6 per 1,000) also experienced high relative numbers, the picture is not exclusively one of burdens concentrated at EU external borders, even taking into account the effect of the Dublin Regulation (which in some circumstances allows asylum seekers to be transferred back to the first European country in which they arrived).

Some Member States point to the need for countries that request support to make greater efforts to fulfil their obligations under EU and international law before they should expect to benefit from further solidarity measures, in addition to the EU funding and practical assistance that every Member State receives. With procedures and reception and detention conditions in some Member States below

the minimum legal standards,<sup>12</sup> the European Commission has launched several legal actions to press for compliance. At the same time, beyond its borders, the European Union seeks to deepen its partnerships with other countries—while continuing to make a very limited contribution to re-settlement on a global scale. Collectively, it provides some 5,000 places per year, mainly from the Nordic countries and most recently Germany, which has pledged to admit more than 10,000 Syrians.

The picture shows a number of important political commitments and legal standards adopted over the years, but there remains much to be done to ensure that the Common European Asylum System can fulfil its goals in practice.

## II. A NEW HORIZON FOR DEVELOPMENT OF THE CEAS

Article 68 of the Treaty on the Functioning of the European Union (TFEU), also known as the Lisbon Treaty, states that ‘the European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice’. This provision forms the legal basis for the June 2014 conclusions, and the justification for the EU Member States to commit to further policy development.

It is already clear that the strategic guidelines will neither be detailed or ambitious in terms of commitments. Indeed, the varied input by Member States and other stakeholders over recent months has focused on the need to implement existing legislation rather than develop a range of new initiatives, an approach that was echoed in a March 2014 Communication issued by the European Commission, identifying goals and priorities for the JHA agenda in the coming years. Regardless of the ambition of the guidelines themselves, it will be crucial in the coming months for EU Member States and institutions, taking into account the views of other participants in the system, to aim for a coherent set of priorities—one that goes beyond generalities and provides a basis for common action. While it may be easier to reach agreement on broad and ambiguous wording, efforts must be made to reach common understandings on what next steps are needed. If not, the CEAS risks running into the same obstacles that have prevented realisation of efficient and fair protection systems across the European Union to date.

While it is clear that asylum interlinks with other major issues on the JHA agenda, including managing migration, borders, and cooperation with third countries and others, it also merits specific scrutiny because of the international legal context as well as the high degree of development of EU law and policy on asylum to date.

## III. FUTURE PRIORITIES ON ASYLUM

Previous multi-annual programmes adopted by the European Council—including the Tampere Conclusions in 1999, the Hague Programme in 2004, and the Stockholm Programme in 2009—have provided political direction for the efforts undertaken to date, including the adoption of common EU laws; practical cooperation, including that coordinated by the European Asylum Support Office (EASO); and initiatives and projects aimed at providing support to Member States under asylum and migratory pressures. The European Union’s new agenda will need to reflect the substantial work undertaken to date, and commit to ongoing engagement and investment where needed to strengthen and fill remaining gaps. It should also set out the main areas in which new approaches, tools, and ideas might be required, including based on the European Union’s recent experience in grappling with displacement crises; the impact of financial pressures on some European state administrations; the need for border management that is effective yet protection-sensitive; and relationships with key countries of origin and transit of refugees and migrants. Different Member States may place more importance on some of these elements than others, and it will be challenging to achieve a universally acceptable balance. This need to find common ground, in goals that are ambitious yet realistic, will require vision, strategic thinking and readiness to think beyond national interests.

The following could be seen as cross-cutting themes which should be prioritised in the guidelines, and then by the EU institutions themselves, for attention and action in the coming years.

### A. *Consolidation and implementation of the CEAS*

After extensive and at times highly sensitive negotiations, the European Council and European Parliament in June 2013 adopted a series of amendments to EU asylum laws. The changes made by these ‘recast’ directives and regula-

tions sought to fill gaps and bring about more consistent practice in the application of common standards, including in previously unregulated areas at the EU level, such as detention of asylum seekers. Some States saw the recast standards as too high, creating scope for higher costs and abuse of asylum systems, while several advocates considered the opportunity missed to put in place essential safeguards in line with human rights. In general, however, the amendments are seen as a measure of progress, and it is generally agreed that the next essential step is more effective and consistent implementation.

EASO, established in 2010 with a mandate to coordinate practical cooperation on asylum among the Member States, is expected to play a key role in supporting implementation of the new EU legislation. The European Commission also will be a decisive actor in carrying out its mandate to ensure compliance with the EU standards. And civil society also has a vital contribution to make, bringing in-depth expertise based on years of monitoring and providing services within the asylum systems of numerous Member States.

Effective implementation of the asylum *acquis* potentially requires action in the following areas, which should be given particular emphasis:

- ▶ **Strategic investment in ongoing practical cooperation activities:** Among existing practical cooperation activities on asylum, the European Union should recall the central importance of collaboration. Ongoing activities include development and rollout of common training curricula and programmes for asylum officials at all levels, sharing of country-of-origin information, and exchanging and comparing information on national approaches to claim adjudication for similar caseloads. In these and other areas where the EASO is currently engaged, more joint action could achieve further impact.
- ▶ **Quality assurance:** Enhancing effective implementation of legal standards is directly linked to reinforcing quality in asylum procedures. Efforts to maintain and build quality, nationally and at the EU level—including through establishing asylum quality-assurance teams and processes, twinning, development of checklists and templates, and other targeted measures to address identified gaps—have been undertaken by numerous Member States and by EASO in recent years, with involvement of UNHCR. The European Union could emphasise

Member States' ongoing commitment to quality processes, and to expanding the work done to date.

- ▶ **Monitoring and evaluation:** New approaches could be explored for more effectively monitoring and evaluating the implementation of laws at the national level, and transversally across the European Union. Member States have underlined the importance of evaluating the impact of EU laws in order to establish, with a firm evidence base, if and where new EU legislation is needed. Previous evaluations have focussed chiefly on data gathered from questionnaires distributed to Member States. There may be scope to strengthen and expand the sources of data to provide a broader picture. Tools and methods from other policy areas might be informative, including the articulation of key benchmarks to measure results in practical terms.
- ▶ **Roles and responsibilities:** There should be scope to assess and consider adjusting currently defined powers and roles of main actors among the EU bodies, States, and others to ensure they are sufficiently clear and extensive to support effective implementation. The Council, Parliament, Commission, EASO, and other organs have differing mandates and powers with regard to asylum. Their work can and should be complementary and mutually reinforcing to avoid the risk of duplication or omission in the development as well as implementation of law and policy. This could require a thorough assessment of different actors' achievements and needs, and exploration of ways to reinforce or change them where needed.
- ▶ **Responding to emerging gaps and loopholes:** It is widely acknowledged that the CEAS will need to be adjusted to adapt to future realities and challenges. The implementation process can also be expected bring to light gaps in the newly recast instruments, and evaluation processes should be able to indicate what changes are needed. Geopolitical developments, refugee movements, and economic and social factors at play in Member States, as well as the jurisprudence of the courts, will all influence and change the context in which the CEAS must operate. There is a need to affirm the European Union's readiness to continue developing and strengthening its legal framework as needed in the future; to amend current legislation or adopt new instruments where needed; potentially to clarify, raise, or provide more detailed standards; or provide the legal basis for deepened cooperation and joint actions on asylum.

## **B. *Solidarity and fair sharing of responsibility***

While ‘solidarity and fair sharing of responsibility’ among Member States on asylum are required by Article 80 of the Lisbon Treaty, these concepts are nowhere defined. Member States and other stakeholders interpret the notions in varying ways, and there is no agreement on what they require or entail in practical terms. ‘Solidarity’ measures to date have involved EU financial assistance, through the European Refugee Funds and other budgets; physical relocation of persons granted protection; different forms of support provided by EASO; and bilateral support activities of various kinds.

Many States and other observers highlight the importance of ‘responsibility’ in connection with ‘solidarity’, broadly referring to States’ willingness to make efforts to fulfil existing obligations before asking for support. The strategic guidelines will need to refer to both of these elements in terms that are acceptable to Member States with different perspectives, and EU institutions should then ensure this commitment becomes meaningful. Full compliance with asylum obligations may not be realistic or meaningful as a precondition for solidarity. However, an approach is needed which incentivises Member States to invest in and use all available means to ensure their asylum systems function in an optimal way as far as possible. Solidarity, in various forms, will nevertheless be needed to assist when available resources are insufficient, or when unforeseeable pressures arise.

The recast of the Dublin Regulation<sup>14</sup> reaffirms Member States’ commitment to the current system of allocating responsibility for asylum claims among European states. Thus while critics have argued that the Dublin system requires a comprehensive rethink in order to bring about fairer outcomes for both asylum seekers and all of the States responsible for their claims, the new Regulation maintains in broad terms the criteria for allocation, subject to a number of important new safeguards for asylum seekers. The amended Dublin system also features a new early warning mechanism (Article 33, Regulation 604/2013) which provides for information-gathering and preparation of preventive action plans or crisis management action plans where needed, potentially involving EU-funded and other measures to support States requiring them. Some observers have expressed the view that this will help ensure that Dublin does not result in inordinate pressure upon particular States who lack the means to respond to it. Others, however, have pointed out that early warning may not be sufficient to ensure effective and timely delivery of support in all circumstances, notably emergencies involving large-scale arrivals. To demonstrate the readiness of all

concerned to make the system work, Member States need to acknowledge the importance of solidarity measures to complement the Dublin system where needed.

## **C. *Coordination and comprehensive approaches***

In order to increase the impact and added value of EU policies and undertakings on international protection, within and beyond EU borders, some observers highlight the need for more comprehensive approaches to asylum and other JHA areas that take into account their wider dimensions, including external relations, development and humanitarian aid, human rights, social inclusion, and others; and a more equitable balance with necessary border management and enforcement processes. To achieve this, more effective coordination is needed within the European Commission, between different EU institutions, and between the European Union and Member States and other actors.

Improving coordination, communication, and collaboration to achieve a more comprehensive approach involves a careful balancing act, and there are no perfect solutions. Overcoming institutional and political sensitivities is not a small part of this. There may nevertheless be a potential opportunity in the strategic guidelines to signal the European Union’s shared will to address this. With the upcoming transition to a new Commission and Parliament, ways can be looked at in the near term to strengthen coordination and coherence on asylum, and potentially other JHA areas.

## **D. *Flexible asylum systems***

Asylum seekers’ arrival patterns, by their nature, are unpredictable and fluctuating, and coming as part of broader mixed migration flows can exert uneven pressures on asylum and reception systems in different countries at different times. Several Member States, confronted with sudden relative or absolute increases in arrivals, asylum claims and reception needs, have received substantial EU emergency funding in recent years, most notably Greece. However, there are no standing EU arrangements for contingency planning or emergency preparedness on asylum and mixed migration. At a national level, it could be that some Member States are ill-equipped to plan comprehensively for such contingencies, and lack the means or readiness to keep human, financial, and other resources in reserve for cases of need.

There is a need to distinguish between ongoing capacity

maintenance and development to ensure a well-functioning system, and contingency and emergency planning and response. Member States' systems should not operate continually in emergency mode, but there should be scope to plan more effectively and take exceptional measures where needed.

### *E. Access to protection in the European Union*

For asylum systems to serve their purpose, they must be genuinely accessible to people in need of protection. While States are obliged under European law to afford access to asylum procedures for those requesting protection, and bodies including the EU external border agency, Frontex, have made efforts to reinforce this in practice, it remains an area requiring significant further effort. It is estimated that around 24,000 people have died in the Mediterranean en route to Europe over the past 20 years;<sup>15</sup> according to UNHCR, some 1,500 were reported to have drowned in 2011.

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Two tragic capsizings occurred in October 2013 close to Italy and Malta, resulting in the death of more than 400 people, and attracting significant media and political attention. These tragedies have thrown into sharp relief, in a way that the smaller incidents occurring on an almost near daily basis have not, the complex challenges involved, some of which a special task force on the Mediterranean has sought to address. Recommendations and actions emerging from the task force have focussed on increased cooperation with third countries on migration and border management, particularly in North Africa; combating trafficking and smuggling; reinforced border surveillance (including for the purposes of saving lives at sea); and providing funding to Member States facing migratory pressure. Limited actions on asylum were also included, all of which were already underway, and chiefly related to building protection capacity of neighbouring countries.<sup>16</sup> Critics have argued that the responses to date in this area have emphasised the reinforcing of borders with insufficient attention to the need to ensure access to protection for refugees who have engaged the European Union's responsibilities.

Among its other complexities, this involves the challenge of ensuring more 'protection-sensitive border management', as well as the possibility of exploring ways to facilitate more managed entry into the European Union for

people needing protection. Protected-entry procedures, involving the assessment of asylum claims at EU Member States' embassies abroad, have been identified as one concept worthy of exploration, albeit with many questions about their feasibility in practice. Increased resettlement, which has general political support among Member States, and dedicated EU resources within a 'Joint EU Resettlement Programme', could provide another important channel for people in need of protection to access Europe without the need to undertake life-threatening journeys.

### *F. The European Union's relationship with other countries: the 'external dimension'*

The European Union and its Member States have repeatedly underlined their strong interest in more cooperation with non-EU countries on asylum and migration. Capacity-building and resettlement activities have grown in scale over the last ten years, and both readmission and return have figured prominently as key objectives in relations with key countries of origin and transit. In addition, the idea of conditionality has been introduced with respect to development funding and broader relations with third countries.

These policy initiatives require careful balancing to ensure the confidence of third countries is not eroded, and partnerships undermined as a result, due to concern about EU motivations or otherwise. From the protection perspective, one of the challenges here is defining a balance between reinforcing protection in regions of origin and transit, and ensuring access to protection within the Union, as well as better understanding how external action impacts global refugee crises, and subsequent flows of asylum seekers and refugees to Europe.

Resettlement is an important way to ensure access to the European Union of more people outside its territory who need protection, and who cannot find durable solutions in first-asylum countries that host them. The EU contribution to resettlement annually has traditionally been modest, at fewer than 5,000 places. Pledges for resettlement and admission of Syrians are likely to lift that closer to 15,000 in 2014, although 10,000 of these places come from Germany alone. More could be done to achieve resettlement of more refugees to more EU Member States, and enhance safe routes to protection in Europe, while demonstrating the Union's commitment to solidarity with third countries that are often hosting far greater refugee numbers with dramatically fewer means.

## G. Further engagement in joint EU action on asylum

The logic of the CEAS tends towards more common policies and joint initiatives on asylum. It will continue to be challenging in many cases for Member States to reconcile national concerns and priorities with the European Union's shared interests in collective action. In some cases, increased joint activities could be seen as calling into question national sovereignty and control over the question of who receives the right to remain in the country. However, the decision made by Member States in 1999 to transfer competence to the EU level on asylum implied that this sovereign power would not remain unfettered, and that it would be in the Member States' collective interests to develop common policies and practices rather than pursue national interests alone.

The capacity of some Member States' national asylum systems is very limited, and while they may be largely sufficient as long as caseloads remain limited, there is little flexibility to cope with increased demand or guarantee state-of-the-art decision-making quality, let alone achieve economies of scale.

The strategic guidelines should aim to articulate the willingness of Member States to extend their collaboration further in the area of asylum. The Treaty objective of establishing a 'uniform status' of asylum and subsidiary protection will require, not only improved and consistent implementation of the existing directives, but potentially also further legislation. Some possible future steps in this direction include:

- ▶ **Mutual recognition** of positive asylum decisions, under which Member States would recognise grants of protection by other Member States, and permit the refugee or subsidiary protection beneficiary to stay and enjoy the corresponding entitlements in the new State, subject to defined conditions. This would effectively enable protection beneficiaries to exercise free movement rights almost immediately after receiving status, instead of several years thereafter, as under current EU law. To be politically acceptable to all Member States however, this would require significantly increased levels of 'mutual trust' among Member States—enabling them to have confidence that decisions made on claims throughout the Union are of a similar high standard and based on similar interpretation of the law. There are at the same time potential benefits to Member States that could accrue from greater free movement of people granted protection, including more flexibility to make use of skills that could be needed in different parts of the

Union's labour market. Alongside mutual recognition, *transfer-of-protection rules* would also potentially be needed, to ensure that refugees and subsidiary protection holders would maintain the legal rights associated with their status. In case a refugee or subsidiary protection holder were to seek mutual recognition of his/her status in another Member State (before obtaining long-term residence), transfer-of-protection arrangements would clarify which State is responsible for ensuring and funding his/her entitlements under the Qualification Directive.

- ▶ **Joint processing** of asylum claims, to improve consistency in asylum decision-making, increase Member States' capacity to deal with large-scale arrivals and demonstrate solidarity between Member States. This idea has been examined in a European Commission study and discussed among Member States, and the EASO has been tasked with developing a series of pilot activities in 2014 to test its potential. The current model foresees joint expert teams from other Member States providing support to selected aspects of national processes, such as interviewing claimants and identifying vulnerable asylum seekers. However, the strategic guidelines may, at the very least, provide a basis for further examination of more far-reaching approaches in the longer term, which should then become the agenda for future discussion. Joint processing could eventually enable States to deal more flexibly with certain caseloads of other aspects across national lines in subregional or other groupings. This could be explored potentially as part of collaboration among particular groups of Member States, aimed at achieving cost savings and economies of scale while maintaining appropriate standards.

These proposals come with a complex set of legal and technical questions in need of further examination, which could be the subject of focussed research into their feasibility and implications. The first step would be an expression in the strategic guidelines of political will to explore them, followed by research and development of creative approaches, from which actual decisions on and action to take forward policy development would be a more long-term endeavour.

## H. Finding a balance with migration management

One of the primary concerns for policymakers is misuse of the asylum system by people with no protection needs, and parts of the asylum *acquis* are designed to provide tools

to enable Member States to combat this. The challenge of balancing migration management priorities alongside asylum responsibilities has been further compounded by the growth of mixed flows on all routes into the European Union, including via dangerous sea routes across the Mediterranean.

There is a perceived risk that the pursuit of credible migration and border management strategies comes at the expense of rigorous asylum safeguards, and vice versa. This need not be the case: well-thought out and implemented policies in each domain can become mutually reinforcing. The strategic guidelines should ensure consistency of purpose between the text on asylum, migration pressures, and border management to reflect this.

## IV. CONCLUSION AND RECOMMENDATIONS: BEYOND THE STRATEGIC GUIDELINES

It is without doubt that the European Union and Member States have made significant progress since 1999 towards establishing a Common European Asylum System based on common legal standards. It is also apparent that more remains to be done to ensure that asylum systems in the European Union produce swift, consistent, and high-quality decisions and deliver protection effectively to those who need it. The strategic guidelines represent the beginning of a new opportunity to define shared EU goals on asylum and international protection. Further progress in priority areas, guided by long-term thinking, realism, and ambition, can ensure continued public and political support for asylum in Europe, reflecting the European Union's core values and tradition of respect for fundamental rights.

The European Union could take this opportunity to reiterate its ongoing commitment to ensuring that all aspects of the CEAS continue to develop on the basis of the full and inclusive application of the Geneva Convention Relating to the Status of Refugees and other relevant treaties. The European Union could also recall principles and commitments expressed in the Tampere, Hague, and Stockholm Programmes, which have provided the basis for achievements so far, and which remain valid and relevant for further efforts.

It is generally agreed among States and other stakeholders

that consolidation and implementation of existing EU measures are major priorities for the immediate future. There is also a need to lay the foundation for continued evolution of the CEAS in the longer term, including through new approaches to addressing gaps and responding to changing needs.

Whether encapsulated in the strategic guidelines or not, the following key elements should be included in any discussions concerning the future development of CEAS:

1. **Strengthened implementation and consolidation of existing EU legislation**, including through:
  - ▶ Continued and increased practical cooperation on asylum. This requires ongoing strategic investment in priority operational areas, including training, country-of-origin information, information exchange, and sharing of expertise, as well as mechanisms to ensure and reinforce ongoing quality in asylum systems.
  - ▶ Continuing and enhanced engagement by all Member States in such cooperation, working with the support and coordination of the European Asylum Support Office, the Fundamental Rights Agency, and Frontex, as well as key partners including the UN High Commissioner for Refugees and civil society.
  - ▶ Full and effective use of monitoring systems at the national level, including the 'early warning and preparedness' mechanism, requiring readiness on part of Member States to acknowledge and openly discuss emerging problems.
  - ▶ Effective monitoring and evaluation of the CEAS as a whole, to identify potential challenges and limitations where measures might be necessary. Monitoring and evaluation arrangements should be strengthened where needed.
  - ▶ Enforcement of the *acquis* through infringement actions where required.
  - ▶ Exchanges, practical guidance, and advice where needed to assist Member States in applying provisions where clarification is needed to promote consistent, high-quality implementation.
2. **Ongoing commitment to the principle of solidarity and responsibility-sharing on asylum** is essential to fulfil the goals of the CEAS and the obligations of the Treaty.
  - ▶ A common understanding of solidarity is needed, as a principle that aims at strengthening the operation of



the CEAS as a whole through effective, well-functioning national asylum systems.

- ▶ Solidarity measures should aim to encourage Member States to continually invest in building the effectiveness of their national systems, using best efforts in good faith, to utilise available resources. Support, in various forms, will be needed to assist when available resources are insufficient, or when unforeseeable pressures arise.
  - ▶ A range of specific measures that exist to provide solidarity should be used in particular situations depending on the context and needs, taking into account lessons learned through experience to date. These tools, and their effective targeting and use, can and should be refined, supplemented, and developed further as necessary.
3. **Strengthened coordination** is required to address multifaceted challenges that asylum and migration pose for the Union. This involves more effective coordination within different parts of the European Commission, between the European Commission and other EU entities, and between the EU bodies and the Member States. This is crucial in particular in relation to cooperation with third countries outside the Union on asylum and migration, to ensure achievement of common EU objectives.
  4. **Resettlement** remains an important protection tool and gesture of solidarity towards third countries hosting large refugee populations. The European Union must aim to make a greater contribution to global resettlement. Other lawful means of providing access to Europe for people in need of protection, as an alternative to dangerous irregular routes, should be explored, consistent with international and European law.
  5. **Integration** of people granted protection is a major ongoing challenge, including in Member States that struggle with economic and social challenges. The European Union has treated integration as a policy priority and those efforts should continue, as well as support for implementation of legal obligations in the *acquis* (including the Qualification Directive) related to integration. Strong leadership at EU and national levels should reiterate the importance of the contribution that people granted protection can make to their host societies.
  6. **Further collaboration and joint action** in the asylum field should be explored, building on pilot activities relating to asylum claim processing in 2014 and thereafter. Such action must be built on, and aim further to increase, mutual trust, as well as respect for legal standards and safeguards, and aim for more efficiency and impact in the use of resources.
  7. Work must be undertaken to prepare to address future challenges ahead for the Union in the asylum field, including:
    - ▶ The foreseen accession to the European Union of countries in southeastern Europe, bearing in mind the challenges facing and nascent state of development of their asylum and protection systems.
    - ▶ Fulfilling the goal of establishing a common procedure and uniform status of asylum and subsidiary protection, valid throughout the Union, as required by the treaties. Strengthened implementation of existing obligations, leading to enhanced trust, could provide a basis for mutual recognition of asylum decisions, as a step towards this end.
    - ▶ Continuing, consultative, and inclusive reflection and readiness to consider new approaches and joint action is needed, to address remaining gaps, and ensure the Common European Asylum System's readiness to adapt to future challenges.

## ACKNOWLEDGMENTS

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## ENDNOTES

- 1 In the joint project entitled ‘European Union Asylum: Beyond 2014’, the Migration Policy Institute Europe (MPI Europe) and the International Migration Initiative (IMI) of the Open Society Foundations are working with States, institutions, and other stakeholders in a multi-year initiative aimed at generating practical ideas for the immediate and longer term. The project aims to contribute to development of the Common European Asylum System (CEAS) consistent with the European Union’s interests, values, and obligations, through research on challenges and options on asylum to inform the development of evidence-based policies and laws. The project will involve broad consultations with Member States, EU institutions, civil society, international organisations and academics, to draw on their expertise and seek to work towards consensus on the many key questions around responses to asylum on which perspectives differ.
- 2 Eurostat, ‘Asylum applicants and first instance decisions on asylum applications: 2013’, [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-14-003/EN/KS-QA-14-003-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-14-003/EN/KS-QA-14-003-EN.PDF).
- 3 Eurostat, ‘Statistics in Focus, 110/2007: asylum applications in the European Union’, [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-SF-07-110/EN/KS-SF-07-110-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-07-110/EN/KS-SF-07-110-EN.PDF).
- 4 The Treaty of Amsterdam, which entered into force in 1999, transferred legal competence over asylum matters from national levels to the EU level, and required Member States to adopt common EU laws to govern procedures, reception of asylum seekers, and criteria and rights of those granted protection, among other subjects.
- 5 The total includes claims in the EU-28 plus Iceland, Liechtenstein, Norway, and Switzerland. See UN High Commissioner for Refugees (UNHCR), ‘Asylum trends 2013: levels and trends in industrialised countries’, [www.unhcr.org/5329b15a9.html](http://www.unhcr.org/5329b15a9.html); UNHCR, ‘Monthly data, Jan-April 2014’, [www.unhcr.org/532afe986.html](http://www.unhcr.org/532afe986.html).
- 6 Ibid.
- 7 Government figures quoted in Reuters, ‘Italy rescues 5200 boat migrants since Thursday; three dead’, 6 June 2014, [www.reuters.com/article/2014/06/08/us-italy-migrants-idUSKBN0EJ00320140608](http://www.reuters.com/article/2014/06/08/us-italy-migrants-idUSKBN0EJ00320140608).
- 8 ANSA, ‘New migrant boat disaster off Lampedusa’, 12 May 2014, [www.ansa.it/english/news/general\\_news/2014/05/12/new-migrant-boat-disaster-off-lampedusa\\_551f7181-9c5c-464a-93a5-4a0e2a944f4d.html](http://www.ansa.it/english/news/general_news/2014/05/12/new-migrant-boat-disaster-off-lampedusa_551f7181-9c5c-464a-93a5-4a0e2a944f4d.html).
- 9 For example, Bulgaria experienced a sudden jump from less than 1,000 asylum seekers annually to 7,000 in 2013. See UNHCR, *UNHCR observations on the current asylum system in Bulgaria* (Geneva: UNHCR, 2014), [www.refworld.org/docid/52c598354.html](http://www.refworld.org/docid/52c598354.html); Human Rights Watch, *Containment Plan: Bulgaria’s pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants* (New York: Human Rights Watch, 2014), [www.hrw.org/reports/2014/04/30/containment-plan-0](http://www.hrw.org/reports/2014/04/30/containment-plan-0).
- 10 UNHCR, *Asylum Trends 2013: Levels and Trends in Industrialized Countries* (Geneva: UNHCR, 2014), [www.unhcr.org/5329b15a9.html](http://www.unhcr.org/5329b15a9.html).
- 11 Ibid.
- 12 See footnote 7 above; see also UNHCR, *UNHCR Recommendations on Important Aspects of Refugee Protection in Italy* (Geneva: UNHCR, 2012), [www.refworld.org/docid/5003da882.html](http://www.refworld.org/docid/5003da882.html).
- 13 The Tampere Conclusions (October 1999) were adopted by European heads of state and government at the time when the Amsterdam Treaty came into force and legal competence for asylum shifted from the national level to the EU level. That document expressed the European Union’s commitment to establishing a CEAS ‘based on the full and inclusive application’ of the 1951 Convention relating to the Status of Refugees and other relevant treaties; European Council, ‘Presidency Conclusions,’ 15-16 October 1999, [www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/00200-r1.en9.htm](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/00200-r1.en9.htm). In the Hague Programme, the European Council in 2004 reiterated its commitment to developing the system and expressed the aim of establishing a ‘common asylum procedure and uniform status’ for those granted protection in the next phase; European Union, *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union*, 13 December 2004, OJ C 53/01, 3.3.2005. In Stockholm in 2009, the European Council adopted its third five-year programme for justice and home affairs, underlining its ambition to establish ‘a common area of protection and solidarity’ in the asylum field; *Official Journal of the European Union*, ‘The Stockholm Programme – An Open and Secure Europe Serving and Protecting

- Citizens’, (2010/C 115/01), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF>.
- 14 The Dublin Regulation, initially adopted in 2003, was amended following negotiation and adoption in June 2013 of a recast regulation, based on an earlier European Commission proposal that underwent significant adjustment in negotiations within and between the European Council and Parliament. The recast is 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) [2013] OJ L 180/31.
- 15 See periodic reports on Migrants at Sea blog, [www.migrantsatsea.org](http://www.migrantsatsea.org); Jack Shenker, ‘Mediterranean migrant deaths: a litany of largely avoidable loss’, *The Guardian*, 3 October 2013, [www.theguardian.com/world/2013/oct/03/mediterranean-migrant-deaths-avoidable-loss](http://www.theguardian.com/world/2013/oct/03/mediterranean-migrant-deaths-avoidable-loss).
- 16 See European Commission Staff Working Document, ‘Implementation of the Communication on the Work of the Task Force Mediterranean’, SWD (2014) 173 final, 22 May 2014, [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/general/docs/sdw\\_implementation\\_of\\_the\\_communication\\_on\\_the\\_work\\_of\\_the\\_task\\_force\\_mediterranean\\_part\\_1\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/general/docs/sdw_implementation_of_the_communication_on_the_work_of_the_task_force_mediterranean_part_1_en.pdf).

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