BETTER PROTECTING REFUGEES IN THE EU AND GLOBALLY

UNHCR's proposals to rebuild trust through better management, partnership and solidarity

December 2016

OVERVIEW

The European Union (EU) needs a bold, imaginative and workable approach to overcome fragmentation and manage refugee movements effectively in accordance with international law. This paper provides a vision for how this could be achieved both within the EU and globally.

The last year was exceptional in Europe, as over one million refugees and migrants undertook dangerous journeys across the Mediterranean Sea in search of safety. Despite indicators that the numbers of people arriving were increasing, the extent to which they escalated caught many countries in Europe unprepared, and chaos prevailed. The capacity of EU Member States and the Common European Asylum System (CEAS) was severely tested. Some countries, such as Austria, Germany, Greece, Italy, and Sweden, were more affected than others. Fragmented responses emerged amongst EU Member States. Some took measures to restrict access of refugees and migrants to their territories and to shift the responsibility to neighbouring countries. Although several made efforts to welcome refugees, the lack of a common EU response led to seemingly intractable policy dilemmas. This resulted in serious operational difficulties, exacerbating the already precarious circumstances under which refugees and migrants arrived in the EU.

Globally, for the past couple of years, the number of people forced to flee their homes has been on the rise, including from countries in Europe's neighbourhood. Finding political solutions to the conflicts that drive people to flee remains critical, and Europe needs to be more engaged in these efforts. In addition, countries receiving the largest numbers of refugees must receive predictable support to protect, assist, and provide solutions for them. In light of this reality, it is important to invest in stabilizing the situation in these countries. At the same time, Europe needs to be prepared to continue receiving refugees on its territory by engaging in contingency planning and putting in place an efficient and better managed asylum system. Expanding safe pathways for refugees to Europe could also provide realistic and meaningful alternatives to human smuggling and irregular movements.

World leaders recognized the need for a humane, considered and comprehensive approach to tackling the realities of displacement in their adoption of the New York Declaration on Refugees and Migrants on 19 September 2016. It is timely, then, for the EU to build on this Declaration, and revitalize its engagement, not only among EU Member States, but also with countries of origin, refuge and transit. A principled, pragmatic and common approach to responding to refugees and migrants is possible and achievable within the framework of the EU. UNHCR, the UN Refugee Agency, sets out in this paper a vision for achieving this through a comprehensive EU asylum and refugee policy of the future, both in its internal and external dimensions. The proposals made here can facilitate the development, over the longer term, of coherent EU-wide arrangements to address and respond to movements effectively. There is strong precedent for this kind of creative and forward thinking in Europe – no more evident than in the formation of the EU itself, which was founded on principles of respect for fundamental rights, responsibility, solidarity and trust.

UNHCR
The UN Refugee Agency

UNHCR PROPOSES

1 **AN EU THAT IS ENGAGED**
beyond its borders to protect, assist and find solutions by:

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

2 **AN EU THAT IS PREPARED**
to respond to possible future arrivals in significant numbers through:

- ✔ Assessment and planning
- ✔ Standby capacity at the national and EU levels
- ✔ Coordination mechanisms

3 **AN EU THAT PROTECTS**
through a well-managed common asylum system
that ensures access to territory, and includes:

- ✔ A common registration system
- ✔ Prioritization of family reunion
- ✔ Accelerated and simplified procedures for asylum determination
- ✔ A distribution mechanism for EU Member States under pressure
- ✔ A common approach to unaccompanied and separated children
- ✔ Incentives for compliance with the new system
- ✔ An efficient system for return

4 **AN EU THAT INTEGRATES**
refugees in their communities through:

- ✔ Increased funding for integration programmes
- ✔ Predictable, harmonized integration services
- ✔ Fostering welcoming communities

1
AN EU THAT IS ENGAGED BEYOND ITS BORDERS

Countries hosting the majority of refugees need robust, predictable and sustained support to create an environment where refugees can live in safety, and rebuild their lives. Solidarity and responsibility sharing with these countries are key expressions of this support. These principles are in keeping with the Treaty on the European Union,[1] and are at the heart of the New York Declaration,[2] adopted in September 2016. As a part the New York Declaration, States agreed to a Comprehensive Refugee Response framework for addressing large-scale movements of refugees, and to develop a Global Compact for Refugees in 2018. This framework provides a blueprint for international engagement with a wide range of actors in refugee situations, and lessons learned from implementing it will inform the development of the Global Compact for Refugees. Continued EU support and funding for piloting this framework in some current refugee situations will be essential to its success.

These developments coincide with the launch of key EU policies on forced displacement and migration management. The April 2016 European Commission Communication *Lives in Dignity: From aid-dependence to self-reliance*[3] calls for a development-oriented approach to displacement. In June 2016, the Migration Partnerships, with a first group of five countries in Africa (Ethiopia, Mali, Niger, Nigeria and Senegal) and two in the Near East (Jordan and Lebanon), pulled together the strengths and funding capacities of the Commission and the EU Member States. This will improve coordination and effectiveness, and reflects the call made at the EU Valletta Summit in December 2015 with African partners. These new approaches attest to the EU's ability to scale up support for overburdened refugee hosting countries, and those with nascent asylum systems.

Building upon these positive developments, UNHCR proposes an approach that would strengthen EU engagement beyond its borders to protect, assist and find solutions for refugees by:

✔ Developing sustainable asylum systems

✔ Providing needs-based support for humanitarian operations

✔ Adopting a development-oriented approach to assistance

✔ Expanding opportunities for safe pathways

✔ Piloting a common, regulated approach to migration

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[1]   Article 21 refers to i.a. the principles of equality and solidarity, and respect for the principles of the UN Charter and International Law as key founding values for the EU. It also commits the EU to seek and develop partnerships with third countries who share these principles and values. See http://goo.gl/wo5jjX.

[2]   United Nations General Assembly, *New York Declaration for Refugees and Migrants*, available at: http://goo.gl/0pFVA0.

[3]   European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Lives in Dignity: from Aid-dependence to Self-reliance, Brussels, 26 April 2016, COM(2016) 234 final, available at: http://goo.gl/xgvusR.

1.1 Developing sustainable asylum systems

The EU and its Member States would support strengthening asylum systems in:

- **Countries that host the majority of refugees:** Such support would be an expression of solidarity. Ensuring that asylum-seekers are able to access asylum and effective protection in these countries could address a major driver of onward movement. It would also provide an alternative to proposals for processing asylum claims to EU Member States outside of their territories. Once the asylum systems in these countries are fully functioning, processing of claims in these countries for asylum to EU Member States could be considered as a way to share responsibility.

- **Countries through which refugees transit:** When the security situation permits, the EU would also step up investment in sustainable protection systems in transit countries, such as Libya and Egypt. The scope of the EU Regional Development and Protection Programmes would be expanded to include all related multilateral and bilateral support to these countries.

- **EU candidate countries:** EU engagement in the development of fair and effective asylum systems in EU candidate countries would integrate the EU asylum *acquis* in their national law. It would also help build functioning asylum systems.

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,[4] and the Grand Bargain. This would include **predictable, flexible, multi-year funding** based upon sustained engagement with responsible agencies, and in close consultation with host countries when possible. The EU would lead by example by providing core funding, easing earmarking, and lifting cumbersome reporting requirements. EU funding instruments would be complementary and coordinated to prevent gaps in support.

1.3 Adopting a development-oriented approach to assistance

Developing countries host 86 per cent of the world's refugees, with the least developed countries providing asylum to 4.2 million. Protracted and chronic crises are overstretching the humanitarian relief system. A new approach would **integrate refugees into development planning and national service provision** by host communities. This would enable refugees to get on with their lives, reduce their reliance on aid,[5] and prepare for longer term solutions. It would also prevent the creation of parallel systems for refugees and nationals of a host country, and foster greater social cohesion.

The 2030 Agenda for Sustainable Development provides a platform for ensuring refugees and internally displaced persons (IDPs) are not "left behind". The EU presents an ambitious, development-oriented approach to refugees, IDPs and their hosts in its policy framework for displaced populations of April 2016.[6] The New York Declaration also provides opportunities to embed the humanitarian-development nexus in comprehensive refugee responses.

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[4] For more information, see: http://goo.gl/XWo5Fg.

[5] 80 per cent of the Commission's humanitarian funding is channelled to protracted displacement.

[6] For more information, see: http://goo.gl/e8vsv0.

The EU would support this approach by:

- **Addressing the socio-economic impacts** of large-scale displacement, and tailoring development interventions to address them.
- **Providing innovative funding modalities**, such as the Emergency Trust Fund for Africa and the Facility for Refugees in Turkey, which expand livelihood and education opportunities.
- **Investing in solutions** that reduce potential for dangerous, irregular onward movement, such as through the EU Regional Development and Protection Programmes.
- **Delivering both humanitarian aid and development cooperation** with a refugee focus from the onset of a crisis.

1.4 Expanding opportunities for safe pathways

States have committed to expanding opportunities for safe pathways,[7] recognizing that this could help to reduce the likelihood that people will risk unsafe journeys to find protection. Providing such pathways in significant numbers would help to share the responsibility for refugees with the countries hosting the largest populations of refugees. Expanded opportunities would be established primarily in countries where a Regional Development and Protection Programme, Migration Compact, or Comprehensive Refugee Response is being developed, as well as in other countries of first asylum on the strategically important routes to Europe.

1.4.1 Effective family reunification arrangements

The desire to join close family members is a key reason why refugees may wish to go to Europe. Family reunification enables many women and children to access protection in Europe, and reduces their exposure to exploitation by smugglers or human traffickers in countries of transit or first asylum. At its core, family unity is a fundamental right.[8] There is a direct link between family reunification, mental health and successful integration. However, legal and practical obstacles to family reunification often lead to prolonged separation and significant procedural costs, and have limited possibilities for success. As a result, the need to reunite with family members is a key driver of irregular, onward movements. This speaks to the need for effective family reunification arrangements.

The EU would take measures to turn the right to family unity into a reality by:[9]

- expanding the scope of family reunification;
- establishing a revolving fund to facilitate family reunification;
- providing for common application forms and travel documentation;
- developing common guidelines on establishing family links;
- developing EU common or pooled administrative support in countries outside the EU;
- providing visa waivers and humanitarian visas for family reunification needs;
- enlisting the European Asylum Support Office (EASO)/EU Asylum Agency (EUAA), NGOs and UNHCR in providing active support;
- facilitating access to embassies, and assisting with documentation;
- ensuring beneficiaries of subsidiary protection have access to family reunification under the same favourable rules as those applied to refugees.

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[7] See United Nations General Assembly, *New York Declaration for Refugees and Migrants*, available at: http://goo.gl/xgz3C7.

[8] United Nations, *Convention on the Rights of the Child*, entry into force 2 September 1990, available at: http://goo.gl/214rD2.

[9] Please also refer to *Refugee Family Reunification – UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union* (Directive 2003/86/EC), available at: http://www.refworld.org/pdfid/4f55e1cf2.pdf.

1.4.2 Resettlement programmes

Consistent with the New York Declaration, EU Member States would **significantly increase their annual resettlement quotas** to align them more closely with UNHCR's *Projected Global Resettlement Needs*,[10] and also respond to UNHCR's call for the resettlement or humanitarian admission of 10 per cent of the Syrian refugee population. Eurostat figures indicate that 28,540 refugees have been resettled to the EU from 2011 to 2015, averaging approximately 5,700 persons per year.[11] UNHCR would continue supporting EU Member States to establish and fulfill resettlement quotas. It would also continue working with the Commission to develop a Union Resettlement Framework responsive to global needs.

1.4.3 Complementary pathways to access protection

Complementary pathways to access protection have been established by a small number of European countries, notably in response to the Syrian refugee crisis. It is key to further develop these pathways. The next step would be to develop sustainable programmes that respond to the needs of a diverse global refugee population. This would give further credibility to calls for more regularized movements of refugees and for solidarity with third countries.

- The Commission/EASO would identify opportunities for **pooling capacities** of EU Member States to provide complementary forms of admission for refugees.

- The Commission would advance the development of **private sponsorship** programmes in the EU proactively and in cooperation with civil society. It could dedicate funding support, for example. It could also draw upon examples of such programmes already developed by some EU Members States, as well as elsewhere in the world.[12]

- The EU would maximize mechanisms, such as Erasmus Mundus and the Students and Researchers Directive, to increase **higher education** opportunities for refugees.

- The EU would facilitate **labour mobility** opportunities for skilled refugees living outside of the EU, including potentially through the revision of the EU Blue Card scheme.

UNHCR will continue to provide technical expertise and guidance to States in the development and expansion of pathways for admission, and in addressing practical obstacles to their implementation.

1.5 Piloting a common, regulated approach to migration

The EU could gradually develop a common approach to legal migration, building on existing cooperation and partnership arrangements. The New York Declaration provides an opening to engage further in this area. A common approach could enable some migrants, beyond the categories foreseen in the Valletta Declaration, to apply for work and residence permits from abroad. Managed migration schemes that provide routes for migrants to the EU can help to **ensure the proper use and functioning of the asylum system**, so that it does not become the migration option by default. This would help to address mixed movements of refugees and migrants more effectively.

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[10] UNHCR, *UNHCR Projected Global Resettlement Needs 2017*, June 2016, available at: http://goo.gl/2NMh3R.

[11] Eurostat, *Resettled persons - annual data*, available at:http://goo.gl/qKVxXj.

[12] Argentina, Australia, Canada, Germany, Ireland, New Zealand, and the United Kingdom of Great Britain and Northern Ireland have private sponsorship programmes.

2

AN EU THAT IS PREPARED TO RESPOND TO POSSIBLE FUTURE ARRIVALS IN SIGNIFICANT NUMBERS

Coordinated contingency planning by the EU and its Member States will be essential to respond effectively to possible future arrivals in significant numbers. Ongoing conflicts and substantial gaps in support for refugees mean that displacement will continue. The EU would need to be prepared in the event of future arrivals of refugees. Regional and national support plans would need to be tailored to each specific country situation, while at the same time be aligned with overarching objectives. The response to Civil Emergencies in the EU provides both good practices and capacities that could be integrated into contingency plans for refugee emergencies. Throughout 2016, UNHCR, with partners and governments, has developed contingency and preparedness plans related to different scenarios of large numbers of asylum-seekers and refugees arriving in the EU.

A system for contingency planning developed by the Commission and EU Agencies would include:

- ✔ Assessment and planning

- ✔ Standby capacity at the national and EU levels

- ✔ Coordination mechanisms

2.1 Assessment and planning

The Commission, EU Agencies and EU Member States would develop a system for (1) identifying and analyzing **early warning signs,** and (2) assessing their **capacity to respond** through registration, screening and reception. Existing national contingency plans would be updated and shared with neighbouring countries. The EU's two key Agencies would engage in contingency planning and emergency response. FRONTEX is already mandated to undertake regular capacity assessments and anticipate movements to the EU. The EUAA – the planned successor to EASO – has been proposed to lead early warning and contingency planning.

2.2 Standby capacity at the national and EU levels

Part of contingency planning requires developing a standby capacity to respond quickly to large-scale arrivals of refugees and migrants. This would be supported with the development of a standby **service assistance package** with the necessary technical and human resources committed in advance, as well as standby **rosters of experts**. This would ensure the immediate deployment of equipment for registration, internet connectivity, and interpreters and processing teams to affected EU Member States within a short timeframe. An important development in this direction was the extension of the mandate of the European Commission's Humanitarian Aid and Civil Protection department (ECHO) on 15 March 2016.

2.3 Coordination mechanisms

Enhanced headquarters and field-level coordination is required to ensure robust preparedness planning and the most efficient use of multiple funding sources from the EU. Coordination also helps to prevent duplication and ensure that activities complement one another. This is particularly the case in Greece where preparedness planning and developing reception capacity need to be conducted in full coordination with the Government.

A predictable and structured coordination structure would be developed between the EU's mandated Agencies and UNHCR for contingency planning and preparedness purposes. Joint analysis and information sharing would be an important starting point for the eventual preparation of joint plans. UNHCR would offer its experience and expertise, particularly in relation to its recent efforts to set up an operational presence in the EU. It would provide information about the drivers of movements around the world, and assist with developing tools for analysis and planning.

3

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

The events of the past year highlighted the need for a revitalized asylum system in the EU. This system would provide access to territory, register and receive new arrivals properly, allocate responsibility for asylum-seekers among EU Member States, and ensure that EU Member States are equipped to meet the task. Building on elements of the existing CEAS and some of the reforms proposed by the Commission,[13] UNHCR proposes a **simplified system that could also potentially save costs**.

This system would guarantee the right to asylum, enhance security screening, facilitate the efficient management of population movements, and would include the following elements:

- ✔ A common registration system

- ✔ Prioritization of family reunion

- ✔ Accelerated and simplified procedures for asylum determination

- ✔ A distribution mechanism for EU Member States under pressure

- ✔ A common approach to unaccompanied and separated children

- ✔ Incentives for compliance with the new system

- ✔ An efficient system for return

3.1 A common registration system

Common registration ensures orderly processing of arrivals, access to protection, security screening and family reunion. EU Member States would register all persons arriving irregularly in the EU[14] in a **common EU registration system**. This system would build upon the EURODAC and other relevant EU databases to improve **data management**. It would ensure **security checks** at the point of entry. It would also increase the

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[13] A comparison between the Commission's proposals and UNHCR's proposals is provided in the Annex. A legal framework for the arrangements proposed by UNHCR is already in place. EU law requires the EU to base its asylum and migration policy on solidarity among EU Member States and fairness towards third-country nationals, and to adopt legal measures, where necessary, to achieve this (see Articles 67(2) and 80 TFEU). EU Member States have a collective responsibility to ensure the right to asylum under Article 18 of the Charter of Fundamental Rights, and in line with the 1951 Convention relating to the Status of Refugees and relevant human rights law.

[14] Reference to the EU here also includes European Member States currently participating in EURODAC and other registration arrangements (Iceland, Lichtenstein, Norway and Switzerland). Registration arrangements could also be extended to EU candidate countries where safeguards are in place.

ability of systems to talk to each other, and **reduce duplication** of costly systems.[15] This would address gaps in data and security that arise when different States record different types of data or do not register arrivals.

The registration system would need to be **connected to the case processing system** in each EU Member State to ensure swift access to the asylum procedure. This could also help to reduce the numbers of persons who go missing between the registration and case processing phases.[16]

To accomplish this, pilot **Registration and Processing Centres** (RPCs) would be established in the main countries of entry with the support of EU Agencies. Building on the lessons learned from the EU "hotspot" approach, the RPCs would provide:

- registration;
- security screening;
- identification of specific needs;
- referrals to reception centres;
- counselling and information provision;
- referrals to the appropriate procedures;
- swift decision making.

The RPCs would be operated by the EU Member State concerned. The Member State's existing registration entities and first instance asylum determination bodies would work together in the same RPC. In the longer term, States may consider the gradual transfer of responsibility for the operation of RPCs from EU Member States to EU Agencies. UNHCR could advise on the development of this system based on its long experience of doing so in field operations.[17]

3.2 Prioritization of family reunion

Family reunion would be facilitated immediately after the registration phase. A common registration system streamlined with case processing ensures that the information required for family reunion is collected at the earliest stage, and in a form that can be shared with other EU Member States. This would address some of the obstacles to family reunion under the current Dublin Regulation.[18]

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[15] This would ensure that relevant data, including biometrics, is uploaded effectively to the EURODAC database by all States. Aspects of the current EURODAC reform proposal, including the expansion of the data collection, could be a step in this direction. However, more is required to achieve effective common registration fully in line with safeguards and standards, in particular for persons in need of international protection. It has also the potential to increase the ability of the European and national databases to talk to each other, and reduce duplication of costly systems.

[16] Typically, at national level in EU Member States, different authorities undertake registration of arrivals and processing of asylum claims.

[17] UNHCR's manual "Procedural Standards for Refugee Status Determination under UNHCR's Mandate" sets out the common approach UNHCR undertakes for registration it conducts in the field. A standardized registration form is used. This allows for informed assessments of the number and profiles of persons of concern (including the identification of persons with specific needs), and for a determination as to which procedures a person should be referred. Available at: http://www.refworld.org/pdfid/42d66dd84.pdf. See also UNHCR's Registration handbook, available at: http://www.refworld.org/docid/3f967dc14.html.

[18] Additionally, UNHCR proposes a broader definition of qualifying family links for family reunion purposes. Under the current Dublin Regulation, spouses, partners and minor unmarried children are eligible for family reunion with adult applicants. For unaccompanied and separated children, parents, siblings, and other adults responsible for the child, uncles, aunts and grandparents may be eligible (provided they are legally present on the territory of the Member States). The Dublin reform proposal expands these categories to include siblings and families formed in transit. UNHCR's proposed broader definition includes also minor married children who are dependent, adult children, and the parents of an adult (see UNHCR's forthcoming study on the Dublin Regulation). The current Commission reform proposals would insert an additional obstacle, as family reunion would be considered only for asylum-seekers deemed "admissible" after the conclusion of a mandatory admissibility procedure.

FLOWCHART 1: Proposed procedures

STEP 1: Registration

Identification and registration
- Identification;
- full registration;
- security checks;
- assessment of vulnerabilities;
- provision of information and legal aid;
- referral to reception.

Prioritized identification and registration of children/age-disputed persons*

* Unaccompanied and separated children and age-disputed persons are channelled to a separate procedure (see Flowchart 3).

STEP 2: Family reunion and transfers

Does asylum-seeker have **family members** in a Member State?

NO*

YES

Asylum-seeker is transferred to Member State where family members are present

* Admissibility checks could be conducted in the Registration and Processing Centre at this stage of the procedure provided the necessary safeguards and conditions are in place. Applicants identified as vulnerable would not undergo admissibility procedures.
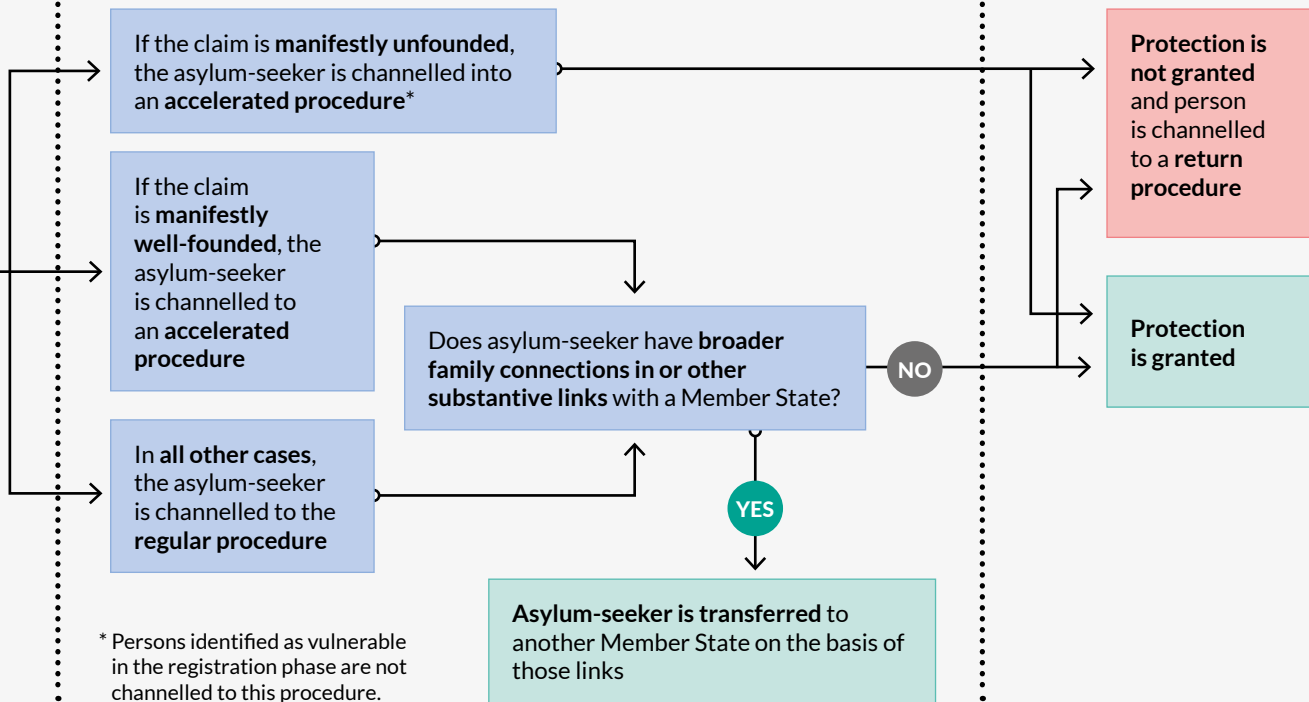
3.3 Accelerated and simplified procedures for asylum determination

Efficient and streamlined asylum determination procedures can help to manage mixed arrivals of refugees and migrants. Asylum-seekers with manifestly well-founded or unfounded claims would be channelled into accelerated procedures.[19] In EU Member States which are under particular pressure, these procedures would be supported by EU Agencies. Accelerated procedures would **provide quick access** to international protection for those who need it, and **facilitate return** for those who do not. Other cases would be processed through the regular asylum procedure. Accelerated procedures would draw upon existing **good practices**, which have been developed at the national level and by EASO. They would foresee an enhanced role for EASO in monitoring and ensuring the quality of decision making on cases. Accelerated procedures would help to address current challenges with lengthy delays, complex processes, and decision making. UNHCR can draw upon its operational experience with asylum claim determination to support the development of accelerated procedures that are fair, efficient and simplified. The proposed procedures, from registration to the decision on asylum, are outlined in Flowchart 1.

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[19]   UNHCR considers that cases from safe countries of origin (SCOs) may be channelled into accelerated procedures provided procedural safeguards are assured, including providing the applicant with all the necessary information, in an appropriate language, to be able to effectively challenge the presumption of safety, and to have access to legal aid, to a personal interview, and to an effective remedy with suspensive effect. Persons identified at registration as vulnerable would not be channelled into the accelerated procedure open for manifestly unfounded claims.

STEP 3: Assessment and additional transfers

STEP 4: Decision

If the claim is **manifestly unfounded**, the asylum-seeker is channelled into an **accelerated procedure***

If the claim is **manifestly well-founded**, the asylum-seeker is channelled to an **accelerated procedure**

In **all other cases**, the asylum-seeker is channelled to the **regular procedure**

Does asylum-seeker have **broader family connections in or other substantive links** with a Member State?

NO

YES

Protection is not granted and person is channelled to a **return procedure**

Protection is granted

Asylum-seeker is transferred to another Member State on the basis of those links

* Persons identified as vulnerable in the registration phase are not channelled to this procedure.

Note: *Some aspects of the Commission's proposals focus on protection outside the EU. They introduce mandatory admissibility procedures and the use of "safe country" concepts. While this may ensure access to protection in a third State, such arrangements are often complex. They would need to be part of efforts to share responsibilities and involve key protection safeguards. They would require independent, reliable and current information on the situation in a country deemed "safe". They would also require that access to effective protection on return is verified. While admissibility arrangements could be used, for example, by main countries of arrival, under an EU emergency support plan and with the necessary safeguards in place, they are currently not amenable to mandatory use across the EU.*

FLOWCHART 2: Procedures when EU Member States are under pressure

STEP 1: Registration

Identification and registration
- Identification;
- full registration;
- security checks;
- assessment of vulnerabilities;
- provision of information and legal aid;
- referral to reception.

Prioritized identification and registration of children/age-disputed persons*

* Unaccompanied and separated children and age-disputed persons are channelled to a separate procedure (see Flowchart 3).

STEP 2: Family reunion and transfers

Does asylum-seeker have **family members** in a Member State?

NO*

YES

Asylum-seeker is transferred to Member State where family members are present

* Admissibility checks could be conducted in the Registration and Processing Centre at this stage of the procedure provided the necessary safeguards and conditions are in place. Applicants identified as vulnerable would not undergo admissibility procedures.

3.4 A distribution mechanism for EU Member States under pressure

A fair and workable distribution mechanism would **manage disproportionate arrivals** in an EU Member State through responsibility sharing. This would assist in maintaining trust. When an EU Member State receives more asylum-seekers than a percentage (or "reference share") that is deemed fair by EU Member States,[20] a mechanism would be triggered to distribute cases above this share to other EU Member States.[21]
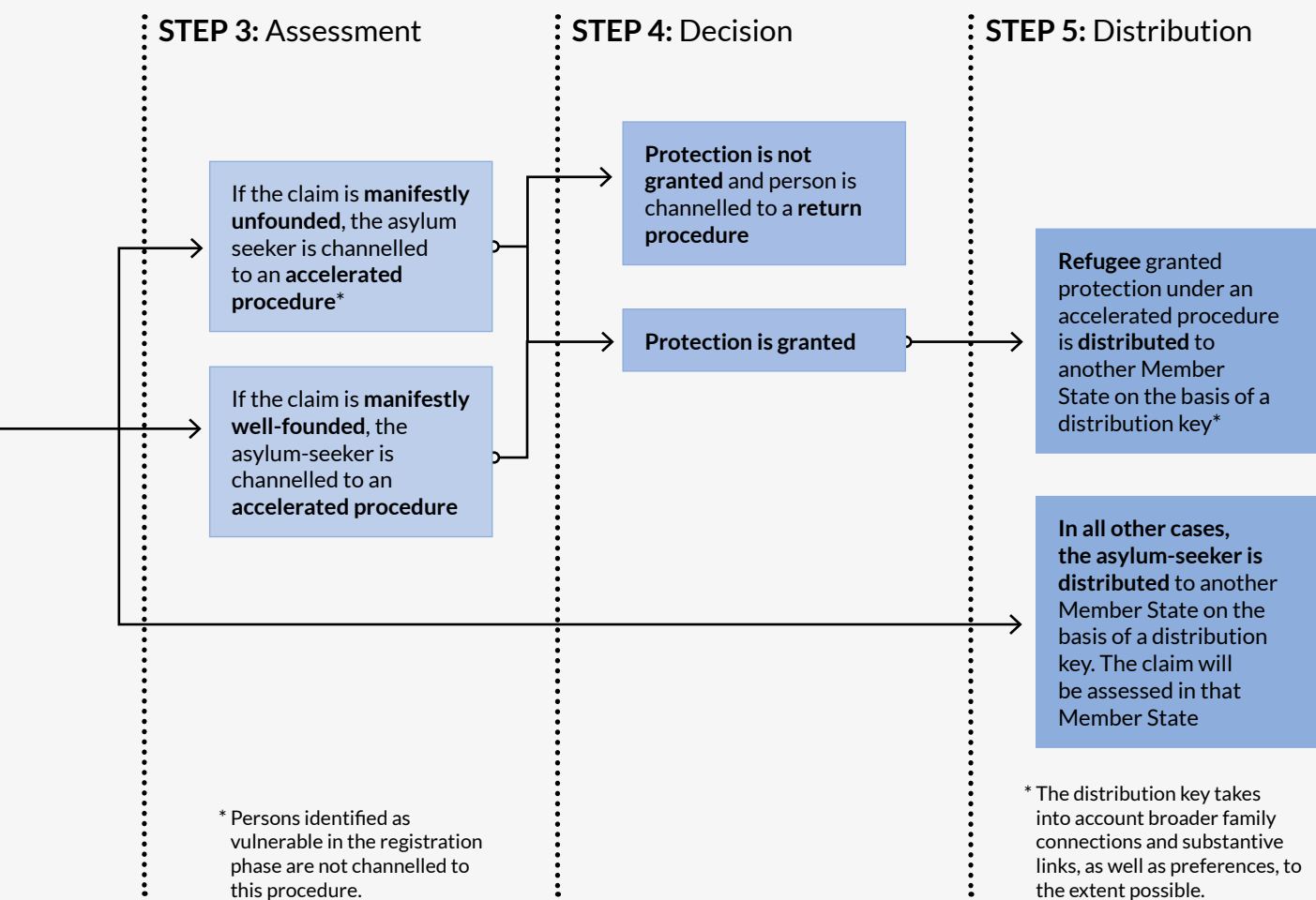
This mechanism would be similar to the one proposed recently by the Commission,[22] but with some important modifications:

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[20] This would need to be determined by prior agreement among Member States at the EU level.

[21] This mechanism would be in line with Article 80 TFEU, which requires that asylum policies and their implementation are governed by the principle of solidarity and fair sharing of responsibility for the EU, and that Union acts in this area contain measures, where necessary, to give effect to the principle. The distribution would be triggered when the agreed "reference share" is reached, rather than after the national system exceeds 150 per cent of the reference share foreseen in current proposals.

[22] European Commission, *Proposal for a Regulation of the European Parliament and the Council 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)*, COM(2016) 270 final, Brussels, May 2016, available at: http://goo.gl/OltoVB.

STEP 3: Assessment

STEP 4: Decision

STEP 5: Distribution

If the claim is **manifestly unfounded**, the asylum seeker is channelled to an **accelerated procedure***

If the claim is **manifestly well-founded**, the asylum-seeker is channelled to an **accelerated procedure**

Protection is not granted and person is channelled to a **return procedure**

Protection is granted

Refugee granted protection under an accelerated procedure is **distributed** to another Member State on the basis of a distribution key*

In all other cases, the asylum-seeker is distributed to another Member State on the basis of a distribution key. The claim will be assessed in that Member State

* Persons identified as vulnerable in the registration phase are not channelled to this procedure.

* The distribution key takes into account broader family connections and substantive links, as well as preferences, to the extent possible.

- **Manifestly unfounded claims**[23] would not be distributed to other EU Member States.[24] They would undergo the accelerated procedure in the country of entry, with increased EU Agency support. This would avoid complicating return for those found not in need international protection.

- **Manifestly well-founded claims**[25] would not be distributed to other EU Member States. They would be determined in the country of entry in the accelerated procedure, with increased EU Agency support.[26] Once international protection is granted, they would be distributed.[27]

- **All other cases** would be distributed to another EU Member State for asylum determination.

The proposed procedures when an EU Member State is under pressure are outlined in Flowchart 2.

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[23] Cases that are manifestly unfounded are applications from persons who clearly have no valid claim to international protection based on established criteria or which are clearly fraudulent or abusive.
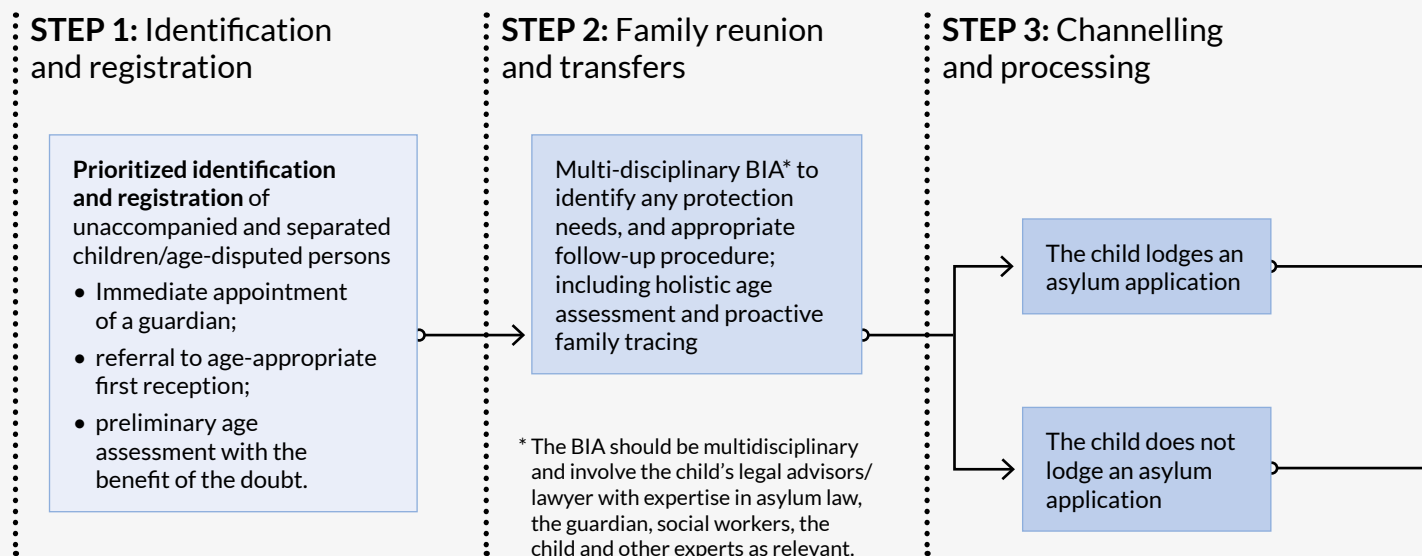
[24] This would also apply to claims lodged by applicants coming from SCOs.

[25] Manifestly well-founded claims clearly indicate the applicant meets the criteria for international protection. Such cases are likely to have claims linked to specific profiles that have been established as giving rise to a well-founded fear of persecution or serious harm owing to the situation in the country origin.

[26] Where the average timeframe for the determination of manifestly well-founded claims in the accelerated procedure exceeds three months, an emergency provision could include the distribution of these cases.

[27] Pending EU-level agreement on mutual recognition of refugee status, refugees could be distributed subject to final recognition under the national law in the country of distribution.

FLOWCHART 3: Procedure for unaccompanied and separated children

STEP 1: Identification and registration	**STEP 2:** Family reunion and transfers	**STEP 3:** Channelling and processing

Prioritized identification and registration of unaccompanied and separated children/age-disputed persons
- Immediate appointment of a guardian;
- referral to age-appropriate first reception;
- preliminary age assessment with the benefit of the doubt.

Multi-disciplinary BIA* to identify any protection needs, and appropriate follow-up procedure; including holistic age assessment and proactive family tracing

* The BIA should be multidisciplinary and involve the child's legal advisors/lawyer with expertise in asylum law, the guardian, social workers, the child and other experts as relevant.

The child lodges an asylum application

The child does not lodge an asylum application

3.5 A common approach to unaccompanied and separated children

UNHCR and its partners are developing a **"Roadmap"** to support EU Member States and institutions in putting standards for the protection of unaccompanied and separated children into practice, including:

- early identification and biometric registration;
- immediate provision of safe and age appropriate care arrangements;
- a best interests assessment (BIA) to identify protection needs and follow-up;
- appointment of a guardian without delay;
- a common method for age assessment;
- family tracing;
- legal representation;
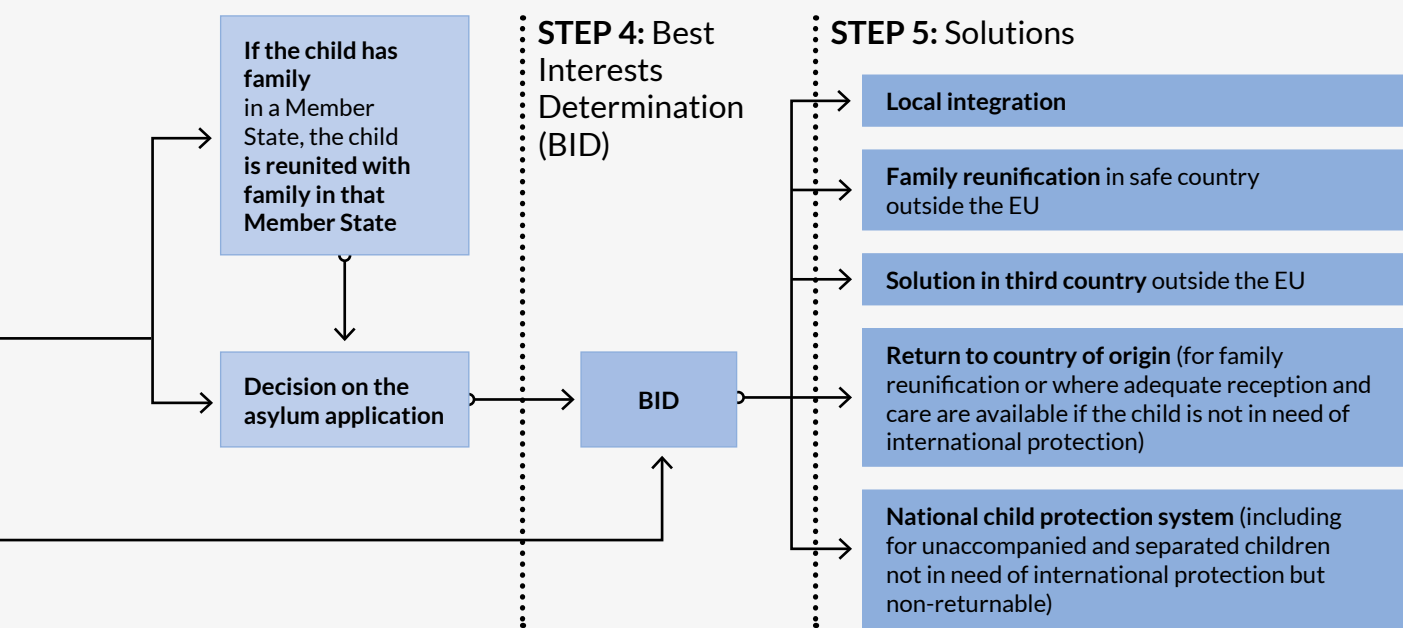- case management systems.

This new approach is set out in Flowchart 3.

3.6 Incentives for compliance with the new system

Incentives for compliance with the new system for States and asylum-seekers would include:

- Transferring asylum-seekers whose claims are manifestly well-founded or channelled into the regular procedure to an EU Member State where the asylum-seeker may have **family or other connections**.[28] This would address one of the reasons why some asylum-seekers engage in irregular onward movement. It would also improve their prospects for integration.

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[28]   Broader family connections would include: disabled persons incapable of self-support, other dependent members of the household (e.g. single/lone brothers, sisters, cousins, nieces, nephews, or individuals who are not biologically related but are cared for within the family unit). Other links could include previous regular stay (visa/residence permit as per the Dublin Regulation)/study/work in a Member State, or concrete employment possibilities in an EU Member State (e.g. job offer). Those found not in need of international protection would be referred without unnecessary delay to return procedures.

Diagram

If the child has family in a Member State, the child **is reunited with family in that Member State**

↓

Decision on the asylum application

STEP 4: Best Interests Determination (BID)

BID

STEP 5: Solutions

- **Local integration**
- **Family reunification** in safe country outside the EU
- **Solution in third country** outside the EU
- **Return to country of origin** (for family reunification or where adequate reception and care are available if the child is not in need of international protection)
- **National child protection system** (including for unaccompanied and separated children not in need of international protection but non-returnable)

- 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.

- Transferring asylum-seekers who have **moved onward irregularly** to another Member State back to the responsible Member State.[29]

- Reducing a Member State's **"reference share"** as a reward for high quality and fast processing of a significant number of cases.

3.7 An efficient system for return

The accelerated procedures would swiftly identify persons not in need of international protection in countries of entry. This would help to build trust in the integrity of the asylum system. **Assisted voluntary return** programmes would be available in all EU Member States. Enhanced outreach, awareness raising, and counselling, including by the International Organization for Migration (IOM), could facilitate greater access to assisted voluntary return. **Forced returns** would be an option only after (1) rejection in a fair procedure, (2) consideration of assisted voluntary return, and (3) absent compelling humanitarian or statelessness-related considerations. **Alternatives to detention** could be used in advance of return operations.[30] **FRONTEX support** for return operations would be enhanced, particularly in the main countries of entry.[31] Return programmes will also require **EU cooperation** with countries of origin and support for reintegration.

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[29] Reductions in benefits, within the parameters of existing legal standards, could apply in cases of non-compliance.

[30] A legal framework for the detention of persons in advance of and for the purpose of return is already in place, setting out the limited circumstances under which detention can be used. See UNHCR's Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention available at: http://www.refworld.org/docid/503489533b8.html.

[31] Greater use could also be made of the enhanced return mandate of FRONTEX. Enhanced technical, logistic and pre-removal capacities are required in countries of entry under pressure to effect returns more rapidly.

HOW WILL THE PROPOSED SYSTEM MAKE A DIFFERENCE?

UNHCR's proposal	Impact
A common registration system	✔ All arrivals are registered ✔ Access to protection is facilitated ✔ Trust that States can manage arrivals is re-built ✔ Security screening is improved ✔ Data-sharing among EU Member States is improved ✔ Duplication of multiple and costly systems is eliminated
Pilot Registration and Processing Centres (RPCs) in the main countries of entry	✔ Arrivals are quickly referred to the right procedure ✔ Decision making is swifter ✔ States can manage larger arrival numbers due to scaled up support from EU Agencies in the RPCs ✔ Number of people going missing between registration and processing could be reduced
Prioritization of family reunion	✔ Family members are quickly reunited ✔ Risky irregular onward movement is replaced with regular movement for those seeking to reunite with their families ✔ Children and vulnerable asylum-seekers get the support and protection of their families early on
Accelerated procedures	✔ Quicker access to international protection is provided for those who need it ✔ Quicker identification of those who do not need international protection and facilitation of their return
A rational approach to a distribution mechanism for EU Member States under pressure	✔ States under pressure of large arrivals are supported ✔ Refugees and asylum-seekers are distributed through a fair system ✔ Access to protection is guaranteed, including at times of large arrival numbers in certain countries ✔ The distribution mechanism is sustained ✔ Existing links asylum-seekers have in EU Member States are recognized ✔ Fairness and trust in the system is restored
Common approach to unaccompanied and separated children	✔ Unaccompanied and separated children are identified sooner, reunited with families if in their best interests, and provided with legal representation and guardian without any delay ✔ With common registration and use of biometrics, unaccompanied and separated children disappearing from the system could be reduced
Incentives for compliance with the system	✔ Rules and procedures of the asylum system are respected by EU Member States and asylum-seekers ✔ Irregular onward movement of asylum-seekers is reduced ✔ Integration prospects are enhanced

4

AN EU THAT INTEGRATES
REFUGEES IN THEIR COMMUNITIES

Building social cohesion, stability and security requires that communities are well-equipped to receive refugees, and that refugees are well-supported to realize their potential in their new environments. **Integration involves a "two-way" process** between refugees and their host communities. The social contract between refugees and receiving States needs to be established properly to restore public and political trust. States need to ensure the **enjoyment of rights**, foster a **welcoming environment**, and address xenophobia. At the same time, refugees need to participate in **integration programmes,** and **comply with the laws** of their host State, including respecting core standards of human rights.[32]

While integration may be a challenge for many States, it also presents an opportunity. The ability for refugees to live and build futures for themselves wherever they are in the EU can contribute to an effective asylum system and reduce pressures for onward movement.[33] UNHCR proposes a system for integration that builds upon the following key elements:

- ✔ Increased funding for integration programmes

- ✔ Predictable, harmonized integration services

- ✔ Fostering welcoming communities

4.1 Increased funding for integration programmes

- 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, Migration and Integration Fund (AMIF) to support integration each year. Adherence to this spending requirement would be monitored by the Commission.

- The EU would develop an assessment tool to measure integration outcomes in the EU. AMIF funding would be tied to these outcomes.

- Funding would be increased for local integration actors (e.g. local authorities, local NGOs).

- Funding would also be sought from non-traditional actors (e.g. private sector, universities).

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[32] Non-compliance by refugees could lead in some circumstances to the loss of some benefits within the parameters of existing legal standards.

[33] Please see UNHCR's research on integration contained in *Integration – A Fundamental Component in Supporting Diverse Societies*, January 2016, available at: http://www.refworld.org/docid/56b9f8034.html.

4.2 Predictable, harmonized integration services

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. Effectively managed integration programmes can reap enormous benefits. 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. Recent research by the Organisation for Economic Co-operation and Development (OECD) shows how refugees can benefit economies, particularly when States invest early in their integration and social inclusion.[34]

- **Targeted investments** would be made in employment, housing, and language acquisition.

- Upon arrival through resettlement,[35] or after recognition in EU Member States, refugees would receive comprehensive **cultural orientation**. Orientation programmes would focus on rights as well as obligations, and could help to manage expectations.

- Refugees' **skills and qualifications** could be recognized through maximizing the New Skills Agenda for Europe, and revising the European Qualifications Framework.

4.3 Fostering welcoming communities

Direct and **sustained engagement** between refugees and host communities is essential. It builds familiarity and empathy, and creates opportunities for social cohesion. It also contributes to a sense of mutual responsibility to one another.

- **Civil society** would be increasingly engaged through volunteer programmes, activities supporting the integration of refugees and asylum-seekers, and civic orientation courses.

- Communities would combat **xenophobia** through increased engagement with refugees. Awareness campaigns and enhanced registration and prosecution of hate crimes would contribute to this objective.

UNHCR will continue to work closely with national governments, civil society and the private sector to support **integration planning**, and can assist EU Member States with specific advice and support.[36]

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[34] OECD, "Making Integration Work", available at https://goo.gl/037jlh.

[35] As also reflected in the Commission's Communication on an *Action Plan on the integration of third country nationals*, pre-departure measures are a key aspect of the successful integration of resettled refugees.

[36] UNHCR and the OECD signed a Memorandum of Understanding (MoU) in June 2016 outlining areas of cooperation, including the protection and integration of refugees. Available at: http://www.refworld.org/pdfid/577a3cb34.pdf.

ANNEX

Differences between UNHCR's approach and the Commission's proposal for the reform of the Dublin Regulation

LEGEND: ━━ UNHCR proposal ━━ EC proposal

(i) Under UNHCR's proposal, family reunion would be prioritized and considered immediately after registration. Under the EC proposal, family reunion would not be considered until after an admissibility procedure.
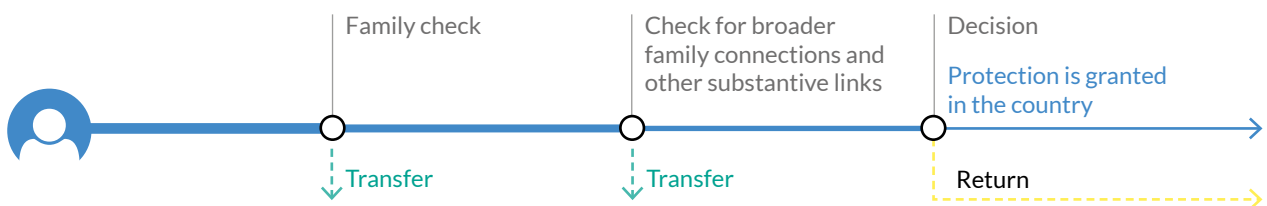

Registration   Admissibility   Transfer: Family Reunion
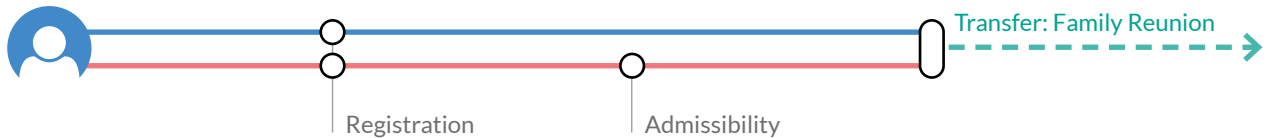
(ii) Under UNHCR's proposal, the prioritization of family reunion would maintain when a State is under pressure and the distribution mechanism is activated. Under the Commission's proposal, asylum-seekers deemed admissible would be distributed to another EU Member State prior to the consideration of family reunion. The Commission's proposal could lead to multiple transfers and delays in family reunion.

Registration   Admissibility   Transfer 1   Transfer: Family Reunion   Transfer 2: Family Reunion
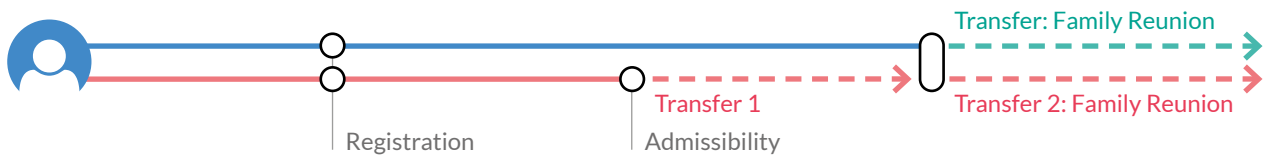
(iii) Under UNHCR's proposal, likely manifestly well-founded and unfounded claims would be determined swiftly in EU Member States of entry. Under the Commission's proposal, when the distribution mechanism is activated, all types of cases, including likely manifestly unfounded claims, would be distributed. UNHCR's proposal would facilitate swifter returns for persons not in need of international protection by avoiding the distribution of such persons.

Family check   Return   Transfer
Registration   Admissibility   Negative decision
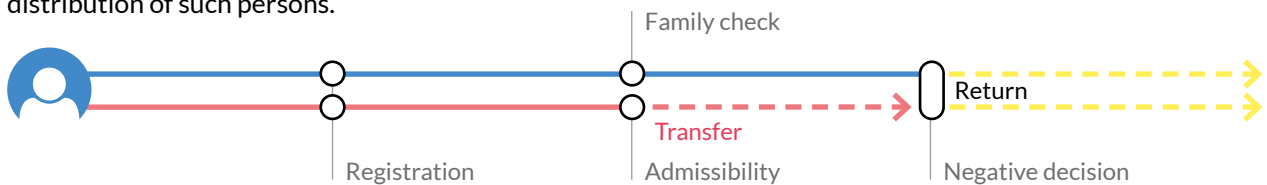
(iv) UNHCR's proposal provides for several possibilities for transfer out of the country of entry, providing asylum-seekers with opportunities for family reunion and transfer to a country where they have links, and reducing the number of asylum-seekers to be processed in main countries of entry.

Family check   Check for broader family connections and other substantive links   Decision

Protection is granted in the country

Transfer   Transfer   Return

(iv) Under UNHCR's proposal, refugees would also be distributed under the distribution mechanism under certain circumstances.

(v) The distribution mechanism would be triggered when the reference share is reached (100 per cent), rather than when 150 per cent of the reference share is reached.

(vi) UNHCR's proposals focus on efficient and streamlined asylum determination procedures within the EU. Aspects of the Commission's proposals, by contrast, focus on protection outside the EU, through the introduction of mandatory admissibility procedures and use of "safe country" concepts.

NOTES

BETTER PROTECTING REFUGEES IN THE EU AND GLOBALLY