

BACKGROUND NOTE

Asylum and International Protection

Disclaimer

This Background Note was established to inform the intergovernmental consultations held in summer 2021. The consultations served the update of the Prague Process Action Plan and its six thematic areas. The fourth Ministerial Conference in October 2022 shall endorse a new Action Plan, which shall frame the Prague Process cooperation throughout 2023-2027.

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Key Developments across the Prague Process region

Asylum has been one of the most broadly and emotionally debated policy areas. In the end of 2019, **79.5 million people worldwide have been seeking refuge**, including 45.7 million internally displaced persons (IDPs), 20.4 million refugees, and 4.2 million asylum seekers. Unrest, persecution, human rights violations, armed conflicts and other serious threats erupted in various parts of the world, including also in the Prague Process region – in **Ukraine**, the **South Caucasus** and just recently in **Central Asia**. According to UNHCR, the overall number of displaced people has doubled over the past decade. Many of the concerned populations have thus far failed to find lasting solutions for rebuilding their lives. Between 2010 and 2019, only 3.9 million refugees were able to return to their countries of origin. In comparison, almost 10 million refugees managed to return home during the previous decade and over 15 million throughout the 1990's. Around half of those displaced nowadays are children. Over 50% of all IDPs are women.

Since 2014, **Syria** has been the main source country of refugees. 3.6 million of them have found shelter in **Turkey**, which swiftly became the world's leading refugee-hosting country after hosting only around 10.000 refugees back in 2010. The outbreak of the armed conflict in **Eastern Ukraine** in 2014 resulted in the displacement of 1.7 million people, most of whom remain IDPs within Ukraine. In the **European Union**, the number of asylum applications peaked at 1.28 million in 2015 and amounted to 698 000 in 2019. Since 2015, over five million asylum claims have been lodged in the EU, with **Germany** alone registering almost two million requests. Arrivals in **Cyprus, Greece, Malta, Italy and Spain** remained below 200,000 between 2017 and 2019. At the end of 2019, the EU hosted a total of 2.6 million refugees, equivalent to 0.6% of the EU population. On average, around 370,000 asylum applications are rejected on an annual basis across the EU. However, only around a third of these persons are actually returned home.

Outside the EU and Turkey, the **United Kingdom** and **Russia** registered the most asylum applications. The **Western Balkan region** continues to constitute an important transit corridor for mixed migration flows to the EU. While the number of registered asylum applications across the region increased by 19% by 2018, most applicants abandoned the related procedures before actually receiving a decision.

In terms of policy, the Prague Process states have made increased efforts to build capacities in this area, establishing new asylum systems or adjusting existing ones. The **Eastern Partnership** countries made good use of the trainings received within the Prague Process Targeted Initiative and the UNHCR-led Quality Initiative. **Moldova** improved its decision making through an internal quality-control mechanism. **Georgia's** recognition rates increased from 5.5% in 2018 to 13% in 2019, following greater use of country of origin information, among other improvements. The **Western Balkan states** also implemented various initiatives to reinforce their national asylum systems, harmonising data collection and identifying protection needs. Individual legal counselling and strategic litigation were essential tools in addressing identified shortcomings. Since the adoption of a comprehensive, EU-inspired Law on Foreigners and International Protection in 2013, **Turkey** has maintained a consistently high standard in its emergency response. The Directorate General of Migration Management (DGMM) established in 2014 assumed all competencies in the area of international protection as of 2018. The country has been enhancing its registration and protection procedures continuously, introducing 40 e-learning modules to support training and deploying over 500 bilingual support personnel. Meanwhile, the **Central Asian countries** have made significant progress in reducing statelessness, which has affected many people in the region, as well as in establishing their national legal frameworks on international protection. In 2017, **Turkmenistan** amended its Law on Refugees, introducing

an enhanced protection for unaccompanied children seeking asylum, as well as temporary and complementary protection. Since 2017, the **Kyrgyz Republic's** criminal code prevents the criminalisation of asylum seekers entering the country illegally. In 2018, **Kazakhstan** simplified the procedures for refugees to acquire permanent resident status.

Within the **European Union**, a unified response to international protection has been hard to achieve since 2015, resulting in many ad-hoc solutions existing to this day. Progress was made in legislative areas, including two regulations establishing a framework for the interoperability of relevant EU information systems as well as the common position on the recast Return Directive. Considerable work was also accomplished in the policy implementation and practical cooperation among EU+ countries. The EU's Strategic Agenda for 2019-2024 set the main priorities for the next institutional cycle, including migration and asylum, as well as the cooperation with countries of origin and transit as priority areas. All these efforts, however, did not manage to overcome the long-standing stumbling block of **solidarity and responsibility sharing**.

Despite the adoption of the **Global Compact on Refugees** in 2018 and numerous other flagship initiatives, solutions for refugees are in decline. A growing number of people in need of protection remains in precarious situations. **Resettlement** benefits only a fraction of the world's refugees, many of whom have little hope of ever returning home. At the same time, their socioeconomic integration in the host countries has become ever more challenging, with the **COVID-19 pandemic** further exacerbating the situation of vulnerable populations, which are particularly susceptible to outbreaks due to dire living conditions and limited access to healthcare. Already marginalised refugees and displaced communities have been forced further into poverty, women and girls are facing increased exposure to gender based violence and worsening gender inequality, access to education has been further reduced, and people are under increasing pressure to return to unsafe or unstable situations. Moreover, governments leveraged the pandemic to restrict access to protection due to heightening security concerns, thereby creating a precedent for the future.

The EU's New Pact on Migration and Asylum

The EU's continuous goals to ensure fair access to an asylum procedure, as well as legal certainty for asylum seekers, remain valid within the New Pact, which shall build on previous compromises and progress made. It proposes various legislative measures to improve the EU's common asylum system:

- A new **solidarity mechanism** for the distribution of incoming asylum seekers among Member States;
- New legislation to establish a **screening procedure** at the EU's external borders;
- A more effective and flexible use of **border procedures** as a second stage in the process, bringing the rules on the asylum and return border procedures together into a single instrument;
- Harmonised rules and improved **reception conditions** for asylum applicants, including earlier access to the labour market and better access to education. Disincentivising unauthorised **secondary movements** and clarifying the rules on **detention**;
- A further harmonisation of the **criteria for granting international protection**, as well as clarifying the **rights and obligations of beneficiaries** and setting out when protection should end, in particular if the beneficiary has become a public security threat or committed a serious crime;

- Addressing **situations of crisis and force majeure**;
- Establishing the EU contribution to **global resettlement efforts**;
- The Regulation to set up a fully-fledged **European Union Agency for Asylum**

The European Commission is thus proposing to establish a seamless procedure at the border applicable to all non-EU citizens crossing without authorisation, comprising **pre-entry screening**, an **asylum procedure** and where applicable a swift **return procedure**. Asylum claims with low chances of being accepted should be examined rapidly without requiring legal entry to a Member State. Meanwhile, the normal asylum procedure would continue to apply to other asylum claims and become more efficient, bringing clarity for those with well-founded claims. The new procedures shall allow asylum and migration authorities to more efficiently assess well-founded claims, deliver **faster decisions** and thereby contribute to a better and more credible functioning of asylum and return policies.

For those whose claims have been rejected, an EU **return border procedure** would apply right away, thus eliminating the risks of unauthorised movements and sending a clear signal to smugglers. Every person should continue to have an individual assessment, with full respect for the principle of **non-refoulement and fundamental rights**. Those most vulnerable should be exempt from the border procedure. An effective monitoring mechanism already at the stage of the screening shall represent an additional safeguard.

Beneficiaries of international protection should have an incentive to remain in the Member State which granted international protection, with the prospect of long-term resident status after three years of legal and continuous residence in that Member State. This would also help their integration into local communities.

Another important step will be the future monitoring of national asylum systems by the new **European Union Agency for Asylum**. The new mandate should respond to Member States' growing need for operational support and guidance on the implementation of the common rules on asylum, as well as bringing greater convergence and mutual trust. The new Agency would also be able to provide capacity building and operational support to **third countries**. After all, the well-functioning migration management on key routes is essential to protection as well as to asylum and return procedures.

The needs of children represent a key priority as they are particularly vulnerable. The **rights and interests of the child** shall be ensured in line with international law on rights of refugees and children as well as with the EU Charter of Fundamental Rights. The new rules shall ensure that the best interests of the child are the primary consideration in all respective decisions. Representatives for **unaccompanied minors** should be appointed more quickly and given sufficient resources. Unaccompanied children and children under twelve years of age together with their families should be exempt from the border procedure unless there are security concerns. In all other relevant asylum procedures, child-specific procedural guarantees and additional support should be effectively provided at every stage, providing effective alternatives to detention, promoting swift family reunification, and ensuring that the voice of child protection authorities is heard. Children should be offered adequate accommodation and assistance, including legal assistance. Finally, they should also have prompt and non-discriminatory access to education, and early access to integration services.

Resettlement is a tested way to provide protection to the most vulnerable refugees. Recent years have already seen a major increase in resettlement to the EU, and this work should be further scaled up. The EU will also support Member States wishing to establish **community or private sponsorship schemes** through funding, capacity building and knowledge-sharing, in cooperation with civil society, with the aim of developing a European model of community sponsorship, which can lead to better integration outcomes in the longer term.

Looking into the Future

Forced migration and displacement will hardly disappear in the future. No matter whether countries pursue open or restrictive policies on international protection, they will need to address this issue as part of their overall migration management framework.

The climate for the admission, processing and treatment of asylum-seekers continues to be malevolent. Refugee issues are often heavily politicized. Many media outlets incite negative attitudes resulting in racist and xenophobic attacks against refugees. To confront these manifold challenges, there is an urgent need to revitalize the **legal principles** that underpin asylum and refugee protection. To do so, there is a need for **strengthened partnerships** between all stakeholders and a clearer understanding of their roles. It is important that states commit themselves to establish asylum systems, which responsibly identify who is a refugee, who is otherwise in need of protection, and who should be rejected and returned home in a safe and dignified manner. The countries of the Prague Process could support each other in building such systems through sharing practices and information, as well as providing targeted guidance and advice. The role of **UNHCR** in this process will be of utmost importance.

Another important protection partner is the **judiciary**. Informed judicial interventions by national courts restore the real meaning to the notion of “protection” for refugees by ensuring that all administrative action meets the basic principles of fairness and due process and that refugees and asylum-seekers are treated in a fair, dignified and humane way. The professionalism of the judiciary relies heavily on the existence of **continuous training in asylum processes** for itself and law enforcement bodies. In the past, the Prague Process already provided a number of trainings and designed specific training guidance, which can be used to build new training activities in this area. A comprehensive needs analysis could represent a first step in creating further tailor-made training curricula. Designing online trainings on the basics of the discipline, on crosscutting issues, but also advanced trainings featuring case studies and knowledge from non-legal disciplines may provide a useful support tool for the Prague Process states.

To support the further development of **national asylum legislation**, taking stock of the latest key decisions in refugee law across the region could be beneficial as it would allow developing concrete guidance on open interpretative questions. Institutions should strive for a smart legislative design that features both positive and negative incentives to optimise compliance. As the factors forcing people to flee may remain in place for decades, legislation targeting long-term residents enjoying international protection could consider broadening opportunities for their economic mobility under predefined criteria.

It is vital to remember that **security and refugee protection are not mutually exclusive**. An integrated response to asylum and migration flows that enables states to identify persons entering their territory, and to respond to protection needs as well as to security concerns in line with their obligations under international law requires robust and efficient systems to register and screen individuals seeking entry. From both a protection and a security perspective, it is critical to establish asylum systems that allow for the fair and efficient determination of claims for international protection. Good practice also involves cooperation between border guards, security services and immigration and asylum authorities within a given state, with other states along travel routes and with regional and international organisations.

The search for **durable solutions** is central to every refugee situation. Durable solutions are achieved when refugees can enjoy a secure legal status that provides them with lasting access to their rights. This can either be accomplished through voluntary repatriation, through

settlement and integration in the country of asylum or through organised resettlement. The latter, in particular, has an important role to play in the international refugee protection regime and is one way in which states can demonstrate solidarity. At present, around half of the Prague Process states feature **resettlement programmes**, leaving ample room for advancement in this respect, particularly among the non-EU Prague Process states. Traditional resettlement programmes can also be complemented with private sponsorship mechanisms, humanitarian admission programmes and humanitarian visas, academic scholarships as well as specific labour migration schemes for refugees. Such complementary options shall be discussed jointly with partners across the region.

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