

Reforming the Common European Asylum System in a spirit of humanity and solidarity

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migration

Recommendations from the National Red Cross Societies in the European Union and the International Federation of Red Cross and Red Crescent Societies⁽¹⁾

In 2016, the European Commission launched a reform process looking at the European Union's (EU) asylum framework, with a view to further harmonising asylum procedures and standards, and implementing a fair and sustainable mechanism to distribute asylum applicants among Member States. One of the European Commission's key objectives is to prevent abuse of the system and limit secondary movements of asylum seekers within the EU⁽²⁾.

Drawing from their practical experience working with and for migrants in Europe, National Red Cross Societies in the EU call on the European Commission, the European Parliament and EU Member States to consider the following recommendations during this reform process:



Over 50.000 migrants are stranded across Greece with limited access to information, specialised healthcare, and appropriate hygiene, Ritsona, 26 March 2016.

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1. Guarantee each asylum applicant effective access to protection systems.
2. Uphold high standards so as to reduce secondary movements.
3. Do not limit individual rights as a sanction for secondary movements.
4. Invest in support measures for Member States to create conditions that reduce incentives for secondary movements.
5. Consider family reunification as the first criteria for determining responsibility among Member States.
6. Ensure Unaccompanied Minors have prompt access to protection, in accordance with the Best Interests of the Child.
7. Take specific needs into account throughout the asylum procedure.
8. Carefully consider transfers of vulnerable asylum seekers.
9. Mutually recognise positive asylum decisions between Member States.
10. Guarantee a suspensive appeal mechanism for decisions on transfers and returns.

With these recommendations, National Red Cross Societies in the EU wish to ensure that any new system to determine the Member State responsible for processing an asylum claim respects the dignity and fundamental rights of all migrants. The new system should exclude coercion, and allow actors to respond to the needs of all migrants, irrespective of their legal status and protection claim.

1. Including the Norwegian Red Cross as a member of the Red Cross EU Office.

2. The first proposals disclosed on 4 May 2016 included a reform of the Dublin system, reinforcing Eurodac and establishing a European Union Agency for Asylum.

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Background

Current pressures on asylum structures across EU Member States illustrate that the Dublin system, which characterises the Common European Asylum System, requires review. National Red Cross Societies in the EU endorse the urgent need to develop an effective solidarity mechanism to ensure a more equitable and humane distribution of asylum seekers and refugees across the EU. This demands a comprehensive revision of the instruments composing the Common European Asylum System, with the primary objective of ensuring effective access to protection and promoting high standards, even reception conditions, and comparable asylum determination procedures throughout the EU⁽³⁾.

National Red Cross Societies in the EU call on the EU and its Member States to respect their international obligations under the 1951 Convention relating to the status of refugees and its 1967 Protocol. The EU must reaffirm the absolute right to asylum, while taking active steps to prevent *refoulement* from occurring as a consequence of EU policies and agreements⁽⁴⁾.

The EU should also ensure that asylum seekers have access to safe and effective legal avenues to the EU territory in order to exercise their right to request international protection⁽⁵⁾. This would contribute to better organised arrivals, and would relieve pressures on Dublin participating States⁽⁶⁾ situated at the external borders of the Schengen area by allowing protection seekers to directly approach the Member State in which they wish to seek protection. The additional vulnerabilities that migrants face as a direct result of their migratory journeys to the EU would also be decreased⁽⁷⁾.

In accordance with Article 31 of the 1951 Convention relating to the status of refugees, illegal entry for the purpose of seeking international protection cannot be penalised. Asking for international protection is a right, not a crime. National Red Cross Societies in the EU believe that people seeking protection should not be detained, and urge States to refrain from using this measure.

In order to truly make detention a measure of last resort, EU decision-makers and Member States must ensure that asylum reception frameworks, including the renewed solidarity mechanism, limit possibilities for the use of detention. If restrictions to freedom of movement are deemed necessary, alternatives to detention have to be systematically explored. Furthermore, children and people with special needs should never be detained.

In September 2015, two temporary emergency relocation schemes were agreed by EU Member States to enable the transfer of responsibility for certain asylum claimants from Italy and Greece to other Member States. However, only a limited



Children and adolescents at risk are often among the most vulnerable. Their specific situation and needs should be considered throughout the asylum procedure, Greece, June 2016.

© Markus Hechenberger / Austrian Red Cross.

3. RCEU Statement, Reform of the EU Asylum System: An Opportunity to Regain Leadership in Refugee Protection, 20 June 2016.

4. The principle of *non-refoulement* prohibits the transfer of persons from one authority to another when there are substantial grounds to believe that the person would be in danger of being subjected to violations of certain fundamental rights.

5. RCEU, Position Paper: Legal Avenues to Access International Protection in the EU, 27 February 2013.

6. EU Member States, Iceland, Norway, Liechtenstein and Switzerland.

7. RCEU, Perilous journeys: Vulnerabilities along migratory routes to the EU, 09 December 2015.

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Austrian Red Cross volunteer provides German language courses to asylum seekers, Vienna, 2015.

© John Engedal Nissen / IFRC.

number of effective transfers have so far taken place under these schemes. In addition, reception and procedural conditions differ significantly across Europe, particularly when it comes to identifying and addressing asylum seekers' special reception needs⁽⁸⁾.

With this in mind, the approach appears ineffective. These types of corrective mechanisms, especially given their heavy reliance on the "hotspot approach", risk standardising the detention of asylum seekers and jeopardising the access of all migrants to an individual assessment of their needs.

In this context, National Red Cross Societies in the EU call for an independent fundamental rights review and an evaluation of relocation procedures to ensure

that they are non-discriminatory, and guarantee access to information, free legal advice and fair asylum procedures, as well as serving to facilitate swift referrals to other appropriate protection procedures.

More must be done to encourage Member States to demonstrate genuine solidarity towards each other. The transfer of asylum seekers back to countries facing high numbers of people seeking international protection, or to places where an effective right to asylum cannot be upheld, should be automatically halted and trigger a review of the allocation of responsibility.

While all steps ought to be taken to support Member States in meeting the highest standards set by the Common European Asylum System, an early warning system must be foreseen to prevent transfers to countries where the individual rights of asylum seekers risk being jeopardised.

Our Recommendations

Against this background, National Red Cross Societies in the EU call on the European Commission, the European Parliament and Member States to consider the following recommendations when reforming all elements characterising the Common European Asylum System, in particular when devising a new responsibility-sharing mechanism for asylum protection within the EU:

1. Guarantee each asylum applicant effective access to protection systems.

The Common European Asylum System must uphold the individual right to asylum and international protection and be based on a systematic, individualised examination of the asylum seeker's particular situation. Solutions have to consider the asylum seeker's needs, preferred choice, and existing ties with other Dublin participating States.

Our call

We call on the EU and Member States to respect their international obligations under the 1951 Convention relating to the status of refugees and its 1967 protocol.

8. AIDA, Common asylum system at a turning point: Refugees caught in Europe's solidarity crisis, Annual Report 2014/2015.

2. Uphold high standards so as to reduce secondary movements.

The secondary movement of asylum seekers can be reduced by assuring even, comparable reception conditions and asylum determination procedures throughout the EU.

These conditions should be characterised by high reception standards, and should enable access to a full range of assistance, protection and integration services, such as healthcare, psychosocial support and rehabilitation, legal counsel, family reunification and language courses.

3. Do not limit individual rights as a sanction for secondary movements.

Asylum seekers who move on to another Member State should not be penalised. In particular, their procedural rights during asylum procedures must not be limited. Reception conditions have to guarantee the dignity and physical integrity of every asylum seeker, in all circumstances.

4. Invest in support measures for Member States to create conditions that reduce incentives for secondary movements.

Secondary movements are often motivated by the absence of support mechanisms in the first country of application. With this in mind, Member States which see high numbers of asylum seekers transferred back under the Dublin System should be encouraged to implement actions to better support asylum seekers and refugees, including integration-related activities.

5. Consider family reunification as the first criteria for determining responsibility among Member States.

Under the Dublin system, family reunification rights should be of paramount importance, taking precedence over admissibility criteria and responsibility allocation mechanisms. The principle of family unity must be fully respected in the entire asylum procedure, and Member States should be proactive in facilitating this.

The definition of family ties ought to include family members beyond the nuclear family. Dublin participating States should systematically consider the reunification of family members beyond the nuclear family, particularly if they are dependent.

Considerations of dependency and family ties with a person that is in another Dublin participating State should be carried out swiftly by the relevant authorities, while ensuring thorough examination of applicant's individual circumstances.

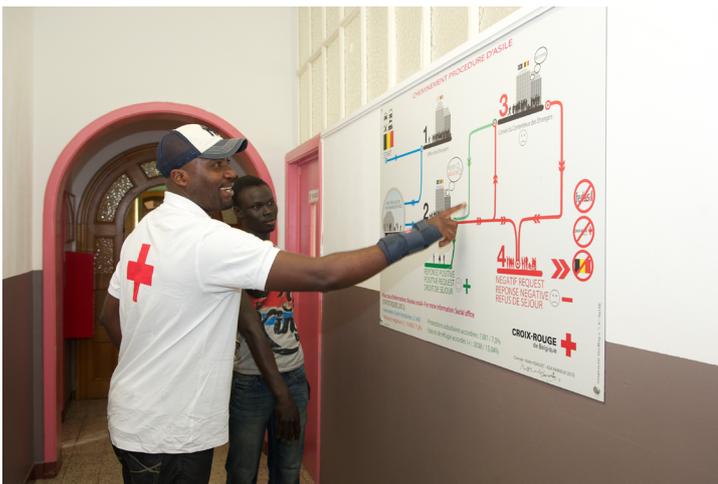
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6. Ensure Unaccompanied Minors have prompt access to protection, in accordance with the Best Interests of the Child.

The procedure for determining the Member State responsible for Unaccompanied Minors should not be prolonged unnecessarily, and Unaccompanied Minors must have prompt access to asylum procedures.

The Best Interests of the Child has to be the overarching primary consideration. This requires systematic individual assessments of the situation in order to guarantee that the Best Interests of the Child prevail at all times. Even if the child's situation has been assessed in another Member State, and/or there is a first instance decision in another Member State, the child should only ever be transferred if it is in his/her best interest.



An asylum seeker receives information about the different stages of the asylum process in a Belgian Red Cross reception centre, Belgium, 2013.

© Geoffrey Ferroni / Belgian Red Cross

7. Take specific needs into account throughout the asylum procedure.

Early identification and referral systems must be put in place in countries where the first application for asylum is filed.

Accelerated, admissibility and border procedures need to be limited to ensure that all migrants benefit from humane, individualised treatment, which allows for comprehensive assessment of their vulnerabilities and needs – both as soon as they reach the EU, and throughout the whole procedure. This should then trigger appropriate referrals to relevant services.

8. Carefully consider transfers of vulnerable asylum seekers.

The specific circumstances of certain categories of especially vulnerable asylum seekers, such as children, the elderly, victims of torture or trafficking, and persons with mental disabilities and/or health conditions should justify individual assessments prior to deciding on transfers to other Dublin participating States.

Transfers should only take place after duly verifying that the State responsible for assessing the asylum claim has been informed of the asylum seeker's specific needs and has the capacity to address them.

We call for an independent fundamental rights review and an evaluation of relocation procedures to ensure that they are non-discriminatory, and guarantee access to information, free legal advice and fair asylum procedures.

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9. Mutually recognise positive asylum decisions between Member States.

The mutual recognition of positive asylum decisions must be considered as a necessary component of a genuine Common European Asylum System, and introduced into the common EU rules governing the procedures and rights offered to beneficiaries of international protection. It should allow for the movement of refugees from one State to another under similar rules to those applied to EU citizens exercising their right to free movement, which would support refugees to make informed decisions and assess whether they have better prospects for integration in other Member States.

10. Guarantee a suspensive appeal mechanism for decisions on transfers and returns.

Transfers and returns must only be carried out safely and with dignity, in full compliance with the fundamental and procedural rights of the asylum seeker concerned. The use of coercive measures should be avoided. Migrants must never be sent to countries where the respect of their fundamental rights is at risk. Asylum seekers should always have access to suspensive appeal procedures and free legal assistance. Return and readmission procedures should not prevent the appropriate examination of individual circumstances, even when implementing the concepts of safe third country, or first country of asylum.

The Red Cross EU Office

28 National Red Cross Societies in the European Union and the Norwegian Red Cross form part of the world's largest humanitarian network, and employ over 250,000 staff. They also engage well over one million volunteers, and have more than eight million members. The Red Cross EU Office represents their interests, as well as those of the International Federation of Red Cross and Red Crescent Societies (IFRC), before the EU and its institutions.

Asylum and Migration

Asylum, migration and displacement are of high importance to National Red Cross Societies in the EU, as many play a key role in receiving refugees and providing counselling, health care and social assistance, as well as supporting their integration and participation in community life. We help National Red Cross Societies in the EU to better understand the EU policy framework on migration and asylum, and advocate for EU migration policies that safeguard humanitarian principles and respect the dignity of migrants and refugees, regardless of their legal status. We promote adequate support for vulnerable migrants irrespective of their legal status, including access to protection and to basic services.



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