

**AMNESTY
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EUROPEAN INSTITUTIONS OFFICE

**Amnesty International's contribution to the European Commission's
public consultation on the Debate on the future agenda for Home Affairs
policies: An open and safe Europe – what next?**

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Introduction

The adoption of the Stockholm programme¹ (2009-2014) coincided with the entry into force of the Lisbon Treaty, which reinforced the importance of human rights in European Union (EU) policies, both inside and outside of the Union, including by bringing onto the scene an EU Charter of Fundamental Rights with Treaty-binding force. In the field of asylum and migration, the EU has developed a broad range of policies and legislative instruments. However, it has not done so in full respect of human rights and fundamental values. In particular, the EU's approach to irregular migration has failed to devote adequate attention to the protection of the rights of migrants, refugees and asylum-seekers.

In accordance with objectives set out in the Stockholm programme, the EU has increased the security-centred approach to migration, with huge investments in Frontex (the EU Border Agency) and new surveillance technologies, such as Eurosur. It has been significantly less ambitious in meeting objectives to develop comprehensive and flexible migration policies, taking into consideration labour market needs, guaranteeing the rights of migrants, and creating an area of protection and solidarity within the EU with the completion of the Common European Asylum System (CEAS). Instead, the EU has become an area where detention of migrants and asylum-seekers is systemic rather than exceptional; where refugees, asylum-seekers and migrants die at its borders; and where their marginalisation and lack of agency makes them vulnerable to abject exploitation and physical and verbal abuse.

In setting the agenda for the forthcoming years in the field of migration and asylum, Amnesty International calls for a major shift in approach: the human rights compliance of common policies in this field must be assessed and policies accordingly reviewed; human rights standards must be mainstreamed in all policies and legislation; and the European Commission (the Commission) must remain vigilant in monitoring the full and proper implementation of these standards by member states.

The present submission is a response to the consultation launched by the Commission on the future agenda for Home Affairs policies.² This submission complements the recommendations concerning EU justice policies that were submitted in December 2013 and is to be read alongside our proposals for the development of an overarching EU-internal human rights framework strategy and action plan, outlined therein.³ An internal human rights framework strategy and action plan would assist the Union in ensuring that respect for human rights is the bedrock of *all* its policies and actions in the area of freedom, security and justice.

1. Promoting human rights-compliant migration control policies

Ever since acquiring legislative competence by virtue of the amendments to the European Community Treaty introduced by the Treaty of Amsterdam and the integration of the Schengen acquis into the framework of the EU, legally binding instruments concerning irregular migration have focused on “control measures” to prevent entry without authorisation, assist with the removal of irregular migrants, and sanction those who facilitate irregular migration.⁴ There is very little human rights content in these measures, apart from certain scant and selective references to human rights standards.

¹ European Council, *The Stockholm Programme – An open and secure Europe serving and protecting citizens*, 2010/C 115/01.

² See http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2013/consulting_0027_en.htm

³ Amnesty International's contribution to the European Commission's public consultation on “Shaping Justice policies in Europe for the years to come”.

⁴ See, amongst others, Council Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (Carrier sanctions Directive); Council Directive 2001/40/EC on the mutual recognition of decisions on expulsion of third country nationals; Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence; Council Framework Decision 2002/946/JHA on strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence; Council Directive 2003/110/EC on assistance in cases of transit for the purposes of removal by air; Directive 2008/115/EC

The same is evident in the plethora of soft law and operational measures adopted in the last decade to prevent the irregular arrival of migrants, refugees and asylum-seekers in Europe.⁵ They have focussed on improving external border controls through logistical and technological means, formalising cooperation agreements with third countries to build capacity to counter irregular migration to the EU, and funding the development of the detention estate for irregular migrants both inside and outside Europe. Disquietingly, EU language is frequently couched in terms of “combating” or “fighting illegal immigration”, underlining a security approach which externalises the phenomenon of irregular migration, as if it were wholly unrelated to migration and economic governance within the territory of member states. The use of the term ‘illegal’ for migrants, who only commit administrative offences by attempting to cross borders irregularly and pose no threat to the security of the state or its people, is dehumanising and criminalising. Illegality is not a term that can be attached to personhood. People can be undocumented or have an irregular immigration status but cannot be illegal.

The absence of a strong human rights component in these laws and policies has been deleterious to the rights of migrants, asylum-seekers and refugees. It has meant their exposure to serious harm within the EU, at its borders and beyond; it has contravened international humanitarian duties such as safe and timely rescue at sea; and has resulted in an increasing number of people dying on their way to Europe. Numerous reports by international organisations such as the Council of Europe, the UN, the EU Fundamental Rights Agency (FRA), and the European Ombudsman urge the EU to take a hard look at the way its border management policies impact on the rights of migrants, refugees and asylum-seekers.⁶ Amnesty International has also undertaken research in this field, highlighting egregious human rights violations as irregular migrants, refugees and asylum-seekers attempt to enter the EU.⁷ These include life-endangering push back practices, violence and ill-treatment by border officials, and indiscriminate and automatic deprivation of liberty.

There have also been some positive developments. In particular, Amnesty International welcomes the adoption by Frontex of a fundamental rights strategy and action plan, which preceded the adoption in 2011 of a revised legal framework for Frontex activities. The revised Regulation, amongst others, aimed to strengthen the Agency’s compliance with human rights standards, including by establishing a Consultative Forum and appointing a Fundamental Rights Officer.⁸ While work is in progress to integrate a fundamental rights dimension in all relevant processes relating to Frontex work, the need remains to establish an effective human rights monitoring mechanism, which addresses how to deal with and follow-up on complaints against Frontex officials and those of individual member states. Moreover, as Frontex’ role has developed beyond mere coordination of member states’ activities, the distribution of competencies and responsibilities between the agency and the national border authorities remains unclear and non-transparent. This should be addressed by the forthcoming evaluation of Frontex,

on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive).

⁵ From the 2002 Council Plan to Combat Illegal Immigration to the 2012 ‘EU Action on Migratory Pressures – A Strategic Response’. The Strategy, which is periodically reviewed, sets out key actions and priorities to ‘prevent and combat illegal immigration in all its forms’ with scant attention to push or pull factors.

⁶ See for instance, Parliamentary Assembly of the Council of Europe, *Lives lost in the Mediterranean Sea who is responsible?*, Doc. 12895, 5 April 2012; Special Report of the European Ombudsman in own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex; Report of the Special Rapporteur on the human rights of migrants, *Regional Study: management of the external borders of the European Union and its impact on the human rights of migrants*, A/HRC/23/46, 24 April 2013; Parliamentary Assembly of the Council of Europe, Resolution 1932 (2013) *Frontex: human rights responsibilities*; European Union Agency for Fundamental Rights, *Fundamental Rights at Europe’s southern sea borders*, 2013.

⁷ See reports by Amnesty International: [Seeking Safety, Finding Fear: Refugees, Asylum-seekers and migrants in Libya and Malta](#) (December 2010); [S.O.S. Europe: Human Rights and Migration Control](#) (June 2012); [Frontier Europe: Human Rights abuses on Greece’s border with Turkey](#) (July 2013); [An International Failure: the Syrian Refugee Crisis](#) (December 2013); [Refugees in Bulgaria trapped in substandard conditions](#) (December 2013).

⁸ Regulation (EU) No 1168/2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

which will also include a specific analysis on the way the Charter of Fundamental Rights was complied with by Frontex.⁹

Amnesty International also welcomes the attempts to ensure uniform rules and effective implementation of international rules on interception and rescue at sea for Frontex-coordinated operations.¹⁰ We recommend swift agreement of the proposed Regulation currently under negotiation, in line with relevant case law and with full respect of the principle of non-refoulement.¹¹ Clearer and more effective rules should also guide unilateral member state operations. On the other hand, we note that much reliance is being placed on the European Border Surveillance System (Eurosur), which entered into force in December 2013, to secure borders and prevent arrivals.¹² The Regulation establishing Eurosur requires member states to apply it in compliance with fundamental rights, in particular, the principles of non-refoulement and respect for human dignity, and data protection requirements. However, it does not establish procedures to safeguard respect of these principles. Despite repeated reference to Eurosur's lifesaving potential, Amnesty International is concerned that it will be used primarily to contain irregular migrants in source countries and do little to prevent deaths at sea, as this is dependent upon clearer responses to search and rescue and safe disembarkation.

The tragic incidents of October 2013 off the coast of Lampedusa, Italy, which altogether claimed more than 500 lives, generated a debate on strengthening existing mechanisms and arrangements to respond more effectively and prevent deaths at sea. Yet this did not translate into concrete measures – even despite the establishment of a task force of member states, the Commission and EU agencies, specifically to take clear and determined action.¹³ Investigations into the incidents show that, yet again, lives could have been saved by the timely intervention of coastal authorities. The issue of disembarkation and the responsibilities of member states post-disembarkation for processing individuals, who are making a claim for international protection, or for addressing other needs, continue to delay intervention, which puts lives at risk. Laws sanctioning the facilitation of unauthorised entry, transit and residence undermine rescue efforts, as private vessels are deterred from saving people in distress out of fear of prosecution for having rescued migrants.

The EU's migration management objectives must be consistent with human rights obligations. In shaping future policies in the field of migration, the EU must move away from a security-centred approach to border control policies to one which fully integrates human rights. The following should, in particular, be prioritised:

- Ensure a human rights-based approach to all migration-related control measures
The EU should comprehensively review border management policies to ensure that a human rights-based approach is at the centre of border-related measures, including those implemented by states, whether unilaterally or with other states under the auspices of Frontex. New measures of border surveillance based on high technology, such as Eurosur, must also respect human rights obligations.

⁹ See Article 33 Regulation 2007/2004, as amended by Regulation 1168/2011.

¹⁰ Proposal for a regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union, COM(2013) 197 final, 12 April 2013 (Regulation on surveillance of external sea borders).

¹¹ See the [Joint Briefing on draft Regulation on surveillance of external sea borders](#) by Amnesty International, the European Council on Refugees and Exiles (ECRE) and the International Commission of Jurists (ICJ), September 2013.

¹² Regulation (EU) No 1052/2013 of 22 October 2013 establishing the European Border Surveillance System (Eurosur).

¹³ See Communication from the Commission to the European Parliament and the Council on the work of the Task Force Mediterranean, COM(2013) 869 final, 4 December 2013.

- A review of the EU acquis on the facilitation of undocumented entry and residence
The Commission should review the EU acquis on the facilitation of undocumented entry and residence to take account of the international humanitarian obligation to render assistance to any person in danger at sea. It should also review the extent to which the penalising of actions committed with a humanitarian aim has contributed to the marginalisation of irregular migrants.
- Effective search and rescue at sea
The Commission should assess sea border monitoring activities carried out by member states, to ensure that they are primarily focussed on saving the lives of migrants in distress at sea, and disembarking them to a place of safety. Further measures should be considered to ensure shared responsibility among EU states for disembarkation and reception arrangements.
- Effective monitoring and complaints mechanisms
The EU should provide for a system to evaluate regularly the human rights impact of border management measures (including Eurosur and other information sharing platforms financed by the EU). Effective mechanisms must be established to monitor and investigate human rights violations at borders. Such mechanisms should enable individual complaints and provide effective remedies for victims of human rights violations.

Human rights-based approach to cooperation with third countries on migration management

As common EU policies on migration have focused on preventing irregular arrivals in Europe, much effort has been placed on securing cooperation from third countries of transit or origin to readmit irregular migrants or prevent departures to Europe, including through arrangements, which Frontex can stipulate, with third country border authorities directly. As of 2011, Frontex also has the capacity to finance technical assistance projects in, and deploy Liaison Officers to, third countries. Frontex' cooperation with third countries occurs across the Agency's activities: from exchange of information and risk analysis assessment, through training, research and development, to operational cooperation.

Third countries' cooperation on migration, whether by EU institutions and agencies or by member states, is sought despite the political and security situation in some of these countries, lack of asylum systems that are in line with international standards, and serious human rights concerns over the treatment of migrants, refugees and asylum-seekers. Negotiation mandates are not public and there is a lack of transparency, and little or no scrutiny of agreements, either at EU or national level. The absence of a human rights-based approach to third country cooperation on migration management has meant that no account has been taken of the effect of such cooperation on the ability of persons to seek international protection or move onwards for human rights concerns, or for reasons of economic hardship, or the desire to join family members. Further, the demands being placed on third countries, particularly those neighbouring the EU, to prevent irregular departures to Europe puts refugees, asylum-seekers and migrants in those countries at risk of prolonged and arbitrary detention, refoulement, and ill-treatment.¹⁴ The capacity of the EU to act as a model for the protection of human rights worldwide is damaged by EU's migration management objectives which both fail to give primacy to human rights in negotiations with third countries, and indirectly encourage third countries to violate human rights law.

The EU developed the Global approach to migration (GAM) in 2005 as the main strategic policy framework for the development of the EU external migration policy and the reinforcement of relations with third countries of transit and origin of migration flows to the EU.¹⁵ In 2011, with the Arab Spring

¹⁴ See reports by Amnesty International: [Libya: Rule of law or rule of militias?](#) (June 2012), [Scapegoats of Fear, Rights of Refugees, Asylum-Seekers and Migrants Abused in Libya](#) (June 2013), ['We cannot live here anymore': Refugees from Syria in Egypt](#) (October 2013).

¹⁵ See Communication on *Priority actions for responding to the challenges of migration: First follow-up to Hampton Court*, COM(2005) 621 final, 30 November 2005 and *Global Approach to Migration: Priority Actions in Africa and the Mediterranean*, annexed to the Presidency Conclusions of the December 2005 European Council.

prompting tens of thousands of migrants to attempt the dangerous journey across the Mediterranean to Europe, the GAM was revised to take account of human aspirations to mobility, and place at its core the concerns of migrants themselves - it became the Global approach to migration and mobility (GAMM) with four pillars: organising and facilitating legal migration and mobility; preventing and reducing irregular migration and trafficking in human beings; promoting international protection and enhancing the external dimension of asylum policy; maximising the development impact of migration and mobility.¹⁶ Amnesty International welcomes the more rights-focused approach in the renewed GAMM of 2011. However, available instruments under the GAMM (such as Mobility Partnerships) have so far failed to ensure orderly, regular and safe migration, and to promote the respect of rights, including the right to seek asylum. A credible alternative has yet to be offered to people attempting the dangerous journey to Europe.

When defining its future priorities in the field of migration, the EU must ensure that human rights and legal guarantees are fully integrated in all its negotiations on migration. Active steps to be taken include:

- Human rights impact assessment and external policy coherence prior to cooperation
EU institutions, bodies and agencies must assess the human rights impact of entering into cooperation with third countries to pursue migration control-related objectives. External migration policy must be guided by the principles inspiring the EU's external action,¹⁷ and be coherent with the EU's development policy and human rights dialogues.
- Adequate human rights safeguards with appropriate implementation mechanisms in cooperation agreements with third countries
The EU, its agencies and member states must ensure that the human rights of migrants are the primary consideration in the negotiation of any migration cooperation agreement with non-EU states, including readmission agreements, technical cooperation with coast guards or other soft law instruments such as mobility partnerships. Arrangements and agreements must also offer tangible financial and technical support for civil society organisations assisting and supporting migrants, refugees and asylum-seekers, and include human rights law training for those implementing relevant agreements. The Commission should develop monitoring mechanisms which allow for public scrutiny of third country cooperation.
- Follow up to the Commission's evaluation of EU readmission agreements
The EU and its member states must implement the fundamental rights safeguards suggested by the Commission in its 2011 evaluation of EU readmission agreements, particularly its recommendations concerning the exclusion of third country nationals from these agreements, international and non-governmental organisations' participation in the Joint Readmission Committees, and suspension clauses in the event of persistent and serious risks of human rights violations of the persons readmitted.¹⁸

¹⁶ Communication on the *Global Approach to Migration and Mobility*, COM(2011) 743 final, 18 November 2011.

¹⁷ See Article 21.1 of the Treaty on the European Union: "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law."

¹⁸ *Evaluation of EU Readmission Agreements*, COM(2011) 76 final, 23 February 2011.

2. End systematic detention of irregular migrants and asylum-seekers and promote alternatives

EU law clearly stipulates that detention should be a measure of last resort and decisions to detain must be subject to the principle of proportionality and necessity.¹⁹ Yet in Europe, there is widespread use of immigration detention as a migration management tool. Extension of detention capacity in member states has also been funded and supported by the EU. The increasing practice of immigration detention is not consistently accompanied by the assurance of legal guarantees and basic human rights protection for detainees. As highlighted by Amnesty International's research and other reports, conditions of detention can be extremely precarious, if not wholly sub-standard; detention can be for prolonged periods and include children and families, and there is a near-total absence of meaningful alternatives to detention.²⁰ Detention of migrants and asylum-seekers largely escapes public scrutiny; publicly accessible information on detention is scattered and patchy. Lack of detailed knowledge about this issue hinders initiatives aimed at improving the treatment of immigration detainees.

Urgent measures are needed to bring member states' detention practices in line with human rights standards, both in terms of conditions and length of detention, and legal guarantees attached to it. This must include a review of unacceptable EU standards, such as allowing a maximum 18-month detention period, and the detention of children, including those who are unaccompanied or separated from their families. In addition, priority must be given to pursuing policies that promote the use of alternatives to immigration detention. Considering non-custodial or less coercive alternative measures first, before detention can be used, is a requirement both in respect of irregular migrants under the Returns Directive, and for asylum-seekers, under the recast Reception Conditions Directive²¹ and the recast Dublin Regulation.²²

There have been instances in which alternatives to immigration detention have been tried in some member states, but they have been of limited scope (concentrating, for instance, only on families) and have generally been employed only at the end of the process, prior to removal. Alternatives to detention should not be exclusively understood as traditional alternative approaches, which are still set within an enforcement mentality: regular reporting to the authorities, deposit of an adequate financial guarantee, submission of identity documents, or the obligation to stay in a certain place. For an alternative approach to be truly effective, a systemic change in the approach to managing migration, from enforcement to engagement, is required. An approach based on engagement involves individual case management, to explore options at all stages of the process.²³ An alternative to detention procedure, based on a fair case examination, is more likely to foster cooperation in the process, including cooperation in return.

Future policies on immigration and asylum must be premised on promoting the use of alternatives to detention measures and making only exceptional use of immigration detention. This involves:

¹⁹ Article 6 of the EU Charter of fundamental rights protects the right to liberty and security of the person. Any interference with this right needs to be subject to the test of necessity and proportionality (Article 52 EU Charter).

²⁰ See, for example, Amnesty International, *Greece: Irregular migrants and asylum-seekers routinely detained in substandard conditions* (2010); Amnesty International, *Italy: New legislation violates right to liberty for migrants* (2011); Médecins Sans Frontières (MSF), *Emergency Intervention in Migrants' Detention Facilities in Evros* (2011); UN Human Rights Council, *Report of the Working Group on Arbitrary Detention, Mission to Malta* (2010); Report of the Special Rapporteur on the Human Rights of Migrants, A/HRC/20/24, 2 April 2012.

²¹ Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast).

²² Regulation (EU) 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).

²³ The International Detention Coalition (IDC) has identified good practices from around the world and compiled them in a handbook, while also introducing a new model, the Community Assessment and Placement model. See <http://idcoalition.org/cap/>.

- Ensuring comprehensive, accurate and up-to-date statistics on immigration detention
The European Asylum Support Office (EASO) and the Commission, within their respective fields of competence, must ensure the comprehensive collection and analysis of data on detention. Member states should be required to provide extensive information on their immigration detention rules and practices, including on places where migrants' are detained, how many are detained and for how long, and a breakdown of nationality, gender, age.
- Comprehensive review of the EU acquis on immigration detention
EU law governing immigration detention must be reviewed, particularly with a view preventing prolonged detention and narrowing down circumstances which would justify detention, thus making it truly exceptional.
- Setting up a mechanism for regular and independent monitoring of places of detention
Places of detention should be independently monitored, to ensure greater transparency. Indeed, member states should be required to facilitate independent monitoring, in accordance with relevant international legal standards.²⁴ The Commission must ensure that instances of arbitrary detention, deficiencies in detention standards, and any violations or abuse of the human rights of detained migrants are investigated and appropriately sanctioned.
- End the detention of children and other particularly vulnerable individuals
Immigration detention of children can never be said to be in their best interests. The detention of children solely for immigration purposes, whether they are unaccompanied or held together with their family members, can never be justified, and represents an abject failure of the obligation to respect, care for, and protect children's human rights. The jurisprudence of the European Court of Human Rights, arising from cases involving the detention of asylum-seeking children and other children, solely for immigration purposes, has rightly emphasised their extreme vulnerability, in particular, but not exclusively, the vulnerability of unaccompanied or separated children.²⁵ Other particularly vulnerable individuals, such as persons with physical, mental, intellectual and sensory impairments, victims of torture and other physical, psychological or sexual violence, pregnant woman and nursing mothers, should not be detained.
- Develop detailed guidance on alternatives to detention
The Commission should develop detailed guidance for implementing alternatives to detention requirements under EU law. Alternatives to detention should involve open reception arrangements based on free movement. Guidance should also be given on adequate assessment procedures, sensitive to the special needs of vulnerable individuals, and the particular needs of women, including safeguards against sexual and gender-based violence. It is crucial that alternative arrangements incorporate relevant support services to avoid people being left destitute, homeless, and falling out of touch with the authorities.

3. Ensure adequate implementation of the EU's legislative framework on asylum and remedy existing gaps in protection

With the adoption of the recast asylum package, the Union has met the objective set by the Stockholm Programme of completing the establishment of a Common European Asylum System (CEAS). While, overall, the recast asylum measures have improved a number of legal standards, opportunities have been missed to achieve high protection standards, and provide sufficient legal clarity to allow for their uniform implementation by member states. After over 10 years of harmonisation, there continues to be great

²⁴For instance, the Optional Protocol to the Convention against Torture provides a strong legal basis for regular and independent monitoring of places of detention.

²⁵*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Application No. 13178/03, Judgment of 12 October 2006; *Mushkhadzhieva and others v. Belgium*, Application No. 41442/07, Judgment of 19 January 2010.

disparity between EU member states, not only in the number of asylum-seekers they receive, but also in the way that asylum-seekers are treated and supported, in protection statuses granted, and in their prospects of integration. There continue to be real challenges to achieving a truly common asylum system in practice. One challenge in particular relates to the lack of a harmonised gender-sensitive approach to the qualification of beneficiaries of international protection, as well as in asylum procedures and reception conditions.²⁶ Amnesty International welcomes the approach to gender and international protection promoted in the recast Directives and the Commission Communication on the elimination of female genital mutilation (FGM).²⁷

The European Asylum Support Office (EASO), which has been operational since June 2011, will play a key role in the post-legislative phase. The EASO is entrusted with supporting the quality, consistency and effectiveness of the CEAS, by gathering information and reporting on the situation of asylum in the Union, and by supporting practical cooperation between member states. The EASO should also gather and analyse information to assess the needs of states under particular pressure, including by making use of or setting up early warning systems, for the purpose of identifying and preparing support actions. While an early warning system has yet to be developed, the gaps analysis to support implementation of the CEAS has, to date, not been performed with the required effectiveness and independence.

As already noted in Amnesty International's mid-term review of the Stockholm Programme,²⁸ the financial resources allocated to this agency do not reflect the high expectation placed on it to support EU member states and institutions. This is in sharp contrast to the large and constantly increasing attributions to Frontex. Moreover, lack of transparency around its activities and of organised input from NGO experts remains largely unaddressed. The EASO is coming up for independent review under its founding Regulation.²⁹ This presents a crucial moment to enhance EASO working methods, and ensure that it develops as an independent centre of expertise in the asylum field, rather than just executing decisions taken by the management board, the agency's main governing, which is comprised of member states' asylum authorities.

When defining its future priorities in the field of asylum, the EU should address the need to close protection gaps, and to ensure the full implementation of existing standards by member states. This should include:

- Adoption of comprehensive guidelines covering the asylum acquis
The Commission should use the possibility of issuing guidelines and roadmaps to help members states comply with relevant human rights standards, including those related to gender, when transposing EU legislation at national level.

²⁶European Parliament, Gender Related Asylum Claims in Europe, study Policy Department Citizen's Rights and Constitutional Affairs, 2012 available at

[http://www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2012/462481/IPOL-FEMM_ET\(2012\)462481_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2012/462481/IPOL-FEMM_ET(2012)462481_EN.pdf)

²⁷ *Towards the elimination of female genital mutilation*, COM(2013) 833 final.

²⁸ http://www.amnesty.eu/content/assets/Stockholm_document.pdf.

²⁹ Regulation (EU) No 439/2010 establishing a European Asylum Support Office, Article 46: "No later than 19 June 2014, the Support Office shall commission an independent external evaluation of its achievements on the basis of terms of reference issued by the Management Board in agreement with the Commission. That evaluation shall cover the Support Office's impact on practical cooperation on asylum and on the CEAS. The evaluation shall take due regard to progress made, within its mandate, including assessing whether additional measures are necessary to ensure effective solidarity and sharing of responsibilities with Member States subject to particular pressure. It shall, in particular, address the possible need to modify the mandate of the Support Office, including the financial implications of any such modification and shall also examine whether the management structure is appropriate for carrying out the Support Office's duties. The evaluation shall take into account the views of stakeholders, at both Union and national level."

- Develop practical cooperation through EASO
States and EU institutions, coordinated by EASO, should work to improve practical cooperation in areas where protection is not consistently ensured in practice. In particular, EASO should further develop training tools for people working with asylum-seekers; improve access to and use of accurate and updated Country of Origin information; develop best practices for working with vulnerable individuals, a gender sensitive approach to international protection, and quality of decision-making.
- Ensure the EASO can perform its key role in identifying protection gaps and enhancing solidarity
The review of the EASO should aim to put in place reliable assessment tools and data collection mechanisms in order to identify gaps, or support overburdened national asylum systems. It should also enhance cooperation with non-governmental organisations, which have the knowledge and ground experience to play a key role in identifying gaps in national asylum systems.
- Ensuring effective monitoring and evaluation of the implementation of the EU asylum acquis
The Commission should develop structural and well-resourced mechanisms for evaluating the implementation of the asylum acquis, including onsite inspections and accountable use of EU funding. The Commission services must be adequately resourced in order to carry out important post-legislative monitoring and evaluation, including taking prompt remedial action in the case of violations by member states.

4. Strengthen solidarity and responsibility sharing

The Stockholm programme recognised the need to develop a comprehensive and flexible migration policy, centred on solidarity and responsibility. Article 80 of the Treaty on the Functioning of the European Union (TFEU) requires that the principle of solidarity and fair sharing of responsibility, including its financial implications, governs all policies on border checks, asylum and immigration.

The need for solidarity and responsibility sharing has been increasingly claimed by those member states geographically situated at the external border of the EU, that are confronted with sudden influxes of migrants, refugees and asylum-seekers, particularly in conjunction with upheaval, wars, or other crises outside Europe. Although these countries might not, overall, be the major recipients of refugees and asylum-seekers in the EU,³⁰ sudden influxes can put reception arrangements under strain and demand urgent and concerted action; people arriving irregularly at the external EU border are often traumatised and have particular humanitarian needs.

The EU legal framework offers a variety of solidarity and responsibility-sharing tools and instruments:³¹ EU resources under relevant funding instruments are allocated in proportion to asylum claims and protection statuses granted. Emergency funding is available to address the situation in member states facing particular pressures. The EASO can deploy Asylum Support Teams to support states that are experiencing difficulties through the provision of interpreting services, information on countries of origin, and knowledge of the handling and management of asylum cases. There have been instances of physical relocation of beneficiaries of international protection from Malta to other EU member states, although these have been limited in number.³²

³⁰ In 2012, out of 335,365 asylum applications in the EU, Bulgaria received 1,385 asylum-seekers (rank 20); Greece 9,575 (rank 11); Italy 17,350 (rank 7) and Spain 2,565 (rank 14). The main countries receiving asylum-seekers over the same period were Germany (77,650), France (61,455) and Sweden (43,945). See [EMN bulletin first semester 2013](#).

³¹ See for comprehensive overview, the Commission Communication on *enhanced intra-EU solidarity in the field of asylum. An agenda for better responsibility-sharing and more mutual trust*, COM(2011) 835final, 2 December 2011.

³² See EASO's evaluation of the Project for intra-EU Relocation from Malta (EUREMA – phase I and II) and bilateral arrangements between EU Member States, Associated Countries and Malta: [EASO fact finding report on intra-EU relocation activities from Malta](#), July 2012.

One issue that frequently arises in conjunction with migration influx situations is the burden that the application of the Dublin system could put on those states receiving migration influx. Aside from the need to ensure the fundamental rights compliance of Dublin arrangements, as evidenced by national and European Courts' rulings,³³ the operation of the Dublin system can contribute to putting overburdened or under-resourced asylum and reception systems under strain, and subject to sub-standard treatment those who are returned.³⁴ The Commission proposal for a recast Dublin Regulation addressed such situations by providing for a mechanism for the temporary suspension of transfers of asylum-seekers, which the Council did not accept. Rather, negotiations concluded with the provision for an Early Warning, Preparedness and Crisis Management Mechanism, aimed at identifying, in a timely manner, particular pressures on member states' asylum systems. Although this mechanism, in itself, is unlikely to ensure that measures taken in applying the Dublin system fully respect fundamental rights, if effectively developed and implemented in a way that allows for early detection of lack of capacity or quality in member state asylum practice, it could be a useful tool in triggering remedial action and relevant solidarity measures.

The recast Dublin Regulation has not remedied the underlying structural problems of a system based on greatly diverging asylum systems and reception conditions in member states. However, it contains more extensive procedural safeguards and has changed in other aspects which should improve respect for family life and the best interests of the child. It further stresses the need for solidarity and emphasises respect for the rights enshrined in the EU Charter of fundamental rights. States participating in the Dublin system should therefore apply the provisions fully in line with fundamental rights and the principle of solidarity. A protection-sensitive and solidarity-oriented application of the Dublin Regulation would involve, for instance, the use of discretion under the system to allow asylum-seekers to lodge their claims in countries where they have wider family ties or stronger links and who would otherwise attempt to reach those countries irregularly – rather than seeking to contain them in the EU country where they first arrived, regardless of whether overburdened or underdeveloped national asylum systems are able to offer adequate protection.

Pressures on certain member states could also be alleviated by removing obstacles to free movement rights for beneficiaries of international protection. The 2011 Directive amending the Long-term Residence Directive extends to beneficiaries of international protection the acquisition of free movement rights, but requirements are onerous and subject to the five-year residence rule, without including the entire duration of the asylum procedure.³⁵ It is therefore unlikely to be an additional avenue for mobility within the EU for asylum-seekers, in the same way as EU long-term residence status has been of limited use to third country nationals themselves.³⁶

A key priority for future policies in the area of immigration and asylum is to provide adequate responses to the issue of solidarity and fair sharing of responsibility. Measures to this effect should include the following:

- Implementation of Dublin in accordance with fundamental rights and the principle of solidarity
The Commission should ensure adequate monitoring of the implementation of the recast Dublin Regulation, and consider further revision of the system to ensure that asylum-seekers' rights are

³³ See particularly, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011; Joined cases C-411/10 *NS* and C-493/10 *ME*, Judgment of 21 December 2011.

³⁴ See for instance recent call to suspend transfers of asylum-seekers under the Dublin Regulation to Bulgaria by UNHCR, Amnesty International and other organisations.

³⁵ Directive 2011/51/EU amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection.

³⁶ Report from the Commission on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, COM(2011) 585final.

safeguarded in any arrangements seeking to attribute responsibility for determining their claims. Focus should be on limiting reasons for onward movement by allowing claims to be lodged where asylum-seekers can rely on extended family or community support, or have better long-term integration prospects and opportunities, as well as fair responsibility sharing between member states.

- Develop an effective Early Warning, Preparedness and Crisis Management Mechanism
To work effectively, the Early Warning, Preparedness and Crisis Management Mechanism under the Dublin Regulation must provide for comprehensive information gathering, and critical analytical processes on asylum practice in the Union. This has the potential to ensure early detection of the lack of capacity or quality in member state asylum practices, and to be a useful tool for triggering remedial action and relevant solidarity tools.
- Further develop intra-EU relocation of beneficiaries of international protection
Intra-EU relocation should remain an option, under the coordination of the EASO. To address concerns that it could disincentivise member states from investing in their national protection system, it must be accompanied by clear conditions, and verifiable, measurable steps being taken by the member state benefitting from relocation, to build capacity for protection and integration in their national asylum system. Criteria for selection and procedures for intra-EU relocation should be harmonised.
- Enhance free movement of beneficiaries of international protection
The Commission should consider a further revision of the Long-Term residence directive as it applies to beneficiaries of international protection. Pressures on member states could be alleviated if beneficiaries of international protection were able to take up residence in another member state. This would also reduce underlying reasons for onward movement. The right to free movement must be attached to mutual recognition of protection statuses granted under the Qualification Directive.³⁷ The Commission should initiate a legislative proposal in this respect.

Sharing international responsibility to protect refugees

While admission of refugees for resettlement remains within the decision-making power of EU member states, further efforts must be made to provide coordinated responses to recurrent refugee crises. EU responses to the Iraqi refugee crisis in 2008, to refugees fleeing from the war in Libya in 2011, and to the current massive refugee outflow generated by the war in Syria, demonstrate the need for better joined-up EU responses and scaled-up resettlement opportunities in the EU. UNHCR has set a goal of securing 30,000 places for Syrian refugees by the end of 2014. The EU is finding it challenging to meet even this modest goal: it has pledged a total of 14,315 - the vast majority (11,000 places) offered by Germany, in the form of humanitarian admission and sponsorship programmes. Excluding Germany, the remaining 27 EU countries have pledged a mere 3,315 places.

The adoption in 2012 of an EU Resettlement Programme was a positive step towards more coordinated efforts, and more effective use of financial assistance for resettlement provided by the European Refugee Fund.³⁸ The EU Resettlement programme enables the setting of common priorities for resettlement, and enhances, therefore, political and practical cooperation between member states, potentially increasing the humanitarian and strategic impact of resettlement. It also provided some impetus for more EU

³⁷ Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

³⁸ Decision No 281/2012/EU of the European Parliament and the Council of 29 March 2012 amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows'.

member states to engage in resettlement.³⁹ However, despite the increase in the number of EU countries resettling, the overall resettlement rate in the EU has not significantly increased, and efforts by EU member states for resettlement are still limited, particularly vis-à-vis global resettlement needs, and Europe's potential capacity to absorb more refugees: 4,125 refugees were resettled in 2011, and 4,405 in 2012.⁴⁰ Numbers of refugees resettled in the EU are not evenly distributed, but concentrated in a few traditional resettlement countries. Perhaps unsurprisingly, it is the countries receiving more asylum-seekers that also tend to resettle more refugees.⁴¹ The EASO, which is tasked with coordinating member states' resettlement actions, is expected to play an increasing role and will start undertaking targeted activities during 2014.⁴²

In the coming years, the EU must take steps to enhance its capacity to respond to international refugee crises and better contribute to the global protection of refugees. This should be done through the following:

- Further developing the EU Programme for the Resettlement of Refugees
The EU Programme for the Resettlement of Refugees is an important step in providing protection to refugees in protracted situations with more member states engaging in resettlement. The EASO should develop this programme further, and strive for the resettlement of at least 20,000 refugees per year by 2020. The EASO should also promote more practical cooperation in resettlement to exchange know-how and best practice, and more cost-effective joint up activities, such as selection missions. The EU's financial incentive for member states to undertake resettlement should be strengthened. Whilst meeting quantitative expectations, the EASO must strengthen logistical support to member states and ensure that resettlement is accompanied by adequate integration packages for resettled refugees.
- Identifying other ways of sharing responsibility
Consideration should also be given to other arrangements enabling refugees and asylum-seekers to find protection in Europe, such as Protected Entry Procedures, which allow for international protection to be requested in EU embassies and consular posts abroad, greater use of humanitarian visas, and lifting of visa restrictions.

5. More channels for legal migration and protection against abuse and exploitation

Enabling refugees and asylum-seekers to find protection by travelling to Europe by regular means is not only a tangible gesture towards international solidarity. It also allows them to move safely, avoiding dangerous journeys to escape border detection, and exposure to abuse and exploitation by the smuggling or trafficking rings, which organise those journeys. The same holds true for those who decide to move because of other human rights concerns, to escape economic hardship, or to join members of their family in Europe.

The opening of legal migration channels is one of the four pillars of the GAMM. Despite the high demand in the EU for seasonal and/or low-skilled work in several sectors, regular migration channels for low-skilled workers from third countries in the EU are largely insufficient. Besides being a major pull factor for irregular migrants, unrecognised or underestimated labour needs are often met by informal, irregular arrangements, often accompanied by dramatic abuse and exploitation.⁴³

³⁹ Currently 14 member states implement resettlement programmes, many with relatively small numbers.

⁴⁰ See [EU Resettlement factsheet](#) of the European Resettlement Network.

⁴¹ KNOW RESET Research Report 2013/04.

⁴² See EASO Work Programme 2014.

⁴³ Amnesty International, *Exploited labour: Migrant workers in Italy's agricultural sector* (December 2012).

Irregular migrants are not only particularly vulnerable to abuse by employers, landlords and other private actors. Without required documentation, irregular migrants may have difficulty accessing essential services, such as healthcare and education. Authorities in some countries require service providers to report suspected irregular migrants, effectively closing off these services to them. When their rights are violated, irregular migrants may be unable to access legal protection without facing detention and deportation. Access to basic rights for migrants in an irregular situation differs significantly between EU member states, both in law and practice.⁴⁴

The security-centred approach of the EU's migration policy is impervious to the problems often faced by irregular migrants on its territory. These problems are not a necessary consequence of irregular migration status; rather, they are human rights violations or abuses, and should be addressed as such. EU law acknowledges the need to prevent destitution of irregular migrants in a single instrument, the Return Directive, specifically in respect to those who cannot be removed. The recognition that basic conditions of subsistence should be defined in national legislation is, however, not followed up by specific legal requirements.⁴⁵

A human rights-based migration policy should aim to respect, protect, and fulfil the human rights of all individuals subjected to the country's jurisdiction, without discrimination based on nationality or migration status. In shaping future migration policy, the EU must pay more attention to positively addressing the situation of migrants in an irregular situation. In particular, the EU should:

- Develop new and more flexible regular migration channels
The EU should strengthen the GAMM pillar that promotes legal migration and develop new and more flexible legal channels for labour migration to Europe. This will contribute not only to alleviating demographic pressures and meeting immediate EU labour market needs, but will also support the aims of other GAMM pillars, namely those on preventing and reducing irregular migration and trafficking in human beings, and maximising the impact of migration on development. More importantly, the opening of new and more flexible legal migration channels would help to protect migrant workers from human rights abuses and exploitation.
- Prevent and address impunity for human rights violations of migrants with an irregular status
The EU should develop a rights-based approach to the situation of migrants with an irregular status. Such an approach needs to address legal and practical barriers migrants in an irregular situation face in accessing basic services, such as healthcare, housing, education, access to justice and labour redress mechanisms. Where a decision to return a person cannot be enforced, their legal status while they remain in the host country should allow them to enjoy their human rights fully. The EU should examine processes that push people into an irregular situation and promote necessary reform of national laws and practices.

6. Human rights compliant, effective, and accountable EU funding

The EU is about to adopt the future DG Home Affairs budget (2014-2020), which will include two DG Home Affairs funds: the Migration, Asylum and Integration Fund (AMIF) and the Internal Security Fund (ISF). AMIF focuses on people flows and the integrated management of migration. It aims to support actions addressing all aspects of migration, including asylum, resettlement, legal migration, integration and the return of irregularly staying non-EU nationals.⁴⁶ Allocation for the financing period is 3,137

⁴⁴ See European Union Agency for Fundamental Rights Report, *Fundamental Rights of migrants in an irregular situation in the European Union*, 2011.

⁴⁵ Return Directive, preamble recital 12. See on this the study by Flemish Refugee Action, Detention Action, France Terre D'Asile, Menedek and ECRE, *Point of No Return: The futile detention of unreturnable migrants*, January 2014.

⁴⁶ DG Home, *Funding home affairs beyond 2013*, http://ec.europa.eu/dgs/home-affairs/financing/fundings/funding-home-affairs-beyond-2013/index_en.htm

million Euro. The ISF will support the implementation of the Internal Security Strategy and the EU approach to law enforcement cooperation, including the management of the union's external borders. It will also cover the development of new IT systems, such as the future entry/exit system and the Registered Traveller Programme. The allocation is 3,764 million Euro.

Both funds include a new external dimension component, which will give the EU the means to pursue the external elements of its migration policy and support implementation of the GAMM. These instruments will also provide for rapid response in cases of emergency. Several other funding instruments managed by other Commission services, agencies and the EEAS, include migration-related interventions in third countries.⁴⁷

Future dialogues, policies and interventions on funding must ensure the following:

- Balanced distribution of funding
The EU needs to ensure a balanced allocation of funds in all asylum and migration-related interventions, both internally and in third countries. Resources should be prioritised to ensure implementation of important human rights and protection standards for refugees, asylum-seekers and migrants. Funding should be more closely linked to formulation and measuring of progress vis-à-vis indicators. There must also be more transparent monitoring and reporting.
- Consistency with human rights obligations
The EU must ensure that internal priorities in the field of migration do not negatively influence activities funded in third countries, to the detriment of the rights of refugees and migrants. In particular, concerning financial assistance in third countries, procedures should be put in place to monitor the impact of funds on the rights of migrants and refugees in these countries.
- Coordination of funding instruments
The external dimension component within DG Home funding requires increased coordination with funding instruments that are managed by other Commission services, agencies and the EEAS. The EU should put in place coherent and integrated institutional dialogue to plan and manage external and internal funds, addressing migration-related issues.

⁴⁷ Amongst others, Development Cooperation Instrument, Instrument for Stability, Partnership Instrument, European Neighbourhood Instrument, and Instrument for Pre-Accession Assistance.