



## **UNHCR's observations on future arrangements for EU Funding in the area of Home Affairs after 2013**

### **1. Introduction**

UNHCR welcomes the opportunity to submit observations in the context of the European Commission's consultation on European Union funding in the area of Home Affairs after 2013. UNHCR supports the underlying aim of the Commission proposal to simplify and rationalize the use of EU funds, to reach the European Union's objectives within the area of Home Affairs.

UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions to the problems of refugees.<sup>1</sup> Paragraph 8 of UNHCR's Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees.<sup>2</sup> UNHCR's supervisory responsibility is reflected in European Union law, including pursuant to Article 78 (1) of the Treaty of the Functioning of the European Union (TFEU),<sup>3</sup> which stipulates that a common policy on asylum, subsidiary protection and temporary protection must be in accordance with the 1951 Convention on the status of refugees. This role is reaffirmed in Declaration 17 to the Treaty of Amsterdam, providing that "consultations shall be established with the United Nations High Commissioner for Refugees ... on matters relating to asylum policy."<sup>4</sup>

Directorate General (DG) Home Affairs' 2007-2013 General Programme "Solidarity and management of migration flows" comprises four funds: 1) the European Fund for the Integration of Third Country Nationals (IF); 2) the European Refugee Fund (ERF); 3) the External Borders Fund; and 4) the European Return Fund. All four funds may be used for activities supporting asylum-seekers, beneficiaries of internal protection or other persons of concern to UNHCR. Throughout the years, UNHCR

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<sup>1</sup> UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), at: <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

<sup>2</sup> Op. cit., paragraph 8(a)

<sup>3</sup> European Union, *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, 30 March 2010, [OJ C 83, ], Article 78 (1), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:EN:PDF>.

<sup>4</sup> European Union, *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities, Declaration on Article 73k of the Treaty establishing the European Community*, 10 November 1997, [OJ C 340], available at: <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0134040034>.

has gained considerable experience regarding the use of these funds and in particular, since its inception in 2000, with regard to the European Refugee Fund. UNHCR has not only been a recipient of ERF funding but has also, in some Member States, been a full member or an observer on national boards and committees selecting ERF projects.

In addition to these instruments and areas of action, UNHCR has closely followed the development of the external dimension of the EU policies on asylum and migration since their emergence in the late 1990s, and has been able to benefit, in various countries of the world, from some of the dedicated EU funding in that area.

UNHCR therefore has a direct interest in providing its views to Member States and EU institutions in relation to the post-2013 funding architecture in these areas. The following comments and recommendations are provided in the constructive and co-operative spirit which characterizes our work.

### **UNHCR's three main recommendations:**

- Funding for needs related to **international protection** should reflect the high level of commitment of the EU towards persons in need of protection, as reflected in the Treaties, secondary legislation and policy instruments on asylum. As such, these funds should be safeguarded from diversion or reduction in favor of other priorities, such as the fight against irregular migration or border management;
- UNHCR recommends more targeted support for **civil society actors** in the future architecture of EU funding in the area of Home Affairs, fully recognizing their leading role in the development and operation of fair and efficient asylum systems, in the reception of asylum-seekers and in the integration of beneficiaries of international protection. There should also be greater inclusion of civil society organizations in the selection of asylum-related projects for funding, as well as greater consultation in the planning process;
- At the global level, the EU is one of the top three donors to UNHCR. In the next financial perspectives, it should be made possible for the EU to allocate direct funding to **supporting UNHCR's role and core activities in Europe**, which has not been possible so far.

Below are UNHCR's further specific recommendations, which are primarily focused on the ERF.

## 2. Structure and contents of the ERF

### 2.1. Asylum procedures, reception, integration

Article 78 TFEU requires that the EU's common policy on asylum, subsidiary protection and temporary protection be in accordance with Convention Relating to the Status of Refugees (1951 Refugee Convention)<sup>5</sup> and its Protocol relating to the Status of Refugees (Protocol of 1967).<sup>6</sup> In UNHCR's view, it follows that the EU must ensure that sufficient funds are made available to Member States and other relevant actors to fulfill this aim. The existing European Refugee Fund has been an important instrument for strengthening the asylum systems of Member States, both through national ERF funding and through Community Actions. The need for EU funding in the process of building the Common European Asylum System remains undiminished.

UNHCR has over the years pointed to different aspects of national asylum procedures, reception mechanisms and integration support arrangements which still need strengthening to meet international and EU obligations. In particular, UNHCR has advocated for **better quality asylum procedures** which can provide the full range of procedural safeguards required to comply with Member States' obligations under the Asylum Procedures Directive, and lead to accurate decisions on protection needs at the earliest stage in the process.

**Reception** is also a key area in which some Member States continue to need EU support. This is required in order to ensure that they can provide living conditions and basic entitlements in line with the *acquis* provisions, and to enable asylum-seekers to pursue their claims effectively throughout the asylum procedure. Recent court decisions at the highest level have shown that standards in some Member States are not, as yet, at acceptable levels. It will take sustained investment of funds and political will to achieve this.

In relation to **integration**, UNHCR considers that refugees and others benefiting from international protection should be included in mainstream activities and services aimed at the integration of third-country nationals legally residing in the EU. However, due to their specific needs and circumstances, including their periods of time as asylum-seekers, their experiences of loss of country, property, family and sometimes dignity, as well as in some cases trauma arising from experiences of and persecution, UNHCR recommends that targeted integration support to persons benefiting from international protection should also be provided.

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<sup>5</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series No. 2545, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>.

<sup>6</sup> UN General Assembly, *Protocol Relating to the Status of Refugees*, 30 January 1967, United Nations Treaty Series No. 8791, vol. 606, p. 267, available at: <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>.

**Recommendations:**

UNHCR recommends that a minimum percentage of overall funding in the area of asylum be earmarked for projects and activities aimed at ensuring Member States' compliance with international and EU *acquis* obligations toward asylum-seekers, refugees and others in need of international protection.

UNHCR recommends that part of the future asylum funding continues to be used:

- 1) for activities aimed at building fair and efficient quality asylum procedures,
- 2) for appropriate reception measures for asylum seekers, and
- 3) for targeted integration support to persons benefiting from international protection.

Regarding the latter in particular, UNHCR recommends that a fixed percentage of the funds earmarked for international protection activities be allocated to integration support services. UNHCR has noted that available funds in the past (especially from the ERF) have been under-utilized for this particular EU policy objective. It thus further recommends that any funds allocated for integration of third country nationals legally residing in Member States also include beneficiaries of international protection as a target group.

**2.2. Solidarity among Member States**

In accordance with article 80 TFEU,<sup>7</sup> UNHCR supports the underlying principle of solidarity and the aim of ensuring fair responsibility-sharing among Member States on policies related to managing borders, asylum and immigration, including their financial implications, support for the establishment of common strategic objectives, and pooling of resources and operational capacity based on mutual trust. UNHCR considers that this is best achieved through ensuring good quality asylum procedures in all Member States, and support to specific Member States which are faced with particular pressures.

**Recommendation:**

UNHCR recommends that among the funds earmarked for international protection activities, a sufficient and reasonable amount should be allocated to solidarity measures within the EU. Such support could include, but not be limited to, large scale projects aimed at building basic elements of asylum systems where they are not yet in place. It could further assist countries faced with particular pressures, through time-limited financial support for activities aimed at finding solutions for persons with international protection (such as, for example, *ad hoc* internal EU relocation schemes.)

**2.3. Resettlement**

UNHCR has actively supported the efforts of the Commission in working to establish an EU Resettlement Scheme. UNHCR considers there is scope for the EU and Member States to do more to support resettlement, including notably through provision of more resettlement places by Member States. Resettlement provides

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<sup>7</sup> Op. cit., Article 80, TFEU: “The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle”.

solutions for refugees and others in need of international protection outside the European Union.

Resettlement is also a form of responsibility-sharing with countries outside the EU which host substantial refugee populations. As such, it is closely linked to other forms of cooperation with third countries.

**Recommendations:**

Increased resources dedicated to resettlement would be welcome, as they may help create incentives for Member States either to increase their resettlement quotas, or to develop further new resettlement programmes. Such resources should however be kept separate from and additional to resources dedicated to internal solidarity within the Union.

Consideration could be given to devoting resources from funding dedicated to cooperation in the external relations area more broadly, to ensure that resettlement needs are adequately covered and do not compete with activities to support asylum systems within the Member States.

**2.4. European Commission and European Asylum Support Office funds**

UNHCR has welcomed the progressive increase in the percentage of funds allocated to the European Refugee Fund's Community Actions component. With the establishment of the European Asylum Support Office (EASO) that has its own budget, UNHCR believes that the EASO will also usefully contribute to the intra-EU sharing of information and experience as well as to the harmonization of asylum conditions and procedures across the Union.

**Recommendation:**

Clarification is needed, and will continue to be required, about the division of application between the (future) funds that are (or will remain) within the remit of the Commission and that of the EASO.

**2.5. Emergency measures**

As witnessed recently, there is scope to strengthen the EU's arrangements for responding to migration and / or asylum emergency situations, and for offering financial support to EU Member States facing particular pressures in these areas.

According to UNHCR's experience, a 6-month time frame might be too limited to properly address a situation of mass arrivals. Any new mechanism should thus permit flexibility in timing, grant amounts, and potentially the categories of eligible recipients.

**Recommendation:**

UNHCR recommends that emergency funding be made available whenever an EU Member State is faced with strong migratory and asylum pressures, through a flexible, swift and procedurally streamlined mechanism, enabling comprehensive and efficient responses to emergency situations.

### **3. Use and management of funds**

#### **3.1. Simplification / sharing of information**

UNHCR agrees with the observations made by the Commission that, in general, the existing financial instruments and their management systems in the policy area of Home Affairs are too complex and cumbersome, and that there is a need for simplification. UNHCR also welcomes the aim of ensuring more strategic use of these financial instruments so that they respond more effectively, swiftly and flexibly to important priorities and needs.

#### **Recommendations:**

Reporting requirements should be simplified at both national and EU levels.

Systematic and easily-accessible information on the use of funds at national and European levels (including updates, reports and documents in English) should be made available to improve information-sharing, avoid duplication of activities, build on previous achievements, increase transparency and accountability, and maximize efficiency and impact.

#### **3.2. Community actions**

UNHCR supports the current model which allows allocation of funds both through national funding, available directly to individual Member States, and for Community Actions benefiting more than one Member State. UNHCR considers that Community Action projects have a strong added-value, supporting the commitment to build a Common European Asylum System based on solidarity and mutual trust. An increase in the proportion of funds allocated to mechanisms which support such multi-country projects would be welcome.

#### **3.3. Funding at national level**

UNHCR considers it important that nationally co-managed EU funds in relation to asylum-seekers and beneficiaries of international protection be utilized to reinforce quality and address gaps in national asylum systems, and to improve reception facilities and integration support. At the national level, funding has had a real impact on the lives of refugees and on the establishment or strengthening of asylum procedures in line with the *acquis*.

UNHCR has observed that long-term objectives appear to have had little impact on the selection of projects (funding for which is made on an annual basis), and that national priorities tend to remain the same year after year. The annual programming cycle (as well as subsequent annual disbursement of funds) seems cumbersome for Member States as well as for the EC itself, and tends to delay the process of project selection, efficient implementation and ultimately, actions which address the needs of beneficiaries.

**Recommendations:**

- First and foremost, it is important to highlight that any EU financial support provided to EU Member States should in no way be used as a substitute for the national budgetary allocations that are necessary to run a fair and efficient asylum system at national and local level.
- European funds should not be allocated for structural or ‘hardware’ projects or facilities, for which Member States have legal obligations and / or national responsibilities.
- **UNHCR suggests consideration of *multi-annual frameworks*, setting out medium- or long-term goals and expected achievements.**
- UNHCR should be invited to participate in national project selection committees or boards as well as in project monitoring mechanisms.
- UNHCR further suggests that national funds earmarked for international protection be conditional on the provision of **sufficient national project management capacity**. Expert personnel with proven ability to manage projects and funds competently and consistently with legal requirements must be in place, to ensure EU funding is spent in a responsible manner with maximum impact.

**3.4. Cooperation with civil society, including refugees**

UNHCR has noted a number of obstacles precluding civil society actors, including refugee associations, from contributing to the planning processes and accessing the currently-available funding at the national level. UNHCR considers it vital that more support be provided to civil society actors in full recognition of their important role in the development of fair and efficient asylum systems, in the reception of asylum-seekers and the integration of refugees.

Among such obstacles are high minimum project amounts, which exclude smaller organizations from funding consideration, even though such funding could assist getting them off the ground. Cumbersome and time-consuming reporting requirements are particularly detrimental to NGOs with a more operational focus. Moreover, high co-funding requirements (up to 50%) de facto exclude a number of smaller NGOs who have proven expertise and project implementation ability.

UNHCR has further noted that insufficient management capacity on the part of Member States for national ERF funds can lead to funds being under-utilized, despite persisting needs and available response capacity among civil society actors.

**Recommendation:**

UNHCR would recommend that multi-annual programming frameworks be prepared in consultation with all relevant national stakeholders, including UNHCR, civil society organizations and beneficiaries of international protection themselves.

**4. Funding for other activities impacting on the rights of asylum-seekers and people in need of protection**

In order to ensure that the principle of *non-refoulement* is respected in all circumstances and in all policy areas related to migration management, sufficient levels of funding for monitoring of **return and readmission** actions and

arrangements (at community and at national-level) should be envisaged. Such funding should be made available to all actors, including civil society and international organizations.

Similarly, funding for **border-related activities** (including border monitoring, training for border guards, and other operational activities) should be made available in order to ensure compliance with EU *acquis* and international law obligations and principles. Such funding should also be made available for civil society and international organizations.

Funding for activities related to countering **human smuggling and trafficking** should also be made available to international organizations – which has not been the practice so far. The particular needs of **unaccompanied children on the move** should also be taken into account.

**Recommendation:**

Funding for return and readmission, border monitoring activities and human smuggling and trafficking should be made available for civil society and international organizations.

## **5. The external dimension of EU asylum and migration policies**

UNHCR appreciates the EU's support for developing the capacity of third countries to meet migration and asylum challenges, and would advocate for the EU to maintain a substantial envelope specifically dedicated to that purpose. However, EU action in the external dimension of asylum must remain complementary to the unhindered provision of access to territory and the means of gaining protection in the European Union.

UNHCR believes that Home Affairs funding should be **dedicated, first and foremost, to the internal dimension**, including for intra-EU activities that have an external dimension, such as resettlement, return related activities or fighting trafficking of human beings. Given the plethora of EU actors and processes engaged in external relations and dealings with third countries, it may be preferable to link Home Affairs actions related to third countries to those existing processes and structures. This would appear to be preferable to creating an autonomous external dimension strand for asylum and migration in the Home Affairs field.

Operational and policy concepts such as asylum capacity-building projects and Regional Protection Programmes are, in UNHCR's view, best situated within the external affairs and cooperation and development aid structures of the EU, with scope for Home Affairs policy input and guidance. External affairs and cooperation and development aid actors have not only the requisite knowledge and expertise, including that available through the local EU Delegations, but also benefit from a wider scope of negotiations with the countries concerned.

Should it be decided to create a separate funding mechanism for asylum and migration within the exclusive Home Affairs remit, UNHCR underlines that it will in any event

be necessary to ensure the coherence and effective ongoing coordination of all related funding strands.

UNHCR also has a potentially valuable role to play in the planning, formulation and, in some cases, implementation of funding policies, programmes and projects directly related to asylum seekers, refugees and other persons in need of protection. Given our worldwide presence and strong local knowledge of conditions, structures and areas of need in relation to asylum in many countries of primary interest to the Union, UNHCR is willing to assist in a consultative or systemic role to support the EU and/or the Member States in the planning and formulation of such policies and funding activities.

**Recommendation:**

UNHCR believes it would be preferable that Home Affairs actions and funding related to third countries be linked to existing processes and structures rather than creating a new asylum and migration external dimension fund.

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