

## Moving forward on asylum in the EU:

UNHCR's Recommendations to Ireland for its EU Presidency  
January – June 2013

**Phaw Shee Hta was resettled into Ireland from Thailand in 2008 and became an Irish citizen last year.**

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Ireland takes over the EU Presidency at a time when the international community, including UNHCR, is responding to a proliferation of new refugee crises unmatched in recent history. Four acute emergencies have intensified during 2012 in Mali, South Sudan, Syria and the Democratic Republic of Congo. Major crises in Côte d'Ivoire, Libya, Yemen and the Horn of Africa are also ongoing since 2011. In addition, millions remain in displacement from Somalia, Afghanistan, Eritrea, Iraq and Myanmar.

The EU plays a key role in the international responses, not only as a major donor, but also through the fulfillment, by Member States, of the protection promise enshrined in the 1951 Refugee Convention. By keeping borders open to those seeking asylum and ensuring a fair and just assessment of protection needs, Member States are setting a global example of rights-based refugee protection. Through acts of solidarity, such as resettlement, the EU and Member States also contribute to sharing responsibility with countries receiving the majority of those displaced.

The Common European Asylum System (CEAS) places Member States in a unique position to respond consistently and justly to the needs of those men, women and children seeking protection in the Union. However, while many of the elements of a CEAS are now in place, a more harmonized approach is still lacking, and remaining gaps in law and practice pose risks to refugee protection.

UNHCR urges the Irish Presidency to take the opportunity to bring conclusion to the legislative process and define a path for a more harmonized EU response to European and global protection challenges.

## Progress made and challenges ahead: the CEAS as a basis for more harmonised responses

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**Achievements** At the beginning of 2013, the European Union can look back on impressive progress achieved on its asylum agenda. The Council and Parliament are close to agreement on legislation that has been subject of intensive and difficult negotiations in recent months. Practical cooperation between Member States has intensified under the coordination of the European Asylum Support Office (EASO), in areas including training, country of origin information and emergency support to States requesting it. Financial assistance for the Member States on asylum and migration will be put in place through the new Multiannual Financial Framework, and reflection and discussions continue on how to put solidarity principles within the EU into practice in more concrete ways.

**Outstanding issues** Many key elements of the CEAS are thus in place, or close to finalisation. Nevertheless, much remains to be done, in practice as well as in law, to fulfil the promise of a system that ensures the “full and inclusive application of the 1951 Convention and relevant international treaties.”<sup>1</sup> The treatment of asylum-seekers, the quality of decision making, the likelihood of obtaining protection and the support provided to achieve self-reliance for recognised beneficiaries of protection are still vastly different throughout the EU. In some cases, they still fall below agreed international or European standards.

Ireland has the opportunity to lead the EU onward in this next phase as Member States work to implement the newly agreed standards in line with international norms. UNHCR supports this process, which must aim to ensure protection through asylum systems that operate efficiently and at a high standard of quality.

**Strengthen EU responses to global crisis** The need for improved systems and solidarity emerges particularly strongly at this time, with 2011 and 2012 seeing a succession of global emergencies, and more people becoming refugees than at any time since 2000. In Europe this has not, so far, led to overwhelming increases in asylum applications in 2012, although some countries have seen higher numbers of applications in particular from Syria and the Democratic Republic of Congo. UNHCR has welcomed the readiness of States to respond to the needs of those seeking protection, and the fact that many thousands have been able to find safety and protection in EU Member States. However, there is a need to strengthen EU and Member States’ responses to these situations in some key areas.

**Syria** With increasing numbers of Syrian refugees seeking protection in neighboring countries of Jordan, Lebanon, Turkey, and Iraq, as well as in North Africa, the crisis is placing severe strain on the asylum space in those regions. Refugees are also seeking protection further afield. More robust protection responses in Europe, as well as acts of solidarity with the countries near Syria, have become pressing.

The High Commissioner in December 2012 called on Member States to demonstrate concretely their commitment to solidarity with States neighbouring Syria, collectively hosting more than half a million refugees from that country at the

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<sup>1</sup> Tampere Conclusions, December 1999

time of writing<sup>2</sup>. This involves most obviously granting access to Member States' asylum procedures and reception for Syrians and others fleeing the country in search of protection, as well as refraining from returns to those States, in light of the vast numbers they accommodate. It also calls for Member States to explore ways to ensure that Syrians already present in the EU can be joined by family members displaced by the conflict. Issuing visas for Syrians who may need international protection, so they may enter Member States lawfully, is also a priority. Targeted resettlement for particularly vulnerable Syrians – as well as resettlement places for nationals of other countries who are refugees in Syria without solutions – are also important.

UNHCR encourages the Irish Presidency to prioritize:

- ✓ Working more effectively together in the EU to ensure implementation of regional and international norms through functioning asylum systems that operate efficiently and at a high standard of quality;
- ✓ Promoting more harmonised responses to ensure protection of all Syrian refugees in Europe and their families. In particular, promoting a consistent approach throughout the Union to ensure access at the borders, a moratorium on returns to Syria and countries in the region, admission of asylum-seekers into established procedures, recognition of protection needs and rights, prioritised family reunification and acts of solidarity including resettlement.
- ✓ Promoting an EU response to UNHCR's appeal for resettlement places to 500 refugees from other countries remaining in or displaced from Syria due to the crisis.

## EU asylum legislation

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### **Formal adoption of the legislative package**

UNHCR welcomes agreements in principle on recasts of the Reception Conditions Directive and Dublin Regulation. Both texts have the potential, once adopted and implemented, to address significant gaps in existing frameworks and practice.

Based on the progress made as of late 2012, UNHCR also looks forward to adoption of the recast Asylum Procedures Directive, which should bring about important improvements in one of the most complex, and most important, of the asylum instruments. Together with agreement on the recast Eurodac Regulation, this will conclude the negotiations of the legislative package.

In anticipation of agreement on the outstanding instruments and formal adoption of the Dublin Regulation and Reception Conditions Directive in early 2013, Ireland will

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<sup>2</sup> As of 24 December 2012 a total number of 542,250 Syrians were registered or pending registration with UNHCR in the region and North Africa (Lebanon 164,626, Jordan 155,147, Turkey 144,755, Iraq 66,532 and Egypt 11,190). In addition, over 25,500 asylum applications have been submitted by Syrians in Western European countries since April 2011. Based on data on asylum applications in the EUROSTAT database accessed 10 December 2012.

also preside over the first stage of transposition into national law and implementation.

**Reception  
Conditions  
Directive**

UNHCR welcomes the new provisions in the amended Reception Conditions Directive relating to the identification of people with special reception needs, as well as those under which detention of asylum-seekers will be limited by explicit permissible grounds, as required by international law, and subject to judicial oversight and minimum standards. The recast Directive also places considerable emphasis on the established principle that the best interests of the child must be a primary consideration.

UNHCR and UNICEF will in 2013 issue guidance on implementation of the 'best interests of the child' principle, drawing on practice and insights from the experience of Member States. This guidance will put forward possible models and practical strategies that can help Member States fulfil the requirements of the Directives and the Convention on the Rights of the Child in relation to asylum-seeking children.

**Dublin  
Regulation**

UNHCR considers that changes to the Dublin Regulation can help ensure that responsibility for claims can be allocated among States in a fairer process, based on clearer criteria and more relevant information. There are, in UNHCR's view, a number of important improvements by comparison with the 2003 Regulation, such as more systematic and complete information for applicants; an interview in each Dublin case; the extension of family unity rules to include relatives beyond the nuclear family for unaccompanied children; and improved access to judicial review.

**Early Warning  
Mechanism**

UNHCR also supports the "early warning and preparedness" mechanism foreseen under the revised Dublin Regulation. Such a mechanism can help identify emerging problems or particular pressures in the asylum systems of Member States, and provide an important basis for addressing such problems or gaps.

UNHCR, based on its expertise on domestic asylum systems and presence across Member States, is well-equipped to contribute to the process of information-gathering foreseen by EASO, but also to deliberations by the Council and Commission on appropriate responses.

At the same time, UNHCR considers that the early warning mechanism alone cannot anticipate or solve all of the difficulties with asylum systems which have emerged in Member States, nor address all of the challenges resulting from Dublin to date. For the Dublin Regulation to operate effectively there must be ongoing efforts to ensure fully functioning asylum systems in all participating states. Meanwhile, courts will continue to play an important role in overseeing the operation of Dublin, to ensure that people are not transferred to situations where *refoulement* obligations are triggered due to the absence of adequate reception or integration support, or of a fair and effective asylum claim assessment.

**Asylum  
Procedures  
Directive**

UNHCR welcomes many features of the recast which are in principle expected to be agreed in the Council and Parliament. Among these, clarified and elaborated provisions on training of competent authorities – requiring that common training set out in the EASO Regulation form part of national training efforts are important. Moreover, explicit obligations to ensure adequate training for any other officials interviewing or registering claims by asylum-seekers are necessary.

Other significant proposed changes include limits on the circumstances in which

accelerated procedures, with reduced procedural safeguards, can be used, and provisions ensuring suspensive effect of appeals, which would bring the EU provisions in line with international law and jurisprudence. Some new provisions, implemented effectively so as to ensure that those in need of protection can receive it, could also help States deal swiftly with unfounded claims. New rules on subsequent applications, where an examination on the merits has been afforded previously and where there are no new elements, should provide one such tool.

UNHCR has called for exemptions from accelerated and border procedures for certain categories of asylum-seekers, namely unaccompanied children and victims of torture. This would help ensure that such people have the fair opportunity they need to present their claims in the most clear and effective way, thus facilitating States' task of determining their status.

**Eurodac**

The Eurodac Regulation remains pending as Ireland assumes the Presidency. Member States have made clear their strong interest in allowing law enforcement authorities access to the database, which would enable searches among fingerprints of asylum-seekers, in a departure from the original purpose of the Regulation. UNHCR has advocated for stronger safeguards, as well as evaluation of possible negative implications and ways to address them, as part of any agreed text. UNHCR remains particularly concerned about the risk that information about asylum-seekers could, even inadvertently, be passed to countries of origin, a situation which could put refugees or their families at grave risk.

- ✓ UNHCR urges the Irish Presidency to take the negotiations forward on the Asylum Procedures Directive towards a principled agreement. On the Eurodac Regulation, UNHCR hopes stronger safeguards will be included in the final text.
- ✓ UNHCR encourages the Irish Presidency to promote transposition and implementation of the legislative package based on good practice standards. In this regard, UNHCR highlights the need to identify good practice in particular with regard to:
  - alternatives to detention;
  - application of best interest determination procedures;
  - identification and support to vulnerable asylum-seekers, including victims of torture and trafficking;
  - procedures dealing swiftly with claims, while observing safeguards for all;
  - quality information given to applicants on different aspects of the Dublin Regulation procedures and good practice on the effective identification of family for the correct application of the Regulation criteria.
- ✓ UNHCR further recommends vigilance by all Member States in ensuring application of the Dublin Regulation in line with international and European obligations.

## Implementation and practical cooperation

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Practical cooperation remains essential to ensure more consistent and effective implementation of asylum law and policy. Furthermore, it provides support to those Member States which can benefit from assistance, either *ad hoc* or on a more systematic basis, to fulfil their EU obligations. Practical cooperation is therefore a key priority in the next phase of work after adoption of the recast proposals. UNHCR is committed to work with Member States and the EASO, as well as other European Union bodies, to promote the best level of implementation.

### **EASO: an ambitious work programme**

The Member States have tasked the EASO with an ambitious work programme for 2013, building on its notable progress and achievements in 2012. Achieving more consistent approaches, and responding to all of the Member States' diverse needs for support, will remain an on-going challenge in a period of financial constraints, at national and EU level.

### **Objective and relevant information on asylum practice**

Member States, EU bodies and wider stakeholders need objective, relevant information about the challenges, as well as good models and approaches, in order further to strengthen asylum practice. Relevant opportunities to discuss such challenges – including the EASO's Consultative Forum – need to be utilised to their maximum effect. This can help bring to bear all the expertise that is available, as well as building a sense of shared engagement in the process of ensuring the EU can honour its protection obligations, while maintaining public support and using resources most effectively.

Gathering information – and its use and dissemination including as part of the early warning mechanism – is a vital role that EASO is particularly well-positioned to fill. While the challenge of doing this strategically and comprehensively is clear, its importance cannot be underestimated. UNHCR encourages inclusion of information on asylum from a wide range of stakeholders.

### **Quality at the center of practical cooperation**

The EU continues to face the ongoing challenge of maintaining and further developing high-quality asylum determination processes. UNHCR welcomes the collaboration of States - including Austria, Bulgaria, Cyprus, Germany, Greece, Hungary, Ireland, Italy, Poland, Portugal, Romania, Slovenia, Slovakia, Sweden, and United Kingdom - all of whom have taken part in quality-related activities with UNHCR. These States are positive about the benefits they see from such actions, which are seen as a way of working that can bring about measurable and practical benefits both in terms of fairness and efficiency.

With quality as an important element in the EASO's 2013 work programme, there is a need for States to engage actively in further activities, and welcome participation by Member States which have not undertaken quality assessments or measures to date.

### **Training to strengthen consistency and quality**

Training deservedly maintains its place at the heart of EASO's activities, with the European Asylum Curriculum (EAC) further to be updated and developed in the coming months. UNHCR encourages the Presidency and other Member States to support and contribute to this work, as a means to strengthen the consistency and quality of asylum practice and outcomes. In particular, UNHCR encourages Member States to use training, expertise and quality support from EASO to

address any weaknesses in their systems. UNHCR, with EASO's other partners, will continue actively to contribute and dedicate resources to development of the EAC and other quality tools and to complement this with more specialised training.

**Country of origin information**

Country of origin information is another core area in the EASO's work programme. Meetings led by EASO in 2012, including on Syria, highlighted the value of exchange and discussion on information sources and their use in asylum decision-making. UNHCR is contributing actively to these discussions, but also sees potential for significant input from other expert bodies in the future, to enrich and deepen the debate.

**Good practice on support to refugees - part of practical cooperation**

UNHCR has over a number of years engaged in projects with governments and other partners, funded by the EU, aimed at bringing together stakeholders on integration in order to share experiences. In the recast Qualification Directive, more emphasis is also placed on the need to acknowledge the specific needs of beneficiaries of international protection in facilitation of integration. Good practice of support to refugee integration is emerging and practical cooperation can be used to strengthen this area further. In particular, experiences around individualised initial support, assessment of skills, language training, employment and housing can be shared and supported in a more systematic manner. UNHCR encourages the Presidency to engage Member States on how to strengthen practical cooperation in relation to integration support.

On practical cooperation on asylum in the EU, UNHCR recommends:

- ✓ Promoting transparent and comprehensive information-gathering from all relevant stakeholders on national asylum law and practice. This should enable good practice to form the basis of practical cooperation and gaps to be identified in a timely manner, allowing for concrete follow up;
- ✓ Placing quality at the center of practical cooperation, emphasizing training, skills development and national quality assurance mechanisms;
- ✓ Considering how to further practical cooperation in relation to support to beneficiaries of protection concerning their integration and social inclusion; and
- ✓ Encouraging Member States to use training, expertise and quality support from EASO to address the weaknesses in their asylum systems.

## Solidarity and responsibility-sharing

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**Solidarity: a means for better protection**

Solidarity between States underpins the international refugee protection system. The cooperation developed over the last 60 years highlights States' readiness to work together to address forced displacement, and their commitment to the concepts of solidarity and responsibility-sharing. Solidarity among Member States is

also required by Article 80 of the Treaty on the Functioning of the EU, and reflected in the Union's efforts to create a fully-functioning CEAS. The central purpose of solidarity from UNHCR's perspective, apart from benefiting States, is to achieve better protection for individuals forced to flee.

**Multiannual  
Financial  
Framework:  
The Asylum and  
Migration Fund**

With the Multiannual Financial Framework still in discussions, the Presidency will have opportunities to lead Member States in putting in place arrangements to ensure the future funds from 2014 will be used most strategically to address, *inter alia*, gaps in protection systems at national level. UNHCR stresses the importance of ensuring funding reflects the needs in the protection area, and the necessity to include consultations with civil society actors to that effect. In particular, UNHCR welcomes, as part of the future Asylum and Migration Fund, the inclusion of support for the joint EU resettlement programme. Funding for resettlement is an important incentive which can enhance overall EU efforts on international solidarity and should support not only resettlement of vulnerable refugees, but resettlement in the context of Regional Protection Programmes (RPPs).

**Solidarity with  
countries  
beyond the EU:  
Resettlement  
and RPPs**

The Presidency is encouraged to lead Member States in seeking to broaden engagement on resettlement, to give concrete expression to the Joint EU Resettlement programme and provide solutions for most vulnerable individual refugees. UNHCR, jointly with IOM and ICMC, is actively working with local governments and civil society to promote communication, exchange of good practice and other practical measures. States are encouraged to use the momentum that has been achieved on resettlement in recent years and ensure this can be a substantial protection tool in the EU's framework.

The EU has invested in support to third countries through important projects focused on protection capacity-building and cooperation in the asylum field. EU RPPs have been among the strategic tools employed in Tanzania; Belarus, Moldova and Ukraine, North Africa and the Horn of Africa. A Regional Protection Programme approach is being contemplated for the Middle East. UNHCR welcomes the EU's increased engagement in such activities where they can enhance the protection space and complement the provision of protection where it is needed in the EU. In the context of the discussions related to the future Asylum and Migration Fund, UNHCR highlights the need to ensure coherence and complementarity between the external dimension of EU asylum and migration internal policies and EU's external affairs policies.

**Solidarity within  
the EU**

In the EU there are evident gaps and imbalances on protection, which need to be addressed. One example relates to responses to arrivals in Europe of Syrian nationals. Solidarity is therefore not only for countries outside the EU and it is time to take forward the thinking of new ways of solidarity also within the EU. Support to individual Member States as they build and maintain their asylum-systems is one way to ensure more effective protection throughout the Union. Voluntary relocation schemes may also be considered for countries under particular pressures. UNHCR is ready to play a role in such schemes, stressing the need to improve on the pilot actions so far. Lessons learned included the importance of ensuring appropriate reception and integration facilities for people offered protection in other Member States.

New elements in the EU's legal framework on asylum, including provisions on early warning, offer an important new way forward for solidarity with States which face pressure. As mentioned above, UNHCR is ready to contribute directly to this



system. A readiness to assess realistically among Member States the need for strengthening measures, and ensure that affected Member States will put them into practice, will be critical for the success of such arrangements.

UNHCR recommends further EU effort on solidarity:

- ✓ Beyond the EU: in the form of increased support to resettlement needs.
- ✓ Within the EU: exploration of new and practical approaches to addressing situations of pressure and Member States' needs, as well as systemic support, with specific aim of ensuring access to protection for all those in need of it in the EU.

## Integration and Family Reunification

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In times of economic difficulty, social cohesion becomes all the more important - but it can also come under strain. UNHCR observes with disquiet the growth of anti-foreigner rhetoric, discrimination and, in some cases, extremist sentiments that have emerged in some EU countries of late. At the same time, it is acknowledged that citizens are concerned about the future, and whether the economy and society can sustain the demographic changes that come about from migrants, as well as refugee newcomers.

UNHCR underlines the benefits of viewing refugees and their families as making positive contributions to all societies - bringing skills, language abilities, cultural richness and willingness to work. However, to fulfill their potential, refugees and other protection beneficiaries must be supported in the integration process. For people who have fled persecution and serious harm, this may require special assistance.

### **Family Reunification**

Many refugees coming to Europe have lost track of their families or have had to leave them behind. Families play an essential role to help persons rebuild their lives, and can provide critical support for integration into society.

UNHCR welcomed the discussions launched in the 2012 Commission's Green Paper on Family Reunification. UNHCR considers that the Family Reunification Directive provides sufficient possibilities for Member States to ensure the right to family life and family reunification for refugees. UNHCR encourages Member States to make full use of the Directive by applying the more positive clauses for refugees. In addition UNHCR urges Member States to extend more favourable provisions to beneficiaries of subsidiary protection, and to strengthen administrative practices in order to ensure and facilitate family reunification (including improving tracing of relatives; providing information about the procedure; suggesting solutions to overcome difficulties accessing embassies to lodge an application; assisting with travel documents and facilitating visa issuance for people from remote or insecure areas).

A better and more protection-oriented implementation of the Directive could be achieved through the provision of guidance on specific issues. UNHCR welcomes discussions on providing guidelines on the Directive and encourages the Irish presidency to support this process.

UNHCR welcomes discussions on guidelines on the Family Reunification Directive and recommends in particular that such guidelines could include defining “dependency” in relation to a sponsor for the purpose of family reunification, and clarify the evidence required to establish family links, including the use of DNA testing for the purpose of documenting family links.

## Combating trafficking in Human Beings

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### **Protecting Victims of Trafficking**

UNHCR welcomes the Irish Presidency’s focus on victim protection and victims’ rights. This focus is timely in light of the adoption on 12 November 2012 of EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, which applies to all victims in a non-discriminatory manner, including with respect to their residence status, and does not affect but builds on the provisions contained in other EU instruments, in particular the Anti-Trafficking Directive (2011/36/EU).

UNHCR emphasizes the importance of ensuring that mechanisms are in place to identify and refer victims of trafficking to authorities competent to address their needs. In addition, Member States must ensure their asylum systems are fully equipped to ensure protection of the rights of victims of trafficking. In particular, UNHCR reiterates the importance of the provision of information to such victims on their rights, including the right to seek asylum under Article 11(6) of EU Anti-Trafficking Directive. UNHCR encourages the Presidency and Member States to consider effective ways to ensure that all officials and competent authorities operating within the context of criminal proceedings likely to come into contact with victims of trafficking are aware of those rights and trained to ensure their full respect in practice.

UNHCR recommends further Member State efforts to ensure that victims of trafficking receive the protection to which they are entitled, including through effective implementation of the EU Anti-Trafficking Directive and appropriate attention to such victims in the asylum process.