

Funding for International Protection in Europe

UNHCR Comments to the proposals for funding in the area of Home Affairs 2014-2020

Introduction

Commission proposals on funding in the area of Home Affairs

The European Commission published in November 2011 its proposals for the funding in the area of Home Affairs for the next Multiannual Financial Framework for the period between 2014 and 2020. This includes four texts:

- a proposal for a Regulation laying down general provisions on the Asylum and Migration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management (hereafter Horizontal Regulation);¹
- a proposal for a Regulation establishing the Asylum and Migration Fund (AMF);²
- a proposal for a Regulation establishing, as part of the Internal Security Fund (ISF), the instrument for financial support for external borders and visa;³
- a proposal for a Regulation establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management.⁴

The proposals aim at simplifying funding in the areas of Home Affairs. A proposed €10.9 billion budget is to be distributed between two funds: the Asylum

¹ European Commission, *Proposal for a Regulation of the European Parliament and of the Council Laying Down General Provisions on the Asylum and Migration Fund and on the Instrument for Financial Support for Police Cooperation, Preventing and Combating Crime, and Crisis Management*, COM (2011) 752 final, 15 November 2011, available at: <http://ec.europa.eu/home-affairs/news/intro/docs/752.pdf>.

² European Commission, *Proposal for a Regulation of the European Parliament and of the Council Establishing the Asylum and Migration Fund*, COM (2011) 751 final, 15 November 2011, available at: <http://ec.europa.eu/home-affairs/news/intro/docs/751.pdf>.

³ European Commission, *Proposal for a Regulation of the European Parliament and of the Council Establishing, as Part of the Internal Security Fund, the Instrument for Financial Support for External Borders and Visa*, COM (2011) 750 final, 5 November 2011, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0750:FIN:EN:PDF>.

⁴ European Commission, *Proposal for a Regulation of the European Parliament and of the Council Establishing, as Part of the Internal Security Fund, the Instrument for Financial Support for Police Cooperation, Preventing and Combating Crime, and Crisis Management*, COM (2011) 753 final, 15 November 2011, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0753:FIN:EN:PDF>.

and Migration Fund (€3.869 million), and the Internal Security Fund (€4.648 million); some of this envelope will be used for the Agencies of the European Union in the field of Home Affairs such as Europol, Frontex and the European Asylum Support Office.

**UNHCR
mandate**

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 and stateless persons.⁵ Paragraph 8 of UNHCR's Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees.⁶ 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),⁷ which stipulates that a common policy on asylum, subsidiary protection and temporary protection must be in accordance with the 1951 Convention Relating to the Status of Refugees (Refugee Convention).⁸ 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*".⁹

Both the AMF and the ISF concern persons who fall under UNHCR's responsibility. In the below comments, UNHCR will primarily provide suggestions regarding the AMF, as well as to the Horizontal Regulation and, to a limited extent, the ISF. These detailed comments should be read in conjunction with UNHCR's statement on Funding on Home Affairs of March 2012.¹⁰

⁵ 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>.

⁶ Op. cit., paragraph 8(a).

⁷ 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>.

⁸ 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>.

UN General Assembly, *Resolution 61/137 Adopted by the UN General Assembly: Office of the United Nations High Commissioner for Refugees*, 25 January 2007, A/RES/61/137, available at: <http://www.unhcr.org/refworld/docid/45fa902d2.html>

⁹ 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>.

¹⁰ UNHCR, *Funding for International Protection in Europe - UNHCR Statement on the future EU funding in the area of migration and asylum 2014-2020*, March 2012.

EU added value The Horizontal Regulation, as well as both Funds, recall a fundamental principle of the “EU Budget Review”¹¹ namely that the EU budget should finance activities which have an EU added value and which “*Member States and regions cannot finance themselves.*”

UNHCR welcomes the assistance provided by EU funding to strengthen asylum, reception and integration systems in EU Member States as a supplement to national funding. Member States have obligations under EU and international law to develop and maintain asylum systems. EU funding should not be considered as a substitute for resources that should be provided pursuant to Member States’ obligations to provide asylum to those in need in accordance with the Geneva Convention and the EU *acquis*; rather, it should complement and strengthen national systems. Similarly, EU funding for the external dimensions of the AMF and the ISF should also add value to, rather than taking the place of, Member States’ support to third countries on asylum and migration.¹²

1. Asylum and Migration Fund

A. Legal basis

Intra-EU solidarity The provision of funding to countries facing pressure is an important aspect of solidarity between EU Member States. UNHCR believes that a reference to Article 80 of the TFEU¹³ could be inserted in the legal basis of the AMF Regulation. This will further highlight and operationalize the principle of intra-EU solidarity.

B. Objectives

Sufficient funding for asylum UNHCR has welcomed the simplification and increased flexibility afforded by the reduction of the six existing EU funds to two funds. UNHCR would however caution that the distribution of funding within the Asylum and Migration Fund between the four objectives set in article 3(2): 1. Strengthening the Common European Asylum System, 2. Supporting legal migration, 3. Promoting return strategies, and 4. Solidarity and responsibility sharing; must reflect the EU’s aim to establish a Common European Asylum System in accordance with international standards, in particular as enshrined in the Refugee Convention.¹⁴ The distribution of funding, in particular between migration management and the

¹¹ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the National Parliaments - The EU Budget Review*, COM (2010) 700, 19 October 2010, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0700:FIN:EN:PDF>.

¹² See section H.

¹³ See footnote 7, Article 80.

¹⁴ See footnote 7, Article 78(1).

building of quality asylum systems, will be most efficiently and fairly allocated if it is based on , inter alia, an in-depth analysis of the gaps in asylum and reception systems, and is proportionate to the needs of each Member State. To facilitate this, information from UNHCR regarding asylum in the EU is available which can assist the Commission in its assessment of the needs of Member States in relation to asylum, reception and integration.

In order to monitor and thus ensure appropriate balance in the funding, UNHCR would encourage the EC and Member States to increase transparency on projects funded by the AMF, throughout the period 2014-2020 but also more particularly, during the mid-term review exercise. To that effect, UNHCR welcomes the proposal of the Horizontal Directive which foresees the publication of a list of actions supported by each national programme through a website.¹⁵ This, together with regular consultations with civil society actors at national and EU level will contribute to ensuring that the right balance in funding is achieved.¹⁶ UNHCR would also suggest that reporting during the mid-term review includes the amount and proportion of the total available funds spent on each of the four objectives. There should then be the possibility to take appropriate corrective actions to ensure, if necessary, a fair distribution of funds.

Funding for preventing and reducing statelessness

UNHCR notes that although the 2012 Communication on the Global Approach to Migration and Mobility recognizes that “*special attention should be paid to protecting and empowering vulnerable migrants, such as unaccompanied minors, asylum-seekers, stateless persons and victims of trafficking*”,¹⁷ the proposed AMF Regulation does not foresee funding accordingly, especially with regard to stateless persons. UNHCR recommends amending the proposed AMF Regulation to include funding for actions to prevent and reduce statelessness and to identify and protect stateless persons.

C. Definitions

Resettlement

In the exercise of its mandated functions, UNHCR identifies refugees who are in need of resettlement. It does this according to carefully designed criteria and procedures which are set out in the UNHCR Resettlement Handbook.¹⁸ UNHCR therefore considers that it is sufficient, in the proposed definition of resettlement in Article 2(a), to refer to persons submitted by UNHCR. In addition, UNHCR is concerned that a specific reference to the Geneva Convention in this definition

¹⁵ See footnote 1, Article 48(2).

¹⁶ See section 2B under on policy dialogues.

¹⁷ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions : The Global Approach to Migration and Mobility*, 18 November 2011, COM(2011) 743 final, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0743:FIN:EN:PDF>.

¹⁸ The UNHCR Resettlement Handbook, was endorsed by UNHCR's Executive Committee in 1996. It contains: the UNHCR resettlement criteria; relevant considerations for the identification of refugees in need of resettlement; and Country Chapters covering refugee selection and processing modalities, reception arrangements and settlement services provided by resettlement countries. The Resettlement Handbook can be found at <http://www.unhcr.org/refworld/docid/3ae6b35e0.html>.

may exclude from resettlement persons who would be recognized by Member States as beneficiaries of subsidiary protection whom UNHCR would submit for resettlement due to their specific vulnerability. This possibility is provided under Article 2(a)(ii). In order to ensure consistency, the reference to the Geneva convention should therefore be deleted.

Recommendation:

- ✓ UNHCR recommends that the definition of resettlement is amended to include beneficiaries of subsidiary protection:

(a) 'resettlement' means the process whereby, on a request from the United Nations High Commissioner for Refugees (UNHCR) based on a person's need for international protection, ~~third-country nationals or stateless persons having the status defined by the Geneva Convention of 28 July 1951~~ and who are permitted to reside ~~as refugees~~ in one of the Member States are transferred from a third-country and established in a Member State where they are permitted to reside with one of the following statuses:

(i) refugee status within the meaning of point (d) of Article 2 of Directive 2004/83/EC, or

(ii) a status which offers similar rights and benefits under national and Union law as refugee status;

D. Indicators

Developing qualitative and measurable indicators

The list of indicators proposed in Article 3(2) to measure the impact of EU funded activities are limited. UNHCR would recommend that work be undertaken to develop a series of qualitative and measurable indicators for each of the four objectives of article 3(2). UNHCR stands ready to offer its cooperation in this exercise.

E. Funding quality asylum systems

One of the objectives of the AMF is "to strengthen and develop the Common European Asylum System".¹⁹ Article 5 details which actions shall be eligible for funding to meet this objective and strengthen and develop in particular reception and asylum systems. This includes *inter alia* the provision of material aid, social assistance, legal aid, specific assistance for vulnerable persons, information and training for local communities and integrative actions. Article 5(2) foresees that funding will be available for accommodation infrastructure and setting up administrative structures, including training of staff involved in the asylum procedures. Funding for these two activities is however limited to new Member States as of 1 January 2013, and to Member States faced with specific and structural deficiencies.

¹⁹ See footnote 2, Article 3(2)(a)

**Continued
funding for
“old” Member
States**

While UNHCR understands that “old” Member States have benefited from funding under the European Refugee Fund since 2000 to establish appropriate accommodation infrastructure and training of staff, and recalling that EU funding should not be considered as a substitute for resources that should be provided pursuant to Member States’ obligations to provide asylum to those in need, UNHCR considers that setting up appropriate administrative infrastructures and training of staff and relevant judicial authorities is a continuous and essential component of building quality asylum systems.²⁰ Administrative structures and systems must be reviewed and upgraded periodically in order to ensure that they allow delivering international protection to those who require it.²¹ Regular and continuing training of staff, including through the European Asylum Curriculum, and with the support of the European Asylum Support Office (EASO), is also an essential aspect of ensuring that decision-makers have the necessary knowledge to take quality decisions. Changes in asylum legislation (including in the near future as a result of the proposed Recasts of the Qualification Directive, Asylum Procedures Directive, and Dublin Regulation) require that administrative structures are reviewed and training continues including in “old” Member States. UNHCR therefore recommends that funding for administrative structures and training of staff continue to be supported through AMF funding for all EU Member States.

Recommendation:

- ✓ Article 5(2) (b) should provide the possibility to continue funding administrative systems and training of staff of all asylum and judicial authorities including through the European Asylum Curriculum. UNHCR recommends that Article (5) (2)(b) be moved to article 5(1) so that it is not limited to new Member States.

F. Resettlement and relocation

Resettlement provides a durable solution for refugees when protection cannot be assured in countries of first asylum. Resettlement is sometimes the only possible durable solution, when voluntary repatriation and local integration are not available. In addition, resettlement is an important means of the international responsibility sharing mechanism for the protection and well-being of refugees. As such, resettlement remains a complement to – and not a substitute for – the provision of protection to persons who apply for asylum in the EU or at its

²⁰ See in particular UNHCR, *Building In Quality: A Manual on Building a High Quality Asylum System*, Chapter II, p. 16, September 2011, available at: <http://www.unhcr.org/refworld/docid/4e85b36d2.html>; states that: “*In fulfilment of their commitment to high quality asylum determination, asylum authorities must ensure that at least four key components are in place. [...] Secondly, the new employees will require appropriate training.*”

²¹ Council of the European Union, *Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*, 2 January 2006, 2005/85/EC, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>.

borders.

For UNHCR, the AMF should ensure that EU funding received on the basis of the number of resettled persons is actually spent on activities related to resettlement, with the objective of improving related procedures and standards as well as resettled refugees' integration in their new asylum country. In addition, UNHCR recommends that the effectiveness and performance of the EU funded resettlement schemes be evaluated at regular intervals, and that additional funding be dependent on subsequent results.

**Joint EU
Resettlement
Programme**

In March 2012, the European Institutions agreed on the establishment of a Joint EU resettlement Programme including an amendment to the European Refugee Fund²² which foresees, *inter alia*, additional financial support for Member States taking part in resettlement actions for the first or second time. UNHCR welcomed this provision as a means to strengthen EU engagement and to involve more Member States in refugee resettlement. In order to encourage a greater number of Member States to engage or engage further in resettlement, UNHCR considers that **additional** support for beginning resettlement countries should be continued after 2013. Often the initial investments in resettlement related to reception and early integration of resettled refugees are substantial. Extra financial support to Member States to sustain these investments is paramount to enhance the number of resettlement places offered in the EU.

**Additional
funding for
resettlement
places outside
quotas**

UNHCR also recommends that additional funding be offered to States that plan to enlarge their existing resettlement program in order to support their efforts to that effect. In accordance with the proposed AMF, UNHCR agrees with a fixed amount of core funding for each resettled refugee coming to the EU. However, UNHCR believes that the financial incentive for States offering new or additional places could be increased. To that effect, existing resettlement quota could be listed in an Annex to the AMF as baseline figures at a given year.

**Resettlement
for victims of
torture**

UNHCR welcomes the inclusion under Article 17(4) of women and children at risk, unaccompanied minors, persons with medical needs and persons in need of emergency resettlement as fixed priority categories in order to ensure continued support for vulnerable refugees. UNHCR would however recommend that this provision be made fully consistent with UNHCR's resettlement criteria and also include refugees who are survivors of violence and torture.

²² European Union, *Decision of the European Parliament and of the Council 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'*, 30 March 2012, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:092:0001:0003:EN:PDF>.

Intra-EU relocation

UNHCR supports relocation as a means of supporting responsibility sharing in the EU but would recall that relocation should be a voluntary option for refugees and should respect the right to family life. It should be accompanied by a secure status preferably through an automatic transfer of the legal status of the person relocated.

UNHCR also believes that EU Member States taking part in this solidarity scheme should be expected to invest in developing proper reception systems as well as integration support schemes with a view to developing capacity to welcome refugees. UNHCR recommends maintaining the funding for relocation at the same level as the core funding for resettlement, or in any case not higher.

Recommendations:

- ✓ UNHCR recommends that EU funding should be spent on activities directly related to resettlement and that EU-funded resettlement schemes should be evaluated at regular intervals.
- ✓ In order to continue beyond 2013 encouraging more Member States to take part in resettlement, or for Member States to offer additional resettlement places, UNHCR recommends additional financial support is given to beginning resettlement countries and to Member States who offer additional resettlement places outside their quota.
- ✓ In order to ensure consistency with UNHCR's resettlement criteria for vulnerable persons, a new subparagraph should be added to article 17(4) to include "**survivors of violence**"
- ✓ UNHCR recommends that the same lump sum should be set for resettlement and relocation and in any case funding for relocation should not be higher than funding for resettlement.

G. Return

Sufficient funding for monitoring of returns

Building on the European Return Fund, the AMF will continue to enhance the Member States' capacities to promote fair and effective return strategies and to support the development cooperation with third countries.

UNHCR welcomes the explicit reference and emphasis placed on assisted voluntary return measures rather than forcible return. Voluntary return, supported by appropriate counselling and material assistance, presents fewer risks of human rights violations and of individual hardship.²³ This is consistent with the approach set by the Returns Directive which foresees that "*voluntary*

²³ Council of Europe: Committee of Ministers, *Twenty Guidelines on Forced Return*, 4 May 2005, Guideline 1 "Promotion of voluntary return", available at: <http://www.unhcr.org/refworld/docid/42ef32984.html>.

return should be preferred over forced return".²⁴

The Returns Directive foresees a monitoring system for forced returns.²⁵ In its evaluation of readmission agreements, the European Commission underlines that there are no mechanisms to monitor what happens to persons after their return.²⁶ UNHCR recommends that in the distribution of funding within return measures, sufficient funding should be given to supporting monitoring mechanisms foreseen by Article 13(d), extending to monitoring post-return, including monitoring the return of third country nationals who are not citizens of the country where they are returned, and evaluating the sustainability of returns.

H. Funding for the external dimension of asylum and migration

Consistency of the external dimension with EU external aid

In the explanatory memorandum to the AMF, the EC specifies that the Fund shall support: (a) actions relating primarily to Union interests; (b) having a direct impact in the Union and its Member States; and, (c) ensuring a necessary continuity with activities implemented in the territory of the Union. Further, the memorandum specifies that actions that are directly development-oriented shall not be supported through this Fund. In implementing such actions, the EC notes that there should be full coherence with the principles and general objectives of the Union external action related to the country or region in question. Furthermore, Recital 7 of the Horizontal Regulation is clear in that "*External action should be consistent and coherent as set out in article 18 (4) of Treaty of the EU*".²⁷ Also, Recital 25 of the AMF notes that measures supported by the Fund in third countries should be taken in synergy and in full coherence with the EU's external action and foreign policy. Article 21(f) of the AMF further elaborates that this refers in particular, but not exhaustively, to readmission agreements, mobility partnerships and regional protection programmes.

Should this external capacity be assigned to DG Home, UNHCR believes that some caution must be exercised as this will represent the arrival of a new EU actor, with relatively large financial capacity, in the area of migration and asylum management outside of the EU. DG Home has not been a traditional actor in the area of foreign affairs or external policies of the EU, or in the field of EU humanitarian or development policies. For this reason, UNHCR believes it is key that the guarantees of both above-cited Recitals on the need for full coherence of AMF funding with the EU's external policy in Article 21 (f) of the AMF become

²⁴ European Union, *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*, 16 December 2008, 2008/115/EC, Recital 10, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>.

²⁵ *Ibid.*, Article 8(6).

²⁶ European Commission, *Communication from the Commission to the European Parliament and Council – Evaluation of EU Readmission Agreements*, COM (2011) 76 final, 23 February 2011, p. 13, available at:

http://ec.europa.eu/home-affairs/news/intro/docs/COMM_PDF_COM_2011_0076_F_EN_COMMUNICATION.pdf.

²⁷ See footnote 1.

legally binding upon the Commission and the Member States. This needed coherence will further ensure that activities funded in third countries will also take into account the genuine interests of the third countries as well as those of refugees and migrants, in full respect of human rights principles and the rights enshrined in the EU Charter on Fundamental Rights,²⁸. This will further ensure compliance with the EU 2007 Consensus on Humanitarian Aid²⁹ and 2011 Agenda for Change principles³⁰.

Thus, in order to avoid potential confusion, risk of duplication or/and overlapping with funding from external instruments (such as the Development and Cooperation Instrument, the Instrument for Stability, the European Development Fund, the European Neighborhood Instrument and ECHO), UNHCR would recommend that a clear line of delineation be articulated between the funding instruments, and that agreements be pursued among the various EU actors in this area, defining when and how DG Home could intervene in the external dimension of EU asylum and migration policies. In order to facilitate a coherent and efficient approach, UNHCR would recommend taking into account the following proposed criteria within Article 21 of the AMF and/or in Article 9 of the Horizontal Regulation:

- DG Home supported actions should be short-term and not development-oriented;
- DG Home funded actions in third countries should have a direct link with the internal activities and represent an extension of an EU internal migration or asylum policy outside the EU (i.e. principle of “territorial continuity”);
- Such actions should aim at a partnership purpose with the countries concerned, in coherency with other EU actions and activities in the specified country.

In summary, UNHCR believes that DG Home supported actions should be specifically linked to: (a) readmission; (b) return; (c) mobility partnerships, and (d) resettlement, keeping in mind above cited criteria, in particular the need for continuity between EU internal and external policies. Thus, for example, activities linked to regional protection programmes would rather come into the remit of development funding, as they are long-term, meant to be development oriented, and are not to be pursued in the interests of the EU but rather in the

²⁸ European Union, *Charter of Fundamental Rights of the European Union*, 7 December 2000, Official Journal of the European Communities, 18 December 2000 (2000/C 364/01), available at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

²⁹ European Union, *Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission: The European Consensus on Humanitarian Aid*, 30 January 2008 (2008/C 25/01), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:025:0001:0012:EN:PDF>.

³⁰ European Commission, *Communication of the European Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: Increasing the impact of EU Development Policy: an Agenda for Change*, COM (2011) 637 final, 13 October 2011, available at: http://ec.europa.eu/europeaid/what/development-policies/documents/agenda_for_change_en.pdf

exclusive interests of the third country and of beneficiaries of international protection. Resettlement however is an activity that could be supported by DG Home due to its linkages with both EU and Member States' policies in this area.

EU added value

Further, since EU funding will also be made available for external actions in third countries by individual Member States, UNHCR recommends that such actions also be fully coherent with the external actions developed at EU level and directly managed by the European Commission. EU funded actions should not serve bilateral objectives of cooperation between a Member State and a third country but also meet the same requirements of EU added value and thus be used only for activities that at least two Member States are involved in, or have a proven EU added value such as being in line with Article 21 of the AMF.

Emergency actions

UNHCR is concerned that through Article 22 of the AMF and Article 8 of the Horizontal Regulation, DG Home could also carry out emergency type of assistance, including of a humanitarian character. Thus, in case of displacement related crises, DG Home interventions could theoretically take place in all non-EU countries of the world (i.e. without restrictions to its own territory or its vicinity - enlargement or neighborhood countries). UNHCR would thus like to propose that the same principle noted above should apply, that is, the need for such interventions to take place only if they have an explicit link with the internal affairs of the EU. This will clearly reduce the risk of complication and duplication with similar actions held through the humanitarian arm of the European Commission, ECHO, or other services such as the Instrument for Stability and Special Measures interventions by DEVCO.

If however there were to be DG Home interventions under this principle, UNHCR would note the strong need for close coordination with all other relevant services of the EU, within the Commission but also with the EEAS, including those working on civil protection coordination matters. Further, UNHCR would like to recall that in accordance with Article 214 (1) and (2) of the TFEU "*Humanitarian aid operations shall be conducted in compliance with the principles of international law and with the principles of impartiality, neutrality and non-discrimination.*"³¹

³¹ See footnote 7

I. Integration

Common Basic Principles

The reduction to two funds and the increased flexibility is especially welcomed in the context of integration, as beneficiaries of international protection will have equal access to integration programmes made available to other third country nationals while their specific needs will continue to be taken into account.

UNHCR welcomes the fact that the eligible actions cover areas identified by the Common Basic Principles for Immigrants' Integration Policy in the European Union³² in particular fostering the two-way process; developing clear goals, indicators and evaluation mechanisms; efforts in education; basic knowledge of the host society's language, history, and institutions; and equal access to institutions. The implementation of the European Integration Fund has shown that some Member States have largely funded language and civic courses.³³ UNHCR encourages Member States to give due consideration to all of the Common Basic Principles including through funding. A reference to the Common Basic Principles could usefully be included in order to ensure that funding for integration measures is fully consistent with the EU integration policy considerations.

Funding for family reunification

UNHCR considers that family reunification is an important element for the integration process. Refugees may find it difficult to concentrate on establishing a new life in the host society, or learning a new language, if they are concerned about the well-being of a spouse, children or other family members residing in a third country. In addition, the presence of family can provide essential support which will assist beneficiaries of international protection in adapting to their new environment.

UNHCR is however concerned that the high costs associated with family reunification often hamper this right and that there are very few available specialized financial assistance schemes to assist beneficiaries of international protection with the cost of family reunification in the European Union. UNHCR has therefore called for financial support schemes for the family reunification of beneficiaries of international protection who do not have sufficient resources to cover the costs.³⁴ Such support should be financed in the future Migration and

³² Council of the European Union, *Common Basic Principles for Immigrant Integration Policy in the European Union*, 19 November 2004, available at:

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/82745.pdf

³³ See Centre for European Studies, *Integration as a Two-way Process in the EU? Assessing the Relationship between the European Integration Fund and the Common Basic Principles on Integration*, May 2011, p. 6, available at:

http://www.ceps.eu/system/files/research_area/2011/02/CEPS EIF study summary.pdf.

³⁴ See UNHCR, *Refugee Family Reunification. UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC)*, February 2012, p. 16, available at:

<http://www.unhcr.org/refworld/docid/4f55e1cf2.html>.

Asylum Fund. Funding in this context could take various forms, including grants or low-interest social loan schemes adapted to the specific situation of beneficiaries of international protection, for the purpose of paying for travel and others costs associated with family reunification.

Recommendations:

- ✓ A reference to the Common Basic Principles could be added to recital 13 to ensure that funding is made fully consistent with the EU's integration principles.
- ✓ UNHCR suggests that funding be made available for family reunification programmes and suggests adding the following wording to article 9 (b):

“(b) advice and assistance in areas such as housing, means of subsistence, administrative and legal guidance, medical, psychological and social care, child care, **and family reunification**;

J. Union actions

Similarly to previous funding arrangements, the European Commission proposes to continue funding transnational cooperation and studies under Union Actions (article 21).

UNHCR had undertaken, several transnational projects, with co-funding from the European Refugee Fund, on developing quality asylum systems,³⁵ and studies evaluating the implementation of the Common European Asylum System.³⁶ UNHCR welcomes the continuation of such activities under the AMF and recommends that sufficient funding is provided for Union actions in order to promote exchange of good practices, transnational partnerships and pilot projects.

2. Horizontal Regulation

The Horizontal Regulation sets out the general rules on financing in the area of Home Affairs funding and lays down common provisions which will apply to both the AMF and ISF including rules on partnership, programming, reporting, monitoring and evaluation.

³⁵ UNHCR, *Asylum Systems Quality Assurance and Evaluation Mechanism Project in the Central and Eastern Europe sub-region (ASQAEM) Summary*, available at: <http://www.unhcr.org/4e60a4549.pdf>; UNHCR, *Further Developing Asylum Quality in the EU (FDQ): Summary Project Report*, September 2011, available at: <http://www.unhcr.org/refworld/docid/4e85b41f2.html>

³⁶ UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations*, March 2010, available at: <http://www.unhcr.org/refworld/docid/4bab55752.html>.

A. Partnership Principle

UNHCR welcomes the European Commission's recognition of the important role played by a variety of stakeholders, including qualified NGOs at national level, in providing assistance to asylum-seekers and refugees through a "Partnership Principle" as set in Article 12 of the Horizontal Regulation.

UNHCR has observed different levels of engagement and cooperation between national authorities, NGOs and UNHCR in Member States across the European Union. Civil society actors, however, play a key role in the development of fair and efficient asylum systems, in the reception of asylum seekers and in the integration of beneficiaries of international protection. Similarly, as an international organization with a mandate from the UN General Assembly, UNHCR consistently provides expertise and observations to authorities of the EU Member States with a view to improving asylum standards.

UNHCR would therefore recommend that the envisaged Partnership Principle be established with relevant international organizations and expert civil society actors as a mandatory requirement, at least for the AMF. An appropriate role for the European Parliament should also be considered in this process.

Further, the monitoring role embedded in this Partnership (through the setting up a "monitoring committee") is essential to ensure that a consensus exists among all concerned actors on the priorities as well as on the performance of the AMF national programmes.

Recommendation:

- ✓ The Partnership Principle with international organizations and civil society actors, including NGOs and IOs, should be made mandatory, the terms "where appropriate" should be deleted from Article 12(1) of the Horizontal Regulation.

B. Policy Dialogue

The European Commission has proposed to simplify the funding mechanism and reduce the bureaucratic burden *inter alia* through shared management of the fund under a multi-annual programming system which will be preceded by a policy dialogue within a strategic framework to be defined at EU level.

Article 13 of the Horizontal Regulation states that the Member States and the European Commission shall conduct a Policy Dialogue at the beginning of the programming period to identify the specific needs and priorities of the Member State concerned, and serve as framework for the national programmes.

UNHCR takes note that the European Commission intends to publish a Communication or some guidelines on the overall expectations and framework for the Dialogue,³⁷ and looks forward in engaging in discussions on this Communication, including on the involvement of expert international organizations and civil society actors in the Policy Dialogues. UNHCR would further recommend that such policy dialogues also take place during the mid-term review, and include a gaps analysis in order to reassess at mid-term what are the needs in the Member States' asylum systems. In addition, UNHCR recommends that the specific actions listed in Annex II of the AMF are discussed with partners during the Policy Dialogues.

C. Management

The Horizontal Regulation foresees that each Member State will set up a single management and control system for each Fund through a single Responsible Authority (article 23), with the possibility of a single system for both funds.

UNHCR understands that the objective of a proposed centralized system at national level is intended for simplification purposes. UNHCR is however concerned that this change in the management system may, however, lead to a loss of expertise that sectoral authorities had acquired over time through their experience in managing previous funds such as the European Refugee Fund. UNHCR would also question whether the establishment of a single Responsible Authority is the most efficient way of implementing the funds. The management of each Fund will require monitoring a large number of projects which were previously followed by several dedicated staff in each responsible ministry. The central Responsible Authority will need to have sufficient human resources, including specialized staff, to efficiently manage the Funds.

UNHCR would encourage Member States to use the possibility offered by Article 13 (1)(d) on Delegated authorities, to designate expert bodies, including Civil Society Actors, who have experience of acting as the responsible authority in previous Funds.

D. Communication

In previous funding arrangements, UNHCR has noted a number of obstacles in access to EU funding at national level including due to lack of appropriate information. UNHCR therefore welcomes the provisions under Chapter V on information, communication, monitoring, evaluation and reporting. In addition, the proposal to increase the publicity of the funds through, *inter alia*, the establishment of a website providing information on the national programmes in the Member States (article 48(1)(a)) is welcome.

UNHCR would further suggest that regular information sessions are held at both

³⁷ See footnote 1, p. 7.

national and EU levels, in order to further publicize the funds and provide detailed information to all interested parties, including national civil society organizations, on how to access funds under the national programmes.

3. Internal Security Fund

The objectives of the Internal Security Fund include, *inter alia*, support to national authorities in the area of border control, funding for the setting up of a European Border Surveillance System (EUROSUR), and emergency assistance for situations of exceptional migratory pressure.

In addition, the ISF will also feature an external dimension to enhance cooperation with third countries on border surveillance and management capacity “*in the areas of interest to the Union’s migration policy*”.³⁸

Protection sensitive border management

Some of the objectives of the draft Regulation setting up, as part of the Fund, the border management and common visa policy, will have impact upon persons of concern to UNHCR, including asylum-seekers, refugees and persons otherwise in need of international protection, seeking to reach safety in the European Union. Movements towards the EU are mixed in character, bringing together in the same flows people in need of international protection as well as those travelling for other reasons. In this context, UNHCR highlights the need for border management strategies to be “protection-sensitive”, incorporating safeguards to guarantee that people seeking international protection will be identified, given access to EU territory and referred to procedures in which their claims can effectively be heard and adjudicated. UNHCR calls for the objectives and activities funded by the ISF to promote a protection-sensitive EU integrated border management system, including in relation to the Frontex agency’s operations and efforts of coordination.

In addition, cooperation with third countries on border and migration management should also aim to raise awareness and engagement on the part of third countries’ authorities, where appropriate and necessary, on mixed flows and the rights of refugees and asylum-seekers under international law.

Border guard training on the rights of refugees and asylum-seekers

In this respect, UNHCR welcomes the recognition that border guards should be sensitized to protection needs through the possibility to call upon the European Asylum Support Office (EASO) to assist in relation to activities under the ISF, including *inter alia* training on asylum addressed to border guards.³⁹ UNHCR considers that training of border guards is an important element of guaranteeing protection-sensitive border control and has actively engaged in this process through the publication of a training manual designed to facilitate the training of European Union border and entry officials on the rights of refugees and asylum-

³⁸ See footnote 3, p.9.

³⁹ See footnote 3, Section 5.5., p. 10.

seekers in the context of mixed migration movements.⁴⁰ This training could be extended in cooperation with third countries and with the EASO.

Trafficking in human beings

In the draft Regulation setting up, as part of the ISF, the component for police co-operation, preventing and combating crime and crisis management,⁴¹ UNHCR welcomes reference to the prevention of and fight against human trafficking, and in particular the foreseen possibility of cooperation with non-governmental organisations and international organisations with expertise in this field.⁴² UNHCR would encourage to incorporate victim protection in line with the holistic and comprehensive approach foreseen by Directive 2011/36/EU, and given the demonstrated limits of silo prosecution approaches; effective prosecution and hence combat against human trafficking must go hand in hand with victim protection.

Recommendation:

- ✓ UNHCR recommends that the objectives of the ISF, Article 3(2)(b), are amended to include a reference to protection-sensitive border management to ensure that people seeking international protection will be referred to asylum procedures:

(b) supporting borders management, to ensure, on one hand, a high level of protection of external borders and, on the other hand, the smooth crossing of the external borders in conformity with the Schengen *acquis* **and protection-sensitive border management**

- ✓ Alternatively, recital 13 could include such a reference:

(13) This instrument should be implemented in full respect of the rights and principles enshrined in the Charter of Fundamental Rights of the European Union **including the right to asylum, and in the Geneva Convention Relating to the Status of Refugees including the principle of non-refoulement.**

UNHCR, Bureau for Europe
August 2012

⁴⁰ UNHCR, *Protection Training Manual for European Border and Entry Officials*, 1 April 2011, available at: <http://www.unhcr.org/refworld/docid/4ddf40d12.html>.

⁴¹ See footnote 4.

⁴² *Ibid.*, Section 1.3.3 Expected result(s) and impact, p. 28.