

The CEAS at a crossroads: Consolidation and implementation at a time of new challenges

UNHCR's recommendations to Latvia for the EU Presidency
January - June 2015



Latvia assumes the European Union (EU) Presidency at a moment when the EU Council has adopted **strategic guidelines regarding future directions and priorities in the area of freedom, security, and justice, including on asylum**, as a follow-up to the Stockholm programme. The EU is currently facing an increase of people seeking international protection in Europe, many arriving by dangerous means including through unsafe sea voyages. The rise in arrivals by sea, especially of Syrians, continued unabated in 2014, with over 200,000 asylum-seekers and migrants arriving across the Mediterranean Sea. The stretching of existing reception capacity in countries of arrival, onward movements of people in need of protection within Europe, the increasing number of persons in need of international protection who refuse to make asylum applications and comply with documentation/identification procedures in countries of arrival, inadequate identification and support for asylum-seekers with specific needs, and the concentration of asylum-seekers in a few Member States (MS), are phenomena that present new challenges.

2015 is a key moment for defining the future course of the Common European Asylum System (CEAS) within the wider area of freedom, security and justice. UNHCR underlines the importance of recalling essential principles, including the EU's **commitment to a common policy on asylum that reflects the full and inclusive application of the 1951 Convention**

and other relevant treaties, including the European Convention on Human Rights and Fundamental Freedoms, and the EU Charter of Fundamental Rights.

The Latvian Presidency will oversee a much-needed discussion about how to **move forward on international protection in the EU**, taking into account made and new challenges unfolding, including in the field of **solidarity and responsibility-sharing, protection-sensitive border management, early warning, preparedness and crisis management, rescue at sea, reception conditions and credible legal alternatives** to reach Europe, supporting a proper transposition and implementation of the CEAS.

In this context, UNHCR urges the Latvian Presidency to prioritise:

1. Protection at sea

UNHCR urges the Latvian Presidency to lead the follow-up and implementation of an action plan on the work of the Task Force on the Mediterranean (TFM), in particular focusing on actions to strengthen search and rescue operations, to avoid deaths at sea, to ensure predictable disembarkation arrangements are put in place, with effective screening mechanisms, and to ensure access to fair and efficient asylum procedures and adequate reception conditions for those rescued.

The past year was marked by a sharp increase in the number of asylum-seekers and migrants who have crossed the Mediterranean Sea to reach the EU. Around 3,400 women, men and children have died or have gone missing in their attempt to reach Europe. With the end of Mare Nostrum Operation, which has led to more than 160,000 people rescued, UNHCR is concerned about the lack of a dedicated search and rescue operation to replace it. UNHCR therefore calls for the explicit strengthening of rescue at sea operations in the Mediterranean, and the need to promote the development of regional protocols for rescue.

The increase in arrivals has brought with it significant challenges, stretching reception and screening capacity in those MS bordering the Mediterranean and beyond. As such, it requires the attention of all MS to ensure that those arriving by sea have access to proper reception facilities and fair asylum procedures. The work of the TFM, and the Commission's related Communication, refer to the need not only to reinforce maritime surveillance, but also to focus on ensuring protection and saving lives. UNHCR has issued recommendations in its Central Mediterranean Sea Initiative (CMSI)¹ which provide concrete steps within the EU, in countries of first asylum/transit, and in countries of origin, aimed at preventing the loss of life at sea. Among the most urgent proposals are: strengthening rescue operations, improving reception conditions, providing swift access to asylum procedures to those in need of international protection, and increasing legal alternatives for people to come to Europe to reduce such dangerous crossings in the first place, which will also contribute to a reduction in individuals having no other option but to resort to the services of smugglers.

¹ UNHCR, Proposal for a Central Mediterranean Sea Initiative: EU solidarity for rescue-at-sea, protection and comprehensive responses, October 2013, available at: <http://www.refworld.org/docid/52c172f84.html>.
<http://www.unhcr.org/531990199.pdf>

2. Access to territory at the EU's external borders for people in need of international protection

UNHCR urges the Latvian Presidency to lead relevant discussions on border measures and protection for those who seek asylum, ensuring protection-sensitive border management respecting fundamental rights is in place and that the principle of *non-refoulement* is adhered to.

The past year has highlighted the stark scale of the challenge that some MS are facing in managing borders and mixed migration in ways that respect fundamental rights. The law at the European and international level is clear: people who may be in need of protection must be given access to territory and procedures in which their asylum claims can be examined. Yet reports continue of “push backs” and denial of entry at borders or in other situations where MS exercise jurisdiction, such practices must cease; and of failures to refer people in need of international protection to competent authorities.

UNHCR works closely with MS as well as Frontex and EASO, including in the implementation of its fundamental rights obligations and strategy, to assist with training, tools, information, and other services, which could help to enhance access to protection in the context of border management. Additional EU measures adopted under the Greek Presidency offer an opportunity to reinforce observance of the *non-refoulement* principle, as reiterated by the European Court of Human Rights, and most notably through the Regulation on Rules for Surveillance of the External Sea Borders in the context of Frontex-coordinated Operational Cooperation.

3. Transposition and Implementation of the Common EU asylum system

The Latvian Presidency should call on MS to transpose and implement the new provisions of the CEAS comprehensively and effectively before the deadline of 21 July 2015; and to work to improve practical cooperation, including with the support of EASO.

The Common European Asylum System (CEAS) has the potential to make significant advancement in the international protection framework. Progress towards implementation of the revised EU legislation on asylum is underway, with many MS having transposed the recast Qualification Directive and in the process of transposing the recast Asylum Procedures Directive and Reception Conditions Directive into national law.

Despite such progress having been made in the implementation of the CEAS, it is nevertheless being heavily tested today, not only by the number of persons losing their lives while trying to irregularly enter Europe, but also by the growing number of persons in need of international protection, including Syrians, refusing to seek asylum in the country where they have first arrived and continuing onwards to other countries in Europe. This is in large part due to the significant differences in the quality of reception conditions, asylum practice, and integration conditions in the EU MS, which are drivers for secondary movement in the EU. One manifestation is the fact that a few MS receive significantly higher number of asylum-seekers than others. It is therefore only through full and harmonized implementation in all MS countries that a truly CEAS will emerge, one that “offers appropriate status to any third-country national requiring international protection” in full respect for the 1951 Convention,

including the non-*refoulement* principle, as well as the right to asylum enshrined in Articles 18 and 19 of the Charter of Fundamental Rights of the EU.

The effective and accurate transposition of the recast directives will require MS to put in place, inter alia, mechanisms to identify and respond to the needs of persons with specific needs, designation of guardians for unaccompanied children, and appropriate psychosocial support for victims of torture and trauma. In the context of implementation of the CEAS, UNHCR highlights the need to identify good practice in particular with regard to:

- development and application of best interests determination procedures for children;
- identification and support to asylum-seekers and refugees with specific needs, including victims of torture and trafficking;
- procedures dealing swiftly with claims, while observing safeguards for all.

UNHCR considers that **more flexibility and a swifter response capacity is required to address protection challenges of a significant scale when they occur or appear imminent** in the EU. Refugee movements, by their nature, emerge or expand dramatically in many cases in response to developments which may be sudden and unpredictable, in rapidly-changing conflicts, or in situations of generalised violence and instability in volatile regions. These lead to increased arrivals at borders, *sur-place* claims, and an increase in refugee numbers in Europe – all of which require tailored and planned collaborative planning and implementation of responses. **Such responses should span the range of potential challenges, from border management, to initial screening, facilitating access to asylum systems and reception, registration and claims processing, as well as solutions for those in need of protection and clear outcomes for others.** It is timely to assess whether and how already existing tools can be used more effectively to achieve this, and if new tools within the existing legal framework could be developed to enable the EU and its MS to respond to such situations in a more rapid and comprehensive way. UNHCR stands ready to assist in this respect.

UNHCR also considers that **mutual recognition of asylum decisions** across MS and a framework for the transfer of protection are areas for further development. These measures could contribute to alleviating the particular pressures felt by some MS as a result of granting protection to significant numbers of applicants, by providing beneficiaries of international protection with opportunities to move between MS, and to legally take up residence in other MS subject to the fulfilment of relevant conditions

4. Increasing Legal Alternatives - Resettlement and Other forms of Admission

UNHCR encourages the Latvian Presidency to call on MS to expand resettlement, to open up new avenues for admission of persons in need of international protection into the EU and to facilitate family reunification.

UNHCR has called for 130,000 places for resettlement and other forms of admission from 2013-2016 for Syrian refugees. While EU MS have contributed to this effort, additional places are required to enable UNHCR to reach this goal. UNHCR has also supported the NGO call for 20,000 resettlement places in Europe by 2020.

Resettlement, intra-EU relocation, facilitated family reunification for relatives, community-based private sponsorship, humanitarian admission, humanitarian visas, student visas for refugees, and refugee-friendly labour migration schemes are all options which need further exploring and developing. UNHCR has urged MS to facilitate family reunification in a proactive manner by simplifying and expediting the family reunification process. In addition, MS should exercise flexibility in relation to family reunification requirements and explore other avenues, such as humanitarian admission, to ensure families are not torn apart or separated for a long period of time. UNHCR is willing to work with the Latvian Presidency to allow for increased protection opportunities for refugees fleeing conflict or otherwise meeting the refugee definition criteria. It also require a more efficient use of the family criteria, clauses on dependent persons, and discretionary clauses under the recast Dublin III Regulation.

5. Detention

UNHCR calls on the Latvian Presidency to underline to MS that detention of asylum-seekers is a measure of last resort, and to explore alternatives to detention wherever feasible.

Reports indicate that **detention** continues to be used for asylum-seekers, including Syrians, in some MS. UNHCR has witnessed the devastating human impact of detention on refugees, including children and families, following their often traumatic experiences of persecution and flight. In response, UNHCR launched a Global Strategy – entitled *Beyond Detention* - at the 60th meeting of UNHCR's Standing Committee in July 2014, to support governments to end the routine detention of asylum-seekers and refugees. In line with international law, UNHCR underlines that refugees and asylum-seekers should not be penalised, including detained, for irregular entry. UNHCR also recalls that the recast Reception Conditions Directive provides for the use of detention only if less coercive measures cannot be applied effectively – truly as a measure of last resort. Where it is used, a periodic review of the lawfulness and conditions of detention, as well as judicial oversight is essential. In addition, UNHCR emphasised the need for detention to be proportionate and necessary and has advocated for the use of alternatives to detention. UNHCR remains ready to work with governments on this issue and looks forward to the European Migration Network's (EMN) study on the use of detention and alternatives to detention in the context of immigration.

6. Unaccompanied and separated children (UASC) and individuals with specific needs

UNHCR urges the Latvian Presidency and MS to improve responses to refugees and asylum-seekers with specific needs, including through training and information-sharing on how to respond to victims of torture and trafficking and women and girls fearing or survivors of FGM; and to ensure full respect of the best interests of UASC throughout the asylum process and in the identification of durable solutions.

Children moving irregularly across borders, including those seeking asylum, pose particular challenges for states. Where children are unaccompanied or separated from their parents or caregivers by law or custom, additional challenges arise. Many EU Member States have sophisticated child protection arrangements in place in their asylum and immigration systems to address the special needs of UASC. Nevertheless, caring for and finding durable solutions for these children considering their best interests, in line with the Convention on the Rights of

the Child, remains challenging in practice for many. The need for strong safeguards, practical approaches and child sensitive mechanisms for identifying correctly their protection needs and finding durable solutions, is apparent. UNHCR has worked extensively on research and tools, including with partners, to assist states in their understanding of and responses to the needs of children. UNHCR and UNICEF published guidance on respecting the best interests of UASC in 2014: *Safe and Sound*². This tool draws on states' experiences and legal and institutional frameworks, putting forward practical ways and good practices to assist states in ensuring that the best interest of children are observed in practice.

Special attention should also be afforded to persons who are survivors of torture, to victims of human trafficking and others with specific needs who may require special care and support throughout the asylum procedure and beyond. This is in line not only with new legal standards that Member States and European Parliament have established in the recast instruments, but also the EU's tradition of commitment to human rights and social values.

The UNHCR publication "Too much pain"³ has emphasised the importance of increased awareness and responses for women and girls who are survivors, or are at risk, of female genital mutilation (FGM). Through its statistical overview, it finds that as many as 20,000 women and girls from countries practising FGM seek protection within the EU each year, of which 9,000 may potentially already have been subjected to FGM and may be living with its life-long consequences. There is a need to enhance the capacity of national reception bodies and asylum authorities to identify and meet the specific needs of these women and girls. Addressing FGM also requires a comprehensive action plan at the EU level. UNHCR calls on the Latvian Presidency to urge MS to follow up on the Commission goal set forth in the European Commission's 2013 Communication: *Towards the elimination of female genital mutilation* and to ensure that proper FGM prevention and response mechanisms are in place. Such a strategy should be part of a wider strategy to prevent and respond to gender based violence and MS should be encouraged to ratify the Istanbul Convention⁴.

7. Integration

UNHCR requests the Latvian Presidency to keep the integration of persons in need of international protection on the agenda of MS, and to support a more comprehensive approach to promote good practices on integration and ways to reflect this practice in national policies and programmes.

In times of economic difficulty, social cohesion becomes all the more important – but it can also come under strain. UNHCR observes with serious concern the growth of anti-foreigner rhetoric, discrimination and, in some cases, extremist sentiments that have emerged in some EU countries of late. The EU is built on the values of freedom, peace, democracy, protecting human rights and solidarity. European states have a long tradition of providing a safe haven to those fleeing violence, persecution and conflict, which should be preserved.

² High Commissioner for Refugees (UNHCR) *Safe and Sound: What States can do to ensure respect for the best interest of unaccompanied and separated children in Europe*, October 2014, <http://www.refworld.org/docid/5423da264.html>.

³ Ibid.

⁴ COM (2013) 833 Final Communication from the Commission to the European Parliament and the Council. *Towards the elimination of female genital mutilation*, http://ec.europa.eu/justice/genderequality/files/gender_based_violence/131125/fgm_communication_en.pdf.

UNHCR underlines the positive contributions that migrants, refugees and their families make to all societies - bringing skills, language abilities, cultural richness and willingness to work and start a new life. However, to fulfil their potential, refugees and other beneficiaries of international protection must be supported in the integration process.

8. Ending Statelessness

UNHCR calls on the Latvian Presidency to encourage the remaining MS who have not yet done so to accede to the 1954 Convention and for MS to take additional measures for the protection of stateless people in the EU and the prevention of statelessness.

In November 2014, UNHCR launched the Global campaign to end Statelessness within a decade. It is certainly possible to reach this goal within the EU. In the EU, statelessness is found mainly among former Soviet citizens and among migrant populations. The EU pledged in September 2012 that MS which had not done so would accede to the 1954 Convention relating to the Status of Stateless Persons. However, the four countries concerned (Cyprus, Estonia, Malta and Poland) have not yet done so. The EU also pledged that the remaining MS would consider acceding to the 1961 Convention on the Reduction of Statelessness, though only Lithuania and Belgium have since done so. The EU *acquis* recognises, to a certain extent, the need for legal protection for stateless persons if they fall within the scope of the Qualification Directive. States should take additional measures to ensure all stateless persons in the EU who are not protected by the Qualification Directive are identified and enjoy their basic rights under the 1954 Convention. States should also promote law reform to ensure children born stateless in Europe acquire a nationality. UNHCR calls on the Latvian Presidency to make accession to the two statelessness Conventions by all EU MS a priority.

9. Humanitarian assistance and development for forcibly displaced populations

The Foreign Affairs (Development) Council meeting of 12 December 2014 acknowledged the unprecedented challenges relating to refugees and internally displaced persons (IDPs) as well as to host communities and countries, arising from the many ongoing crises and conflicts and that many are living in protracted displacement situations. In this context, the Council advised to address all related needs through a long-term development planning at an early stage of a crisis to complement the humanitarian approach. The Latvian Presidency is encouraged to work closely with the Commission and EEAS in helping to define a strategy to step up EU commitments in this area. The implementation of an approach that promotes development and solutions for forcibly displaced populations should be actively supported in order to mitigate and avoid, at an early stage, situations of protracted displacement.

Bureau for Europe, January 2015