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The UN Refugee Agency



Yohannes, an Ethiopian refugee, was reunified with his mother in Belgium after having been evacuated from Sudan.
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UNHCR'S 2024 RECOMMENDATIONS FOR THE BELGIAN AND HUNGARIAN PRESIDENCIES OF THE COUNCIL OF THE EUROPEAN UNION (EU)

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INTRODUCTION

As population movements increase, addressing the challenges posed by forced displacement demands a coherent and effective strategy. As an important host to refugees and major humanitarian and development donor, the EU is a key actor in addressing forced displacement. With its political influence and financial resources, the EU shoulders a global responsibility to lead by example.

The Pact on Migration and Asylum is almost over the finish line after seven years of difficult negotiations. UNHCR reiterates its support for a sustainable, protection-sensitive reform of the Common European Asylum System (CEAS) that protects the right to seek asylum in Europe. The Pact offers a benchmark that safeguards the EU's protection system for generations to come, and has the potential, if implemented with sufficient safeguards, to both ensure respect for human rights, including access to territory and asylum in the EU, and better manage mixed movements of refugees and migrants.

However, the final agreement on legislative texts is only part of the answer – the Pact's success is conditional on its protection sensitive implementation. Dangerous practices, such as denial of access to territory, pushbacks, and the non-implementation of fair and efficient procedures and solidarity, cannot continue. Such practices undermine a well-functioning EU asylum system and risk shrinking the protection space in Europe. Instead, UNHCR calls on the Presidencies

to ensure proper implementation of the EU's asylum system, that in turn can help to increase states' willingness to comply with existing law, and act as a bulwark against detrimental proposals that externalise asylum obligations to other countries.

UNHCR calls on the forthcoming 2024 Belgian and Hungarian Presidencies of the Council of the EU to implement protection-sensitive reform that respects and protects the right to seek asylum in the EU. In line with the 2024 deadline for the finalisation of the Pact laid out in the Joint Roadmap, and prior to the June 2024 European elections, the Presidencies are encouraged to shepherd the Pact to finalisation and support the creation of a collaborative, robust, and protection centred implementation plan. UNHCR stands ready to support.¹

As a major global actor and donor, the EU and EU MS play a significant role in ensuring that neither forcibly displaced nor host communities are left behind as we progress towards the 2030 Agenda for Sustainable Development. The recommendations urge the EU to continue its good path and complement its humanitarian assistance with development aid to promote protection and solutions. EU political support is needed to ensure a human rights protection centered response and the inclusion of forcibly displaced persons into donor and government policies and development plans. This is particularly relevant in the context of the 'all of route'

¹ See: UNHCR, Better Protecting Refugees in the EU and Globally: UNHCR's proposals to rebuild trust through better management, partnership and solidarity, December 2016, available at: <https://www.refworld.org/docid/58385d4e4.html>; UNHCR, UNHCR Recommendations for the European Commission's Proposed Pact on Migration and Asylum, January 2020, available at: <https://www.refworld.org/docid/5e3171364.html>; UNHCR, Fair and Fast: Discussion Paper on Accelerated and Simplified Procedures in the European Union, 25 July 2018, available at: <https://www.refworld.org/docid/5b589eef4.html>; UNHCR, Practical considerations for fair and fast border procedures and solidarity in the European Union, 15 October 2020, available at: <https://www.refworld.org/docid/5f8838974.html>

approach,² ensuring the EU's responses along key migratory routes are coordinated, coherent and in line with the humanitarian and development nexus.

UNHCR advises the Presidencies to consider the following seven priority elements, while not exhaustive, as key for the last months of the current European mandate and the Belgian and Hungarian Presidencies in 2024 as the focus shifts to implementation.

1. Providing protection for spontaneous arrivals to the EU, and addressing rights violations at the external borders

- Access to territory for persons wishing to seek asylum, including those arriving irregularly, should be assured in the EU in compliance with the right to seek asylum and the principle of non-refoulement.
- Ensure a protection-sensitive, streamlined process of arrival and effective frontloading of resources to support referral to appropriate protection and services, including legal assistance. Early screening is important to identify people with vulnerabilities, including stateless persons, victims of trafficking, and unaccompanied or separated children, and provide them with timely support and assistance.

2. Reforming EU asylum procedures

- Any border procedure must be carried out in line with legal safeguards and with full respect for the right to seek asylum and the principle of non-refoulement, even in times of emergency. In-merits procedures are generally preferred over admissibility procedures.

- Ensure that border procedures do not equate *de facto* detention and that detention remains the exception. Instead, adequate and dignified reception arrangements or alternatives to detention should be invested in.
- Ensure adequate reception capacity and conditions are in place as a key aspect of fair and efficient asylum procedures. This includes safe and dignified accommodation, adequate means of subsistence, access to education and medical care, throughout the procedure, based on the needs of asylum-seekers, considering age, gender, diversity, and specific needs.

3. Solidarity that works for displaced persons, countries hosting large numbers of refugees and MS

- Ensure solidarity and safety are at the heart of the EU's action along migratory routes. UNHCR has long called for functioning solidarity measures to ensure a workable and sustainable EU asylum system.
- Encourage the application of a broader definition of the concept of family member, including both siblings and spouses. Other meaningful links in addition to family status (e.g., diplomas and other qualifications) should be taken into account as criteria for responsibility allocation and meaningfully implemented.

4. More effective responses to mixed migration: the route-based

- Promote the routes-based approach as a way to reduce human suffering on dangerous journeys and offer effective, rights-based alternatives to externalization practices in countries of origin, transit and destination.
- Support interventions along key mixed and onward movement routes to the EU, including in candidate countries, that assist refugees and

2 UNHCR, UNHCR's Grandi on need for 'panoramic' approach to mixed movements, 21 April 2023, available at: <https://www.unhcr.org/news/speeches-and-statements/unhcr-s-grandi-need-panoramic-approach-mixed-movements>

migrants to find protection, solutions, and legal pathways at the earliest possible stage while ensuring all safeguards and guarantees.

- Provide adequate humanitarian and development funding to respond to the immediate needs of people on the move and develop effective longer term protection responses to preserve access to protection for refugees and rights-based solutions for migrants.
- Scale up access to resettlement and complementary pathways for refugees and migration pathways for migrants (including family reunification for both groups) along key routes and support sustainable return of those not in need of international protection.

5. Resettlement and Complementary Pathways

- Contribute to 40 % of the global resettlement target and encourage more EU MS to join resettlement efforts.
- Underline that provisions of resettlement quotas do not relieve states of their obligation to provide access to asylum procedures. UNHCR recalls that MS may not use resettlement as a substitute to their obligations under international law to provide access to asylum, and to maintain resettlement and humanitarian programs driven by protection considerations.
- Expand access to existing education and labour pathways by making them more accessible, reliable, and predictable for refugees. Ensure a flexible approach to family reunification procedures in Europe.
- Strengthen resettlement processing mechanisms and reception capacities to ensure that resettlement commitments are

protected. Explore community sponsorship and partnerships to enhance reception and integration of refugees.

6. Addressing statelessness

- Develop a comprehensive strategy and action plan to address statelessness within the EU and globally, and review progress towards the implementation of the 2015 Council Conclusions on Statelessness.
- Ensure that stateless people are identified and recorded at all stages of the asylum process and that they are referred to adequate status determination procedures.

7. Make EU funding adequate, more agile and responsive

- Develop an action plan implementing Council Conclusions on addressing the funding gap and provide much needed predictable, additional, and flexible funding to protection actors.
- Without compromising the EU's development budget, increase the humanitarian aid budget line to a minimum of EUR 2.6 billion per year, as compared to the current EUR 1.6 billion.
- Transparently report on the use of the 10% spending target on migration and forced displacement of the Neighbourhood, Development and International Cooperation Instrument (NDICI), differentiating between forced displacement and migration.
- With climate induced displacement and protracted displacement situations on the rise, ensure EU financial resources target thematic areas such as climate and education. Explore innovative financing modalities in the context of forced displacement to unlock additional financing and create more sustainable solutions for people forced to flee and the communities that host them.

1 PROVIDING PROTECTION FOR SPONTANEOUS ARRIVALS TO THE EU, AND ADDRESSING RIGHTS VIOLATIONS AT THE EXTERNAL BORDERS

UNHCR remains firmly opposed to externalisation approaches that shift responsibility for asylum procedures or international protection to third states. MS proposals to externalise migration in attempts to stop all irregular movement to the EU, including those seeking access to international protection, are both impractical and at variance with State obligations under international and EU law. Such actions pose serious risks for refugees by undermining their right to international protection and placing them at risk of human rights violations, including risks of refoulement.

Limiting access to asylum and other forms of international protection is also likely to increase the risks of trafficking in persons, according to the UN Special Rapporteur on Trafficking.³

While some measures, such as increasing protection along the route, expanding access to legal pathways, and enhancing **resettlement and other complementary pathways**, can and should be taken, these cannot be seen as a substitute to States' obligations to grant access to EU territory and to asylum procedures.

Maintaining access to territory and procedures within the EU is part of a comprehensive approach to managing complex mixed migration, including in the Mediterranean. 2023 recorded the deadliest first quarter since 2017, and by 20 December 3,439 were counted as dead or missing this year alone in the Mediterranean.⁴ Further efforts are essential to strengthen cooperation in coordinated search

and rescue operations; ensure that refugees and migrants receive life-saving assistance; and end the criminalization, obstruction, or deterrence of those providing humanitarian assistance.⁵ UNHCR reminds states that **no one should be criminalised for saving lives at sea.**⁶

Reports of serious human rights violations in the context of border management operations continue to be a source of great concern. Alleged violations must be independently investigated, and States must adopt corrective or remedial actions to ensure adherence to EU and international law. Collaboration with the Frontex Fundamental Rights Officer is crucial to enhance respect for fundamental rights in all aspects of Joint Operations.

INITIAL SCREENING TO IDENTIFY PROTECTION NEEDS AT THE EXTERNAL BORDERS

UNHCR has long called for a streamlined process upon arrival. If implemented well, with the correct purposes and protection objective, and in full compliance with human rights, initial screening could help to quickly identify persons in need of international protection and those who may not be, speed up referral to appropriate procedures, and reduce limbo situations.⁷

The following **four areas** should be implemented to ensure effective screening procedures:

3 OHCHR, Limiting access to international protection puts people at risk of trafficking: UN expert, 28 June 2023, available at: <https://www.ohchr.org/en/press-releases/2023/06/limiting-access-international-protection-puts-people-risk-trafficking-un>

4 OM, Missing Migrants Project: Migration Flow to Europe, available at: <https://dtm.iom.int/europe/dead-and-missing>

5 UNHCR, A decade after the Lampedusa shipwreck, the continuing tragedies need to end, 3 October 2023, available at: <https://www.unhcr.org/news/press-releases/decade-after-lampedusa-shipwreck-continuing-tragedies-need-end>

6 Loc. Cit.

7 UNHCR, UNHCR Recommendations for the European Commission's Proposed Pact on Migration and Asylum, January 2020, available at: <https://www.refworld.org/docid/5e3171364.html>

UNHCR strongly recommends frontloading resources for vulnerability checks to identify **persons with vulnerabilities or specific needs at an early stage of the process, and subsequently referring such individuals to appropriate procedures.**

Independent legal assistance and information provision is conducive to a fair and efficient procedure: legal assistance should be provided early on to support the fairness and efficiency of the system, support caseworkers, and ensure the rights of applicants are upheld.⁸ Special care should be taken to ensure **effective access to these services, including by international organisations and NGOs at the border.**

EU asylum law and international refugee law apply as soon as a person presents him or herself at the border and can be understood to request protection. Applicants in border procedures are under the full jurisdiction of MS and entitled to the full range of rights under the EU *acquis*. States must provide asylum-seekers admission at least on a temporary basis, as the right to seek asylum and non-refoulement would otherwise be rendered meaningless.

UNHCR welcomes the early identification and recording of vulnerable profiles for swift referral to appropriate procedures. This includes the **involvement of national anti-trafficking rapporteurs** or equivalent mechanisms and should be prioritised throughout the implementation phase. Screening authorities should transmit information related to suspected trafficking activities and victims to the competent authorities to ensure proper links between the screening and anti-trafficking referral mechanisms. **In the same vein, UNHCR recommends that statelessness and the risk of statelessness are explicitly included as a factor to be assessed during the screening process, and that indications of**

statelessness are registered in the screening form. When a person is identified as stateless or at risk of statelessness, they must be referred to the competent authorities for statelessness determination.

MONITORING MECHANISMS

Effective independent border monitoring is critical to ensure access to territory. Such mechanisms should ensure proper oversight of the correct implementation of initial screening mechanisms, access to fair and efficient asylum procedures and prevention of pushbacks.

UNHCR is concerned that MS wish to restrict the role of the independent monitoring mechanism in several ways including by limiting the role of NGOs and international organisations, and the potential support role of the European Agency for Fundamental Rights (FRA). As such mechanisms would be set up under national law, their effectiveness in practice during implementation needs to be ensured and UNHCR and other stakeholders, such as NGOs and lawyers, should have **unhindered access to the border reception and processing facilities** to conduct monitoring visits.

The monitoring mandate of the European Union Agency for Asylum (EUAA) is due to come into force during the Belgian Presidency. UNHCR recommends swiftly setting up the EUAA monitoring mechanism and the rapid adoption of the Asylum and Migration Management Regulation (AMMR) in order to ensure a full implementation of the EUAA Regulation. UNHCR encourages MS to use the monitoring mechanism as a tool to identify gaps and to enhance the efficiency and resilience of their asylum and reception systems while ensuring full compliance with fundamental rights.

⁸ UNHCR, Access to Legal Aid for Asylum-Seekers in Estonia, July 2019, available at: <https://www.refworld.org/docid/5d4bedea4.html>

2 REFORMING EU ASYLUM PROCEDURES

The EU needs a comprehensive approach both internally, through investing in functioning and humane asylum and reception systems, as well as in the external dimension.

UNHCR reminds the Presidencies that fair and efficient asylum systems within the EU are a crucial component of a sustainable route-based approach. **Ensuring effective access to territory and asylum procedures as well as adequate reception conditions remains the core and priority to ensure that the EU asylum policy works.** Any border procedures must be carried out in line with legal safeguards and with full respect for the right to seek asylum and the principle of non-refoulement, even in times of emergency.

PROCEDURES AT THE EXTERNAL BORDER

UNHCR is not opposed to the use of border procedures provided they comply with procedural safeguards under EU and international law from the outset,⁹ are protection-sensitive and child-sensitive, and do not lead to *de facto* detention situations. Fair and efficient border procedures are possible if implemented in a manner that provides for the special procedural and reception needs of vulnerable individuals, without resorting to detention. Detention should not be applied mandatorily for all arrivals; where detention grounds apply, alternatives to detention (ATDs), including temporary, lawful movement restrictions, are possible and preferable. In addition, early vulnerability screening and referral to appropriate reception arrangements and essential services are vital.

⁹ UNHCR, Practical considerations for fair and fast border procedures and solidarity in the European Union, 15 October 2020, available at: <https://www.refworld.org/docid/5f8838974.html>

¹⁰ UNHCR, Fair and Fast: Discussion Paper on Accelerated and Simplified Procedures in the European Union, 25 July 2018, available at: <https://www.refworld.org/docid/5b589eef4.html>

UNHCR recommends the following **key points** for consideration in any outstanding technical negotiations on the Asylum Procedures Regulation (APR) and, by extension, during implementation:

- **The use of accelerated and prioritized procedures for manifestly well-founded cases should be considered and not only employed for likely manifestly unfounded cases.** **Sufficient flexibility** should be maintained, so that an application can be triaged to a different procedure if needed, for example if new information on vulnerabilities arises that would make border procedures unsuitable.¹⁰
- **In-merits assessments that examine the individual circumstances of an asylum application are generally preferred over admissibility considerations (such as applying the safe third country concept).** In-merits **assessments** tend to be easier to implement in practice, in keeping with necessary safeguards and proved to ensure a more effective use of resources. By contrast, admissibility procedures tend to create procedural inefficiencies, increase backlogs, add unnecessary layers and costs, or shift the burden to non-EU countries.
- UNHCR remains **firmly opposed to externalisation approaches.** Efforts that shift responsibility for international protection responsibilities to third states without sufficient safeguards, rather than sharing responsibility, are not adequate. The application of the **safe third country concept should remain optional** and require a **connection to the receiving country.** UNHCR has consistently

been advocating for a meaningful link to exist that would make it reasonable and sustainable for a person to seek asylum in the third country. Mere transit of the applicant through a particular country does not amount to a meaningful link that would make it reasonable and sustainable for a person to seek asylum there. In some instances, admissibility procedures can potentially be a useful tool to better manage mixed and onward movements. Such arrangements should be aimed at enhancing responsibility sharing and international cooperation and not for the purpose of responsibility shifting and must meet all safeguards.

- **Vulnerable applicants require special consideration in border procedures.**

Border procedures should **not be applied to unaccompanied and separated children**, including for cases of security or public order. The use of accelerated border procedures is also not suitable for victims of trauma or trafficking and person with mental disabilities; they should therefore be exempted from these procedures.¹¹ Other categories of vulnerable persons with specific needs ¹² may require additional support or access to services during border procedures to ensure that they can effectively present their claim for adjudication. If such support or services cannot be provided in this context, the applicants must be channeled out to the regular procedure. **Should the conditions under which border procedures are implemented rise to detention, vulnerable persons should be exempted.** In this context, proper implementation requires robust vulnerability screenings from the outset, conducted by well trained staff. Rapid and effective referral mechanisms to specialized service providers for all vulnerable applicants are paramount given the restrictions in border

procedures. In addition, as appeals do not suspend returns in border procedures, it is crucial that all safeguards are in place to protect against refoulement. UNHCR stands ready to provide further advice and support in the implementation phase on the forms of reception and procedural needs of different vulnerable groups.

- **Proper implementation of the asylum border procedures requires appropriate resourcing.**

Staff working in the asylum procedures, including at the border, need to be well trained, and sufficient financial and human capacity, is needed to ensure such procedures can be operationalized. It is in the interest of the asylum authority to frontload services at the beginning of the procedure. **The EUAA can play an important role through practical and operational guidance and to support early identification of vulnerable people.** The European Parliament has also suggested strengthening the support and oversight role of the EUAA in the APR, which UNHCR considers could be beneficial. UNHCR also welcomes the Council's willingness to further enhance the use of EUAA training and Country of Origin Information (COI) in asylum procedures.

- **Adequate reception capacity and conditions should be ensured, with detention only as a last resort.** Sufficient and quality reception conditions need to be in place as a key aspect of fair and efficient asylum procedures. This includes safe and dignified accommodation and adequate means of subsistence, access to education and medical care, throughout the procedure, based on the needs of asylum-seekers, considering age, gender, diversity and specific needs. While the needs of persons with specific vulnerabilities need to be considered,

¹¹ UNHCR, Practical considerations for fair and fast border procedures and solidarity in the European Union, 15 October 2020, available at: <https://www.refworld.org/docid/5f8838974.html>

¹² Applicants with special reception needs as defined by Article 20 of the Reception Conditions Directive (recast) compromise proposal, reached in 2018 between the Council of the EU and the European Parliament.

access to reception for all asylum seekers without distinction is required under EU law.

Detention should not be applied mandatorily for all arrivals; where detention grounds apply, alternatives to detention (ATDs), including temporary, lawful movement restrictions, are possible and preferable. Children should never be detained. Movement restrictions may be required during border procedures for their effective implementation, to prevent secondary movements. Community-based and non-custodial arrangements have resulted in higher rates of compliance with procedures and greater cost-effectiveness. UNHCR stands ready to provide practical advice and support on ATDs in the implementation phase of the Pact.

- **The functioning and integrity of the EU's asylum systems is also dependent on the return of those found not to be in need of international protection.** Measures to support effective returns include assisted voluntary return and reintegration (AVRR) programmes that should be implemented in all MS to support sustainable and dignified returns.

SITUATIONS OF CRISIS, FORCE MAJEURE AND INSTRUMENTALISATION

The Ukraine emergency has demonstrated that solidarity within the EU and towards refugees is possible in times of crisis. Meaningful solidarity and responsibility sharing must continue to be a part of the EU's response to exceptional situations of crisis, including measures such as relocation. UNHCR welcomes that the Temporary Protection Directive (TPD) will not be repealed. After the TPD was triggered in March 2022, UNHCR strongly advocated to maintain temporary protection as a protection tool in the EU, and welcomes agreement to additionally introduce the possibility of a *prima facie* approach to qualification for

international protection. The extension of the application of the TPD until March 2025 is also welcome and provides much needed certainty for refugees from Ukraine. However, at the point at which TP comes to an end, there may be groups who are unable to return to Ukraine and who remain in need of international protection. UNHCR emphasizes the necessity of host States continuing to provide access to protection and rights for such populations, in line with their rights under international and EU law. UNHCR additionally strongly recommends a coordinated and harmonized response amongst hosting States at the point at which the application of Temporary Protection comes to an end, in line with the international principles of cooperation and responsibility-sharing.

UNHCR continues to express concern on the wide use of derogations to the EU asylum system as proposed in the Crisis Regulation. Some of the proposed derogations could shrink the protection space in Europe and potentially undermine the goals of the CEAS by jeopardising the potential for harmonised and uniform standards across MS. In particular, **five areas** could be considered for further improvement:

- The **broad definition of crisis**, instrumentalisation and *force majeure* that currently leaves a wide margin of discretion to MS and may risk excessive recourse to derogations. UNHCR welcomes the double safeguard to trigger the Crisis Regulation with the involvement of both Council and Commission and encourages a clearer definition of these key terms. UNHCR is willing to provide additional guidance in this respect.
- **While States have the right to manage their borders, the possibility of suspending registration is not foreseen in international refugee law.** UNHCR is concerned that delayed registration of applications for up to four weeks may lead to denial of admission to territory. As

the CJEU underlined,¹³ the right to seek asylum should not depend on the mode of arrival to the territory of the State.¹⁴ Initial registration needs to take place as soon as possible to grant access to territory and essential services and prevent *refoulement*; more in-depth asylum registration and interviews may be done at a slightly delayed stage. UNHCR particularly welcomes that **material reception standards should be fully applied during the crisis border procedure**, including while the registration of asylum application is pending.

- **Well-prepared asylum systems and adequate safeguards need to be ensured, especially in exceptional situations of crisis.** MS should ensure that prior to triggering any crisis measures, their asylum, reception and return system are well-prepared, properly capacitated, and efficient - this would reduce the need to trigger derogations in exceptional situations of crisis from the outset. The broader applicability of the asylum and return border procedures, coupled with the additional grounds under which the risk of absconding might be presumed, will likely lead to a wider use of detention both in terms of duration as well the number of persons subjected to it. This in turn could increase pressure at the border facilities where the screening and border procedures are to take place, and could result in unacceptable circumstances, both in terms of overcrowding and living conditions. UNHCR's recommended safeguards would therefore be additionally important (See preceding sub-section).

- **Continuous monitoring and review**, in particular to compliance with fundamental rights and humanitarian standards, including with the support of the EUAA, is welcome to ensure proper implementation and compliance with the Regulation.
- **Border procedures applied in exceptional situations of crisis or non-crisis should not lead to *de facto* detention.** UNHCR notes the significant flexibility afforded to MS as part of a 'toolbox' in the application of border procedures in situations of crisis and *force majeure*. However, some elements could place extra pressure on processing capacity and reception standards and give rise to subsequent concerns related to prolonged *de facto* detention. This includes the possibility to extend border procedures up to five months (compared to three months under the ordinary rules proposed under the APR), to expand the scope to applicants with a recognition rate of 75% or below in times of crisis, and 100% in times of instrumentalisation respectively. Vulnerable groups, including families with children, should not be included in border procedures if conditions amount to detention, and well-founded claims should be prioritized and swiftly removed from border procedures. UNHCR recognizes that measures introducing temporary limitations on movement may be reasonable in certain circumstances of crisis but reiterates the importance of considering alternatives to detention. The systematic use of immigration detention is not justified, even in times of crisis.¹⁵

13 See: CJEU, First Chamber, M.A. v. Valstybės sienos apsaugos tarnyba, C-72/22 PPU, 30 June 2022, according to which a norm, which in mass influx situation forbids asylum seekers to apply for international protection and allows their detention for irregular entry, is not in compliance with EU law.

14 The EU Charter applies whenever States implement EU law and all rights guaranteed therein must be respected during screening and border procedures. These include the rights to dignity, liberty, an effective remedy, and the prohibition of ill-treatment and collective expulsions. Importantly, protection under the European Convention on Human Rights (ECHR) is not dependent on whether the applicant has been formally admitted to the territory, and States must comply with the relevant safeguards in border or transit zones, even where they might be termed "international zones". See: N.D. and N.T. v. Spain [GC], no. 8675/15 and 8697/15, 13 February 2020, para. 184; Amuur v France, no. 19776/92, 25 June 1996, para. 52.

15 In the recent M.A. judgment, the CJEU restated that, given the importance of the right to liberty, detention should be limited to strictly necessary situations.

3 SOLIDARITY THAT WORKS FOR DISPLACED PERSONS, COUNTRIES HOSTING LARGE NUMBERS OF REFUGEES, AND MS

The tragic loss of life in the Mediterranean highlights the urgent need for **solidarity and safety at the heart of the EU's action along migratory routes**. UNHCR has long called for **functioning solidarity measures to ensure a workable and sustainable EU asylum system**, with responsibility-sharing across the bloc with those EU MS where most asylum-seekers arrive. For the first time, an EU solidarity mechanism is proposed to be codified into law, and the Council and the Parliament are strongly encouraged to ensure workable solidarity rules among MS are adopted and swiftly put into effect.

The Presidencies should consider the following areas for the sustainable implementation of solidarity and responsibility sharing in the EU:

- While MS must find a way to implement the solidarity mechanism in a manner that works for States and protects refugees, asylum-seekers and stateless people, the **prioritization of relocation as a solidarity option is strongly encouraged**. Guiding principles when discussing and implementing relocation should include family unity (regardless of the nature of the claim), effective links with a MS and the best interest of the child for unaccompanied children. An efficient and functioning system would contribute to reducing unsafe onward movement and encouraging compliance.
- **Mandatory but flexible solidarity, which can include financial solidarity, can be used to pool resources and support the capacity needed to support fair and fast border procedures** for MS at the external borders at risk of migratory pressure. This

can include providing additional support for immediate screening and triaging, fair and efficient procedures, alternatives to detention and effective returns for those not in need of international protection. By contrast, UNHCR strongly discourages utilising financial solidarity to invest solely in deterrence measures, such as fences and surveillance equipment, which risks shifting focus away from ensuring the effective implementation of the asylum system.

- Collective efforts, including **greater coordination between all Mediterranean States, solidarity, and responsibility-sharing, are essential to save lives**. This includes the establishment of an agreed regional disembarkation and redistribution mechanism for people who arrive by sea. Until then, the **Voluntary Solidarity Mechanism** should continue, and good practices incorporated into the implementation of the AMMR.
- **Build trust in the system among forcibly displaced, stateless and trafficked persons**. Incentives for compliance with the system are an important method to prevent absconding, while supporting displaced and stateless persons. UNHCR supports the use of a **broader definition of the concept of family member**, which includes both siblings and spouses, and for a stronger focus on other **meaningful links** (e.g., diplomas and other qualifications) as criteria for responsibility allocation. In UNHCR's view, this would be an important step to create a more sustainable solidarity mechanism, strengthen the protection of family unity and reduce incentives for irregular onward movements.¹⁶ An efficient system can be a further incentive for compliance with the

¹⁶ Similarly, spouses should also be included in the dependency clause (which is meant to ensure the applicant and persons dependent on him or her are kept or brought together in the proceedings).

rules. Penal measures alone will not support a functioning system and may be at odds with European case law.¹⁷

- **Ensure sufficient safeguards for the identification and protection of vulnerable persons.** UNHCR recalls that the rules regulating the solidarity mechanism, including transfers (Art.8), need to comply with fundamental rights, including preventing inhuman and degrading treatment as interpreted by the caselaw of the Court of Justice of the EU and the European Court of Human Rights.¹⁸

¹⁷ For example, withdrawing reception conditions in case of lack of compliance with a transfer decision would likely be at variance with the case-law of the CJEU (see: *Haqbin*, C-233/18, 12 November 2019; *T.O.*, C-422/21, 9 July 2021).

¹⁸ See: *Tarakhel v. Switzerland*, no. 29217/12, 4 November 2014; *Jawo*, C-163/17, 19 March 2019.

4 MORE EFFECTIVE RESPONSES TO MIXED MIGRATION: THE ROUTE-BASED APPROACH

The EU and EU MS have a key role to play as part of mixed movements along the key migratory routes. Current responses to the mixed movements of refugees and migrants, including along the Central Mediterranean route and the Balkan land route, do not offer a comprehensive and predictable approach to effectively address the humanitarian, development and protection needs of refugees and migrants. Neither do they ensure access to rights and long-term solutions nor address the recurrent challenges faced by EU MS and states upstream to better manage mixed movements. A comprehensive strategy is needed for the entire routes from the country of origin, through transit countries, to countries of destination in the EU, both for those in need of international protection and those seeking migration opportunities.

The route-based approach is a comprehensive strategy aiming to support interventions along key mixed and onward movement routes to assist refugees and migrants to find protection, solutions, and legal pathways at the earliest possible stage, reducing human suffering on dangerous journeys, and offering effective, rights-based alternatives to externalization proposals and practices. This represents a comprehensive, joined-up approach to engagement along mixed movement routes, rather than a set of options to be selectively taken up by governments, based on real responsibility-sharing.

The route-based approach envisions simultaneous interventions by States and other stakeholders with the support of UNHCR and key partners. To effectively respond to pressures at its external borders, the EU must look beyond its immediate neighbourhood, and coordinate its

work across the humanitarian and development nexus. This approach can build the capacity of State authorities over time, allowing States to increasingly assume their responsibilities vis-à-vis migrants and refugees, with continued support from the international community and the EU.

The route-based approach requires simultaneous and balanced investment in the internal and external dimensions of the EU in the spirit of responsibility-sharing, both within Europe and with regions of origin. Europe is part of key mixed migration routes, including those from East Africa to North Africa and the Mediterranean and West Africa to North Africa and the Mediterranean. Simultaneous strategic interventions, in a coordinated manner, are needed in both internal and external dimensions. Within the internal dimension, flexible solidarity such as financial contributions can support and pool resources to ensure fair and efficient asylum procedures at the borders. This includes immediate screening and triaging, fair asylum and border procedures with the relevant safeguards, alternatives to detention and effective returns for those not in need of international protection, complemented by relocation guided by the principle of family unity and meaningful links.

To address the root causes, it is essential that the EU maintains a strong commitment to solidarity with countries along the route and those hosting large numbers of refugees. Maintaining a steadfast commitment to the objectives articulated in the Global Compact on Refugees (GCR) and its protection principles is crucial. This commitment should be demonstrated by increasing resettlement commitments to safeguard the most vulnerable individuals but also by

expanding access to complementary pathways for refugees and legal pathways for migrants. The lack of access to legal pathways may force some refugees in search of safety and protection to undertake dangerous journeys, exposing them to abuse and exploitation on the route, or leading to tragic incidents at sea.

The EU also has the opportunity to actively encourage refugee inclusion globally and support countries in need through its extensive development programming. By ensuring inclusion across its own sectoral priorities (including food security, climate change, education, and healthcare among others), the EU can ensure that specific vulnerabilities of forcibly displaced persons are addressed. Given the discussions around the next Multi-annual Financial Framework (MFF) will begin soon, the upcoming Belgian and Hungarian Council Presidencies will play a particularly important role in setting the tone for future negotiations.

As such, UNHCR calls on the upcoming Council Presidencies to:

Encourage the Commission to support a route-based approach that is comprehensive in addressing forced displacement along mixed movement routes to Europe. This should include simultaneous and balanced investment in the internal and external dimensions of the EU through coordinated, multilateral, strategic interventions by the EC and European States to ensure a comprehensive approach and maximize impact, in the spirit of responsibility-sharing both within Europe and with regions of origin.

Support interventions along key mixed and onward movement routes that assist refugees and migrants to find protection, solutions, and legal pathways at the earliest possible stage.

Provide adequate humanitarian and development funding to respond to the immediate needs of people on the move and develop effective longer term protection responses to preserve access to protection for refugees and rights-based solutions for migrants.

Scale up access to resettlement and complementary pathways for refugees and migration pathways for migrants (including family reunification for both groups) along key routes and **support sustainable return of those not in need of international protection.**

Sustain an ongoing dialogue with countries of origin, transit, and asylum to effectively pinpoint and address potential obstacles along the route.

This includes supporting authorities to develop a strategic vision for the appropriate management of mixed and onward movements – both through financial and operational support. By equipping origin and transit countries with the capacity to provide essential protection and support, this approach not only addresses the immediate needs of displaced individuals but also fosters a more comprehensive and sustainable solution to forced displacement globally.

Ensure that **the implementation of the respective EU action plans is in line with international human rights and refugee law.**

Ensure that **hosting countries and host communities benefit from the EU's external action instruments.**

5 RESETTLEMENT AND COMPLEMENTARY PATHWAYS

At the end of 2022, 108.4 million people worldwide were forcibly displaced because of persecution, conflict, violence and human rights violations. Out of the global total, 35.3 million are refugees, with many in protracted refugee situations and with limited durable solutions and opportunities. The lack of access to legal pathways may force some refugees in search of safety and protection to undertake dangerous journeys, exposing them to abuse and exploitation on the route, or leading to tragic incidents at sea.

The Projected Global Resettlement Needs estimates that more than 2.4 million refugees will be in need of resettlement in 2024, with increased needs noted in all regions.¹⁹

UNHCR urges MS to maintain their commitments to refugees worldwide and provide solutions to those most at risk and calls on the EU to:

- **Contribute to 40 % of the global resettlement target and encourage more EU MS to join resettlement efforts.**
- **States must uphold their obligations under international law to provide access to asylum procedures.** Resettlement programs must remain driven by protection considerations, Resettlement remains a life-saving mechanism and a protection tool and should not serve migration policy objectives.
- **Ensure that resettlement remains the primary means** of admission for refugees in need and that complementary pathways remain additional to resettlement targets.

- **Strengthen resettlement processing mechanisms and reception capacities:** with the increased humanitarian needs in several regions across the globe, processing mechanisms and reception structures need to be enhanced in a sustainable manner to ensure that resettlement commitments are protected. Explore community sponsorship and build partnerships benefiting States, host communities and refugees and new approaches to enhance the reception and integration of refugees that can benefit all.
- **Expand access to existing education and labour pathways** by making them more accessible, reliable, and predictable for refugees; ensure that refugees have equal access to opportunities that bring talents to the EU by ensuring flexibility in the procedures and providing guidance. Help to address the barriers (including the lack of travel documents) faced by refugees to access opportunities and existing legal migration channels on equal footing.
- **Address obstacles to the realization of the right to family unity.** While family unity is enshrined in international and regional instruments, many legal and administrative obstacles need to be overcome to give effect to this right. UNHCR urges MS to preserve family unity and ensure refugees' access to existing procedures by making them protection-centred and responsive, including by adopting flexible procedures as set forth in the UNHCR Recommendations on Flexible Approaches to Family Reunification Procedures in Europe.²⁰

¹⁹ UNHCR, UNHCR: Global refugee resettlement needs grow in 2024, 26 June 2023, available at: <https://www.unhcr.org/news/press-releases/unhcr-global-refugee-resettlement-needs-grow-2024>

²⁰ UNHCR, UNHCR recommendations on flexible approaches to family reunification procedures in Europe, February 2023, available at: <https://www.refworld.org/pdfid/63f75b3f4.pdf>

6 ADDRESSING STATELESSNESS

The EU is home to hundreds of thousands stateless people and people of undetermined nationality.²¹ Many of them were born stateless in the EU, while others have migrated to the EU later in life. Stateless people are not only denied the right to a nationality but are often also unable to access basic rights and services, lack economic opportunities, and are particularly vulnerable to exploitation and abuse and arbitrary detention. People can become stateless for various reasons including discrimination, gaps in nationality laws and practices, conflict and displacement, or because a country no longer exists. In turn, statelessness can trigger displacement. Children can also be born into statelessness because their parents are stateless or cannot pass down their nationality.

In 2015, the Council of the EU adopted the EU Conclusions on Statelessness, acknowledging the importance of identifying stateless persons and strengthening their protection thus allowing them to enjoy core fundamental rights and reducing the risk of discrimination or unequal treatment. With the political will, the EU can play a leading role in ending statelessness within as well as beyond its borders.

UNHCR calls on the EU and incoming Council Presidencies to:

- **Encourage MS to ensure that all children born in their territory are registered at birth**, regardless of the legal or documentation status of the parents and acquire nationality where they would otherwise be stateless.
- **Encourage MS to put in place laws and determination procedures** to ensure that stateless people are identified, recognized, protected and able to access their rights.
- **Develop a comprehensive EU strategy and Action Plan to address statelessness within the EU and globally**, ensure it is mainstreamed in all relevant policy areas and review progress towards the implementation of the 2015 Council Conclusions on Statelessness.

²¹ UNHCR, UNCR Global Trends 2022, June 2023, available at: <https://www.unhcr.org/global-trends-report-2022> (For more data see annex 5 of the same report, available at: <https://www.unhcr.org/statistics/2022GTannextableSTA.xlsx>)

7 MAKE EU FUNDING ADEQUATE, MORE AGILE AND RESPONSIVE

The EU and its MS, as Team Europe, have the responsibility to be responsive and present in times of crisis²². Making flexible, un-earmarked and multi-year funding available needs to become a standard practice, wherever possible, in line with the commitments the EU made under the Grand Bargain. In this context, UNHCR welcomes the Council conclusions of May 2023, which called for an increase in levels of flexible funding and on the need for the EU to further address the humanitarian funding gap²³. This is a big step in the right direction, and one that UNHCR stands ready to help operationalize and implement under the Belgian and Hungarian Council Presidencies.

With the number of forcibly displaced people worldwide at an all-time high, flexible humanitarian funding has never been more urgent. When the current MFF was negotiated in 2018, 133 million people needed humanitarian assistance. Today, 339 million people need such assistance. The EU must increase its budget accordingly and keep pace with the growing needs. UNHCR recommends that the revised MFF has built-in benchmarks and that it makes funding proportional to needs, ensuring that both specific protection needs of refugees and the impact of forced displacement on host countries and communities are duly considered. Such measurement allows for the identification of areas to which resources can be directed more effectively, thus ensuring that the EU's support addresses the specific needs of refugees and host communities alike. EU

funding must also address underfunded situations by increasing the share allocated to forgotten crises and allowing for greater coherence and proportionality in EU financing.

Given the Council's central role in negotiating, amending, and ultimately adopting the EU budget, both Belgium and Hungary have strong oversight on the 10% spending target on migration and forced displacement under the EU's development budget. Clearer insights into funding allocation and spending not only build trust among stakeholders but also empower informed decision-making, enabling more strategic and impactful interventions that address pressing global challenges with greater efficiency and precision. This means providing a clear and transparent overview of spending on forced displacement separately from spending on migration clearly noting the development impact on countries hosting forcibly displaced people is very different from the impact on those hosting migrants.

With protracted displacement situations and **climate induced displacement multiplying**, these thematic priorities require targeted financial scale-up, especially in the areas of education and climate. In addition, the potentials for sustainable development for refugee hosting countries and communities that come with innovative financing tools, such as the Global Gateway, need to include

22 See: European Parliament Resolution, Upscaling the 2021-2027 Multiannual Financial Framework, 15 December 2022, available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0450_EN.html; European Parliament, Report on new orientations for the EU's humanitarian action, 19 November 2021, available at: https://www.europarl.europa.eu/doceo/document/A-9-2021-0328_EN.html; Council of the European Union, Council conclusions on addressing the humanitarian funding gap, 22 May 2023, available at: <https://data.consilium.europa.eu/doc/document/ST-9598-2023-INIT/en/pdf>

23 Council of the European Union, Council conclusions on addressing the humanitarian funding gap, 22 May 2023, available at: <https://data.consilium.europa.eu/doc/document/ST-9598-2023-INIT/en/pdf>

people forced to flee and the communities that host them, so no one is left behind as we progress towards the SDGs.

UNHCR calls on the Council Presidencies to:

- Call on the Commission to **develop an Action Plan implementing the Council Conclusions on addressing the humanitarian funding gap** released in May 2023. This would provide much needed predictable, additional, and flexible funding to protection actors, at a time when vulnerabilities and needs of refugees, asylum-seekers, and host communities are increasing rapidly.
- **Increase the humanitarian aid budget line to a minimum of EUR 2.6 billion per year**, as compared to the current EUR 1.6 billion. However, this increase should not be made at the expense of development funding.
- Call on the Commission to **report on the use of the 10% spending target of the NDICI, differentiating between forced displacement and migration.**
- Advocate for Commission financing towards thematic areas including education climate and innovative/blended finance in the context of forced displacement.

UNHCR, January 2024