

Asylum and international protection in the EU: the next five years?

UNHCR's further inputs to the Strategic Guidelines for future development of the area of freedom, security and justice following the European Commission Communication "An open and secure Europe: making it happen" addressed to the European Council.

In June 2014, the European Council will set Strategic Guidelines for further development in the area of freedom, security and justice of the EU. In January 2014, UNHCR provided some suggestions to the European Commission's public consultations in this respect, calling for a holistic approach to protection based on the respect of fundamental rights to "help ensure that asylum-seekers, refugees and others in need of international protection do not fall into gaps which might arise between different policy areas¹."

Following these consultations, the European Commission (hereinafter "the Commission") published, in March 2014, its Communication in relation to the future of Home Affairs policies². Further to this Communication, UNHCR would like to highlight a number of key issues for inclusion in the future Strategic Guidelines.

1. Specific Elements from the European Commission Communication, March 2014

In its Communication, the Commission made a number of proposals UNHCR supports and urges Member States to retain in the finally adopted guidelines. These are highlighted below. However UNHCR would also like to underline that some key aspects needed to ensure a comprehensive approach to freedom, justice and security are not included in the Commission's communication. UNHCR is also underlining these aspects, for the Council to consider including in the Strategic Guidelines.

Beyond the implementation of the CEAS

UNHCR supports the Commission's commitment to establishing the effective operation of a common policy on asylum and international protection in the EU based on full and inclusive application of the 1951 Convention relating to the Status of Refugees and other relevant treaties.

¹Asylum and international protection in the EU: strengthening cooperation and solidarity:
<http://www.refworld.org/docid/52ea55234.html>

² http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/an_open_and_secure_europe_-_making_it_happen_en.pdf

In particular, **a uniform asylum status and a uniform subsidiary protection status would entail greater consistency** in the level and rights accorded to people in need of international protection throughout the EU. With this in mind, a mechanism for transfer of protection and mutual recognition of asylum decisions should continue to be the goal for the EU.

**Mutual
recognition
and transfer of
protection**

UNHCR therefore particularly welcomes the Commission's reference to the **mutual recognition of asylum decisions across Member States and a framework for the transfer of protection**. These measures could contribute to alleviating the particular pressures felt by some Member States as a result of granting protection to significant numbers of applicants, by providing beneficiaries of international protection with opportunities to move between Member States, and take up residence in other Member States, subject to the fulfillment of relevant conditions.

**Promoting
legal access to
Europe**

UNHCR also welcomes the EU's continued commitment to **increasing resettlement** in the EU towards a target of 20,000 places by 2020.

The proposal in the Commission's communication, **to enhance safe arrival to the EU of persons with a well-founded fear of persecution**, thus reducing the numbers of persons making hazardous journeys across the Mediterranean and/or resorting to smugglers, is also positive, and complements the work of the Task Force for the Mediterranean (TFM).

As highlighted in UNHCR's Central Mediterranean Sea Initiative (CMSI), UNHCR in particular supports the establishment of protected entry procedures (PEPs), protection friendly labour migration schemes, private sponsorship resettlement opportunities and the proposed coordinated approach to humanitarian visas to complement resettlement. This would provide a potential means to ensure people at risk can be identified outside the EU, and granted visas by Member States on a voluntary basis, to facilitate their safe travel to Europe.

Outside the area of protective entry mechanisms, UNHCR strongly urges Member States to develop a common migration policy. This could be first tested in areas with current needs for skilled manpower, such as care for the elderly.

UNHCR notes the Commission's proposal to carry out a feasibility study on the **possibility of joint processing outside the EU** and is available to take part in such discussions noting that such arrangements should not undermine the right to access asylum procedures in Europe.

**Protecting
children and
vulnerable
persons**

UNHCR welcomes the attention given in the Communication to diversity and the **protection of groups with specific needs**. As noted in the proposal, protection of individuals with specific needs includes providing them with targeted support so that they also receive appropriate assistance in accordance with the recast Reception Conditions (RCD) and Asylum Procedures Directives (APD).

More specifically UNHCR welcomes the recognition that the **best interest of the child** approach should be applied in accordance with the Convention on the Rights of the Child (CRC). UNHCR has also called for the best interest principle to be applied across policy areas including, not only unaccompanied children, but

also children seeking protection with their families.

The best interest approach should include children who are born stateless in the EU. It follows from the principle of the best interest of the child and the child's right to acquire a nationality based on Article 7 of the CRC that a child must not be left stateless for an extended period of time and must acquire a nationality at birth or as soon as possible after birth. In addition, pursuant to Article 7, Member States are to ensure all children born in their territory are registered at birth, irrespective of their parents' documentation, civil status or legal status.

Freedom of movement

The principle of freedom of movement within the country of asylum, for asylum-seekers, reinforced in the Reception Conditions Directive (RCD), with detention to be used only as a last resort, needs to be more firmly embedded in the practice of Member States. Sharing of best practices on alternatives to detention are important in this regard.

Solidarity

UNHCR welcomes the proposed development of **joint processing of asylum applications in the EU** following the pilot on processing of asylum claims of persons rescued at sea. This needs to be coupled with a solutions component where those found to be in need of international protection can be assisted to find solutions in other countries, both within and outside the EU, for example on the basis of family links.

UNHCR considers that pooling/sharing of reception places at times of emergency could also help alleviate pressure on the reception capacity of Member States facing particular pressures. UNHCR underlines that Member States benefitting from such assistance measures should continue to be encouraged to strengthen their integration systems further.

Return

UNHCR is concerned by the situation in a number of Member States of failed asylum-seekers living in limbo. Asylum systems only work if functioning return mechanisms exist in all Member States. In this context, UNHCR recommends that **Assisted Voluntary Return programmes be established** by Member States and accessible to all failed asylum-seekers.

Integration

UNHCR welcomes the suggested focus areas for integration in the Commission's Communication and recalls that all newcomers, including refugees and beneficiaries of subsidiary protection, can contribute positively and effectively to their host societies. Beneficiaries of international protection should thus be included in all efforts to maximize employment rates, receive fair treatment in access to the labour market, and have access to education and affordable housing. Exchange of best practice between Member States including on skills recognition will be beneficial. In addition, UNHCR recommends time limited, targeted support, upon recognition, for beneficiaries of international protection to assist their rapid and effective integration.

Integration also requires a welcoming environment. Fighting racism, religious intolerance and xenophobia is an important element of ensuring an environment conducive for integration. This task is the joint responsibility, not only of Governments, but of all members of society including mainstream political parties

and responsible media .

Trafficking

While the Commission proposes the full implementation of the Trafficking Directive, continuing the Anti-Trafficking Coordinator position, and a post 2016 strategy covering prevention, assistance, return and reintegration, and consideration for criminalization of the use of services of victims of trafficking; UNHCR reiterates that the fight against trafficking should not only be rooted in criminal law but should follow a fundamental rights based approach in order to avoid the fragmentation of trafficking victims' rights. Particular attention to women and children who are at risk of trafficking as well as those who have been trafficked is essential.

Other proposals to include beneficiaries of international protection

UNHCR notes that certain elements of the Commission's communication make no mention of beneficiaries of international protection. **UNHCR encourages explicit reference to beneficiaries of international protection during the development of the Strategic Guidelines** to ensure that groups, such as refugees, have their needs considered throughout all aspects of the Strategic Guidelines.

In addition, the Commission has made a number of proposals which UNHCR considers could be applied in a protection sensitive manner and include persons in need of international protection. These include:

- Changes in visa policy including moving towards a common visa system based on individual assessment rather than nationalities, and greater opportunities for joint Schengen Visa Centres could assist simplifying rules for refugees and their family members.
- More modern and efficient border management should promote protection-sensitive approaches at EU level in full respect of fundamental rights, in particular the right to asylum and the principle of *non-refoulement*.

2. Aspects for inclusion in the Strategic Guidelines not featuring in the Commission communication

Family reunification

UNHCR regrets that the potential of using family reunification as a protection tool through facilitated access for family members of refugees in Europe is not explored in the Commission Communication. UNHCR calls on Member States and the European Council to consider including this in the Strategic Guidelines.

Respect for family life is a key principle of European fundamental rights law, reflected in key parts of the EU *acquis*. While no immediate legislative initiatives may be foreseen in the context of the Family Reunification Directive, UNHCR considers that family reunification should nevertheless continue to constitute a key element of EU asylum and integration policies. UNHCR recommends in particular that facilitated family reunification should be considered as one of the possible options to promote legal routes to access asylum in the EU. Increased family reunification channels could remove powerful channels for persons to embark on dangerous irregular routes to join family members in Europe and seek safety.

Field research demonstrates that family reunification and presence of family members is a key driver to facilitate the successful integration of beneficiaries of international protection present in the EU.

Stateless persons

Statelessness is not addressed as such in the Commission Communication although stateless persons can be found in every Member State³. UNHCR calls for inclusion of statelessness concerns in the Strategic Guidelines in order to strengthen the protection of stateless persons who fall outside the scope of the Qualification Directive and to encourage Member States to amend their nationality legislation to facilitate the naturalization of stateless persons. Inclusion of statelessness concerns in the Strategic Guidelines may also ensure that Member States avoid that children are born stateless in the EU, and establish statelessness determination procedures.

UNHCR has called for the eradication of statelessness by 2024, an achievable goal in the EU, and a matter of justice and human security.

In this regard, UNHCR would like to recall the pledge made by the EU in September 2012 stating that Member States which have not yet done so will accede to the 1954 Convention relating to the Status of Stateless Persons⁴, and Member States will consider acceding to the 1961 Convention on the Reduction of Statelessness⁵.

Accession

UNHCR has also suggested possible **EU accession to the 1951 Refugee Convention** (the EC was tasked in the Stockholm Programme to undertake a feasibility study but has not done so), **and the 1954 Statelessness Convention**.

3. Conclusion

UNHCR is pleased to have the opportunity to share these perspectives with the European Commission, Council and Member States, and to highlight issues which would be important to include in the Strategic Directions to ensure the protection of refugees, asylum-seekers and stateless people in the European Union in years to come.

UNHCR would also like to reiterate its willingness to work with Member States and EU institutions and agencies to achieve these objectives.

UNHCR, 16 May 2014

³ Approximately 600,000 stateless persons are to be found in Europe, over 400,000 of whom in the EU

⁴ Four Member States still need to do so: Cyprus, Estonia, Malta and Poland

⁵ Eleven Member States still need to do so: Belgium (although a bill was adopted on 23 April 2014 allowing for accession), Cyprus, Estonia, France, Greece, Italy, Luxembourg, Malta, Poland, Slovenia and Spain