

## Working to complete the Common European Asylum System

UNHCR's recommendations to Cyprus for its EU Presidency  
June – December 2012



Palestinian refugee girl taking language classes in Cyprus  
Photo: UNHCR

### Introductory Remarks

---

Cyprus assumes the Presidency at a pivotal moment for the European Union (EU). The Union and some of its Member States are facing far-reaching political, economic and social challenges extending beyond the Justice and Home Affairs field. In relation to asylum, refugee protection and migration policy also, new questions are before the EU that could not necessarily have been foreseen in the recent past. Some Member States have recently faced demands on their asylum, reception and migration management systems that have required exceptional responses. New and complex displacement crises beyond Europe have posed new challenges, influencing the EU debate and demanding strategic responses.

The EU's aim of achieving a **Common European Asylum System (CEAS)** by the end of 2012 remains in place and is potentially more important than ever. UNHCR welcomes the demonstrated commitment of the European institutions and the Member States to work towards that goal. For UNHCR, completion of the CEAS necessitates, among other things, the adoption of **higher legislative standards** than those put in place under the first generation asylum instruments. Impressive progress has been made by previous presidencies on this task. UNHCR believes that principled agreement remains possible on the asylum instruments currently under negotiation. UNHCR thus encourages the Cyprus Presidency to assist the Council and Parliament to finalize the recast processes in a manner that reflects **international refugee and human rights law**, as well as **good practice** and high **quality** standards.

Nevertheless, agreement on the **current legislative package** will not be the end of process. Work is ongoing in a number of vital other areas that form part of the CEAS – including the **practical cooperation** agenda, the **external dimension**, **solidarity** and others. Moreover, the EU asylum *acquis*, like any legal framework, must be ready to evolve and continue to respond to changing needs and circumstances in the EU in future. There will thus be a need for further engagement and readiness on the part of the Union, Member States and other stakeholders to invest in ensuring that the system is able to continue to develop in the face of change, and ensure that the **right to asylum** is guaranteed, in accordance with the Union's Charter of Fundamental Rights.

## A Common European Asylum System by 2012

---

For UNHCR, the progress achieved in the recast process in the first months of 2012, particularly on the Reception Conditions Directive and Dublin Regulation, highlights the importance of and collective commitment to filling gaps, raising standards, and clarifying ambiguities and inconsistencies in the EU's asylum and protection framework. It is also an acknowledgement that notwithstanding challenges posed by the difficult economic and political climate in many States, binding legal obligations and national interests require the clarifying of common rules, and efforts to achieve **more consistent and higher standards** in asylum procedures, reception and the allocation of responsibility for claims.

### Reception Conditions Directive

UNHCR supports further efforts to reach agreement on a number of key issues in recent discussions on the Reception Conditions Directive (RCD), which are centrally important to ensuring respect for refugee law and international human rights principles.

## **Detention**

In UNHCR's view, the recast RCD will achieve genuine added value only if it contains a principled agreement on the **detention of asylum-seekers**. Grounds or reasons for detention must be clearly and exhaustively established in the RCD.

UNHCR is of the view that asylum-seekers should in principle be entitled to **liberty of the person**, and that detention or other restrictions on their movement should be used only as a last resort; where necessary, on legally defined grounds which are applicable in the individual case; for the shortest possible period; and in a manner that is proportionate to the lawful goal pursued. Where possible, **alternatives to detention** should be used. UNHCR considers that there are two justifiable legal reasons for detention in the asylum context, namely **national security** and **public order**. Initial periods in detention, or other restrictions on free movement for the purpose of verifying identity, conducting security checks or to prevent absconding, where applicable in an individual case, fall within these grounds. UNHCR maintains concerns about proposed additional grounds for detention, including for cases where the applicant has applied for asylum from **pre-removal detention**. Whereas UNHCR acknowledges legitimate interests in curbing baseless claims, this proposal could negatively affect asylum seekers who might have protection needs and who, upon entering the territory of a Member State in an irregular manner, are automatically detained and issued with a deportation or expulsion order without having had effective access to the asylum procedure. As a minimum, to justify detention, Member States should be in a position to substantiate that there are **serious grounds** to believe that the asylum-seeker makes the application for international protection merely in order to **delay or frustrate** the enforcement of a removal decision. It must also be shown that s/he had an **effective opportunity** to access the asylum procedure.

It will be particularly important that any grounds for detention which are additional to national security and public order are applied in a limited fashion in practice. Courts will also need actively to play their role in **overseeing detention**, to ensure it is used only where the legal grounds, which will be defined in the recast RCD, so permit, in the individual case in question; in a manner proportionate to those lawful purposes, and where that other essential safeguards are observed.

## **Identification of vulnerable persons**

Identification of **vulnerability and special reception needs** is critical to the quality of reception standards and asylum claim determination. Early identification of vulnerabilities, especially invisible ones such as **trauma**, would create more understanding of the situation of vulnerable asylum seekers and could ensure that reception conditions are adapted to their situations. Early identification would also help ensure in practice that the claims of vulnerable asylum-seekers can be presented effectively, with all information and evidence required to enable the authorities to render an informed and accurate decision. **Safeguards** for the protection of vulnerable asylum seekers will be meaningless if they cannot systematically be identified. UNHCR considers that every effort should be made to identify vulnerable asylum-seekers at the earliest practicable stage.

## Access to the labour market

UNHCR encourages Member States to allow **early and effective access of asylum-seekers to the labour market**. This can be beneficial both to the State and to the asylum-seeker, where it provides an opportunity for the asylum-seeker to attain a degree of self-reliance without recourse to social assistance. UNHCR underlines that several Member States already afford access to the labour market after six months in the asylum procedure, while many others seek to determine asylum claims in that period or shortly after, which would mean limited changes to practice in the event this time frame is adopted.

## The Dublin Regulation

From UNHCR's viewpoint, the proposed introduction of an “**early warning mechanism**” will be a positive step, which should enable the EU and Member States to collect and examine information and statistics on the functioning of the national asylum systems and, where needed, to draw up preventive and crisis management action plans. However, this process will not, of itself, enable the EU to fully address situations where there are weak asylum systems, destitution and homelessness, or systematic resort to detention in poor conditions. Such situations may nevertheless contribute to secondary movements and in some cases, have led to the blocking of transfers under the Dublin Regulation by the courts. In addition, the criteria which allocate responsibility to the first State of entry – most commonly those at the Union's external borders – are the most frequently applied of all those in the Dublin Regulation.

In this context, UNHCR considers that a broader approach is needed, incorporating more general **capacity-building, quality** measures and **solidarity**, to ensure that legally compliant, high-quality asylum systems will function consistently across the EU in future. Until such systems are in place, it is evident the Dublin system, in its current form, cannot operate effectively and fairly to ensure access to fully functioning asylum procedures in every case.

UNHCR also reiterates several **further important amendments to Dublin** in the proposed recast which would improve the situation for refugees in the EU in key areas. These include:

### Maintaining the objective of Dublin

Maintaining, as the **primary objective** of the Dublin Regulation, determination of the MS responsible for examining and deciding on an asylum application. This will help ensure that the Regulation is used to identify a responsible Member State which will fulfill its protection obligations within reasonable time frames.

### A broader definition of family members

A broader definition of **family members** could ensure the Regulation will function more effectively, based on correct application of the hierarchy of criteria, enabling family members to be reunited. In particular, **unaccompanied or separated children** should be brought together with family members, including relatives beyond the nuclear family, without restrictive interpretation of the relevant criteria, when this is in their best interests.

<b>Un-accompanied children</b>	Transfers of unaccompanied or separated children should occur only when this is in line with the <b>best interest of the child</b> .
<b>Appeals against transfer decisions</b>	The possibility to appeal against a decision to transfer should include a requirement to <b>suspend the transfer</b> of an asylum seeker to another Member State, automatically or upon request, until a decision has been made on his/her appeal.
<b>Detention in Dublin procedures</b>	Detention of persons who are subject to Dublin procedures should be regulated, requiring that detention be used for the <b>shortest possible period</b> , and only where there is a risk of absconding, such that detention is a necessary and proportionate measure in the individual case.
<b>Interviews in Dublin procedures</b>	The requirement for Member States to conduct <b>interviews</b> with persons subject to Dublin will contribute to more efficient administration of the Dublin system. It will also enable applicants to submit relevant information necessary for the correct identification of the <b>responsible Member State</b> , including potentially relating to the presence of family members or relatives in other Member States, or the existence of a visa or residence permit. In addition, appropriate <b>information</b> should be provided to the applicant during the Dublin process, including advice during the interview of the authorities' intention to apply the Regulation to his/her case and potentially to request his/her transfer to a particular State.

## Eurodac

Providing **law enforcement authorities with access** to fingerprint data stored in Eurodac constitutes a departure from the original purpose of Eurodac. UNHCR is concerned this could lead to interference with the right to **privacy and family life** of asylum-seekers and refugees. It may place asylum-seekers or refugees and their /her families at **significant risk** of harm, if the information is shared with countries of origin. Moreover, it creates the risk of **stigmatization** of asylum-seekers as a group by associating them with criminal activity.

<b>Additional safeguards needed</b>	<p>UNHCR recommends that Eurodac continue to be used solely for its original purpose. However, in light of the recast proposal issued by the European Commission for Eurodac, proposing access to Eurodac data for law enforcement authorities, UNHCR recommends that a number of <b>safeguards</b> are taken into consideration. In particular, UNHCR recommends that:</p> <ul style="list-style-type: none"> <li>– the possibility of <b>error</b> in matching fingerprints and the wrongful implication of asylum-seekers in criminal investigations is fully examined and eliminated to the greatest extent possible;</li> <li>– provisions on the prohibition of <b>transfer of information</b> on asylum-seekers or</li> </ul>
-------------------------------------	--

refugees to third countries are reinforced to eliminate any gaps;

- the potential for **stigmatization** of asylum-seekers as a particularly vulnerable group is fully evaluated;
- the **scope** of the instruments is limited to reflect the principles of necessity and proportionality; and
- additional **data protection measures** are incorporated.

## The Asylum Procedures Directive

The Asylum Procedures Directive (APD) is also among the most important instruments of the EU *acquis*, albeit also one of the most complex. Procedures which are workable and provide essential safeguards form an essential basis for the CEAS.

### Training

Training the personnel of national Determining Authorities is essential to ensure quality and harmonization in the CEAS. The APD recast proposal identifies the mandatory list of training subjects by way of reference to the European Asylum Support Office (EASO) Regulation. It also refers to the training the EASO has established and developed, notably the European Asylum Curriculum (EAC). UNHCR strongly supports this provision. The EAC is a powerful training tool developed through practical cooperation, and its use for the training of Determining Authorities should be mandatory.

### Special procedural guarantees

The proposed recast provides for **special procedural guarantees** for certain categories of applicants. UNHCR considers that explicit reference to the need to afford '**sufficient time**' in the procedure for asylum-seekers to present their claims is required. Persons who have witnessed or been subject to persecution or human right violations may be traumatized. An interval is required to overcome the trauma and talk about it in an asylum procedure. This is also in the interests of the authorities, who will benefit from all of the information needed to enable them to reach an accurate decision on the claim.

### Un-accompanied children

In UNHCR's view, **unaccompanied children** should benefit from reinforced safeguards in the recast Directive. The recast contains proposals to **exempt** them from certain restrictive procedures involving reduced timeframes and safeguards.

In UNHCR's view, accelerated procedures with reduced procedural safeguards are inappropriate for unaccompanied children, given the additional challenges they pose to the comprehensive and effective presentation of a claim. Similarly, **border procedures** with shortened timeframes and limited safeguards should not apply to children separated from their caregivers. It should not be possible to consider such claims as **manifestly unfounded**, without a full examination on the merits. Given that in most cases children are less well equipped to present their experiences in a complex and unfamiliar legal process, their claims should be subject to comprehensive examination in every case. UNHCR also considers that children should be exempt from application of the **safe third country** concept, which, where

relevant, would require them to make complex legal arguments to disprove the presumption of safety. Finally, UNHCR would support the exemption of unaccompanied children from a “**merits test**” as a condition for free **legal assistance** on appeal. In the organization’s view, children require legal representation in all cases where the Directive permits it, given their inability to understand and represent themselves in legal processes – including for the purposes of showing that their case might have merits that the first instance did not reveal.

**Temporary suspension of examination of claims**

The APD proposal foresees that the examination process may be **suspended temporarily** for certain categories of claims. UNHCR accepts that in certain circumstances, this could be done without prejudice to the case or individual hardship. However, this should occur only in narrowly circumscribed cases and for **short periods** only, which are subject to regular **reassessment**. This is necessary to ensure that people are not left without decisions on their claims for extended periods.

**Accelerated procedures**

Accelerated procedures have been the subject of extensive discussion. UNHCR supports **limited and clearly-defined grounds** for channeling a claim into accelerated procedures. Accelerated procedures should not be applicable merely because of a failure to meet a procedural requirement; or because an applicant has used a forged document – something which is unavoidable for those fleeing persecution in many cases.

Above all, however, the Directive should require in all cases that accelerated procedures must provide for **reasonable time limits** that allow for an adequate examination of claims. UNHCR’s research on state procedures in practice revealed that some accelerated procedures are so compressed that applicants do not, in practice, have any realistic opportunity to present their claim or to enjoy basic procedural rights, including access to a lawyer and a chance to gather evidence. Specific wording requiring such reasonable time limits and an adequate examination of claims should be included in the Directive.

**Subsequent applications**

A further, extensively-debated issue relates to subsequent applications. This refers to new claims made after a first application has been rejected. UNHCR accepts that States may wish to accord more limited entitlements to people filing such claims. However, one proposal would deny such people the **right to remain** in the Member State while their first subsequent applications are being examined. UNHCR notes that in some cases (e.g. those of Dublin returnees whose claims have been considered as implicitly withdrawn); the asylum-seekers concerned may not have had a full examination of the merits of their claims on the first occasion. This creates a risk that *refoulement* could occur. UNHCR thus supports the continued **right to remain** (either on an automatic basis or upon request) in the EU, at least while a first subsequent application is being examined.



## Harmonizing Asylum Practice

---

**Practical cooperation** While strengthened legislative provisions are essential for the CEAS, the goal of more harmonized asylum practices and outcomes cannot be reached without more practical cooperation. During the year since its inauguration in June 2011, the European Asylum Support Office (EASO) has taken important initiatives to strengthen practical cooperation on asylum among the 27 EU Member States and to facilitate support to Member States facing particular pressure, including Greece and Luxembourg.

**European Asylum Support Office** The EASO's work programmes provide a sound basis for strengthening activities around practical cooperation on asylum and supporting EU Member States to fulfil their European and international obligations to protect people in need. As highlighted in specific studies, projects and reports conducted by UNHCR and others on selected aspects of the EU *acquis* on asylum and its implementation by Member States,<sup>1</sup> the current **divergences in recognition rates** among EU Member States, as well as in **national processing capacities** and **practices**, even for comparable caseloads, remain significant.

UNHCR appreciates the important progress EASO made in the first year of its operation and calls on EU Member States and EU institutions to ensure that the agency receives adequate resources to continue its ambitious work in support of EU MS and the CEAS.

**EASO work on quality** UNHCR welcomes in particular EASO's focus on the **quality of asylum decision making** and ensuring that asylum procedures are **gender-sensitive** and respect the special needs of **vulnerable persons**. UNHCR encourages EU Member States to fully engage with EASO to address remaining concerns in the asylum practice. UNHCR will continue to support EASO's work in this area and is ready to lend its support and long-standing expertise to the tasks.

---

<sup>1</sup> UNHCR, *Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence*, 27 July 2011, available at:

<http://www.unhcr.org/refworld/docid/4e2ee002.html>;

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>;

UNHCR, *The Dublin II Regulation. A UNHCR Discussion Paper*, April 2006, available at:

<http://www.unhcr.org/refworld/docid/4445fe344.html>;

UNHCR, *Asylum in the European Union. A Study of the Implementation of the Qualification Directive*, November 2007, available at:

<http://www.unhcr.org/refworld/docid/473050632.html>;

UNHCR, *Further Developing Asylum Quality in the EU (FDQ): Summary Project Report*, September 2011, available at: <http://www.unhcr.org/refworld/docid/4e85b41f2.html>;

UNHCR, *Building In Quality: A Manual on Building a High Quality Asylum System*, September 2011, available at: <http://www.unhcr.org/refworld/docid/4e85b36d2.html>.



## European Asylum Curriculum

EASO has assumed responsibility for the **European Asylum Curriculum (EAC)** and is developing further training tools for EU Member State asylum officials and members of the judiciary, as well as supporting EU MS to develop and implement systematic national training programmes. This work has great potential to build expertise and common approaches to the shared body of legislation and protection concepts that binds all Member States. UNHCR welcomes EASO's efforts to develop **comprehensive and high quality training support** for EU MS, including other competent training partners. UNHCR welcomes the opportunity to continue taking part in EASO's training activities, and offers its recognized expertise in protection training to support EASO and the Member States in the development and implementation of capacity-building actions, at EU and national levels.

## The Solidarity Challenge

---

### Intra-EU Solidarity

The issue of intra-EU solidarity has – appropriately in UNHCR's view – received significant attention in recent years. UNHCR welcomes the links that are made between the solidarity debate and the operation of the Dublin system, including in discussions on the recast proposal for Dublin which, have aimed to address imbalances and needs for solidarity more effectively. UNHCR supports the proposed Early Warning and Preparedness mechanism which is foreseen for the revised Dublin Regulation, as a useful step that can help provide more insights into, and transparency about, the situation and, where relevant, shortcomings in various Member States. But this mechanism alone will not solve all the problems of the Dublin system, nor of the need for more creative and effective solidarity arrangements. Such new approaches should seek to address not only current or impending crises, but also **broader quality challenges** which mean that access to a fair and effective asylum procedure, adequate reception standards, and protection for those who need it, are not at present guaranteed across the whole European Union.

Decisions by the Strasbourg and Luxembourg courts, as well as from national judicial bodies in many countries, have recently highlighted the importance of vigilance to ensure that rights are respected in the Dublin context. They also underline the need for action to be taken to redress **systemic deficiencies**, as well as to refrain from actions that could lead to breaches in individual cases.

## Voluntary relocation

UNHCR is contributing to the EU discussion on the possibility of ongoing voluntary **relocation** arrangements for people granted protection who might be offered places elsewhere in the EU, based on an evaluation of previous relocation actions, notably the EUREMA projects for Malta. UNHCR has played an important supporting role in these projects, both in Malta and in the receiving Member States. The organization thus has a practical interest in exploring the issue further, in a way which could improve and refine the approaches used in the past, to ensure more sustainable solutions for all concerned.

## Joint processing of asylum claims in the EU

Pursuant to the Council's request to the Commission in the Stockholm Programme, the joint processing of asylum claims has been the subject of examination and informal discussion over recent months. A study has been launched by the EC on the options for and feasibility of such approaches. UNHCR, which has proposed this concept in different forms in the past, stands ready to explore its potential to deliver protection to people who seek it in the EU through innovative cooperation arrangements, involving Member States and others working in **joint processing teams**. Such arrangements could, in UNHCR's view, be developed in a manner that respects and ensures full observance of the rights of persons in need of protection, and could contribute to practical cooperation among Member States. Clear aims, as well as tailored models which can address the identified gaps or problems, should be developed to guide the process of reflection on joint processing ideas. It may be that **different models** for joint processing would be needed, depending on the particular challenge or shortcomings to be addressed in a situation where such joint arrangements could be considered.

## Beyond the EU

UNHCR's refugee population statistics worldwide have highlighted once again in 2012 that the vast majority of the world's displaced seek shelter in regions far from Europe, often in **least developed countries** facing many other problems.<sup>2</sup> UNHCR, which consistently recalls the importance of solidarity in protection beyond as well as within the EU, has welcomed the adoption of the **Joint EU Resettlement Programme** in April 2012, and other advances made this year on resettlement. The organization supports calls made by civil society and others recently to aim for 20,000 resettlement places in the EU in 2020: a figure some four times the total resettlement numbers seen in the Union right now. The interest and engagement received from a number of Member States in further advancing in this field is most welcome.

---

<sup>2</sup> UNHCR, *UNHCR Global Trends 2011: A Year of Crises*, 18 June 2012, available at: <http://www.unhcr.org/refworld/docid/4fdeccbe2.html>.

UNHCR sees at the same time the need to **reinforce resettlement arrangements** in some countries which have only recently begun to resettle. Strengthened reception and integration frameworks in particular are needed to ensure a truly durable solution for resettled refugees in those countries.

For UNHCR, other forms of solidarity and engagement with third countries are also key. **Capacity-building** on asylum and migration management in **protection-sensitive** ways, as well as support to local integration, are essential elements that the EU is urged to continue to support. UNHCR cooperates with EU initiatives and individual Member States in their actions to support asylum and protection in many parts of the world. In this connection, UNHCR emphasizes that such capacity-building actions should be done in full **partnership** with the concerned third countries, and should never be seen solely as a means to secure cooperation on readmission, strengthened border and migration management cooperation and other political, non- protection related objectives.

Moreover, the EU is strongly encouraged to continue to make its vital contribution to global **humanitarian assistance**, which is essential to the survival of tens of thousands of refugees in many displacement situations worldwide every year. In many countries. With new crises emerging and many of those from the past remaining unresolved for years or decades on end, UNHCR struggles to meet even the most basic of needs for those forced to flee in many cases. More strategic approaches to forced **migration and development** can also play an important role in this major area of need.

## Trafficking in Human Beings

---

In the European Union, UNHCR has a responsibility to prevent refugees, asylum-seekers and stateless persons from falling victim to human trafficking, and to work to ensure that victims of trafficking who are in need of international protection are identified and protected against *refoulement*. This requires ensuring that their claims to international protection will be registered and examined by the asylum authorities and, where necessary, the judiciary.

**EU  
Directive  
and Anti  
Trafficking  
strategy**

UNHCR welcomed the adoption of EU Directive 2011/36/EU<sup>3</sup> and, jointly with other UN agencies, has called for a **human rights-based approach** to the transposition of this instrument in national legislation by the deadline of April 2013. UNHCR welcomes the EC's Communication on the **EU Strategy towards the Eradication of Trafficking in Human Beings in 2012-2016** (the 'EU Anti-Trafficking Strategy'). To ensure an effective multi-disciplinary and integrated approach, UNHCR emphasizes the importance of fully including Member States' **asylum systems** in the elements which the strategy will address.

Cyprus assumes the Presidency at a key moment for the EU Anti-Trafficking Strategy. The **EU Anti-Trafficking Day** will be an opportunity to engage in a dialogue with all stakeholders, including civil society and international organizations, on the Strategy's future implementation. With regards the first actions planned by the European Commission, UNHCR supports the development of **guidelines** for the identification of victims of trafficking, and calls for EASO to be included in the process. UNHCR also encourages the development of training material on trafficking for asylum adjudicators within the EU asylum systems as part of the EASO **capacity-building** 'tool box'.

**Information  
on the right  
to seek  
asylum for  
trafficking  
victims**

At the practical level, UNHCR stresses the importance of the provision of **information to victims of trafficking** on their rights, including the right to seek asylum as per Article 11(6) of EU Directive 2011/36/EU. The organization encourages the Commission and Member States to consider effective ways to ensure that all officials likely to come into contact with victims of trafficking are aware of those rights. UNHCR also urges Member States to ensure that their asylum authorities are effectively included and connected to the national referral mechanisms they are committed to establishing for trafficking victims by the end of 2012.

---

<sup>3</sup> European Union, *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*, April 2011, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>.

## Integration and Family Reunification

---

### Integration

Support for the integration of beneficiaries of international protection is a key aspect of the Common European Asylum System. While progress has been achieved with the adoption of the recast Qualification Directive, current negotiations on other legislative proposals may lead to standards which impact negatively on the integration of refugees and those given subsidiary protection. UNHCR highlights in particular that the use of **detention** and **poor reception conditions** may further disempower refugees and make their transition into European societies a bigger challenge.

Integration of third-country nationals in general will also remain at the center of European attention. As Member States shape the content of the European 2020 strategy for growth, the inclusion and specific needs of people with protection needs residing in Member States must be considered, along with those of immigrants in general.

UNHCR recalls that persons fleeing persecution, armed conflict or widespread human rights violations, or persons who are stateless, have in many cases lost the bond between state and individual, which is the natural foundation of citizenship. Furthermore, they may have lost close relatives, property and other important features of their previous lives, in difficult circumstances. Many have left behind family members in order to find safety, and some have been forced to separate from their children, their spouses and their social and emotional networks of support. They often find themselves in unfamiliar circumstances without the opportunities to return home that many migrants have.

### Conditions and support conducive for integration

Starting a new life in such circumstances requires conditions conducive for integration, as well as support to overcome initial difficulties, such as **language** learning, building **social networks** and finding one's way in society. Welcoming **communities** create the foundation for this integration, along with concrete and targeted support. UNHCR welcomes the European initiatives to promote good models for language learning and committed societies. The organization urges the Cyprus Presidency to support efforts to strengthen the **cooperation among Member States** and with **civil society** actors, including refugees, to find the most suitable and innovative solutions to address the needs.

## Family reunification

Discussions will continue under the Cyprus Presidency on improvement of the implementation of the Family Reunification Directive,<sup>4</sup> potentially including through interpretative **guidelines** and **other measures**. Despite the more favourable provisions applying to refugees under the Family Reunification Directive by comparison with other third country nationals, UNHCR observes throughout the EU many practical **obstacles** to the family reunification process. This leads to prolonged separation of families, significant procedural costs and, in many cases, no realistic possibility of success.

### Family reunification for beneficiaries of subsidiary protection

In response to the EC's 2012 Green Paper on the issue, UNHCR has issued a number of recommendations on the subject, including that all Member States provide **beneficiaries of subsidiary protection** with access to family reunification under the same favourable rules as those applied to refugees. UNHCR has also encouraged Member States to refrain from applying **time limits** to use of the more favourable conditions granted to refugees, in recognition of their specific situation which may preclude them from initiating family reunification processes at the first opportunity.

### Family members

UNHCR also encourages Member States, and invites the Presidency to support, the application of liberal **criteria for the identification of family members**, to promote comprehensive reunification of families. This should include with extended family members where dependency is shown between such family members.

### Appropriate information on family reunification

UNHCR also encourages Member States to ensure that beneficiaries of international protection receive appropriate information on family reunification in a manner which is **timely** and readily **understandable**.

### Proving family links

UNHCR has also called on the EC and the Member States to ensure that in law and in practice, requests for family reunification by beneficiaries of international protection are not rejected based solely on the lack of **documentary evidence**. Guidelines on the evidence required to establish family links, and appropriate training for decision makers, are needed. UNHCR has underlined that Member States and the EC should utilize UNHCR's guidance on the use of **DNA testing** for the purpose of documenting family links.

---

<sup>4</sup> Council of the European Union, *Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification*, 3 October 2003, 2003/86/EC, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:en:PDF>.

## The Future Funding Framework for Asylum, Migration and Related Areas

---

Discussions on the proposed new EU budget instruments will continue under the Cyprus Presidency. UNHCR recalls that both the proposed **Asylum and Migration Fund (AMF)** and the **Internal Security Fund (ISF)** concern persons who fall under UNHCR's mandate, including asylum-seekers, refugees and other persons in need of international protection. UNHCR is ready to provide support and recommendations to the Cyprus Presidency, in particular on the AMF, to contribute to ensuring that a well-functioning financial framework is put in place that fully reflects the EU's protection responsibilities.

### **Policy Dialogue**

The European Commission has proposed simplification of the existing funding mechanisms and reduction of the bureaucratic process, *inter alia* through shared management of the fund under a multi-annual programming system, preceded by a **policy dialogue** within a **strategic framework** defined at EU level. UNHCR welcomes this concept, and is ready to work with the Presidency, States and EC to further develop the policy dialogue as an important potential instrument to ensure better use of funds.

### **Appropriate funding for strengthening the CEAS**

UNHCR would caution that the allocation of funding within the Asylum and Migration Fund between its **four objectives** (strengthening the Common European Asylum System; supporting legal migration; promoting return strategies, and migration management) 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. The distribution of funding, in particular between **migration management** on the one hand, and the building of **quality asylum systems** on the other within the AMF, will be most efficient if it is based on an **analysis of the gaps** in asylum and reception systems. It should also be proportionate to the needs of each Member State and fair to asylum-seekers and beneficiaries of international protection.

### **Role of civil society**

UNHCR has consistently supported a greater role for **civil society** in discussions around EU funding, as key expert observers and partners in many projects. In this context, UNHCR considers that the "Partnership Principle" expressed in the propose Horizontal Directive regulating general provisions of the AMF and ISF regarding States' and EU institutions' dealings with international organizations (IOs) and civil society actors should be strengthened. More systematic cooperation with experienced IOs and NGOs can only enhance the positive impact of EU-funded initiatives and will contribute in ensuring the right balance in funding is achieved.



<b>Support for asylum structures and training</b>	UNHCR considers that the new rules should provide the possibility to support appropriate <b>administrative infrastructures</b> and ongoing <b>training</b> of staff of asylum authorities and judicial bodies in all Member States, which are not limited to those which have <b>recently acceded</b> to the Union. Each Member State's authorities must continue to dedicate national budgetary resources to administrative infrastructures which guarantee high quality asylum systems, as well as to updating their knowledge on a continuous basis. However, European funds can supplement and enhance national budget allocations to ensure optimal asylum services and systems. They should thus be used both to support State and non-state actions that can serve this end.
<b>Resettlement funding</b>	In the resettlement sphere, to encourage more Member States to take part in resettlement beyond 2013, UNHCR would support adjustment to the financial allowances provided for resettlement programmes, to provide increased financial support for any <b>additional resettlement places</b> offered by new or established resettlement countries, in addition to offering additional funding for resettlement according to <b>EU priority categories</b> .
<b>External dimension</b>	UNHCR recommends that full <b>coherence</b> of AMF funding with the <b>EU's external aid policy</b> is ensured, so that that activities funded in third countries will be pursued in the genuine interests of those third states, for the benefit of refugees and in close partnership with national actors concerned.
<b>Returns</b>	UNHCR welcomes the AMF's explicit reference to assisted <b>voluntary return</b> measures in preference to forced return. Voluntary return, supported by appropriate counselling and material assistance, presents fewer risks of human rights violations and of individual hardship. <sup>5</sup> This is consistent with the approach taken by the Returns Directive which foresees that "voluntary return should be preferred over forced return". <sup>6</sup> In addition, UNHCR recommends that monitoring mechanisms for forced return receive sufficient funding, extending to monitoring <b>post-return</b> and evaluating the <b>sustainability</b> of return actions.
<b>Protection sensitive border management</b>	Finally, in relation to the Internal Security Fund, UNHCR recommends that the proposed objectives are amended to include a reference to <b>protection-sensitive border management</b> which can ensure that people seeking international protection will be referred to asylum procedures. In addition and in reflection of binding EU law, the proposal could include reference to the EU Charter of Fundamental Rights, most notably articles 18 (on the right to asylum) and 19 ( <i>non-refoulement</i> ).

---

<sup>5</sup> 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>.

<sup>6</sup> 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>

## Concluding Remarks

---

UNHCR appreciates that Cyprus begins its Presidency at a particularly challenging moment for the Union at every level. The Presidency's willingness to prioritize and engage in a concerted way with asylum and refugee protection, and to work to fulfill the EU's ambition to complete the Common European Asylum System, is most welcome. UNHCR is ready to contribute in the various fora and processes to which it can bring expertise, knowledge and experience, to the benefit of all stakeholders in the asylum debate in the EU today.

UNHCR,  
July 2012