

UNTYING THE EU RESETTLEMENT FRAMEWORK

ECRE'S RECOMMENDATIONS ON BREAKING THE LINK WITH MIGRATION CONTROL AND PRESERVING THE HUMANITARIAN FOCUS OF RESETTLEMENT

I. INTRODUCTION

In July 2016, the Proposal for a Regulation establishing a Union Resettlement Framework (“the Framework”) and amending Regulation (EU) No 516/2014 was published, along with three other proposals for revision of the Common European Asylum System (CEAS). The aim of the proposal is to establish a permanent resettlement framework for the EU, with common rules on admission, procedures for the resettlement process, types of status accorded, decision-making procedures, and financial support for Member States participating in the framework.

While in principle ECRE welcomes the idea of a resettlement framework for the EU, a number of concerns make it impossible to support the proposal in its current form. These concerns relate primarily to the way resettlement may be instrumentalized to encourage countries to cooperate on migration control and deterrence of irregular arrivals. This runs counter to the long-standing function of resettlement as a life-saving and protection tool for the world’s most vulnerable. ECRE is also concerned about the Framework’s eligibility and exclusion criteria which potentially exclude many categories of refugees in need of resettlement, including vulnerable cases and those with no other solution in sight.

II. ANALYSIS

The Framework will be operationalised through the adoption, in an implementing act, of an Annual EU Resettlement Plan, presented by the Commission with the draft annual EU budget. The Annual Plan will include a maximum number of resettlement places for the EU and a breakdown per Member State, all based on identified EU geographic priorities. At least one targeted EU Resettlement Scheme, with fixed numbers, will implement each Annual Plan. It is unclear whether the choice of instrument (a regulation) will ensure greater participation and commitment from the Member States. The numerical target set in the Annual Plan and Scheme(s) will be a maximum, but there is no mechanism to hold Member States accountable if they do not meet these targets. The decision to propose a regulation may in fact relate more to the need for convergence of statuses, rights, and prevention of secondary movement, in line with the other CEAS proposals.

I. INSTRUMENTALIZING RESETTLEMENT

One of the stated aims of the Framework is to use it as an incentive to encourage certain countries to cooperate on migration control, deterrence, and readmission. Instead of being a humanitarian programme that provides durable solutions for the most vulnerable, resettlement is “a partnership activity”, with reference made to the Partnership Framework.¹ Inspired by the EU-Turkey deal that offers resettlement as a *quid pro quo*, the Framework risks instrumentalizing resettlement to exert leverage on these “partner” countries. Conversely, protracted refugee situations are not explicitly mentioned as a criterion.

Setting targets for specific displacement situations or regions can make sense (for example for Syrians in the Middle East or Somalis in Ethiopia), and mirrors the identification of resettlement needs by UNHCR (by region or group). Nevertheless, it is important to ensure that the EU maintains a commitment to many different regions, including where there are protracted refugee situations.

II. NEGATIVE IMPACT ON STATUS AND ELIGIBILITY CRITERIA

The procedures for granting status and the eligibility criteria in the proposed Framework may have a negative impact on the quality of resettlement as currently implemented by some Member States. In particular, the Framework provides for an ordinary and an expedited procedure. Refugees admitted through the ordinary procedure may receive either refugee or subsidiary status, while refugees admitted through the expedited procedure can only receive subsidiary status.

ECRE believes that all refugees granted a resettlement place in a Member State (or a place under other forms of admission) should receive refugee status in order to support integration, and that Member States should refrain from using subsidiary status. It is concerning to see that for vulnerable cases in urgent need of protection (i.e. those under the expedited procedure) there are fewer guarantees that this will happen. In fact, the expedited procedure only guarantees transfer to a Member State and refugees will then have to enter the asylum procedure. In addition, expedited resettlement is not fast enough: the proposal stipulates that it should be completed within four months (six months for complicated cases), whereas currently, emergency resettlement can happen in a few weeks or a matter of days if necessary.

In terms of eligibility criteria, while most are in line with UNHCR’s eligibility criteria, some are not. First, family reunification is a UNHCR submission criterion for cases in which this is the only way to reunite family members. The proposal includes categories of nuclear and non-nuclear family members who would normally be eligible for family reunification under the 2003 Council Directive for Family Reunification. As a matter of principle, these categories of family members should not be resettled and financed under this programme in order to allow the available places to be used for resettlement of persons who have no other legal way to enter the EU. Member States should not (be supported to) shy away from their family reunification obligations by shifting cases over to resettlement.

It is unclear why certain categories of refugees are included, such as internally displaced persons and “persons with socioeconomic vulnerabilities”, as they are not among UNHCR’s submission categories. There is also no definition of the latter, and who is to be included could be highly arbitrary.

More importantly, there is no reference to refugees who are not able to either integrate locally or return to their home country and for whom no other durable solutions are available, such as those in protracted refugee situations – a typical UNHCR submission category. Similarly, refugees from regions in which Regional Development and Protection Programmes (RDPP) are implemented were previously a priority category but are no longer mentioned. In ECRE’s view, linking RDPP to resettlement could better support durable solutions for refugees.

Integration criteria are also included with the suggestion that Member States give preference to refugees with “social and cultural links” provided that this does not involve discrimination. The wording here is ambiguous

¹ See p. 10, recital 10 on p 19, “[...] the regions or third countries from which resettlement is to occur should fit in a tailored engagement with third countries to better manage migration as foreseen in the Commission’s Communication of 7 June 2016 on Establishing a new Partnership Framework with third countries under the European Agenda on Migration’, and Article 4 (c) and (d).

and it is unclear under which circumstances these criteria will be used and how they relate to the eligibility and vulnerability criteria.

III. UNFAIR GROUNDS FOR EXCLUSION

In the Framework, refugees are penalised for irregular entry by being denied resettlement if they have stayed, irregularly entered, or attempted to irregularly enter EU territory in the previous five years. In addition, they are excluded if any Member State has refused to resettle them during the previous five years. These two exclusionary criteria may deny resettlement to refugees who would otherwise meet the eligibility criteria. Currently, UNHCR can refer refugees rejected by one Member State to another Member State. This is an important safeguard because they may be rejected by one Member State for reasons that do not apply in another, for example, a lack of specialised medical treatment in a given country may be grounds for rejection. The proposal's provision will now exclude them (and UNHCR) from exhausting different options across Europe.

In addition, permanently excluding persons rejected for reasons such as security, international relations or similar, which apply *prima facie*, may lead to blanket exclusions which cover vulnerable and eligible cases.

Finally, the use of annual EU geographic priorities – which are likely to be countries covered by the Partnership Framework – means that vulnerable refugees and emergency cases from other parts of the world have no chance of resettlement.

IV. RESETTLEMENT NUMBERS MAY NOT INCREASE

Civil society organisations and international actors have long advocated for European countries to substantially increase their resettlement numbers in order for Europe to make a meaningful contribution to global resettlement. The Framework may not contribute to increasing the overall numbers, however: the number to be set in Annual Plans and Schemes is a maximum related to the maximum budget available for the year, and thus might not be achieved.

More worryingly, according to Recital 31:

“national programmes should not jeopardise the attainment of the Union’s objectives under this Regulation, for example where they contribute an additional number of resettlement places to targeted Union resettlement schemes established under this Regulation beyond their contribution to the maximum number of persons to be resettled”.

With this provision, the proposal may undermine national programmes that aim to include other categories of refugees. The AMIF Regulation stipulates that Member States receive EUR 10,000 for each person resettled under common EU resettlement priorities set out in the EU scheme, and EUR 6,000 for each person resettled outside the EU scheme. The proposed Framework would no longer finance resettlement outside the EU scheme, meaning that if Member States want to resettle refugees from protracted refugee situations or nationalities that are not included in EU geographic priorities, these resettlement places will not be funded. This, combined with the suggestion that national programmes should not “jeopardise” EU priorities, means that Member States have incentives to pool all their quotas under the EU framework and are less likely to resettle other cases.

V. OTHER CONCERNS

The fact that resettlement plans will be made annually instead of bi-annually as under the current AMIF framework (which was requested by countries experienced in resettlement in order to help them meet their quotas), will significantly slow down the process.

Finally, the role of the EU Agency for Asylum (EUAA) is unclear. Apart from coordinating technical cooperation

and the pooling of resources, it is envisaged that the EUAA will participate in referrals to Member States for persons eligible for resettlement under the ordinary procedure. It is unclear however under which circumstances referrals will be made by UNHCR, the EUAA or the Member States, how that will be decided and coordinated, and whether the same criteria will apply in all cases.

III. RECOMMENDATIONS

1. Resettlement should be disentangled from the Partnership Framework and from cooperation in reducing irregular migration and readmission
2. Prioritisation of countries or caseloads should be based on global resettlement needs and identified protection situations, including protracted refugee situations
3. All refugees granted a resettlement place in a Member State (or a place under other forms of admission) should receive refugee status; Member States should refrain from using subsidiary status
4. Refugees admitted through the expedited procedure should have access to status; the risk that their application be rejected on arrival in the Member State should be removed
5. The expedited procedure should be faster, as per current practice
6. Provisions on family reunification should only apply for cases not covered by current law on family reunification, i.e. where it would be the only way to reunite family members, as per the UNHCR submission criteria. Member States should use the applicable family reunification laws
7. Provisions on IDPs and persons with socioeconomic vulnerabilities should be clarified as these are not UNHCR submission categories
8. Eligibility criteria should include refugees in protracted refugee situations and refugees who cannot integrate locally or return to their home country and for whom no other durable solutions are available
9. The provisions on application of integration criteria by Member States should be clarified, especially in terms of how they relate to other eligibility criteria
10. Punitive elements should be removed from the Framework: refugees should not be excluded from resettlement due to previous irregular entry into the EU, and should not be excluded from re-submission if rejected by one Member State
11. Blanket exclusions should be removed, including using grounds for exclusion such as security, international relations or similar prima facie grounds
12. Resettlement plans should be bi-annual or otherwise multiannual as under the current AMIF framework, in order to allow Member States to fill their quotas
13. The involvement of the EU Agency for Asylum (EUAA) in making referrals to Member States under the ordinary procedure should be clearly defined, and the overall roles of UNHCR, EUAA and the Member States should be clearly set out
14. Rather than a cap or a maximum number of resettlement places, the Annual Plan and Schemes should include ambitious minimum numbers of places that Member States should be obliged to reach and encouraged to exceed
15. Member States should not be discouraged from offering additional resettlement places according to national priorities which can exist alongside EU priorities; disincentives and discouragement of Member State resettlement beyond the EU framework should be removed.