



Updated Recommendations to The Netherlands for its Presidency of the Council of the EU

January - June 2016



The Netherlands, Application center for asylum seekers in Ter Apel in the snow. © UNHCR/P. de Ruiter 2010

In July 2015 UNHCR published its recommendations to Luxembourg and the Netherlands for their Presidencies of the Council of the EU from July to December 2015 and January to June 2016 respectively. The recommendations, available [here](#), urged the Luxembourg and Netherlands Presidencies to prioritize measures implementing proposals under the Agenda on Migration focused on protection, saving lives, and addressing root causes of forced displacement and irregular movement, as well as efforts to end statelessness in Europe.

In light of the continuation and escalation of the displacement crisis in Europe's neighbourhood and within the EU, UNHCR takes this opportunity to set out updated

recommendations to the Netherlands for its Presidency of the Council of the EU.

The Common European Asylum System has been tested and found wanting in response to the crisis in Europe. The inability of the existing frameworks to facilitate the management of the crisis and preserve the protection space in a sustainable manner have placed Europe's asylum system in jeopardy. Leadership and action are urgently required to retain the progress achieved in recent years and to build a system that can respond to current realities. Solidarity amongst EU Member States and a greater reliance on international co-operation and supra-national systems are the means by which a coherent response can be delivered.

The key elements of that response should include a focus on: addressing the root causes of displacement; strengthening support to refugees and host communities in third countries; the development of credible alternative pathways to access

protection in Europe and beyond; and full implementation of the European Council decisions in 2015 and of the commitments made at the Leader's Summit on the Western Balkan Route of 25 October 2015.

Following the adoption of the European Agenda on Migration in May 2015, the Commission put forward a package of measures in September 2015 to inter alia address the refugee crisis and tackle root causes, including proposals on relocation, a Trust Fund for Africa and actions on returns. Additional measures were set out in December 2015. UNHCR has welcomed these proposals and called for swift progress on implementation. In tandem with this package of measures, the EU-Turkey Joint Action Plan was adopted and reform of the Dublin Regulation will be accelerated with a proposal from the Commission expected in February or March.

In this fast paced environment, UNHCR addresses the following recommendations to the Netherlands Presidency on the key issues for the coming months.

1. Relocation

UNHCR has long advocated for and welcomed the EU-wide pilot response mechanism for relocating 160,000 persons in need of international protection from Greece and Italy which commenced in October 2015. Though there have been significant challenges in the implementation of the relocation schemes, the schemes are key elements of the overall EU response to the refugee emergency in Europe, which can assist in better managing asylum and migration systems. UNHCR has issued a number of recommendations on how to build on the lessons learned to make the relocation schemes work more effectively. These Recommendations are available [here](#). Concerns and constraints observed include, for example, delays in the implementation of the hotspot approach and effective registration; the need for improved reception capacities, including for vulnerable cases, both in Greece and Italy as well as Member States of relocation; and delays and prohibitive preferences in the 'indication' and 'filling' of available places by Member States of relocation. Collectively, these challenges have hampered the implementation of the process and challenged its credibility, and in particular for asylum seekers.

According to the latest European Commission's update, 17 Member States have made 4,237 places available for relocation as at 29 January 2016. However, UNHCR observes that the actual number of places formally indicated as available and open to be filled within the normally foreseen two-month period is significantly lower and does not allow Greece and Italy to promptly relocate applicants. Thus the indications of available places by Member States of relocation without prohibitive preferences needs to be significantly increased to make the relocation schemes effectively work.

Recommendations:

- UNHCR recommends that the Netherlands Presidency focuses on overcoming the current challenges identified and has set out specific recommendations to this effect;
- In particular, UNHCR urges the Netherlands Presidency to encourage cooperation amongst all agencies and Member States;
- UNHCR also encourages the Netherlands Presidency to urge all Member States to significantly increase their formal relocation pledges without prohibitive preferences in order to make the relocation schemes effectively work.

2. Dublin Regulation

In its Communication of 23 September 2015 on "Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration", the European Commission announced that it will present a proposal for a reform of the Dublin III Regulation by March 2016. The Dublin Regulation constitutes the only permanent regional instrument that governs the allocation of responsibility for asylum-seekers, and is the only legal way for asylum-seekers to unite with other family members within the EU. The Dublin Regulation has largely failed both asylum-seekers and States with low numbers of transfers, in particular for family reunion, being effected and inconsistent implementation of the Dublin Regulation being generally widespread. UNHCR understands the reform of Dublin may now be accelerated and a radical re-think of the system may be contemplated.

UNHCR has accelerated its Study on the functioning of the Dublin III Regulation with the aim of providing recommendations to feed into the reform. The reform should be guided by the necessity to develop a system that is able to adapt to changes in inflows and that ensures the equitable sharing of responsibilities within the EU in the interest of asylum-seekers and States alike.

Recommendations:

UNHCR recommends that the Netherlands Presidency

- Focuses on achieving results from the relocation schemes that might be built on in a revised Dublin Regulation;
- Urges in the meantime Member States to promptly expedite the processing, under the current Regulation, of cases involving UASCs for smooth family reunion;
- Promotes an approach to Dublin that can deliver on the main aim of the Regulation of facilitating access to asylum procedures; and
- Renews attempts to seek agreement on a distribution key that can deliver on the principle of solidarity which underpins the Common European Asylum System.

3. Complementary Alternative Pathways

As the number of those forcibly displaced has reached 60 million persons worldwide, the ongoing and increased availability of resettlement places and other alternative pathways is vital. While welcoming the adoption of the Conclusions on Resettlement by the Council of the European Union for 20,000 persons over a two year period (2015-2017), UNHCR recalls that the European Agenda on Migration also requests Member States to make use of other alternative avenues for persons in need of international protection to reach Europe. Additional complementary pathways of admission, such as private sponsorship schemes, student scholarship programmes, labour mobility schemes and the admission of relatives, amongst others, open up opportunities for refugees to access safety and potentially dissuade them from undertaking perilous land and sea journeys.

UNHCR also notes the European Commission's recommendation for a Voluntary Humanitarian Admission Scheme (VHAS) with Turkey. UNHCR stands ready to assist the Netherlands Presidency in advancing the details of the VHAS with all other relevant actors.

Recommendations:

UNHCR calls on the Netherlands Presidency to:

- Urge Member States to remain open to the resettlement of refugees from all priority situations as reflected in UNHCR's Projected Global Resettlement Needs document, and to pledge resettlement places in addition to existing annual quotas; and
- Spearhead the necessary actions for the development of other legal pathways to Europe, while encouraging Member States to pledge additional places at the *High-level meeting on global responsibility-sharing through pathways for admission of Syrian refugees*, which will take place on 30 March 2016 in Geneva.

4. Borders Package

The package of measures set out in the European Agenda on Migration were complemented by a "Borders package" in December 2015 including the Commission's proposal for the establishment of a European Border and Coast Guard, built from Frontex, and for a strong and shared management of the EU external borders. UNHCR calls on EU institutions and Member States to consider these proposals in light of international obligations concerning persons in need of international protection, in particular, respect for the principle of non-refoulement and access to fair and efficient asylum procedures. The objective should remain to increase response capacity and expertise at the EU external borders, with increased attention to the identification, prevention of and response to deficiencies and ensuring border management is in line with international and EU standards, including full compliance with Fundamental Rights and personal data protection.

Recommendation:

- UNHCR encourages the Netherlands Presidency to lead discussions on the proposed Borders Package by putting protection and fundamental rights at the forefront of border management policies.

5. Reception Conditions

Implementation of the standards of the recast asylum legislative package has come under strain with the high number of persons applying for international protection, especially in certain Member States such that in some even basic reception conditions required under the Reception Conditions Directive in times of pressure can no longer said to be fulfilled. Most affected are families and unaccompanied children and other persons with specific reception needs. UNHCR is concerned about an increasing trend where Member States resort to measures that essentially erode reception conditions with the primary aim to discourage people from applying for asylum. Proper reception conditions are a precondition for applicants of international protection to present their claim properly. Moreover, research has shown that adequate reception conditions allow for smoother integration later on of persons recognized.

Equally of concern is the increased use of detention of persons who enter the territory of Member States without the required documentation including families with children and age disputed unaccompanied children. UNHCR recalls that because of the documented detrimental effects detention has on the mental health including the social and cognitive development of children, decisions to detain should be a last resort and made on an individual bases and be in line with EU law and international human rights standards and principles.

Recommendations:

UNHCR encourages the Netherlands Presidency to:

- Ensure that adequate reception conditions are maintained in Europe. In particular, implementation of the 17-Point Action Plan on the Western Balkan route should be advanced to facilitate access to protection and prevent onward movements;
- Focus on the reduction of incidents of sexual and gender based violence, including through improving reception conditions; and
- Urge Member States to restrict the use of detention of asylum-seekers to last resort situations and following individual decision making.

6. Restrictive Measures

UNHCR is concerned about the restrictions some Member States are presently introducing in the area of asylum, including on family reunification and stricter internal border controls.

On family reunification, UNHCR estimates this pathway represents a very small proportion of overall migration to Europe. In addition, family reunification is one way that people can reach Europe safely and legally. With such restrictions, there is a real risk that more women and children, who have previously safely joined their families through existing schemes, will be pushed towards dangerous sea journeys in the hands of smugglers. There are also serious concerns as to how life without family impacts on people's well-being, and their ability to integrate if they do manage to reach Europe.

On border controls, States have a legitimate duty to control their borders and manage migratory flows as well as legitimate security concerns. This should, however, be done in full respect of international obligations to protect people in need of protection. UNHCR considers that safeguards need to be in place to ensure that the introduction of internal border controls, ID checks and carrier sanctions do not have the effect of preventing individuals in need of protection from exercising their right to seek asylum. The recent successive announcements of stricter border control measures by a number of European countries underline the urgency of putting in place an effective comprehensive EU-wide response. As an element of such a comprehensive approach, fair and equal distribution of asylum-seekers among Member States needs to be promoted (see above).

Recommendations:

UNHCR calls on the Netherlands Presidency to:

- Promote a flexible approach to family reunification across the EU and to urge Member States to use all the opportunities provided by the Family Reunification Directive, including possibilities for reuniting families beyond core family members, in a spirit of solidarity; and
- Demonstrate European leadership in urging all Member States to strictly comply with the right to seek asylum through an effective and protection-sensitive border management practice in line with relevant provisions of the Schengen Borders Code.

7. Integration

UNHCR observes with serious concern the growth of anti-foreigner rhetoric, discrimination and, in some cases, extremist sentiments that have emerged in some EU countries of late. The EU is built on the values of freedom, peace, democracy, the protection of human rights and solidarity. European States have a long tradition of providing a safe haven to those fleeing violence, persecution and

conflict, which should be preserved. Continued resolute leadership is called for at this particularly difficult time to de-dramatize and de-politicize the humanitarian challenges of protecting refugees and to provide a better understanding of refugees and the right to seek asylum. UNHCR underlines the positive contributions that migrants, refugees and their families make to all societies - bringing skills, language abilities, cultural richness and a willingness to work as they seek to build a new life. However, to fulfil their potential, refugees and other beneficiaries of international protection must be supported in this process, and provided with the tools they need to fully integrate.

Recommendations:

UNHCR requests the Netherlands Presidency to:

- Keep the integration of persons in need of international protection on the agenda of all Member States;
- Reiterate the inherent value and rich diversity that refugees and migrants bring to our societies; and
- Support a more comprehensive approach to promoting good practices on integration and ways to reflect these practices in national policies and programmes.

8. Security

UNHCR shares the legitimate concern of States to ensure that there should be no avenue for those supporting or committing terrorist acts to secure access to territory, whether to find a safe haven, avoid prosecution, or to carry out further attacks. UNHCR's views on this issue are set out [here](#). An effective response to possible security threats cannot, however, come from measures seeking to restrict the movement of refugees and migrants and further limit access. This simply diverts refugee and migrant movements along other routes, aggravates their situation, and contributes to the flourishing business of smugglers and traffickers.

UNHCR considers that dealing with the terrorist threat in the context of asylum does not necessitate an amendment of the principles on which refugee protection is based, but requires a comprehensive and coordinated approach to addressing situations of mixed movements of refugees, migrants and others, with proper security and protection safeguards built in. UNHCR recognizes that the sharing of data between Member States is crucial, provided it is done in line with established principles and standards of data protection, and with due respect to international law and international human rights law. In this respect, UNHCR encourages States to improve their registration and screening mechanisms including through a constant use of available data from existing relevant databases.

In addition, as the EU also commits to under the European Agenda on Migration, addressing the root causes of forced displacement is a key element to a broader and more holistic response.

Recommendations:

UNHCR calls on the Netherlands Presidency to:

- Pursue an integrated response that focuses on addressing asylum and migration flows, thereby enabling Member States to identify those entering their territory and respond to protection as well as security concerns in line with their obligations under international law;
- Urge Member States to strictly comply with both international law and international human rights law standards when reinforcing registration and screening mechanisms, in particular at the external borders; and
- Translate the commitment in addressing the root causes of displacement into action by ensuring that the Agenda's related proposals are actually implemented, including within the framework of the Regional Development and Protection Programmes.

9. Addressing Root Causes

The European Agenda on Migration committed the EU to address the root causes of forced displacement, and serious reflections have been taking place at various high-level multi-stakeholders meetings to that effect. This, on the EU side, culminated in the Valetta Summit on Migration in November 2015, where the EU Emergency Trust Fund to tackle the root causes of irregular migration in Africa was launched.

Recommendations:

- UNHCR calls on the Netherlands Presidency to ensure that funding allocations of the Trust Fund for Africa (but also other similar EU Trust Funds established for the Middle East and for Colombia) address long-term root causes of forced displacement and irregular movements; and
- UNHCR, therefore, strongly urge the Netherlands Presidency to also ensure that EU Trust Funds and other available mechanisms, will further support livelihood and education opportunities for people in need of international protection in hosting countries with a view to stabilizing the population.

10. Funding for Displacement Crises

With humanitarian needs rising exponentially, and displacement crises becoming more protracted, it puts in evidence the inherent insufficiency, and unpredictability of voluntary donations for humanitarian response. There is also a continued fundamental need to review the relationship between humanitarian and development funding. In the current context of growing conflict-induced displacement, development funds are not accessible quickly enough in many situations where they are needed, and humanitarian actors are time and again forced to act as substitutes for the absence of structural assistance.

Recommendations:

UNHCR calls on the Netherlands Presidency to:

- Advocate for development agencies, donors and international financial institutions to work together to increase flexibility and complementarity between short and longer-term interventions, as well as for the presence of development actors on the ground from the onset of a crisis;
- Support an increased un-earmarked and multi-year funding approach for speed and predictable response to humanitarian crises; and also
- Support a greater use of social inclusion mechanisms with a view to ensuring that displaced populations do not remain marginalized, forgotten and children become 'lost generations'.

11. World Humanitarian Summit

There is broad consensus amongst the humanitarian community that the forthcoming May 2016 World Humanitarian Summit (WHS) is an opportunity for all stakeholders to affirm the key humanitarian principles of humanity, neutrality, impartiality and independence as the cornerstone of humanitarian action. The WHS also provides the opportunity to recognize and define areas for changes to the humanitarian system so that it can better respond to the new challenges and opportunities.

UNHCR stands ready to work closely with the Netherlands Presidency, Member States and other relevant EU Institutions, to promote a humanitarian system that: *is truly universal, inclusive and accountable, places people at the centre of humanitarian action, emphasizes the centrality of protection of people affected by humanitarian crises, fully addresses SGBV and promotes gender empowerment, focuses on solutions of protracted refugee situations, stresses the need to develop innovative policies and coordination, programme management, monitoring and evaluation models, and improves humanitarian financing models to meet the increasing needs as well as to ensure improved timeliness, transparency, predictability and effectiveness. To this aim, increased un-earmarked and multi-year funding and broadening the donor base are essential.*

Recommendations:

UNHCR recommends that the Netherlands Presidency:

- Promotes a gender-sensitive people and protection-centred humanitarian system that also focuses on solutions to protracted displacement situations; and
- Advocates for an improved humanitarian financing model allowing to meet the increasing needs in a timely manner and with predictability.

12. Ending Statelessness

On 4 December 2015, the Council of the EU first Conclusions on statelessness were adopted. The Conclusions emphasize the importance of exchange of good practices and information relating to statelessness among Member States. On 4 November 2015, UNHCR commemorated the first anniversary of the global campaign to end statelessness by 2024. With sufficient political will, it is certainly possible to reach this goal within the EU.

Recommendations:

UNHCR encourages the Netherlands Presidency to:

- Support the launch and effective functioning of the platform for the exchanges of good practices related to the collection of reliable data on stateless persons as well as the statelessness determination procedures among Member States;
- Urge Member States to ensure that all children born in their territory regardless of their legal status or their parents' identity documents are registered; and
- Make the accession to the two UN Statelessness Conventions and their implementation by all EU Member States a priority.

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