



UNHCR comments on the European Commission proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum – COM (2016) 271

These comments complement UNHCR’s overarching proposals for Europe as set out in: “Better Protecting Refugees in the EU and Globally”, UNHCR’s proposals to rebuild trust through better management, partnership and solidarity, of 05 December 2016¹. The proposals focus on four elements: Engagement beyond EU borders, Preparedness, a well-managed asylum system and greater emphasis on integration.

The events of 2015 highlighted the need for a revitalized asylum system in the EU. In its overarching proposals UNHCR recommends that, in addition to ensuring access to territory is guaranteed and new arrivals are registered and received properly, a new asylum system would also allocate responsibility for asylum seekers fairly among EU Member States, and ensure that EU Member States are equipped to meet the task.

To complement and elaborate on these overarching proposals, UNHCR is setting out its position on the European Commission’s proposals to reform the CEAS in a series of detailed commentaries. This paper sets out UNHCR’s comments on the specific aspects of the EC’s proposal for a European Union Asylum Agency (EUAA). More specifically, UNHCR calls for an enhanced role for the EUAA including in relation to monitoring and ensuring the quality of decision making and to lead early warning and contingency planning initiatives. UNHCR regards the enhancement of the roles and scope of the EUAA and Frontex as the lynchpins of a viable future Common European Asylum System. In this regard, the strengthened role in providing guidance and operational support envisioned for EUAA is an important step towards achieving consistently high standards and harmonized approaches of international protection, including reception, across the European Union. UNHCR sees a new active role for the EUAA, particularly in relation to family reunification and integration, and together with Frontex, to lead on the development of comprehensive and realistic contingency plans, covering all relevant processes and needs from first arrival to integration or return.

1. Introduction

Following its April 2016 Communication² setting out the priorities for improving the Common European Asylum System (CEAS), the European Commission (EC)

¹ Available at: <http://www.refworld.org/docid/58385d4e4.html>

² European Commission, *Communication from the Commission to the European Parliament and the Council - Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe*, COM(2016) 197 final, 6 April 2016, available at: <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52016DC0197>

proposed³ as part of a first package of major reform of the CEAS the creation of a European Union Agency for Asylum (EUAA or hereafter “the Agency”)

The Commission’s proposal aims at strengthening the role of the European Asylum Support Office (EASO) and developing it into an Agency which can assume a new role in the implementation of policy and a stronger operational role. In order to achieve this, it suggests transforming the current EASO into a fully-fledged EU Agency with the means and mandate necessary to assist Member States in crisis situations and to build a solid legal, operational and practical framework for the Agency to be able to reinforce and complement the asylum and reception systems of Member States. In addition, the Agency would also provide the necessary operational and technical assistance to Member States; be able to support a sustainable and fair distribution of applications for international protection; monitor and assess the implementation of the CEAS; and enable convergence in the assessment of applications for international protection across the Union.

Since 2011, the EASO has gained experience and earned credibility for its work. The Member States increasingly rely on its operational and technical support. The past five years have also demonstrated EASO’s role in supporting the implementation of the CEAS by providing common training, practical guidance and Country of Origin Information (COI). The EASO has facilitated and coordinated practical cooperation between Member States’ asylum authorities. However, without an obligation for MS to apply the common EASO tools or competence to monitor and provide any guidance on the interpretation of key concepts of EU asylum law and international refugee law, the EASO has so far only had a modest impact on the convergence of individual decision-making in practice. It is therefore a logical next step to transform EASO into an Agency and centre of expertise in its own right and not one that still significantly relies on information, expertise and support provided by Member States. The current EASO mandate and resources are too limited to allow it to assume a more effective role in implementing and facilitating a functioning CEAS, as reflected in the 2015 external evaluation, and based on the lessons learned during the European refugee emergency.

In UNHCR’s view, it is important to provide the Agency with a mandate and means that correspond to the overall aim to strengthen the CEAS, including assisting Member States in crisis situations to be able to reinforce and complement the asylum and reception systems of Member States. The Agency has the potential to become an actor that can be used to effectively address the structural weaknesses in the CEAS which have been further exacerbated by large scale and uncontrolled arrival of refugees and migrants in 2015.

UNHCR has long advocated for many of the structural changes proposed to strengthen the EASO mandate and capacities to effectively address the deficiencies and shortcoming of the current CEAS and to establish a real emergency response capacity. UNHCR therefore welcomes the Commission

³ European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and Repealing Regulation (EU) No 439/2010*, COM(2016) 271 final, 4 May 2016, available at: http://eur-lex.europa.eu/resource.html?uri=cellar:ce773c1e-1689-11e6-ba9a-01aa75ed71a1.0001.02/DOC_1&format=PDF.

proposal and calls for its swift adoption. UNHCR considers that in the longer term the EUAA could possibly assume the responsibility for asylum decision making at the EU level.

**UNHCR
Mandate**

The United Nations High Commissioner for Refugees (UNHCR) is mandated by the General Assembly of the United Nations (Resolution 428 (V), December 1950) to provide international protection to refugees and together with Governments, seek permanent solutions to the problems of refugees.⁴ Paragraph 8 of UNHCR's Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,⁵ whereas Article 35 of the Convention Relating to the Status of Refugees (hereafter "1951 Refugee Convention")⁶ and Article II of the 1967 Protocol relating to the Status of Refugees (hereinafter "1967 Protocol")⁷ oblige States Parties to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR's duty of supervising the application of the provisions of the 1951 Refugee Convention and 1967 Protocol.

UNHCR's supervisory responsibility is reflected in European Union law, including pursuant to Article 78 (1) of the Treaty of the Functioning of the European Union,⁸ which stipulates that a common policy on asylum, subsidiary protection and temporary protection must be in accordance with the 1951 Refugee Convention. This role is reaffirmed in Declaration 17 to the Treaty of Amsterdam, which provides that "*consultations shall be established with the United Nations High Commissioner for Refugees...on matters relating to asylum policy.*"⁹

Recital 23 and Article 37 of the proposed Regulation govern the Agency's cooperation with UNHCR. UNHCR considers that the proposed Regulation takes due account of the organization's supervisory role and responsibilities as outlined above. UNHCR welcomes also that Article 39(2) of the proposal maintains the participation of UNHCR in the Management Board of the new Agency as a (non-voting) member. As experienced with the current UNHCR role in the EASO Management Board, the close cooperation between the Agency and UNHCR creates synergies and fosters coherence among their actions in supporting States to fulfil their international and European Union obligations in the field of international protection. The new Agency opens new opportunities of cooperation with UNHCR. In order to ensure that the CEAS is developed in full compliance with international standards and practices, comprehensive information, targeted guidance and expertise from UNHCR is needed in all areas of the Agency's work

⁴ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), paragraph 1, available at: <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

⁵ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), paragraph 8(a), available at: <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

⁶ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951 (hereinafter "1951 Refugee Convention"), United Nations Treaty Series No. 2545, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>.

⁷ UN General Assembly, *Protocol Relating to the Status of Refugees*, 30 January 1967 (hereinafter "1967 Protocol"), United Nations Treaty Series No. 8791, vol. 606, p. 267, available at: <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>.

⁸ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, available at: <http://www.refworld.org/docid/52303e8d4.html>.

⁹ European Union, *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities*, 2 September 1997, *Declaration on Article 73k of the Treaty establishing the European Community* [OJ C 340, 10.11.1997], available at: <http://www.refworld.org/docid/51c009ec4.html>.

**General
observations
on
cooperation
with the
agency**

as outlined in detail in the UNHCR proposals.

Over the past five years, UNHCR has enjoyed close cooperation and involvement in EASO activities in the framework of the Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (hereafter “EASO Regulation”)¹⁰ and the EASO – UNHCR Working Arrangement.¹¹ The working methodology applied by EASO to draft modules, tools, guidance and reports in the areas of training, quality, best practices and COI foresees the involvement of Member States, but also experts from UNHCR and civil society organizations, where relevant. This EASO working methodology can be considered as good practice, which should be continued by the new Agency. UNHCR is available to continue making its expertise available to the Agency. In addition, UNHCR believes that the Agency would also benefit from the active participation of other external experts, including from intergovernmental organizations, NGOs and academia.

While welcoming the reference to the general cooperation with UNHCR and civil society in recital 23 and 25 of the proposal, UNHCR suggests adding a specific recital stipulating that the Agency, when establishing working methodology or operational procedures, should follow the current EASO practice and involve UNHCR in addition to MS in the development of training, quality, COI materials, reports, guidelines and operational standards and best practices in the context of Articles 7, 8, 9, 10, 11 and 12 of the proposed regulation. Based on past good practice, UNHCR believes that the Agency would also benefit from the active participation of other external experts, including from other intergovernmental organizations, NGOs and academia in these areas.

UNHCR welcomes in particular that Article 12 stipulates a strengthened Agency role in the promotion of correct and effective implementation of Union Law, including the development of operational standards on the implementation, indicators for monitoring compliance with those operational standards as well as guidelines and best practices on asylum and reception. In connection with Article 13 on the Agency’s monitoring an assessment role, this significantly improves the Agency’s competence to facilitate a more coherent and harmonized implementation of the EU Asylum *acquis*. Given UNHCR’s supervisory role, longstanding expertise and presence in 22 MS (and coverage from other locations of others), UNHCR can contribute an essential independent perspective on the accuracy and fairness of asylum procedures and reception conditions in MS. This is important for the development of effective operational standards, indicators, guidelines and best practices by the Agency to promote the correct and effective implementation of the EU Asylum *acquis*. Further, given the important role civil society organizations have in the asylum and reception systems of many MS, UNHCR also suggests, building on the established good EASO practice, to involve civil society in the monitoring, assessment and tools development process.

¹⁰ European Union, *Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office*, 29 May 2010, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:132:0011:0028:EN:PDF>.

¹¹ UNHCR, *Working Arrangement between the European Asylum Support Office (EASO) and the Office of the United Nations High Commissioner for Refugees (UNHCR)*, 13 December 2013, available at: <http://www.refworld.org/docid/52aef24c4.html>.

Further, unlike the EASO Regulation¹² the proposal does not specifically mention the Agency's procedure to set up working parties. UNHCR suggests that this provision of the previous EASO Regulation is introduced in chapter 9 of the current proposal in a new Article on working parties established by the Agency. This will contribute to underline the importance and relevance of involving, depending on the topics under discussion, UNHCR, other external experts and civil society in work of the Agency. Particular areas where UNHCR and civil society could assist might include country of origin information, training, and dealing with vulnerable asylum-seekers. Further, given UNHCR's specific mandate to provide interpretative guidance on any and all issues relating to the interpretation of international and European refugee law, UNHCR will continue making its expertise available to the Agency.

Recommendations:

- Insertion of a new recital 26

The operating procedures and methods established by the European Union Agency for Asylum should facilitate, the involvement of Member State, EU Agencies and independent external experts, in particular from UNHCR and civil society, including in the development of training materials, Country of Origin reports, guidelines, operational standards and best practices mentioned Articles 7, 8, 9, 10, 11 and 12 of this Regulation.

- Insertion of a new subparagraph to Article 12(2)(a):

The operational standards, indicators, guidelines or best practices mentioned in paragraph (1) and (2) shall be developed in consultation with UNHCR and civil society, where relevant.

- Insertion of a new Article 48 on Working Parties as follows

1. As part of its terms of reference as laid down in this Regulation, the Agency may set up working parties composed of experts from competent Member State authorities operating in the field of asylum, including judges.

2. The Commission shall take part in the working parties as of right. UNHCR representatives may attend all or part of the meetings of the Agency's working parties, depending on the nature of the issues under discussion.

3. The working parties may invite any person whose opinion may be of interest to attend meetings, including representatives of NGOs working in the field of asylum.

¹² EASO Regulation, Article 31.

2. The European Agency for asylum (Article 2)

Article 2 – Tasks of the Agency

Article 2 provides a list of detailed tasks the new Agency shall perform. Given that effective integration is crucial for the functioning of the CEAS and represents a key challenge and opportunity for EU Member States at the same time, UNHCR proposes to explicitly mention the support to integration as an EUAA task. Practical cooperation and information exchange among Member States on good integration practices and on how to strike a balance between the need for States to ensure the effective enjoyment of rights, host communities' willingness to foster a welcoming environment, and refugees' participation in integration programmes, facilitated by the Agency could overall strengthen integration of persons in need of international protection in MS. In this context, the EUAA should in particular support the activities of the European Integration Network established in the context of the EU Commissions Action Plan on integration.

Article 2 (1) (d) specifies how the new Agency will assist Member States in the area of training. UNHCR proposes to task the EUAA also with the development of a common EU asylum certificate in line with the European Qualifications Framework (EQF). The link of the common core curriculum to the EQF will enhance the sustainability and consistency of training developed by the new Agency and contribute to the motivation and qualification of asylum officials and other target groups benefiting from EUAA training. It will further strengthen the professional development and facilitate mobility in capacity building across EU Member States.

Recommendations:

- Adding to Article 2 (1) a new sub-paragraph (n)

NEW subparagraph (n): *shall support the Commission and Member States in relation to all aspects of integration of persons in need of international protection. In this regard, the Agency shall support in particular the practical cooperation and information exchange among Member States and other actions in support of integration.*

- Amending Article 2 (1) sub-paragraph (d) as follows:

(d) assist Member States on training of experts from all national administrations, courts and tribunals, and national services responsible for asylum matters, including the development of a common core curriculum **and a common EU asylum certificate awarded by the Agency;**

- This will further require amending Recital 10 as follows:

(10) The European Union Agency for Asylum should assist Member States with training of experts from all national administrations, courts and tribunals, and national services responsible for asylum matters, including the development of a common

core curriculum **and a common EU asylum certificate. This common EU asylum certificate is based on and awarded upon a valid and reliable assessment according to agreed and transparent learning outcome-based standards.** In addition, the Agency should ensure that all experts participating in asylum support teams or forming part of the asylum intervention pool receive specialist training before their participation in operational activities organised by the Agency.

- This will further require amending Article 7 (4) – as proposed below.

3. Practical cooperation and information on asylum seekers (Articles 3 – 7)

Article 6 – Support to the Dublin system

In the context of the proposed reform of the Dublin system,¹³ and in particular of the proposed corrective allocation mechanism, the Agency will have additional tasks and obligations. In particular, the Agency will be in charge of developing and adapting on a yearly basis the proposed “reference key” and will monitor the application of the financial solidarity mechanism. In UNHCR’s view, the Agency is the natural choice to provide the EC and Member States with the support needed to operate and monitor the corrective allocation and financial solidarity mechanism and overall facilitating an efficient and rights-respecting operation of the Dublin system. As outlined in greater detail in the UNHCR comments to the proposal to recast the Dublin regulation, the Agency can bring a pan-EU perspective as well as the benefits of experience in data collection and monitoring from across the full range of the EU asylum *acquis* to the Dublin system.

In particular, UNHCR welcomes the EUAA’s role in collecting and publishing data relating to the operation of the corrective mechanism (Articles 35, 43 and 59 of the proposal to recast the Dublin III Regulation), which would assist in ensuring transparency. In this context, UNHCR suggest to provide, in Article 45(2) of the proposal to recast the Dublin III Regulation, that eu-LISA, in view of its relevance and expertise, shall develop, operate and monitor corrective allocation mechanism together with the Agency. Further, UNHCR suggest including in Article 45(2) of the latter proposal also an explicit reference that the Agency will have access to the relevant data generated by the automated system necessary to monitor and report to the Commission on the application of the financial solidarity mechanism as foreseen in recast Article 37(5)). As a neutral agency with particular technical expertise, this can only enhance the operation of the Dublin system. It is also welcome that the new Agency will remain responsible for establishing and running a network of national Dublin units, to better monitor the overall system, share good practices, and identify potential issues in relation to fundamental rights.

Article Article 7 sets out the tasks of the Agency in the area of training and introduces an obligation for Member States to integrate the training curriculum established and

¹³ European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*, COM(2016) 270 final, 4 May 2016, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0270>.

7 – Training

developed by the Agency in the training of staff of national services and authorities responsible for asylum matters. Article 7(2) refers explicitly to the Agency's cooperation with Member States, academic institutions and other relevant organizations. Given the well-established cooperation in the context of the EASO training curriculum with UNHCR and civil society, UNHCR suggests an explicit reference to these organizations as well as with Frontex and the European Union Agency for Fundamental Rights in the development of training materials in areas where they have expertise.

EASO has developed in the past five years a comprehensive common training curriculum consisting of 15 modules and handbooks covering all relevant aspects of the asylum and reception systems which promote high standards and best practices in the implementation of international protection standards and the Union law governing the Common European Asylum Systems. According to EASO, over 8000 mainly Member States asylum officials have been trained since 2012. A reference to this existing work and the importance that the Agency should continue to aim to promote highest standards and best practice should be included in Article 7(4) on the Agency's task to develop a European Asylum Curriculum.

As regards the specific or thematic training activities listed in Article 7(5), UNHCR suggests to adding gender, gender identity and sexual orientation, content of international protection, rights of person granted protection, integration and resettlement as specific topics for training activities.

Recommendations:

Amending Article 7(2) as follows:

The Agency shall develop such training in close cooperation with Member States, *where appropriate, Frontex and the European Union Agency for Fundamental Rights* and, in cooperation with appropriate training entities in the Member States, including academic institutions and other relevant organizations, *in particular UNHCR and relevant civil society experts.*

Amending Article 7(4) as follows:

The Agency shall *further develop and update the* European asylum curriculum taking into account the Union's existing cooperation *and work* in that field, *e.g. under Regulation (EU) No. 439/2010. The Agency's curriculum shall aim to promote the highest standards and best practices in the implementation of international protection standards and the Union law governing the Common European Asylum System. (...)*

Member States shall integrate the common core curriculum in the training of staff of national services and authorities responsible for asylum matters pursuant to their obligation under Article 4(3) of Directive 2013/32/EU of the European Parliament and of the Council to ensure proper training of their staff. ***This curriculum shall be accompanied by a common EU asylum certificate.***

Adding new subparagraphs (h), (i) and (j) to Article 7(5):

(h) resettlement;

(i) issues related to the processing of applications for international protection related to gender, gender identity and sexual orientation;

(j) issues related to the content of international protection, rights of person granted international protection and integration support;

4. Country of origin information (Articles 8 – 11)

UNHCR welcomes the specific reference in Article 8(1) to “child specific information and targeted information on vulnerable groups.” UNHCR suggests complementing this with the need to gather specific information on gender, gender identity and sexual orientation and the situation of minorities and groups at risk.

UNHCR welcomes the reference in Article 8(2)(a) that the Agency shall make use of all relevant sources of information, including information gathered from non-governmental and international organisations. In light of UNHCR’s mandate we would recommend to insert a specific reference to UNHCR.

UNHCR would also recommend building on the good practice established by EASO and some Member States and mention in Article 8(2)(c) that such methodology should foresee, a review of COI products by UNHCR and independent experts from academia and civil society.

Recommendations:

- Amending Article 8(1) as follows:

The Agency shall be a center for gathering relevant, reliable, and accurate and up-to date information on countries of origin of persons applying for international protection, including child-specific information, **gender and sexual orientation specific information** and targeted information on persons belonging to vulnerable groups **and minorities**. It shall draw up and regularly update reports and other products providing for information on countries of origin at the level of the Union including on thematic issues specific to countries of origin.

- Amending Article 8(2)(a) and (c) as follows:

The Agency shall, in particular:

(a) make use of all relevant sources of information, including its information analysis on the situation of asylum and other information gathered from governmental, non-governmental and international organizations, *in particular*

UNHCR, including through the networks referred to in Article 9, as well as Union institutions, agencies, bodies, offices and the European External Action Service;

(...)

(c) develop a common format and a common methodology including terms of reference **and the involvement of independent experts in particular from UNHCR, academia and civil society**, in line with the requirements of Union law on asylum, for developing reports and other products with information on countries of origin at the level of the Union.

Article 9 – European networks of country of origin information

EASO has established Strategic and Country specific networks of COI experts of Member States for specific countries of origin, which assume an important role in the EASO COI work. While welcoming that the Agency will also in future be in a position to rely on the support and advice of such European networks, UNHCR suggests inserting a reference in Article 9(1) to foresee the involvement of external experts such as UNHCR and civil society with specific COI and country expertise on a case-by-case basis.

Recommendations:

➤ Amending Article 9(1) as follows:

The Agency shall ensure the coordination of national initiatives producing country of origin information by establishing and managing networks among Member States on country of origin information. **Such networks may, on a case-by-case basis, involve external experts with specific expertise from UNHCR and civil society, where relevant.**

Article 10 – Common analysis on country of origin information

Article 10 entrusts the Agency with broader competences in the area of country of origin information to address more effectively the significant disparities in protection rates and status granted between the Member States. A common and uniform interpretation of eligibility criteria throughout the EU is necessary to facilitate more convergence in individual asylum decision-making. Reliable and up-to-date country of origin information is essential for quality decision-making and the establishment of any robust status determination process and is central to the credibility of asylum procedures. In the context of the increased level of harmonization envisaged in proposed further reform of instruments of the CEAS¹⁴,

¹⁴ European Commission, *Proposal for a Regulation of the European Parliament and Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents*, COM(2016)466 final, 13 July 2016, available at: <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-466-EN-F1-1.PDF>; European Commission, *Proposal for a Regulation of the European Parliament and the Council establishing a common procedure in the Union and repealing Directive 2013/32/EU*, COM(2016) 467 final, 13 July 2016, available at:

the Agency's new role to coordinate efforts among Member States to engage in and develop a common analysis providing guidance on the situation in specific countries of origin is welcome. Any common analysis and guidelines should be based on precise, impartial, and up-to-date information, which should include information from UNHCR, UN Treaty bodies, the Council of Europe, the ICRC and other relevant independent and reliable sources. While welcoming this new role, UNHCR recommends including a specific reference in Recital 11 and Article 9(1) to UNHCR country-specific guidance (eligibility guidelines, international protection considerations, positions on return), where such UNHCR country-specific guidance exists. UNHCR country-specific guidance is issued at the global level pursuant its supervisory responsibility to assist decision-makers, including governments and members of the judiciary, in assessing the international protection needs of asylum-seekers. These guidelines present detailed analysis of international protection needs and include recommendations as to how asylum applications relate to criteria and principles of international refugee law, including in the 1951 Refugee Convention¹⁵ and the EU Qualification Directive.¹⁶

The information to be submitted under Article 10(4) by Member States to the Agency on decisions taken on applications for international protection from countries subject to common analysis seems to include only quantitative aspects. UNHCR would recommend including qualitative data such as the type of international protection and information on criteria granting or rejecting international protection. This would allow the Agency to effectively monitor the practical implementation of the common analysis.

Recommendations:

➤ *Amending Recital 11 as follows:*

The European Union Agency for Asylum should ensure a more structured and streamlined production of information on countries of origin at the level of the European Union. It is necessary for the Agency to gather information and draw up reports providing for country of origin information by making use of European networks on country of origin information so as to avoid duplication and create synergies with national reports. Furthermore, to ensure convergence in the assessment of applications for international protection and the nature and quality of protection granted, the Agency should, together with Member States, engage in and develop a common analysis providing guidance on the situation in specific countries of origin. ***Such common analysis shall be developed in consultation***

<http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-467-EN-F1-1.PDF>; Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast), COM(2016) 465 final, 13 July 2016, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A0465%3AFIN>.

¹⁵ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>.

¹⁶ European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>.

with UNHCR and taking into full account UNHCR' country-specific-guidance, where available.

➤ *Amending Article 10(1) as follows:*

To foster convergence in applying the assessment criteria established in Directive 2011/95/EU of the European Parliament and of the Council, the Agency shall coordinate efforts among Member States to engage in and develop a common analysis providing guidance on the situation in specific countries of origin. **Such guidance on the international protection needs of applicants from specific countries of origin shall be developed in consultation with UNHCR and taking into full account UNHCR country-specific guidance, where available.**

Adding to Article 10(4) a new sub paragraph (d)

NEW (d) –data on the type of protection granted and a summary of criteria used for granting or refusing international protection.

Article 11 – Designation of safe countries of origin and safe third countries

Article 11 sets out the new role of the Agency in supporting the EC with regard to the reviewing the situation in countries included on the EU list of Safe Countries of Origin (SCO) based on the future Regulation to establish such a common EU list,¹⁷ and providing information on countries considered by the EC for inclusion on the EU list of SCO. The Agency should also be informed by MS of third countries which are safe third countries (STC), or to which the concepts of first country of asylum (FCA), safe third country and European safe third country applied pursuant to Articles 35, 38 and 39 of Directive 2013/32/EU, respectively¹⁸. In particular, the Agency's role in regularly reviewing the situation in countries included in the common EU list of safe countries of origin or designated as safe third countries can ensure a more objective and harmonized application of these sensitive concepts. While welcoming the involvement of the Agency in the process of the designation of these concepts, UNHCR recommends to insert a specific reference in Article 11 to the fact that information provided by the Agency to the EC on SCO and STC pursuant to the above mentioned EU norms, should be compiled in accordance with the Agency's general COI methodology established in the context of Article 8, and comprise objective, accurate and up-to-date information, including on the situation of vulnerable groups and minorities, and should take account of information from UNHCR, UN Treaty bodies, the Council of Europe, the ICRC and

¹⁷ European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU*, COM (2015) 452 final, 9 September 2015, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal_for_regulation_of_the_ep_and_council_establishing_an_eu_common_list_of_safe_countries_of_origin_en.pdf.

¹⁸ European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, OJ L. 180/60-94; 29.06.2013, 2013/32/EU, available at: http://eur-lex.europa.eu/resource.html?uri=cellar:a5874209-56cc-11e5-afbf-01aa75ed71a1.0009.02/DOC_1&format=PDF.

other relevant independent and reliable sources. This would support also the Agency's independence and authority required for the production of objective assessments as to whether a country can be considered as a safe third country, or safe country of origin.

Recommendations:

- Adding a new Article 11(2)(a) as follows:

NEW Article 11(2)(a) *Information provided by the Agency in the context of Article 11(1) and (2) shall be compiled in accordance with the general COI principles stipulated in Article 8 of the Regulation and shall take into account information from UNHCR, UN human rights treaty monitoring bodies, the Council of Europe, the ICRC and other relevant independent and reliable sources.*

5. Monitoring and assessment

UNHCR welcomes the Agency's role in the development of a mechanism capable of ensuring that common standards for asylum and reception systems are maintained in all Member States. Such a mechanism could contribute to reducing factors contributing to the onward movement of asylum-seekers and refugees. The new Agency is well placed to support the systematic monitoring of the Common European Asylum System and the full and coherent implementation of the EU Asylum *acquis*, and to take action where needed to address shortcomings. Given UNHCR's supervisory mandate and the important role of civil society organizations in the asylum and reception systems of most MS, UNHCR suggests to explicitly mention in Article 13 (2) and Article 14 (2) the inclusion of relevant information from UNHCR and civil society on MS asylum and reception systems when assessing and monitoring asylum and reception systems and drawing up reports and findings. Further, UNHCR suggest to take into consideration also information provided by UN human right treaty monitoring bodies. These are committees of independent experts that monitor State parties' implementation of the core international human rights treaties. They are created in accordance with the provisions of the treaty that they monitor. This monitoring function is performed, inter alia, through consideration of State parties' initial and periodic reports, containing the State's self-assessment of its implementation of its treaty obligations, and also of reports and/or confidential comments provided by UN entities and civil society organisations. The treaty bodies are competent to examine the extent to which persons in need of international protection enjoy their human rights as provided for in the core international human rights treaties. Their reports often include recommendations on accession to the 1951 Refugee Convention and/or its Protocol, adoption of national legislation on asylum, reform of the national legislation on asylum to bring it in line with international standards, the principle of non-refoulement and admission to territory, reception conditions, detention, access to quality asylum procedures etc.

Further, UNHCR welcomes the strengthened Agency role in contingency planning and emergency response as foreseen in the Commission's proposal set out in Article 13 (3). Together with its partners, UNHCR is ready to continue supporting contingency planning and preparedness measures at the national and EU levels, and to assist the Agency in relation to such activities to assess and support MS asylum and reception systems preparedness to cope with extraordinary pressure.

Recommendations:

➤ Amending Article 13(2) first indent as follows:

(2) The Agency may, in particular, base its assessment on information provided by Member States, **UNHCR, UN human rights treaty monitoring bodies, the Council of Europe civil society**, information analysis on the situation of asylum developed by the Agency **and other EU agencies and bodies**, on-site visits and case sampling.

➤ *Amending Article 14 (2) as follows:*

(2) The Agency shall set up teams of experts for each monitoring exercise, including for the on-site visits as necessary. The teams of experts shall be composed of experts from the Agency's own staff and Commission representatives. The team of experts shall be responsible for drawing up a report based on the findings of on-site visits and information provided by Member States, **UNHCR, civil society and other EU agencies and bodies.**

6. Operational and technical assistance (Articles 16 – 28)

Article 16 – Operational and technical assistance by the Agency

Article 16 sets out the procedure under which Member States can request the Agency's assistance and lists the operational and technical measures it can organize and coordinate. The experience with the European refugee emergency in 2015 has shown that EU and UN Agencies are required to provide a wide variety of support requested by Member States facing disproportionate pressure. UNHCR welcomes therefore these provisions and proposes to add a reference in subparagraph (3) to indicate that the list is not exhaustive and that the Agency is allowed to provide other forms of support, in particular upon the initial arrival and reception of persons seeking international protection, including at border points in close cooperation and coordination with the new European Border and Coast Guard. Such support could for example also include expertise on the identification, safeguards and adequate assistance to vulnerable groups, including victims of trauma and serious human right violations, victims of trafficking and gender or sexual orientation related persecution. In addition, the Agency should also be tasked to support the effective integration of person granted international protection in MS. Further, the evaluation of the results of the operational and technical measure provided by the Agency by the Executive Director in Article

16(5) should be based on a reporting and evaluation schemes outlining clear indicators and benchmarks, including the impact on fundamental rights and include also information from external sources such as UNHCR, civil society and other EU agencies and bodies, where relevant, to ensure the comprehensiveness of the evaluation process.

Recommendations:

- *Adding new subparagraphs (k) and (l) to Article 16(3):*

NEW (k) assist with the identification, referral mechanism, safeguards and adequate assistance to vulnerable groups, including victims of trauma, gender or sexual orientation related persecution, serious human right violations and victims of trafficking.

NEW (l) support Member States in relation to the integration of persons in need of international protection.

- *Amending Article 16(5) as follows:*

The Executive Director shall, ***based on a reporting and evaluation scheme containing indicators and benchmarks for the evaluation, including with regard to the protection of fundamental rights, and taking into account, where available, information from other EU agencies and bodies and external sources such as UNHCR, civil society,*** evaluate the result of the operational and technical measures and shall transmit detailed evaluation reports to the Management Board within 60 days from the end of those measures. The Agency shall make a comprehensive comparative analysis of those results which shall be included in the annual activity report referred to in Article 65.

**Article 17 –
Asylum
support
teams**

&

**Article 18 –
Asylum
intervention
pool**

Article 17 sets out the procedure for the deployment of MS experts in the context Asylum support teams to support regular operational activities organized by the Agency. Article 18 provides for the creation of an intervention pool of personnel from Member States to be deployed to support Member States that are confronted with a disproportional pressure that place exceptionally heavy and urgent demands on their asylum and reception systems (as defined in Article 22).

UNHCR welcomes the proposal that Member States shall provide an annually agreed number of experts for the Agency's Asylum support teams and, contribute on a yearly basis to the Asylum intervention pool a reserve of at least 500 experts at the immediate disposal of the Agency. This will significantly improve effectiveness and the management of the Agency's deployment schemes. Both Article 17(3) and Article 18(2) stipulate that the contribution of MS to the asylum support teams or intervention pool will have to reflect the number and specific profiles of experts determined by the Management Board. UNHCR suggests complementing this with specific references to expert minimum qualifications to be eligible for deployment. In addition MS experts nominated for the operational

activities organized by the Agency should successfully participate in the specialist training relevant to their duties and functions organized by the Agency in accordance with Article 7(7) prior to their deployment.

Experience with the deployment of MS experts in the context of the EASO operational activities has shown that minimum qualification and training of experts are an essential requirement to ensure the quality and effectiveness of the operational and technical assistance offered by the Agency. Further, UNHCR suggest to mention in Article 17 and 18 that the Agency has the power to verify whether the experts proposed by Member States correspond to the defined profiles and qualifications and may request the Member State to remove an expert from the from the asylum support teams or pool if this is not the case or in cases of misconduct or infringement of the applicable deployment rules.

Recommendations:

➤ *Amending Article 17(3) as follows:*

On a proposal by the Executive Director, the Management Board shall decide by an absolute majority of its members with a right to vote on the profiles, **qualification** and the overall number of experts to be made available for the asylum support teams. The same procedure shall apply to any subsequent changes in the profiles and the overall number of experts. ***The experts who participate in the asylum support teams shall participate in specialist training relevant to their duties and functions to be organized by the Agency in accordance with Article 7 (7) prior to their deployment***

➤ *Amending Article 17(7) as follows*

Member States shall ensure that the experts that they contribute match the profiles, **qualifications** and numbers decided upon by the Management Board. The duration of deployment shall be determined by the home Member State but it shall not be less than 30 days. ***The Agency may verify whether the experts proposed by Member States correspond to the defined profiles and qualifications. The Agency may request the Member State to remove an expert from the asylum support teams in case those requirements are not met or in case of misconduct or infringement of the applicable deployment rules.***

➤ *Amending Article 18(2) as follows*

The Management Board shall, on a proposal of the Executive Director, decide by a three-fourths majority of members with a right to vote on the profiles **and qualifications** of experts and on the share that each Member State shall contribute to constitute the asylum intervention pool. The same procedure shall apply to any subsequent changes in the profiles and the overall number of experts. ***The experts who participate in the asylum intervention pool shall participate in specialist training relevant to their duties and functions***

organized by the Agency in accordance with

➤ *NEW Article 18(4) as follows*

The Agency may verify whether the experts proposed by Member States for the Asylum intervention pool correspond to the defined profiles and qualifications and shall decide on the experts to be chosen from the asylum intervention pool. The Agency may request the Member State to remove an expert from the asylum intervention pool in case those requirements are not met or in case of misconduct or infringement of the applicable deployment rules.

Article 19 – Operational plan

Article 19 sets out the procedure for the Agency to establish an operational plan. UNHCR welcomes the explicit reference in Article 19 that the Agency's operational plan should include modalities of cooperation, among others, with international organizations such as UNHCR. Experience with the EASO operational plans has shown that the development and implementation of the Agency's operational activities in Member States where UNHCR is present would benefit from strengthened synchronisation of activities with UNHCR.¹⁹ UNHCR therefore suggests the inclusion in Article 19 of a specific reference to the Agency's coordination role and involvement of UNHCR in MS in which UNHCR is present in the development and implementation of the operational plan. This would facilitate that the Agency and UNHCR better synchronize their interventions, coordinate and regularly exchange information on their operational activities.

Given the enhanced responsibilities assigned to the Agency under the proposal, UNHCR suggests including in both in subparagraphs (e) and (i) of Article 19(2) an explicit reference to the importance of the respect for fundamental rights and principles, which the Agency is obliged to observe in all its activities (in particular with reference to Recital 26).

Finally, given the enhanced responsibility under the EBCG Regulation²⁰ in particular regarding the provision of information to persons arriving and the establishment of referral systems, UNHCR suggests inserting a specific reference in Article 19 that the Agency coordinates with other EU Agencies in areas where their activities could overlap.

Recommendations:

¹⁹ See in particular Recommendation No 4 of the 2015 EASO External Evaluation, https://www.easo.europa.eu/sites/default/files/16-Annex-2-External-evaluation-of-EASO-Annexes_0.pdf.

²⁰ European Union, Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, OJ L 251, 16.9.2016, p. 1–76, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1624&qid=1474645770700&from=en>.

➤ Amending Article 19(1) subparagraphs (e) (i), (j) and (k) as follows

(e) a detailed and clear description of the tasks, **responsibilities, including with regard to the respect for fundamental rights** and special instructions for the asylum support teams or experts from the asylum intervention pool, including the national and European databases that they are authorised to consult and the equipment that they may use or carry in the host Member State ,

(...)

a reporting and evaluation scheme containing benchmarks for the evaluation report, **including with regard to the protection of fundamental rights**, and final date of submission of the final evaluation report;

(j) modalities of cooperation with third countries, other Union agencies, bodies, offices or international organisations, **in areas where their activities could overlap;**

(k) procedures whereby persons in need of international protection, victims of trafficking in human beings, unaccompanied minors and persons in a vulnerable situation are **identified** and directed to the competent national authorities for appropriate assistance.

➤ Adding a new subparagraph (l) to Article 19(2):

NEW (l) The Agency shall consult and coordinate the development and implementation of the operational plan with UNHCR in Member States where UNHCR is operational and has the capacity to contribute to the request for operational and technical assistance.

Article 20 – Procedure for deploying asylum support teams

Article 20 (6) stipulates an obligation for the Executive Director to suspend or terminate the deployment of the asylum support teams if the conditions to carry out the operational and technical support measures are no longer fulfilled or if the operational plan is not respected by the host Member State. UNHCR recommends to include a specific reference that a violation of the rights mentioned in the Recital 26: the Charter of Fundamental Rights of the European Union, including the right to asylum; the protection from *refoulement*, the right to respect for private and family life, the right to protection of personal data and the right to an effective remedy, are considered sufficient reasons for the suspension or termination of the deployment of asylum support teams by the Executive Director.

Recommendations:

➤ Amending Article 20(6) as follows:

The Executive Director shall, after informing the host Member State, suspend or

terminate the deployment of the asylum support teams if the conditions to carry out the operational and technical measures are no longer fulfilled or if the operational plan is not respected by the host Member State ***or if he/ she considers that there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist.***

**Article 22 –
Disproportionate
pressure on
asylum and
reception
system**

The Article sets out the procedure for the Agency to provide operational and technical assistance and the deployment of experts (both from the asylum intervention pool and from the EUAA itself) to support Member States that are confronted with a disproportional pressure on their asylum and reception systems. The recent European refugee emergency, in particular in Greece, has shown that the fast deployment of a high number of national experts from Member State by EU agencies is very challenging, especially at times when several Member States face increasing pressure on their asylum systems. This shortcoming could be addressed with partnerships with international and non-governmental organizations to complement the Agency's and MS capacity in areas where specific expertise is needed, and to deploy on an exceptional basis external experts to bridge the gap until suitable Member State experts are available. UNHCR suggests therefore that the Agency should be explicitly authorized to enter into stand-by agreements to draw on the capacity and technical expertise of external partners for providing immediate operational support and technical assistance to MS facing heavy and urgent demands on their asylum and reception systems in the context of Article 22. UNHCR stands ready to cooperate with the Agency and to offer its long-standing expertise with stand-by partnership agreements.²¹

Further, given that Article 22(1) foresees that the Agency is also called upon to deploy experts from its own staff to reinforce asylum and reception systems, UNHCR suggests that Agency establishes an emergency roster of dedicated and qualified Agency staff available to serve as a reserve for immediate deployments for a certain period. The internal emergency roster with a minimum stand-by capacity would significantly strengthen the emergency response and deployment capacity of the Agency. UNHCR suggests in addition the explicit requirement for the Agency's own emergency roster to have successfully participated in the pre-deployment training foreseen in Article 7 (7) of the proposal.

Recommendations:

- *Adding a new Article 22(8)*

The Agency may enter into stand-by agreements to draw on the capacity and technical expertise of international and non-governmental organizations to complement the Agency's capacities to provide operational support in non-discretionary matters excluding tasks listed in Article 16 (a) to (d).

²¹ UNHCR has currently stand-by partnership agreements with the following 13 expert organizations to ensure an effective response to refugee emergencies: Canadem (Canada), CDC, Danish Refugee Council (Denmark), DSB (Norway), DFID (UK), Emergency.lu (Luxemburg), IHP, Irish Aid MSB, NRC, REdR Australia, Save the Children Norway, SDC/SHA, THW Germany, Veolia Environment Foundation, White Helmets Commission, Turkish Red Crescent.

Where necessary, the Agency may deploy experts of these organizations until suitable Member State experts are available. The experts deployed from these external partners shall participate in specialist training relevant to their duties and functions organized by the Agency in accordance with Article 7 (7) prior to their deployment.

➤ Adding a new Article 22(9)

NEW Article 22 (9) The Agency shall set up an emergency roster which shall constitute a reserve of qualified Agency staff available for immediate deployment in operational activities organized by the Agency. The experts deployed from its own staff shall participate in specialist training relevant to their duties and functions organized by the Agency in accordance with Article 7 (7) prior to their deployment.

7. Information exchange and data protection (Articles 30 – 32)

UNHCR notes that the enhanced competences will require the Agency to process and share personal data on applicants for international protection, including with Member States and other EU Agencies such as the European Border and Coast Guard, Europol and Eurojust. UNHCR underlines that in the context of international protection, a prohibition of sharing information on an application for international protection with a third country and potentially the country of origin which may be the agent of persecution is key. UNHCR welcomes therefore the prohibition in Article 30(4) of the transfer of personal data processed by the Agency to third countries or third parties. However, the proposal lacks a specific reference to the right of the individuals concerned to be informed of the purpose of processing and collecting their personal data, the recipient of their personal data and the right to an effective remedy to challenge any wrongful use of their personal data. Further, given that the General Data Protection Regulation²² which regulates the relevant safeguards is not applicable as activities relating to asylum, border control and immigration are excluded from its scope, this leaves a gap in the fundamental rights protection of the individuals concerned. UNHCR suggests to amend Article 32 to include a reference to the right of the individuals affected by the processing of personal data by the Agency to be informed of the purpose of the data processing and collection and the recipient of their personal data. The Regulation should also guarantee the right of any individual concerned to challenge any wrongful or inappropriate use of the personal data by the Agency before a court or tribunal in accordance with Article 47 of the EU Charter of Fundamental Rights.

²² European Union, *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)*, 27 April 2016, OJ L. 119/1-88; 04.05.2016, 2016/679/EU available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG&toc=OJ:L:2016:119:TOC.

Recommendations:

- Adding a new Article 32(4)

NEW Article 32(4): When processing personal data collected by the Agency or transmitted to it by the Member States or its own staff when providing operational and technical assistance to Member States, the Agency or the Member State which has transmitted personal data in accordance with paragraph 1 shall inform the applicant of such transmission and his or her right to, in accordance with the laws, regulations and procedures of that State, bring an action or, if appropriate, a complaint before the competent authorities or courts of the State, against wrongful use or processing of such data.

8. Cooperation by agencies (Articles 33 – 37)

Article 35(1)-(3) – Cooperation with third countries

Article 35(1) sets out the Agency’s role in cooperating with third countries and/or facilitating such cooperation between Member States and third countries. In this context the proposal includes a specific reference that the Agency and MS shall promote “and comply with norms and standards equivalent to those set by Union legislation, including when carrying out activities on the territory of those third countries”. UNHCR recommends adding in Article 35(1) a specific reference to highlighting the obligation to comply explicitly with the standards set out by the EU Charter of Fundamental Rights and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

Further, according to Article 35 (2) and (3) the Agency may cooperate with third countries in view of promoting Union standards on asylum and as regards asylum and reception capacity building. In this context, the Agency may also “invite officials from third countries to observe the operational and technical measures outlined in Article 16(3).” Given that among the measure listed in Article 16 (3) several require the Agency to process personal data, including of applicants of international protection, the involvement of officials from third countries as observers could mean that they meet and witness interviews or procedures relating to nationals from their countries. This would be considered a violation of international protection standards, since it could create a risk for the applicants, their family and relatives in the third country. The participation of officials from third countries in Agency’s operations involving the processing of personal data could also run counter to the principle stipulated in Article 30 (4), which prohibits the transfer of such personal data processed by the Agency to third countries or third parties. UNHCR suggests to include a specific reference to Article 30(4) in Article 35(3). In addition, it should be clarified, that officials from third countries are excluded from observing the Agency’ operational and technical measures which might involve nationals of their country.

Recommendations:

➤ *Amending Article 35(1)*

(1) In matters related to its activities and, to the extent required for the fulfillment of its tasks, the Agency shall facilitate and encourage operational cooperation between Member States and third countries, within the framework of the Union's external relations policy, including with regard to the protection of fundamental rights, and in cooperation with the European External Action Service. The Agency and the Member States shall promote norms and comply with the standards, where applicable, or **equivalent**, to those set by Union legislation, **the EU Charter of Fundamental Rights, the 1951 Geneva Refugee Convention and its 1967 Protocol**, including when carrying out activities on the territory of those third countries.

➤ *Amending Article 35(3)*

The Agency may, with the agreement of the host Member State, invite officials from third countries to observe the operational and technical measures outlined in Article 16(3), **provided those measures do not involve observing procedures involving nationals from their country, and their presence fully respects the prohibition of transfer of personal data stipulated in Article 30(4) of the Regulation** and does not jeopardize the achievement of objectives of those measures, and where it may contribute to improving cooperation and the exchange of best practices.

Article 35(4)
–
**Cooperation
with third
countries
(resettlement)**

Article 35(4) tasks the Agency with the coordination of actions on resettlement taken by Member States or by the Union, including the exchange of information, so as to meet the international protection needs of refugees in third countries and show solidarity with their host countries. Given UNHCR's central role in the global resettlement process and the importance of civil society organizations in resettlement, UNHCR recommends to insert a specific reference on the necessary cooperation and coordination of the Agency with UNHCR and civil society in the field of resettlement. Moreover, support, cooperation and coordination of resettlement by the Agency should encompass the entire process, including the post arrival in MS phases, e.g. integration, and should not be limited to pre-departure actions such as selection missions and the provision of pre-departure information to refugees.

Recommendations:

➤ *Amending Article 35(4)*

The Agency shall coordinate actions on resettlement taken by the Member States or by the Union, including the exchange of information, so as to meet the international protection needs of refugees in third countries and show solidarity

with their host countries. ***The Agency shall closely cooperate and coordinate its activities in the field of resettlement with UNHCR and expert civil society organisations.*** The Agency shall gather information, monitor resettlement to Member States and support Member States with capacity building on resettlement, ***including integration support for resettled refugees in Member States, as relevant.***

9. Organisation of the agency (Articles 38 – 48)

Article 48 – Consultative forum

The proposal suggests that the new Agency should set up a Consultative Forum to assist the Executive Director and the Management Board. The forum should be independent of the Agency and no longer chaired by the Executive Director. The proposed new structure has the potential to strengthen the role of the Consultative Forum and to improve the cooperation and interest of civil society in working with the Agency. An essential requirement for a meaningful consultation process is based on mutual trust and shared ownership for the overall process. Therefore, UNHCR considers essential to involve civil society in the development of the composition, structure and working methods of the Consultative Forum, including thematic or geographic-focused consultation groups, and the modalities of transmission of information to the Consultative Forum. The current text does not foresee this and stipulates that the Management Board shall decide on the composition, working methods and transfer of information alone on a proposal by the Executive Director. In UNHCR's view the criteria set in Article 48 (1) and currently applied for the participation in the EASO Consultative Forum, based on knowledge, expertise, interest and geographical aspects, could be used as selection criteria for membership of the Consultative Forum, which should be as broad as possible. As regards working methods, UNHCR recommends following the example of the recently adopted EBCG Regulation, which foresees that the Consultative Forum define its own working methods after consulting the Management Board and the Executive Director. Further, the proposal mentions that the Consultative Forum shall assist the Executive Director and the Management Board in matters related to asylum, in accordance with specific needs in areas identified as a priority for the Agency's work. UNHCR recommends that the Consultative Forum's role is expanded to advising, to ensure that all aspects of the Consultative Forum work are explicitly covered.

Recommendations:

- *Amending Recital 25*

Recital 25: The European Union Agency for Asylum should maintain a close dialogue with civil society with a view to exchanging information and pooling knowledge in the field of asylum. The Agency should set up a Consultative Forum which should constitute a mechanism for the exchange of information and the sharing of knowledge. The Consultative Forum should **advise** and assist the

Executive Director and the Management Board in matters covered by this Regulation.

- *Amending Article 48(3)*

NEW: On a proposal by the Executive Director, the Management Board shall decide on the composition of the Consultative Forum, ***taking into consideration the knowledge, expertise, diversity of civil society organizations and relevance to the Agency's activities as well as on the modalities of transmission of information to the Consultative Forum. The Consultative Forum shall, after consulting the Management Board and the Executive Director, define its working methods***

- *Amending Article 48(4)*

The Consultative Forum shall ***advise*** and assist the Executive Director and the Management Board in matters related to asylum, in accordance with specific needs in areas identified as a priority for the Agency's work.

10. General provisions

Given the enhanced competencies, mandate and strengthened operational support role of the new Agency, in particular with regard to the processing of applications for international protection, including processing of personal data, monitoring implementation and compliance of MS with all aspects of the CEAS, UNHCR considers it as important to strengthen the fundamental right dimension of the proposal. Apart from the recital 26, and similar to the fundamental rights protection framework and structure foreseen in the new EBCG regulation, UNHCR suggests to mention in a new Article 54 the Agency's commitment to the protection of fundamental rights and principles, including the need to develop a Fundamental Rights Strategy, the creation of the position of a Fundamental Rights Officer, a mechanism for identification and reporting of violations of fundamental rights, values and principles. In addition, the Agency should develop a Code of Conduct applicable to all experts involved in support operations coordinated by the Agency.

Recommendations:

- *Amending Recital 26*

This Regulation respects fundamental rights and observes the principles recognized in particular by the Charter of Fundamental Rights of the European Union, ***the European Convention for the Protection of Human Rights and Fundamental Freedoms, relevant international law, including the United***

Nations Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Discrimination Against Women, the Convention Relating to the Status of Refugees and obligations related to access and content of international protection. All activities of the European Union Agency for Asylum shall be carried out in full respect of these fundamental rights and principles, including the right to asylum, the protection from refoulement, the right to respect for private and family life, the right to protection of personal data and the right to an effective remedy. The rights of the child and the special needs of vulnerable persons shall always being taken into account.

- *Adding a new Article 54(a) - Protection of Fundamental Rights and Fundamental Rights Strategy*

1. The Agency shall guarantee the protection of fundamental rights in the performance of its tasks under this Regulation in accordance with relevant Union law, in particular the Charter, relevant international law, including the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol thereto, the legal norms adopted in the context of the Common European Asylum System and obligations related to access to and content of international protection.

2. For that purpose, the Agency shall draw up and further develop and implement a Fundamental Rights Strategy including an effective mechanism to monitor the respect for fundamental rights in all the activities of the Agency.

3. The Agency shall, in the performance of its tasks, take into account the special needs of children, unaccompanied minors, persons with disabilities, victims of trafficking in human beings, persons in need of medical assistance, persons in need of international protection, and other persons in a particularly vulnerable situation.

The Agency shall in all its activities pay particular attention to children's rights and ensure that the best interests of the child are respected.

- *Adding a new Article 54(b) - Code of Conduct*

1. The Agency shall draw up and further develop a Code of Conduct applicable to all experts involved in support operations coordinated by the Agency. The Code of Conduct shall lay down procedures intended to guarantee the principles of the rule of law and respect for fundamental rights with particular focus on vulnerable persons, including children, unaccompanied minors and other persons in a vulnerable situation, as well as on persons seeking international protection, applicable to all persons participating in the activities of the Agency.

2. The Agency shall develop and regularly update its Codes of Conduct in cooperation with the Consultative Forum.

➤ *Adding a new Article 54(c) - Fundamental Rights Officer*

1. A fundamental rights officer shall be appointed by the management board. He or she shall have the tasks of contributing to the Agency's fundamental rights strategy, of monitoring its compliance with fundamental rights and of promoting its respect of fundamental rights. The fundamental rights officer shall have the necessary qualifications and experience in the field of fundamental rights and be provided with adequate resources corresponding to its mandate and activities.

2. The fundamental rights officer shall be independent in the performance of his or her duties. He or she shall report directly to the management board. The Executive Director and the Consultative Forum shall be periodically informed of the activities of the officer and have the opportunity to provide advice on those activities and the priorities the officer is requested to address. The fundamental rights officer shall so report on a regular basis and as such contribute to the mechanism for monitoring fundamental rights.

3. The fundamental rights officer shall be consulted on the Agency's operational plans and contribute to the development of training and quality guidance on fundamental rights matters. He or she shall have access to all information relevant to the performance of his or her tasks including all information concerning respect for fundamental rights in all the activities of the Agency.

➤ *Amending Article 40 - Functions on the Management Board*

NEW (cc) shall appoint the fundamental rights officer in accordance with Article 54(c)

➤ *Adding a new Article 54(d) - Complaint Mechanism*

The Agency, in cooperation with the fundamental rights officer, shall take the necessary measures to set up an impartial and effective complaint mechanism in accordance with this Article to monitor and ensure the respect for fundamental rights in all the activities of the Agency.

To this effect, the Agency should, in consultation with the EU Ombudsman, the consultative forum and other relevant stakeholders with experience in the development and management of complaints mechanisms, develop clear rules and procedures that specify the modalities for the submission, handling, resolution and oversight of complaints including follow up on complaints at national level.

The Agency shall also ensure that information on the possibility and

procedure for making a complaint is effectively communicated to all persons who could be affected by the activities of the Agency, with special attention to persons with specific needs or vulnerabilities.

Information on the functioning of the complaints mechanism, including the amount of complaints received, types of fundamental rights violations involved, findings and follow up should be included in the Agency's annual report, with due regard to confidentiality and data protection.

Article 65 – Reporting

The Article sets out the reporting requirements of the Agency and seems to combine the current EASO Annual Report on the situation of asylum in the Union, taking due account of information already available from other relevant sources and the Annual Activity report, which focus is on activities and impact of the Agency's work. Experience with the EASO annual reports have shown that both reports provide important, but different perspectives on asylum in the Union and the important work of EASO and wealth of information which has proven to be difficult to combine without losing relevant information, focus and clarity of the report. UNHCR suggest therefore to amend the current Article and to foresee that the Agency prepares an annual report on the situation of asylum in the union and an annual activity report, as EASO is currently doing.

Recommendations:

➤ *Amending 65(1) as follows*

1. The Agency shall draw up an annual report on the situation of asylum in the Union, taking due account of information already available from other relevant sources. In addition, the Agency shall draw up ***an annual activity report, outlining and evaluating the results of activities carried out under this Regulation and make a comprehensive comparative analysis of them with the aim of improving the quality, consistency and effectiveness of the CEAS.***

10. Closing remarks

UNHCR is looking forward to continue its close co-operation with a future European Union Agency for Asylum. UNHCR regards the enhancement of the roles and scope, both of the EUAA and Frontex as the lynchpins of a viable future Common European Asylum System. In UNHCR's view, the strengthened role in providing guidance and operational support envisioned for the EUAA is an important step towards achieving consistently high standards and harmonized approaches of international protection, including reception, across the European Union. At the same time, the EUAA could become an actor that can effectively

address the structural weaknesses in the CEAS, which have been further exacerbated by large scale and uncontrolled arrival of refugees and migrants to the European Union particularly during 2015. The EUAA should make full use of its new mandate to ensure that early warning and preparedness activities lead to the development of comprehensive and realistic contingency plans, including all relevant actors, covering all relevant processes and needs from first arrival to integration or return. As articulated in its paper 'Better Protecting Refugees in the EU and Globally' of 05 December 2016, UNHCR sees a new active role for the EUAA also in relation to family reunification and integration. With this outcome in mind, UNHCR hopes that negotiations among Member States and between the Council and the European Parliament will proceed swiftly and successfully.

UNHCR, December 2016