



# UNHCR's recommendations to the Republic of Bulgaria for its Presidency of the Council of the European Union (EU)

A time for solidarity  
January - June 2018<sup>1</sup>



Republic of Bulgaria / A family in the reception and registration centre, Voenna Rampa district, Sofia  
© UNHCR / Nikolay Stoykov

The Republic of Bulgaria will hold the Presidency of the Council of the European Union (EU) at a critical time.

More than one year after the adoption of the September 2016 New York Declaration for Refugees and Migrants,<sup>2</sup> EU Member States (MS) and institutions are in the process of concretizing the Declaration's principles. They are also following up on the commitments to a comprehensive approach to asylum and migration issues made as part of the Comprehensive Refugee Response Framework (CRRF). Discussions are on-going as to how solidarity and responsibility-sharing can best be organized at the global level, and how to effectively extend protection to those in need while supporting refugee-hosting countries.

Aspects of these discussions are of particular relevance for internal EU policies, particularly at a time when EU institutions and MS are reflecting on possible lessons to be drawn from the 2015-2016 refugee situation, as well as reforming the Common European Asylum System (CEAS).

---

<sup>1</sup> The present recommendations should be read together with UNHCR's *Better Protecting Refugees in the EU and Globally* December 2016 proposals, available at: <http://www.refworld.org/docid/58385d4e4.html>, as well as with UNHCR's more detailed commentaries on the European Commission's proposals to reform the Common European Asylum System.

<sup>2</sup> UN General Assembly, *New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly*, 3 October 2016, A/RES/71/1, available at: <http://www.refworld.org/docid/57ceb74a4.html>.

In that context, and pursuant to its mandate responsibilities, UNHCR would like to outline two key priorities for during the Bulgarian Presidency:

- In line with their commitments to global solidarity and responsibility-sharing, for EU MS to focus on swift and efficient procedures to assess international protection needs in the EU rather than predominantly on mandatory admissibility procedures, including those on the basis of first country of asylum or safe third country concepts.
- For the reformed Dublin system to include an intra-EU solidarity mechanism entailing the physical relocation of asylum-seekers. Such a mechanism would need to be capable of activation simply, swiftly, and as necessary. Full participation in the mechanism would need to be secured.

These priorities are part of the following set of UNHCR's recommendations to the Bulgarian Presidency. The recommendations cover four complementary areas, in line with the comprehensive approach to asylum and migration issues promoted by UNHCR in its Better Protecting Refugees proposals<sup>3</sup> to EU institutions and MS.

## **1. An EU that is engaged beyond its borders**

### **a. Paving the way for the adoption of the Global Compact on Refugees**

The Bulgarian Presidency will have a key role in following up on the commitments set out in the September 2016 New York Declaration in order to advance consultations leading up to the adoption of the Global Compact on Refugees, expected during the 73rd session of the UN General Assembly in September 2018.

UNHCR recommends:

- For the Bulgarian Presidency to prioritize the process leading to the adoption of the Global Compact on Refugees on the agendas of relevant Council configurations, including in the High Level Working Group on Migration and Asylum (HLWG).
- In particular, for the Bulgarian Presidency to initiate discussions with a view to adopting specific Council Conclusions in which the EU would affirm its collective support for the adoption of the Compact, for global responsibility-sharing for the protection of refugees through more predictable resettlement and complementary pathways of admission, for support to host countries, as well as for comprehensive approaches to refugee situations.

### **b. Developing and strengthening safe and legal pathways for persons in need of international protection**

With an estimated 1.2 million persons in need of resettlement globally in 2018, EU MS need to continue expanding and strengthening safe and legal pathways for persons in need of international protection that are responsive to global

<sup>3</sup> UN High Commissioner for Refugees (UNHCR), *Better Protecting Refugees in the EU and Globally: UNHCR's proposals to rebuild trust through better management, partnership and solidarity*, December 2016, available at: <http://www.refworld.org/docid/58385d4e4.html>.

protection needs.<sup>4</sup> Work on the Union Resettlement Framework<sup>5</sup> is ongoing, and the Bulgarian Presidency will have an important role in advancing these discussions. In parallel, the European Commission (EC) is likely to present the results of its “Fitness check” on legal migration during Bulgaria’s Presidency. These results will provide an opportunity for EU MS to further reflect on ways to develop and strengthen safe and legal pathways.

**UNHCR recommends:**

- That the trilogues on the proposal for a Union Resettlement Framework are advanced in a way that ensures that the final text reflects resettlement as a tool for protection, responsibility-sharing and a durable solution, that it aligns with the existing international resettlement architecture, and that it is responsive to global resettlement needs.
- For the Bulgarian Presidency to initiate discussions in the Integration, Migration and Expulsion Working Party on the need to address practical and legal barriers to family reunification in EU MS.

**c. Enhancing protection in the Western Balkans as part of the pre-accession process**

Important progress has been made in the Western Balkans to reinforce asylum systems. However, action is needed to further strengthen access to solutions for refugees in the Western Balkans; for example, by focusing on fair and efficient asylum procedures and integration opportunities. In addition, further efforts are needed to prevent and address statelessness.

On 17 May 2018, the EU-Western Balkans Summit will be organized in Sofia, Bulgaria, under the auspices of the Bulgarian Presidency. The Summit could provide an opportunity to discuss strengthening protection-sensitive systems in the region.

Furthermore, the EC is likely to release the next Enlargement package during Bulgaria’s Presidency. The package will notably assess where candidates and potential candidates in the Western Balkans stand in implementing key reforms as part of the pre-accession process, including those in the fields of judiciary and fundamental rights (Chapter 23) and justice, security and freedom (Chapter 24). These two chapters, *inter alia*, are of particular relevance for access to territory, identification, protection and assistance systems pertaining to asylum-seekers, refugees and stateless persons.

**UNHCR recommends:**

- For the Bulgarian Presidency to ensure that asylum and statelessness issues are included on the agenda of the May 2018 EU-Western Balkans Summit.

<sup>4</sup> To note, UNHCR called on EU MS to resettle 40,000 persons in 2018 in response to global resettlement needs. Separately, in September 2017, UNHCR called on all resettlement States (European and non-European) to make 40,000 additional resettlement places available for refugees located in 15 priority countries along the Central Mediterranean route.

<sup>5</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council*, COM(2016) 468 final, 13 July 2016, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/resettlement\\_system\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/resettlement_system_en.pdf).

- For the Bulgarian Presidency to show leadership in the Working Party on Enlargement and Countries Negotiating Accession to the EU to ensure that the asylum and statelessness-related benchmarks of accession in relevant Chapters of the EU *acquis*, including Chapters 23 and 24, are being effectively progressed, on the basis of the upcoming Enlargement package.

#### d. Following up on the Grand Bargain commitments to reduce individual donor assessments

One of the commitments made by donors as part of the Grand Bargain at the World Humanitarian Summit, and on which UNHCR is co-leading follow-up work, was to reduce individual donor assessments of UN Agencies' operational and Headquarters activities. Individual donor assessments have proliferated in recent years, and a large share thereof were conducted by EU MS. Council discussions would provide opportunities to explore how EU MS could reduce these assessments.

UNHCR recommends:

- For the Bulgarian Presidency to include the issue of individual donor assessments on the agenda of the Working Party on Humanitarian Aid and Food Aid (COHAFA), as follow-up action to the Grand Bargain commitments.

## 2. An EU that is prepared

---

The 2015-2016 refugee situation has exposed the need for better preparedness. In that context, the EC proposal to render the elaboration of contingency plans mandatory is welcome.<sup>6</sup> These will need to be comprehensive, and cover, among other aspects, reception capacity. Contingency plans need to be complemented by efficient emergency management mechanisms, including at EU-level. This includes streamlining cooperation platforms, and ensuring that EU Agencies are equipped to effectively perform their tasks.

UNHCR recommends:

- For the Bulgarian Presidency to ensure that the development of contingency plans, including those pertaining to reception capacity, remains on the agenda of relevant Council configurations.
- For the Bulgarian Presidency to encourage EU MS to ensure that appropriate resources and staff with required expertise are allocated to relevant Frontex and EASO/EUAA response pools and deployments, in Justice and Home Affairs (JHA) Council and Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) meetings.

---

<sup>6</sup> See European Commission, *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, Article 28, Brussels, 13 July 2016, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0465>.

- For the Bulgarian Presidency to focus on developing adequate emergency management mechanisms, building on existing cooperation structures such as the Integrated Political Crisis Response format.

### 3. An EU that protects

---

#### a. Upholding protection standards within the EU

Despite the existence of the CEAS, standards and practices continue to vary widely throughout the EU. UNHCR has consistently noted that the standards and practices of some EU MS are at variance with international law. It is crucial that EU MS implement the current asylum *acquis* to ensure quality reception conditions and fair and efficient procedures. This includes providing asylum-seekers with an effective opportunity to swiftly lodge their asylum claims, ensuring adequate reception conditions, as well as guaranteeing that asylum procedures, including timeframes, are in line with applicable EU law. It also means that detention should only be resorted to as an exceptional and last resort measure, when determined to be necessary, reasonable, and proportionate to a legitimate purpose, with alternatives to detention effectively available and accessible, and with prompt judicial review mechanisms in place. Children should not be detained for immigration-related reasons. Comparable conditions throughout the EU would notably contribute to supporting the full and effective implementation of the Dublin Regulation,<sup>7</sup> as well as to reduce irregular onward movement and the risks of sexual and gender-based violence. In this context, facilitating prompt and effective family reunion within the EU under the Dublin Regulation, including through the use of its “discretionary clauses”, should remain a priority.<sup>8</sup>

UNHCR recommends:

- For the Bulgarian Presidency to use all available fora, including JHA Council and SCIFA meetings, to encourage all EU MS to implement the existing EU asylum legislation and policies with a view to ensuring quality reception conditions, as well as fair and efficient Dublin and asylum procedures.

#### b. Ensuring a well-managed access to the EU’s protection space

Important discussions are being held as to how solidarity and responsibility-sharing can best be organized at the global level as follow-up to the adoption of the September 2016 New York Declaration and in the lead-up to the adoption of the Global Compact on Refugees envisaged for 2018. UNHCR has been deeply grateful for the important contribution of EU MS and institutions in these discussions and indeed in support of the practical application of the CRRF. However, UNHCR notes with concern that aspects of the EC proposals to reform the CEAS and further discussions at EU-level appear to be focusing on

---

<sup>7</sup> 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, Brussels, 04 May 2016, available at: <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-270-EN-F1-1.PDF>.

<sup>8</sup> For evidence-based information on current practice on family reunion under the Dublin Regulation, and recommendations to MS for the efficient implementation of the Dublin Regulation as well as for its reform, see UNHCR’s recently published study *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, available at: <http://www.refworld.org/docid/59d5dcb64.html>.

procedures entailing the possibility of shifting protection responsibilities outside of the EU. This includes the possible introduction of mandatory admissibility procedures, which would take precedence over family reunion possibilities, and making greater use of safe country concepts. Depending on how they are actually developed and presented, such an approach may risk being at odds with the commitments to global responsibility-sharing made by EU MS and institutions under the September 2016 New York Declaration.

Instead, UNHCR suggests that EU MS continue to focus on improving asylum procedures within the EU. Those procedures need to be complemented notably by a functioning return system, in order to maintain the integrity of the EU's asylum space. Such return systems would obviously need to respect important safeguards, including respect for the principle of *non-refoulement* as well as the due consideration of humanitarian and statelessness-related aspects.

#### UNHCR recommends:

- As part of the reform of the Dublin Regulation and the discussions on the Asylum Procedures Regulation<sup>9</sup>, deleting provisions introducing mandatory admissibility procedures, and prioritizing family reunion over admissibility considerations.
- On admissibility on the basis of the safe third country concept specifically, maintaining the provisions proposed by the EC to ensure that the safe third country concept may only be applied where protection in the non-EU country is effective and available in practice, and ensuring that there is a meaningful connection between the applicant and the non-EU country on the basis of which it would be reasonable for the applicant to go there. Mere transit would not constitute such a connection.
- For the Bulgarian Presidency, when chairing Council configurations at both technical and political level, to encourage EU MS to focus on swift and efficient procedures to substantively assess international protection needs in the EU rather than on admissibility procedures, including those on the basis of safe country concepts.
- For the Bulgarian Presidency to invite UNHCR to relevant Council configurations to discuss the necessary guarantees to ensure that the European Integrated Border Management strategy, including its return component, is developed in a protection-sensitive manner.

### c. Fostering intra-EU solidarity

Situations in which a small number of EU MS bear disproportionate responsibility are unsustainable. They often have significant negative implications on the availability and quality of protection responses. This goes hand-in-hand with substantial human and material costs, as well as important public policy challenges. Greater intra-EU solidarity needs to be fostered. Despite the formal end of the emergency relocation mechanism, the EC has indicated its readiness to support voluntary relocation from Greece and Italy. In addition, the reform of the Dublin system provides an opportunity to embed an intra-EU solidarity component into the CEAS.

---

<sup>9</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32*, COM(2016) 467 final, Brussels, 13 July 2016, available at: <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-467-EN-F1-1.PDF>.

UNHCR recommends:

- For the Bulgarian Presidency to hold bilateral meetings with EU MS, and use Council configurations such as JHA Council, SCIFA and JHA Counsellors meetings to promote the possibility to continue relocation on a voluntary basis from Greece and Italy with the support of the EC and its agencies.
- For the reformed Dublin system to include a solidarity mechanism to support EU MS facing pressure on their asylum systems through the physical relocation of asylum-seekers. Such a mechanism needs to be able to be activated simply, swiftly, and as necessary. Full participation in the mechanism would need to be secured.

#### d. Protecting refugee children

The 2015-2016 refugee situation exposed gaps in the migration and asylum systems of many EU MS when it came to the protection of children. Further efforts are needed to develop an approach driven by the best interests of the child in order to ensure that children are properly identified, registered, protected, and that durable solutions are offered to them. This is particularly important for unaccompanied and separated children, who are exposed to serious protection risks during their journeys, including exposure to smuggling and trafficking networks.

In that context, it is key to continue to build on the momentum provided by the release of the April 2017 EC Communication on the Protection of Children<sup>10</sup> to address those gaps, while reforming the CEAS in a way that is mindful of the protection needs of children, including when unaccompanied or separated.

UNHCR recommends:

- Ending child detention for immigration-related purposes and encourages all EU MS to actively explore accessible and child-appropriate care arrangements. This is of particular relevance in the context of the reform of the CEAS and of the implementation of existing instruments such as the Return Directive.<sup>11</sup>
- For the Bulgarian Presidency to host under its auspices a Conference of the European Migration Network aimed at exchanging best practices on issues relating to children on the move, with a focus on unaccompanied and separated children, with a view to better implementing and designing asylum and migration instruments. These areas would cover age assessment, best interests assessment and family tracing.

<sup>10</sup> European Commission, *Communication from the Commission to the European Parliament and the Council, COM(2017)211 final*, Brussels, 12 April 2017, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412\\_communication\\_on\\_the\\_protection\\_of\\_children\\_in\\_migration\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf).

<sup>11</sup> Council of the European Union and European Parliament, *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*, 16 December 2008, available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>.

## e. Strengthening the identification, registration and protection of stateless persons

The December 2015 Council Conclusions on Statelessness<sup>12</sup> encouraged action and exchanges of information and good practices, including in the area of identification of stateless persons. The CEAS reform provides an opportunity to ensure that EU asylum rules provide for the adequate identification, registration and protection of stateless persons in the EU. In addition, building on the momentum created by the introduction of a statelessness determination procedure in its own country, UNHCR would be grateful to the Bulgarian Presidency for showing leadership in ensuring that the issue of statelessness remains on the EU's agenda. This would be an important achievement to showcase at the High Level Event on statelessness to mark the halfway point of the #IBelong Campaign to End Statelessness, which UNHCR will organize in October 2019. In that context, EU MS will be encouraged to share achievements, good practices and pledges.

### UNHCR recommends:

- For the Bulgarian Presidency to ensure that the reformed CEAS instruments consistently address the specific situation of stateless persons, including as part of the discussions on the Asylum Procedures Regulation in the Asylum Working Party.

## 4. An EU that integrates

---

A safe and secure status is key for refugees' effective integration in their new communities. UNHCR welcomes the position of the Council, as it does that of the European Parliament, in opposing the introduction of mandatory and systematic status review as part of the Qualification Regulation.<sup>13</sup> However, other aspects of the CEAS proposals could have a negative impact on the ability of refugees to effectively integrate. These include provisions that could lead to differing integration outcomes for persons with refugee status and beneficiaries of subsidiary protection, as well as the introduction of restrictive family definitions, with family unity being a key aspect for refugee integration.

### UNHCR recommends:

- As part of the CEAS reform, and in particular through the trilogues on the Qualification Regulation, aligning the rights and obligations of beneficiaries of subsidiary protection with those of persons with refugee status, including on residence permits, and extending family definitions.

UNHCR, December 2017

---

<sup>12</sup> Council of the European Union, *Council Conclusions on Statelessness*, 4 December 2015, available at: <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04-council-adopts-conclusions-on-statelessness/>.

<sup>13</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the 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/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/proposal\\_on\\_beneficiaries\\_of\\_international\\_protection\\_-\\_subsidiary\\_protection\\_eligibility\\_-\\_protection\\_granted\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/proposal_on_beneficiaries_of_international_protection_-_subsidiary_protection_eligibility_-_protection_granted_en.pdf).