



UNHCR's recommendations for the Romanian Presidency of the Council of the EU

January-June 2019

During its Presidency of the Council of the European Union (EU), Romania will have the challenging responsibility of advancing work on EU asylum policies in the run-up to the European Parliament elections in May 2019. While more remains to be done both in the EU itself and through the EU's engagement outside of its borders, the Global Compact on Refugees (GCR)¹ will provide a new momentum to protect refugees better through enhanced responsibility-sharing in the EU and globally.



Romania. Refugee children find their voice in inclusive choirs.

In this context, UNHCR, the UN Refugee Agency, is calling on the Romanian Presidency to focus on the following key protection priorities during its tenure:

- Contribute to the implementation of the GCR, by the EU, both inside and outside the EU.
- Engage outside of the EU to expand protection globally, as outlined in the GCR.
- Support the development of a fair, effective and well-managed EU asylum system.
- Promote integration and access to equal opportunities for refugees to foster social cohesion.

These priorities form the foundation of UNHCR's full Recommendations for the Romanian Presidency, and are to be read in conjunction with UNHCR's "Better Protecting Refugees in the EU and Globally",² which sets out the organization's proposals for EU asylum and migration policies.

I. An EU that contributes to the implementation of the Global Compact on Refugees

The GCR reaffirms international obligations under the 1951 Convention relating to the Status of Refugees,³ and consolidates existing initiatives and policies that comprehensively address forced displacement, from its prevention to the securing of solutions. These include aspects linked to safe and legal pathways, integration, linkages between humanitarian and

¹ UN General Assembly, *Report of the United Nations High Commissioner for Refugees, Part II, Global compact on refugees, A/73/12*, New York, 2018, available at: <https://www.unhcr.org/excom/unhcrannual/5ba3a5d44/report-united-nations-high-commissioner-refugees-part-ii-global-compact.html>.

² 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>.

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

development funding, as well as political support to mainstream forced displacement in the EU's external action.

UNHCR recommends that:

- The Romanian Presidency ensures that aspects of the GCR are discussed in relevant Council configurations, in order to reflect the diverse set of opportunities that come with its implementation, both inside and outside the EU.
- In particular, the Romanian Presidency convenes a joint meeting of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) and the High-Level Working Group on Asylum and Migration (HLWG) in the early stages of its mandate, to discuss implementation of the GCR, both inside and outside the EU.

II. An EU that is engaged beyond its borders

1. Cooperating with non-EU countries with the objective of expanding protection space globally

The Romanian Presidency has indicated its willingness to reinforce the EU's external engagement, including in its neighbourhood.⁴ In the spirit of the GCR, this needs to be done with a view to expanding the protection space globally. This will include fostering preparedness, establishing and strengthening relevant asylum institutions and procedures, access to rights and services, integration in host communities, and identifying, registering and protecting stateless people. For the Western Balkans specifically, the pre-accession process provides opportunities to assess where the region stands in implementing key reforms, and make recommendations to address remaining gaps. Although important progress has been made to reinforce asylum systems, further efforts are needed to develop fair and efficient asylum procedures, strengthen access to fundamental rights and services, expand integration opportunities, and prevent and address statelessness in the region.

UNHCR recommends that:

- In the EU's cooperation with non-EU countries, the Romanian Presidency focuses on expanding the protection space globally.
- The Romanian Presidency shows leadership in the Working Party on Enlargement and Countries Negotiating Accession to the EU to ensure that asylum and statelessness related accession benchmarks are effectively met and implemented by Western Balkan countries.

2. Expanding resettlement and complementary pathways of admission

With the global decrease in available resettlement places and continuously high resettlement needs, EU Member States (MS) can show global solidarity by expanding pathways of admission for refugees, in complement to their continuous obligation to receive spontaneously arriving asylum-seekers in the EU. This will also help undermine the business model of smugglers and traffickers. In this context, and with the adoption of the GCR, UNHCR and partners are working on a global three-year strategy⁵ to increase opportunities for resettlement and complementary pathways of admission, including to countries which do not currently have

⁴ See *Topics of interest, Preparing the Romanian Presidency to the EU*, available at: www.romania2019.eu/en/topics-of-interest/.

⁵ See paragraph 91 of the GCR.

such programmes. Positive developments to build upon include the commitment of 20 EU MS to resettle over 50,000 refugees by October 2019, the proposal for a Union Resettlement Framework Regulation, and the European Commission's and EASO's interest in community-based sponsorship. Additionally, barriers to family reunification in EU MS need to be addressed to avoid prolonged separation, reduced integration prospects and irregular onward movement.

UNHCR recommends that:

- In Justice and Home Affairs Councils, the Romanian Presidency encourages EU MS to fully implement their commitments to resettle 50,000 refugees by October 2019.
- The Union Resettlement Framework reflects resettlement as a tool for protection based on a refugee's vulnerability in accordance with UNHCR's Resettlement Submission Categories,⁶ and that it is responsive to global resettlement needs⁷ in a balanced manner.
- The Romanian Presidency organizes a SCIFA meeting on complementary pathways of admission in EU MS, such as community-based sponsorship programs and student scholarship schemes, as well as measures to improve access to efficient family reunification procedures.
- The Romanian Presidency supports the development of the three-year strategy on resettlement and complementary pathways of admission, as envisaged in the GCR.

3. Giving prominence to the situation of internally displaced persons

40 million people, the majority of forcibly displaced persons globally, are internally displaced persons. They are fleeing war, conflict and violence within the borders of their own country. With both the 20th anniversary of the Guiding Principles on Internal Displacement⁸ and the adoption of the GP20 Plan of Action,⁹ as well as the 10th anniversary of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention),¹⁰ 2019 will provide opportunities to reinforce existing EU policies and instruments. These opportunities will enable States to meet their primary responsibility to prevent internal displacement, as well as to respond to the needs of displaced persons and resolve causes for displacement. The Romanian Presidency will have a key role in making the most of these opportunities.

UNHCR recommends that:

- The Romanian Presidency prioritizes preventing and addressing internal displacement in relevant Council configurations. This is relevant in particular for the Working Party on Human Rights (COHOM), the Council Working Party on Humanitarian Aid and Food Aid (COHAFA) as well as the Working Party on Development Cooperation (CODEV).

⁶ UNHCR, *UNHCR Resettlement Handbook, Chapter Six, UNHCR Resettlement Submission Categories*, available at: <https://www.unhcr.org/3d464e842.pdf>.

⁷ UNHCR, *UNHCR Projected Global Resettlement Needs 2019*, 25-26 June 2018, available at: <https://www.unhcr.org/5b28a7df4.pdf>.

⁸ UNHCR, *Guiding Principles on Internal Displacement*, 22 July 1998, ADM 1.1, PRL 12.1, PR00/98/109, available at: <https://www.refworld.org/docid/3c3da07f7.html>.

⁹ *GP20 Plan Of Action*, 23 May 2018, available at: <http://globalprotectioncluster.org/assets/files/20180523-gp20-plan-of-action-final.pdf>.

¹⁰ African Union, *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention")*, 23 October 2009, available at: <https://www.refworld.org/docid/4ae572d82.html>.

III. An EU that ensures access to a fair, effective and well-managed protection system

1. Fostering responsibility-sharing and solidarity

Geography alone cannot continue to determine protection responsibilities. It remains key to establish practical and reliable arrangements among EU MS to share responsibility for the disembarkation and processing of persons rescued at sea. IOM and UNHCR put forward a joint proposal¹¹ to support the development of such arrangements, in which EU MS have a key role to play. In addition, EU MS facing a disproportionate number of arrivals need to be supported by specific intra-EU solidarity mechanisms. Reforming the Dublin Regulation to include a relocation mechanism, complemented by swift asylum decisions and integration support for those granted protection to help reduce onward movement, would be the most sustainable and effective way of sharing responsibility among EU MS. However, until structural changes are secured through the CEAS reform, existing frameworks need to be strengthened and used to foster responsibility-sharing and solidarity in the EU.

UNHCR recommends that:

- The Romanian Presidency continues to advance efforts to establish predictable disembarkation and processing mechanisms in the Central Mediterranean area, in line with IOM's and UNHCR's joint proposal.
- The Romanian Presidency continues to advance efforts to establish an effective solidarity mechanism to support EU MS receiving a disproportionate number of asylum claims, in particular a relocation mechanism as part of the reform of the Dublin Regulation.
- Until such a mechanism is in place, the Romanian Presidency encourages ad hoc arrangements, in line with existing EU law and frameworks, to foster responsibility-sharing. This would include relocation on a voluntary basis¹² and the use of discretionary powers under the current Dublin Regulation.

2. Enabling protection-sensitive border management

Border management will feature high on the Romanian Presidency's agenda, notably as it will advance the reform of the European Border and Coast Guard (EBCG) during its mandate. Border management is an important and legitimate part of migration and security policies. However, EU MS have an obligation under international and EU law to timely provide access to their territory to persons seeking international protection, and to identify and respond to their needs.

UNHCR recommends that:

- The reformed EBCG ensures effective access to the territory and to asylum procedures for persons seeking international protection and guarantees fundamental rights.
- Border management relies on clear monitoring and accountability mechanisms to address potential cases of non-compliance.

¹¹ IOM and UNHCR, *Proposal for a regional cooperative arrangement ensuring predictable disembarkation and subsequent processing of persons rescued-at-sea*, July 2018, available at: <https://www.unhcr.org/5b35e60f4>.

¹² As called upon in European Union: European Commission, *Communication from the Commission to the European Parliament, the European Council and the Council on managing migration in all its aspects: progress under the European Agenda on Migration*, COM (2018) 798 final, Brussels 4 December 2018, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20181204_com-2018-798-communication_en.pdf.

3. Fairly and efficiently determining protection needs in the EU

In recent months, proposals seeking to limit access to asylum in the EU and to externalize asylum processing to non-EU countries through mandatory admissibility and border procedures have been advanced. Taking into consideration that the EU receives a comparatively small proportion of the world's asylum-seekers, EU MS need to focus on developing fair and efficient procedures to substantively assess asylum claims on their territories, in compliance with the right to asylum enshrined in international and EU law. These procedures would quickly provide international protection to those who need it, facilitate the return of those who do not, while helping to reduce irregular onward movements. This would also be in line with the EU MS' commitment to global responsibility-sharing under the GCR, and provide a model for States developing their own asylum systems. The procedures must include the necessary safeguards and fully guarantee judicial oversight. They also need to provide adequate provisions for persons with specific needs, including children. Also, EU Agencies have a key role in supporting EU MS in implementing these procedures. The detention of asylum-seekers should remain exceptional rather than routine practice.¹³ Finally, UNHCR recalls its view that children should not be detained for immigration related-purposes, irrespective of their legal or migratory status, or that of their parents, as it is not in their best interests.

UNHCR recommends that:

- A focus is placed on further developing fair and efficient procedures in the EU to swiftly determine who is in need of international protection and who is not. In that context, UNHCR's proposals on accelerated and simplified procedures could prove helpful.¹⁴
- In particular, the Asylum Procedures Regulation, as well as the reformed Dublin Regulation and Return Directive uphold fundamental rights, procedural safeguards, and the principle of effective judicial protection at all stages of the asylum procedure, including at appeal stage.
- The necessary attention to the protection of people with specific needs, including children, is given in law and in practice in the EU
- The Romanian Presidency co-organizes a meeting to explore the use of alternatives to detention and, in the context of children, accessible and appropriate care arrangements, with the European Migration Network (EMN).
- The reform of the EBCG and the EU Asylum Agency (EUAA) upholds the right to asylum through access to the EU's territory and supports the implementation of fair and efficient procedures.

4. Fostering a sound, efficient and rights-based return system

The Romanian Presidency plans to advance the reform of the Return Directive during its mandate. A functioning return system is important to maintain the integrity of the EU's asylum space. Return can only be effected following a final negative asylum decision reached after a fair procedure, and with due consideration of the *non-refoulement* principle, as well as humanitarian and statelessness-related aspects. It also remains essential to ensure that persons found not to be in need of international protection have an opportunity to avail themselves of voluntary return assistance.

¹³ UNHCR, *Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seeker and refugees, 2014-2019*, June 2014, available at <https://www.unhcr.org/53aa929f6>.

¹⁴ UNHCR, *UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union*, 25 July 2018, available at: <https://www.refworld.org/docid/5b589eef4.html>.

UNHCR recommends that:

- The reform of the Return Directive fosters a sound, efficient, and rights-based return system.

IV. An EU that integrates

Through its focus on social cohesion and equal opportunities,¹⁵ the Romanian Presidency can pursue the GCR's objective of sustainably fostering integration at the local level. Integration requires appropriate investments of time and resources from States, local authorities, the private sector and civil society that have a key role to play in supporting integration, in addition to the efforts required from refugees in facilitating their integration. Additionally, the Romanian Presidency's intended focus on countering growing intolerance and xenophobia is particularly relevant for asylum-seekers and refugees.

UNHCR recommends that:

- The Romanian Presidency co-organizes an event to exchange views on the challenges and opportunities for more inclusive and sustainable integration programs with the EMN and the European Integration Network (EIN). Refugees, including refugee-led organizations, could be invited to share their first-hand experience, in addition to representatives from host communities.
- Relevant funds under the next Multi-Annual Financial Framework (MFF), such as the AMF, ERDF and Cohesion Funds, ensure that sufficient funding is allocated to integration.
- The Romanian Presidency co-organizes a meeting with the EU High-Level Group on combating racism, xenophobia and other forms of intolerance to specifically focus on the situation of asylum-seekers and refugees.

V. An EU that provides sufficient funding to effectively address forced displacement and protection needs

The Romanian Presidency will be involved in the early stages of negotiations on the next MFF. In this context, the whole-of-society approach, responsibility-sharing and solidarity, enshrined in the GCR, need to be effectively reflected in the MFF priorities and implementation. At the global level, this includes providing additional humanitarian funding matching rising global needs, and establishing dedicated development resources on top of regular development programmes. In the EU, this includes investing in fair and effective protection systems.

UNHCR recommends that:

- The Romanian Presidency raises awareness in relevant Council configurations on the need for dedicated, flexible and additional funding as part of the MFF to effectively address forced displacement and protection needs, globally and in the EU. In this context, UNHCR's recommendations for the next MFF should be considered.¹⁶

¹⁵ See *Topics of interest, Preparing the Romanian Presidency to the EU*, available at: www.romania2019.eu/en/topics-of-interest/.

¹⁶ UNHCR, *EU Multiannual Financial Framework 2021-2027: Addressing forced displacement effectively*, April 2018, available at: <https://www.unhcr.org/publications/euroseries/5ad7602c4/unhcr-recommendations-european-union-eu-multiannual-financial-framework.html>.

- In particular, the next MFF relies on needs assessments, and renders the partnership principle, aimed at fostering consultations among all relevant stakeholders, mandatory at national and EU levels.

VI. An EU that addresses statelessness

Despite most EU MS being parties to the Statelessness Conventions,¹⁷ only a handful provide sufficient and formal identification and protection mechanisms for stateless persons on their territory, and adequately prevent statelessness at birth. Statelessness also remains a key political, humanitarian and development challenge in non-EU countries. In October 2019, UNHCR will convene a global High-Level Event on Statelessness as part of the ten year #IBelong Campaign to End Statelessness, to assess achievements to date, showcase good practices, and encourage concrete pledges by States and others, including regional actors, in order to take action to address statelessness in the remaining five years of the Campaign. The Romanian Presidency will have a key role in facilitating a stock-taking of the progress achieved so far by EU MS, institutions and Agencies, and identifying a way forward.

UNHCR recommends that:

- EU MS reflect on pledges ahead of the 2019 High-Level Event on statelessness, among others, to accede the 1954 and 1961 Statelessness Conventions, as initially pledged in 2012,¹⁸ as well as to establish identification and protection procedures, and to introduce safeguards against statelessness at birth.
- The Romanian Presidency shows leadership in bringing the issue of statelessness to the attention of the Working Party on Human Rights (COHOM) on Development Cooperation (CODEV) and the Council Working Party on Humanitarian Aid and Food Aid (COHAFA) to support efforts to end statelessness globally.

VII. An EU that is prepared

The changing displacement and migratory patterns over the recent years have highlighted the need for better preparedness by the EU. The GCR provides additional momentum for the Romanian Presidency to further reflect on this issue. By capitalizing on increased monitoring and crisis prevention efforts by the EBCG, relevant guidance issued by EASO, and the asylum support teams foreseen in the EUAA Regulation, and drawing upon the relevant experience of other actors, including UNHCR, EU MS would be better prepared for any future surge in arrivals.

UNHCR recommends that:

- The Romanian Presidency ensures coherence and complementarity by convening meetings in relevant Council configurations with the participation of all actors involved in the different aspects of preparedness, including relevant EU Agencies and UNHCR.

UNHCR, December 2018

¹⁷ UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <http://www.refworld.org/docid/3ae6b3840.html>, and *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <https://www.refworld.org/docid/3ae6b39620.html>.

¹⁸ Delegation of the European Union to the United Nations, *Note verbale on the pledge registration form on the occasion of the High-Level Meeting on the Rule of Law*, para 4 on pledges by the European Union on accession to two Statelessness Conventions, 19 September 2012, available at: <https://www.un.org/ruleoflaw/files/Pledges%20by%20the%20European%20Union.pdf>.