



UNHCR's Recommendations to the Federal Republic of Austria for its Presidency of the Council of the European Union (EU)

July-December 2018

1. Introduction

The Federal Republic of Austria (hereafter Austria) will take over the Presidency of the Council of the European Union at a critical moment for the European Union (EU)'s asylum policy. At intra-EU level, despite some progress on the reform of the Common European Asylum System (CEAS), a significant breakthrough on EU solidarity is still urgently needed as exemplified by recent



discussions on the disembarkation of the *MS Aquarius*. Internal EU solidarity must also be accompanied with continued access for people to the EU's asylum procedures, rather than shifting protection responsibilities and externalizing asylum processing to non-EU countries. As formal consultations on the Global Compact on Refugees are drawing to an end, the EU's actions in the next months will send a strong signal to the rest of the international community on the importance of global solidarity and responsibility-sharing.

Refugee Children finding a new home in Austria
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In this context, UNHCR, the UN Refugee Agency, is calling on the Austrian Presidency to focus on the following key protection priorities during its tenure:

- Continue efforts to establish an effective mechanism to relocate asylum-seekers from EU Member States receiving a disproportionate number of asylum claims to other EU Member States as part of the reform of the Dublin Regulation.¹
- Advance the establishment of a predictable regional mechanism in the Mediterranean for the disembarkation and processing of persons rescued at sea. Such a mechanism needs to be underpinned by solidarity measures across the region.
- Ensure that the EU's cooperation with countries of origin and transit seeks to expand the global protection space rather than to shift protection responsibilities outside of the EU.

¹ 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>.

These priorities form the foundation of UNHCR's full Recommendations to the Austrian Presidency, and are to be read 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.

2. An EU that protects

a. Enhancing intra-EU solidarity

It is unsustainable for a small number of EU Member States to continue to bear a disproportionate responsibility for processing the majority of asylum claims and finding durable solutions. In the absence of an intra-EU solidarity mechanism, responsibility for processing applications continues to be linked to the disembarkation or arrival by land or sea of asylum-seekers. This gap has led to dramatic consequences, including (but not limited to) the most recent delays in disembarkation in safety for the rescued people aboard the *MS Aquarius*, and denial of access to territory and asylum procedures at land borders.

An urgent reform of the Dublin system is needed to embed an intra-EU solidarity mechanism in the CEAS and address such gaps. Until such a mechanism is in place, relocation should continue on a voluntary basis from EU Member States bearing a disproportionate responsibility of arrivals to other EU Member States. This would need to be complemented by enhanced efforts by EU Member States to swiftly provide asylum-seekers with a decision on their claims and those granted international protection with integration support in order to help reduce onward movements.

In a complementary manner, UNHCR has also called for a broader regional approach to disembarkation following search-and-rescue operations in the Mediterranean. This approach should ensure quick and predictable disembarkation and processing, safeguard the right to seek asylum, the respect for human rights of all people rescued, and provide support to States offering disembarkation to find solutions based on the principle of solidarity.

UNHCR recommends that:

- The Austrian Presidency continues to advance efforts to establish an effective mechanism to relocate asylum-seekers from EU Member States receiving a disproportionate number of asylum claims to other EU Member States as part of the reform of the Dublin Regulation. Such a mechanism needs to be activated swiftly and in a simple way, whenever it is needed. Full participation in the mechanism needs to be secured.
- In relevant Council configurations and through bilateral diplomatic efforts, the Austrian Presidency promotes the continuation of relocation on a voluntary basis until an intra-EU solidarity mechanism is in place.
- The Austrian Presidency advances the establishment of a predictable regional mechanism in the Mediterranean for the disembarkation and processing of persons rescued at sea. Such a mechanism needs to be underpinned by solidarity measures across the region.

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>.

b. Ensuring protection-sensitive border management and return

During the Austrian Presidency, FRONTEX plans to develop a technical and operational strategy to promote and support European Integrated Border Management (EIBM) in EU Member States. It is important that this strategy reflects the imperative need for border management, an important and legitimate part of migration policies, to be undertaken in a protection-sensitive manner to ensure that people seeking international protection have access to asylum procedures. Similarly, a functioning return policy following fair and efficient asylum procedures is important for the integrity of the EU asylum system, while it 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.

UNHCR recommends that:

- In relevant Council configurations, including the Working Parties on Frontiers and on Integration, Migration and Expulsion, the Austrian Presidency holds discussions on protection-sensitive border management and return of persons found not to be in need of international protection, including as part of the development of EIBM. Participation of relevant experts, including UNHCR, is important.

c. Protecting people with specific needs, including children

Many asylum-seekers arriving in Europe have specific needs requiring a specialized response. These include survivors of sexual and gender-based violence, victims of trafficking, people with disabilities, and children at risk, including unaccompanied and separated children. As highlighted in the European Commission Communication on the protection of children in migration,³ certain age assessment methodologies raise concerns and best interests procedures are not systematically carried out as required. For unaccompanied and separated children, the swift appointment of a guardian and legal representative is key. 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:

- In the context of the ongoing reform of the CEAS, the Austrian Presidency gives the necessary attention to the protection of people with specific needs, including children.
- The Presidency uses Justice and Home Affairs (JHA) Councils and Strategic Committee on Immigration Frontiers and Asylum (SCIFA) meetings to encourage EU Member States to actively participate in the European Network on Guardianship to facilitate the exchange of good practices among EU Member States on implementing guardianship safeguards for unaccompanied and separated children.
- Child detention for immigration purposes is ended, included as part of the reform of the recast Reception Conditions Directive.⁴ Instead, accessible and child-appropriate care arrangements should be actively explored.

³ European Union: European Commission, *Communication from the Commission to the European Parliament and the Council on the protection of children in migration*, 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.

⁴ 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)*, Brussels, 13 July 2016, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0465>.

d. Protecting stateless people

In the run-up to the mid-point of UNHCR's 2014-2024 global #IBelong Campaign to end Statelessness, the Austrian Presidency can lead by encouraging EU Member States to prepare achievements and robust pledges for UNHCR's High-Level Event on Statelessness to be held in October 2019.

UNHCR recommends that:

- The Austrian Presidency holds a SCIFA discussion on the status of implementation of the statelessness Conventions, regarding the identification and protection of stateless migrants and refugees, including children who face particular challenges, through the adoption of stateless determination procedures, as well as measures to ensure that children born stateless in Europe acquire nationality. The objective of the discussion should be to encourage improved implementation of international standards, including by calling for accession to the statelessness Conventions where relevant, and robust related pledges at the High-Level Event for the mid-point of the #IBelong Campaign.

3. An EU that is engaged beyond its borders

a. Supporting the adoption of the Global Compact on Refugees

As established by the New York Declaration, the High Commissioner will for Refugees will propose the Global Compact on Refugees as part of his annual report for consideration by the 73rd session of the UN General Assembly in the fall of 2018, in conjunction with the annual Resolution on the Office of UN High Commissioner for Refugees to be adopted in mid-December. The Austrian Presidency is therefore in a position to play an instrumental role in ensuring that the EU maintains its existing support for the adoption of this landmark international agreement.

UNHCR recommends that:

- The Austrian Presidency prioritizes the maintenance of EU support for the GCR's adoption in relevant Council configurations, including in the High Level Working Group on Asylum and Migration (HLWG).

b. Featuring the expansion of the protection space globally among the objectives of the EU's cooperation with non-EU countries, including in the Western Balkans

The Austria's September 2018 Conference on Security and Migration will be an important opportunity to reiterate the EU's commitment to continued and enhanced cooperation with countries outside of the EU in the field of asylum and migration, including through support for the host communities where the majority of the world's refugees live.

In line with the commitments to global solidarity expressed by all UN Member States in the New York Declaration,⁵ and in order to promote EU values and fundamental rights in the EU's external engagement, such cooperation needs to seek to expand the global protection space rather than to shift protection responsibilities outside the EU. Recently proposed approaches limiting access to asylum for people arriving to the EU and seeking to externalize asylum processing to non-EU

⁵ 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>.

countries, including through mandatory admissibility assessments based on the safe third country concept, must be avoided.

The Austrian Presidency has indicated that it will focus on the Western Balkans during its mandate.⁶ The Presidency will have a key role in taking forward the commitments made by EU leaders at the EU-Western Balkans Summit in May 2018, including in the context of the accession process. Although important progress has been made to reinforce asylum systems in the Western Balkans, further efforts are needed to develop fair and efficient asylum procedures, expand integration opportunities, and prevent and address statelessness in the region.

UNHCR recommends that:

- In the EU's cooperation with non-EU countries, the Austrian Presidency focuses on expanding the protection space globally. In particular, the September 2018 Conference is an opportunity to ensure that issues such as 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 remain high on the EU Member States' agenda.
- Rather than considering mandatory admissibility procedures based on the safe third country concept, EU Member States need to focus on establishing fair and efficient procedures in the EU to quickly determine who is in need of protection and who is not. These procedures must be in full compliance with EU fundamental rights and procedural safeguards, including the right to an effective remedy. In that context, UNHCR's proposals on accelerated and simplified procedures could prove helpful.⁷
- The Austrian 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.

c. Expanding safe and legal pathways

As the European Commission is finalizing the results of its Legal Migration Fitness Check,⁸ the time is ripe for further reflection on safe and legal pathways to the EU. Against the backdrop of a global decrease in the number of available resettlement places, and continuingly high resettlement needs, EU Member States can demonstrate their commitment to global solidarity as set out in the New York Declaration by expanding the number and range of legal pathways for refugees, which will also help to undermine the business model of human smuggling and trafficking networks. In this context and as the global community moves towards the adoption of the GCR, UNHCR and partners are working to devise a global three-year strategy to increase the pool of resettlement places, including to countries who do not currently resettle.

Recent positive developments in Europe include 20 EU Member States committing to resettle over 50,000 refugees by October 2019, negotiations for the establishment of a Union Resettlement Framework, and EASO's engagement in the piloting of community-based sponsorship in interested EU Member States. EU Member States have the opportunity to

⁶ Austrian Presidency of the Council of the European Union, *Agenda Priorities: 'A Europe that Protects' – Priorities of the Austrian Presidency of the Council of the EU*, available at: <https://www.eu2018.at/agenda-priorities/priorities.html>.

⁷ UN High Commissioner for Refugees, *Discussion paper on Accelerated and Simplified Procedures in the European Union*, forthcoming.

⁸ See European Commission, *Legal Migration Fitness Check – REFIT Initiative*, available at: https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/fitness-check_en.

reaffirm, in accordance with UNHCR's Resettlement Submission Categories, that resettlement is a crucially important protection tool and a durable solution for people at risk in their country of refuge, including due to their gender or particular needs and vulnerabilities. Moreover, EU Member States need to address the practical and legal barriers to family reunification that refugees and beneficiaries of subsidiary protection face, and which too often lead to prolonged separation, reduced integration prospects, and irregular onward movement.

UNHCR recommends that:

- During upcoming Justice and Home Affairs (JHA) Council meetings, the Austrian Presidency encourages EU Member States to fully implement their commitments to meet the target of effectively resettling 50,000 people by October 2019, including by meeting the European Commission's initial 50 per cent milestone⁹ by October 2018.
- The Austrian Presidency puts the development of complementary pathways of admission in EU Member States, such as community-based sponsorship programmes and student scholarship schemes, as well as measures to improve access to efficient family reunification procedures, on the SCIFA agenda.
- The Union Resettlement Framework reflects resettlement as a tool for protection based on a refugee's vulnerability and in accordance with UNHCR's well-established Resettlement Submission Categories, and that it is responsive to global resettlement needs in a balanced manner.
- The Austrian Presidency supports the development of a three-year global strategy to increase the pool of resettlement places, as envisaged in the draft GCR.

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

The Austrian Presidency will be involved in the early stages of negotiations on the 2021-2027 Multi-Annual Financial Framework (MFF). The MFF will be an opportunity to effectively address forced displacement globally, as well as protection needs in the EU. In this context, the whole-of-society approach, responsibility-sharing and solidarity, which will be enshrined in the future GCR, need to be effectively reflected in the MFF priorities and implementation. At the global level, this includes providing additional humanitarian funding matching the rising global needs, and establishing dedicated development resources over and above regular development programmes. Within the EU, this includes investing in effective and efficient protection systems.

UNHCR recommends that:

- The Austrian Presidency raises awareness in relevant Council configurations on the need for dedicated, flexible and additional funding to address forced displacement effectively in the MFF, both globally and in the EU. In this context, UNHCR's recommendations for the next MFF could prove useful.¹⁰

⁹ European Commission, *Migration: A Roadmap*, December 2017, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171207_migration_a_roadmap_en.pdf.

¹⁰ UNHCR, *EU Multiannual Financial Framework 2021-2027: Addressing forced displacement effectively*, April 2018, available at: <http://www.unhcr.org/publications/euroseries/5ad7602c4/unhcr-recommendations-european-union-eu-multiannual-financial-framework.html>.

5. An EU that integrates

During the Austrian Presidency, a stocktaking exercise will be undertaken to measure progress achieved on the European Partnership for Integration.¹¹ This will provide further momentum to focus on integration-related practices, help support and strengthen the integration of beneficiaries of international protection and their full participation in these processes, and with a view to ensuring that they can fully contribute to their host societies. Integration requires appropriate investments of time and resources from States and their national partners, while due consideration should be given to the critical role that cities and civil society play in supporting integration. Additionally, public figures and the media have a key role in promoting a constructive narrative on refugees to counter growing intolerance and xenophobia.

UNHCR recommends that:

- The Austrian Presidency hosts a European Migration Network (EMN) conference to exchange best practices on integration, including on language, housing, cultural and social orientation, as well as access to vocational and skills training, skills recognition, work permits and the labour market. Refugees could be invited, in order for them to share their first-hand experience.
- The Austrian Presidency encourages EU Member States to allocate and spend a minimum of 30 per cent of Asylum, Migration and Integration (AMIF) National Programme funding on integration activities.

6. An EU that is prepared

The 2015 to 2016 refugee situation underscored the need for better preparedness in the EU. By capitalizing on increased monitoring and crisis prevention efforts by FRONTEX, relevant guidance issued by EASO,¹² and the asylum support teams foreseen in the European Union Agency for Asylum (EUAA) Regulation, and drawing upon the relevant experience of other actors, including UNHCR, EU Member States would be better prepared for any future surge in arrivals.

UNHCR recommends that:

- The Austrian 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 FRONTEX, EASO and UNHCR.

UNHCR, June 2018

¹¹ European Union: European Commission and European Social Partners, *A European Partnership for Integration*, December 2017, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/integration/docs/20171220_european_partnership_for_integration_en.pdf.

¹² European Union: European Asylum Support Office (EASO), *EASO Guidance on contingency planning in the context of reception*, March 2018, available at: <https://www.easo.europa.eu/sites/default/files/easo-guidance-contingency-planning-2018.pdf>.