

Comments by the United Nations High Commissioner for Refugees (UNHCR) Regional Representation for Northern Europe on the draft amended National Action Plan for the Asylum, Migration and Integration Fund 2014 - 2020

I. Introduction

1. The UNHCR Regional Representation for Northern Europe (hereafter “RRNE”) is grateful to the Ministry of the Interior of Finland for the invitation to comment on the draft amended National Action Plan (hereafter “NAP”) for the Asylum, Migration and Integration Fund (hereafter “AMIF”).
2. As the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees,¹ UNHCR has a direct interest in law and policy proposals in the field of asylum. According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]”² This supervisory responsibility is reiterated in the preamble as well as reflected in Article 35 of the 1951 Convention,³ and in Article II of the 1967 Protocol relating to the Status of Refugees (collectively referred to as the “1951 Convention”). UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention,⁴ as well as by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.
3. UNHCR’s supervisory responsibility has also been reflected in European Union law, including by way of a general reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union (“TFEU”)⁵, as well as 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*”⁶.

¹ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628> (“UNHCR Statute”).

² *Ibid.*, paragraph 8(a).

³ According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the 1951 Convention”.

⁴ UN High Commissioner for Refugees (UNHCR), *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

⁵ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, OJ C 115/47 of 9.05.2008, available at: <http://www.unhcr.org/refworld/docid/4b17a07e2.html>.

⁶ European Union, *Declaration on Article 73k of the Treaty establishing the European Community*, OJ C 340/134 of 10.11.1997, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/DCL/17: EN:HTML>.

4. UNHCR therefore welcomes this opportunity to provide comments on the draft amended NAP for Finland's national AMIF programme for the period 2014 - 2020. UNHCR shared preliminary recommendations on priority areas for funding under the Finnish National Programme for the 2014-2020 Asylum and Migration Fund ("AMF") on 4 September 2013, comments on the draft National Programme for the AMIF in May 2014 and comments on the draft NAP for Finland's national AMIF programme for the period 2014-2020 in January 2015. These recommendations and comments are still valid.
5. The current NAP, adopted by the Finnish Government on 1 October 2015, is proposed to be amended due to the fact that the European Commission is granting additional funding for relocation. The use of the additional funding is proposed to be defined in chapter 6 of the NAP. The priorities for funding for resettlement (chapter 5 of the NAP), the criteria for accepting applications and the yearly distribution of funding are also proposed to be amended.
6. As a general comment, UNHCR welcomes that Finland participates in the intra-EU relocation of asylum-seekers. UNHCR has for a long time been in favour of relocation as a means of responsibility sharing in the EU. UNHCR has also always seen the use of EU funds for relocation to be the way forward in making relocation a viable option for EU Member States.⁷ UNHCR thus welcomes Finland's active approach to include relocation in the NAP. In the following section, UNHCR will present more detailed comments on the draft amended NAP.

II. Observations

7. No amendments are proposed in the text concerning the three special goals in the current NAP (1. Developing and strengthening the Common European Asylum System, 2. Integration and Legal Migration, 3. Return). Concerning these goals, UNHCR refers to its earlier comments, listed in para. 4 above. UNHCR has no comments concerning the, mostly technical, amendments proposed to the criteria for accepting applications and concerning the distribution of funding.
8. Chapter 5, containing goal 5 (Safeguarding the continuity and functionality of Finland's resettlement programme), and goal 6 (Ensuring the functionality of municipality placements), is in the draft amended NAP proposed to be changed to reflect needs arising from the increase in numbers of asylum-seekers in Finland. The proposed amendments highlight that securing municipality placements will be even more important. The importance of early integration and immediate start of integration when settling in a municipality is also included in the proposed amendments. The lack of municipality placements and the resulting delays in departures of resettled refugees to Finland has for the last few years been one of UNHCR's main concerns in Finland. Especially the long waiting times for emergency cases have caused problems. UNHCR thus supports these proposed amendments to Chapter 5.

⁷ See UN High Commissioner for Refugees (UNHCR), *The challenges of mixed migration, access to protection and responsibility-sharing in the EU: A UNHCR non-paper*, 16 June 2009, available at: <http://www.refworld.org/docid/4a5c453a2.html>

9. The draft amended NAP contains a new chapter 6 about the funding for relocation. According to it, the funds allocated will result in well-organised travel for the relocated asylum-seekers, extended reception capacity, new forms and places of accommodation, adequate services and more effective registration, handling of applications and decision making, and communication of the decisions.
10. In its earlier comments, UNHCR RRNE has recommended prioritizing improvement of the quality of the asylum procedure, including of decisions, interpretation and quality assurance at all stages of the procedure, as well as continuous capacity-building of the relevant authorities. The first action point in Chapter 6 *inter alia* refers to training of authorities and interpretation. UNHCR thus welcomes this inclusion in the draft amended NAP. The quality of interpretation and information are crucial aspects for correct decision making, which was highlighted in the findings of the project on quality of asylum decisions in the EU.⁸
11. In its earlier comments, UNHCR RRNE has further suggested the prioritization of quality legal counseling, as well as the provision of information to asylum-seekers. UNHCR reiterates this view and recommends quality legal aid to be mentioned in chapter 6 as a part of services connected to the asylum procedure. This would be in line with goal 1 in the current NAP, where access to quality legal aid and assistance already in the initial stages of the asylum procedure feature prominently.
12. The second action point in chapter 6 of the draft amended NAP is to secure the technical conditions for the asylum procedure. It is UNHCR's understanding that funding can be used for developing data systems connected to registering asylum-seekers and the asylum procedure, procurement of equipment, and more specifically, to connect the Passport Register and the Schengen Information System II with the Automated Fingerprint Identification System of the police.
13. UNHCR wishes to remind that the sharing of personal information concerning asylum-seekers is guided by a number of principles as well as EU legislation.⁹

⁸ UN High Commissioner for Refugees (UNHCR), Further Developing Asylum Quality in the EU (FDQ): Summary Project Report, September 2011, available at: <http://www.refworld.org/docid/4e85b41f2.html>

⁹ See, for instance, European Union, *Directive 95/46/EC of the European Parliament and of the Council on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data*, 24 October 1995, available at: <http://www.refworld.org/docid/3ddcc1c74.html>; Convention for the protection of individuals with regard to automatic processing of personal data (CETS No. 108), 28.1.1981; Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and trans-border data flows (CETS No. 181), Strasbourg, 8.11.2001; Amendments to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data approved by the Committee of Ministers, in Strasbourg, on 15 June 1999, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm>; European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)); available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0212+0+DOC+XML+V0//EN>.

Data sharing is normally regulated by national law and needs to have a legitimate basis and specific purpose. It should also be necessary and proportionate to a legitimate and specific purpose, and not exceed this.

UNHCR Regional Representation for Northern Europe
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