



Spain. Basque community opens its doors to refugee families from Syria, October 2019
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UNHCR'S RECOMMENDATIONS FOR THE SWEDISH AND SPANISH PRESIDENCIES OF THE COUNCIL OF THE EUROPEAN UNION (EU)

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Contents

| | |
|---------------------------------------------------------------------------------------------------------------------------|----|
| Executive Summary | 3 |
| Introduction | 6 |
| Section one: Negotiating sustainable asylum reform based on the Pact | |
| I. Ensure access to territory and fair and efficient asylum procedures | 7 |
| II. Address Human rights violations at the borders | 11 |
| III. Enhance monitoring and contingency planning | 12 |
| IV. Ensure adequate reception conditions and develop alternatives to detention (ATDs) | 13 |
| V. Enhance intra-EU solidarity and responsibility-sharing | 14 |
| VI. Ensure swift return of asylum seekers whose asylum applications have been rejected, following due process | 14 |
| VII. Promote integration and inclusion for those granted asylum | 16 |
| VIII. Increase access to resettlement and complementary pathways | 16 |
| IX. Ensure access to family reunification | 17 |
| X. Address statelessness | 18 |
| Section two: Providing more support to countries and regions where most forcibly displaced people live | |
| I. Partnership with third countries | 20 |
| II. Ten percent target in NDICI: EU needs to track and report its spending on forced displacement in a transparent manner | 21 |
| III. The EU needs to show progress on the nexus | 22 |
| IV. Champion forgotten crises | 22 |

EXECUTIVE SUMMARY

Two years after the release of the European Commission's proposed Pact on Migration and Asylum, progress on negotiations has been made under the 2021 French and Czech Presidencies of the Council of the EU. UNHCR urges the incoming Swedish and Spanish Presidencies to continue working towards solutions for displaced people, in line with the Joint Roadmap¹ on the timeframe for completion of the Pact. However, UNHCR continues to be concerned that violent pushbacks persist at the EU's external borders in violation of international law. Member States (MS) are expected to fully uphold the right to seek asylum and align their legislation and practice with EU and international law. Creating sustainable, speedy, and fair systems even in times of crisis is possible.

UNHCR has welcomed the decision to activate the Temporary Protection Directive (TPD) in response to the Ukraine emergency in MS² as one way to provide immediate protection from refoulement and basic standards of living for refugees, including access to social and health services, to accommodation and the labour market. Its practical implementation demonstrates that large movements of refugees may be effectively managed. Six months on from the activation of the TPD, UNHCR has additionally conducted research into the practical implementation of the Directive with a focus on refugees' access to rights and key barriers.³ In particular, allowing refugees to move beyond the first country of

asylum has helped to reduce increasing pressures on countries neighbouring Ukraine and enhance solidarity across MS. It has helped enable refugees to be an active contributor, and by allowing them the option of reuniting with family members and existing community networks in other countries, it has avoided overreliance on State systems in the first countries of asylum.⁴

Elements of the Pact on Migration and Asylum, such as the Crisis and Force Majeure Regulation, and the new proposed Instrumentalisation Regulation provide for significant derogations to MS obligations under the asylum *acquis* and international law in certain situations. They include provisions that risk shrinking the protection space in Europe, which UNHCR strongly advises against. UNHCR further wishes to underline to the Swedish and Spanish Presidencies the importance of a renewed focus of EU institutions on the negotiation and adoption of the Pact on Migration and Asylum, while considering a reformulation of elements that encompass derogations, and UNHCR stands ready to support. The diverse elements of the Pact present a tangible opportunity to set up a legal framework capable of ensuring access to fair and efficient asylum procedures, as well as creating functioning solidarity and responsibility-sharing mechanisms without resorting to derogations.

1 European Parliament News Room, Migration and Asylum: Roadmap on the way forward agreed between European Parliament and rotating Presidencies., 7 September 2022, available at: <https://www.europarl.europa.eu/news/en/press-room/20220905IPR39714/migration-and-asylum-roadmap-on-way-forward-agreed>

2 UNHCR, News Comment: UNHCR welcomes EU decision to offer Temporary Protection to Refugees fleeing Ukraine, 4 March 2022, available at: <https://www.unhcr.org/news/press/2022/3/6221f1c84/news-comment-unhcr-welcomes-eu-decision-offer-temporary-protection-refugees.html>

3 UNHCR, The Implementation Of The Temporary Protection Directive - Six Months On, October 2022, available at: <https://data.unhcr.org/en/documents/details/96266>

4 UNHCR, The EU Temporary Protection Directive in Practice 2022, May 2022, available at: <https://data.unhcr.org/en/documents/details/93633>

As the first Presidency of 2023, Sweden has released its priorities⁵ and programme on Justice and Home Affairs⁶ that reflects many of the issues and considerations outlined in this document. UNHCR welcomes the focus on advancing negotiations on the Pact and building an effective asylum system, support for refugees forced to flee Ukraine, dignified, operational and effective returns of rejected asylum seekers, and upholding the principle of rule of law and respect for human rights.

The Pact also outlines the EU's stronger role as a partner to promote better protection and solutions for people forced to flee globally. Given that 74 per cent of the world's refugees are hosted in low- and middle-income countries, the EU's commitment to global solidarity and partnership with third countries is paramount to have meaningful results for forcibly displaced and communities that host them. UNHCR strongly recommends that the two upcoming Presidencies facilitate discussions to ensure that global solidarity is reflected in the EU's policy and financing decisions when working with third countries.

Section One of this document outlines the core components for a functional asylum system within the EU, which UNHCR advises the Presidencies to consider:

1. Ensuring access to territory and addressing human rights violations at the borders: It is essential to maintain access to territory and procedures on arrival to the EU and globally at a time when the number of displaced persons in the world is at an all-time high and when humanitarian needs are increasing. UNHCR remains gravely concerned about ongoing systematic and increasingly violent pushbacks at the EU's external borders; the various human rights violations they encompass are clearly

at odds with EU and international law. UNHCR encourages the swift implementation of Independent National Monitoring Mechanisms (INMMs).

2. Developing fair and efficient asylum procedures in the EU and dignified reception conditions:

It is key to continue developing functional asylum systems to swiftly and fairly determine whether an asylum seeker is in need of international protection. As the Asylum Procedures Regulation (APR) is again on the table, UNHCR reminds the Presidencies that fair and efficient procedures can support healthy asylum systems while building trust in the asylum system and reducing situations of prolonged limbo. The European Union Asylum Agency (EUAA) will be well placed to assist with this, and MS are advised to increasingly use the supporting mechanisms the new Agency can offer toward this end. Part of a functional asylum system includes adequate and dignified reception conditions while the asylum claim is processed, coupled with sufficient capacity and human resources available to meet obligations under current EU legislation. UNHCR remains firmly opposed to arrangements that seek to transfer refugees and asylum seekers to third countries in the absence of sufficient safeguards and standards. Such arrangements simply shift asylum responsibilities, evade international obligations, and are contrary to the letter and spirit of the Refugee Convention.

3. Enhancing intra-EU solidarity and responsibility-sharing and search and rescue (SAR):

Fair and efficient asylum procedures need to be accompanied by functional solidarity measures. The right balance between the responsibility of MS to process claims should be complemented by adequate solidarity measures. The 2022 Solidarity Declaration is a good basis for a predictable search and rescue and disembarkation mechanism that saves lives. UNHCR hopes the political commitment will

⁵ Swedish Presidency of the Council of the EU, Priorities of the Swedish Presidency of the Council of the EU, 2022, available at: <https://swedish-presidency.consilium.europa.eu/en/programme/priorities/>

⁶ Swedish Presidency of the Council of the EU, The Swedish Presidency Programme, 2022, available at: <https://swedish-presidency.consilium.europa.eu/en/programme/programme-of-the-presidency/>

translate into prompt and practical action and, ultimately, better protection for people fleeing war, violence and persecution.

4. Finally, the **return** of those not found to be in need of international protection is an important final element of a well-functioning asylum system. Returns should be operational, effective and carried out after due process with the relevant safeguards. UNHCR welcomes the role of the EU Return Coordinator provided that MS and the European Commission commit to strengthen and capacitate its role in promoting effective returns of rejected asylum seekers. States are required to grant individuals seeking asylum access to their territory and to fair and efficient procedures, before taking action to affect their removal, and returns should be supported through re-integration measures to ensure the sustainability of returns.

Section Two of the Recommendations outlines concrete areas where the upcoming Council Presidencies can engage with the European Commission and MS on the EU's support to countries and regions where most forcibly displaced people live. This includes recommendations on how the Swedish and Spanish Presidencies can partner with third countries, using all instruments available, to progress on global solidarity with hosting countries and communities, while upholding functioning asylum systems. The recommendations also urge the Presidencies to advocate for an early increase in the EU's and MS' Humanitarian Budgets for 2023 and encourage the European Commission to design a road map towards more flexible funding for forced displacement situations globally, complementing what is provided for the Ukraine situation. Similarly, UNHCR recommends that the Presidencies call on transparent and predictable EU funding for forced displacement, through more regular reporting on progress made to relevant Council Working Groups and European Parliament (EP) Committees. Final-

ly, UNHCR urges the Council Presidencies to use opportunities such as the upcoming European Humanitarian Forum to increase visibility around protracted humanitarian situations and take stock of humanitarian funding allocated for forgotten crises.

INTRODUCTION

As we enter the third year since the European Commission proposed its Pact on Migration and Asylum, global forced displacement has increased at an alarming rate: currently, 103 million people globally have been forcibly displaced by war, violence, persecution, and human rights abuses. Of those, 27 million were refugees at the end of 2021.⁷ This is well over double the figure 10 years ago.⁸ Since then, the Russian Federation's invasion of Ukraine – causing the fastest and one of the largest forced displacement crises since World War II – and other emergencies, from Africa to Afghanistan and beyond, have exacerbated the global displacement crisis. Sustainable, fair, and pragmatic asylum reform in the EU is urgently needed to protect people uprooted from their homes and seeking international protection, accompanied by solidarity and global responsibility sharing.

The welcome shown by European nations to Ukrainian refugees has demonstrated the positive global leadership and the highly commendable response of the EU to refugees in an efficient, fair, and well-coordinated manner. The activation of the TPD for the first time has generated many lessons and good practices that can be used to inform sustainable reform of asylum systems. The EU's response to Ukraine should not be the exception, but can act as a blueprint for a future meaningful response, as the President of the European Commission has emphasised.⁹

UNHCR has welcomed the progress made over the last year on the proposed Pact on Migration and Asylum. These are steps in the right direction towards a common framework that balances solidarity and responsibility sharing in the EU. Real progress towards a fair system that supports forcibly displaced people and MS alike is possible and UNHCR welcomes the commitment and cooperation between the forthcoming Presidencies until 2024 and the EP in the Roadmap on the Pact.¹⁰

In addition to overstressing the EU's and MS' capacities and financial resources, the effects of the Ukraine crisis, coupled with those of climate and Covid-19, have increased vulnerabilities among those already at risk and have forced many more to flee and become forcibly displaced. While exceptional support from all relevant actors, including the EU, has shown unprecedented solidarity with Ukraine, the protracted nature of other conflicts around the world requires a coherent and effective approach on EU external action globally. This includes coherent policy as well as predictable and flexible EU financial support. Lessons learnt from the EU's policy implementation and financial response with regards to the Ukraine situation, should be extended to EU's external policy more broadly.

7 UNHCR, Mid-Year Trends 2022, 27 October, 2022, available at: <https://www.unhcr.org/statistics/unhcrstats/635a578f4/mid-year-trends-2022.html>

8 UNHCR, Global Trends Report: Forced Displacement in 2021, 16 June 2022, available at: <https://www.unhcr.org/unhcr-global-trends-2021-media-page.html>

9 The European Commission, State of the Union Address 2022, available at: https://state-of-the-union.ec.europa.eu/index_en

10 European Parliament News Room, Migration and Asylum: Roadmap on the way forward agreed between European Parliament and rotating Presidencies, 7 September 2022, available at: <https://www.europarl.europa.eu/news/en/press-room/20220905IPR39714/migration-and-asylum-roadmap-on-way-forward-agreed>

1 NEGOTIATING SUSTAINABLE ASYLUM REFORM BASED ON THE PACT

Significant advancements on the Pact on Migration and Asylum have been made under the Portuguese and French Presidencies of the Council of the EU, namely the entry into force of the EU Asylum Agency Regulation in January 2022, and agreements on the Council negotiating mandates on Screening and Eurodac in June 2022. UNHCR welcomes this recent progress as part of the need to create a fair and sustainable asylum system within Europe for people fleeing violence and persecution from around the world. Europe has a long history of offering asylum and protection to people in need; the Ukraine crisis has shown Europe's capacity for an organised and workable approach to asylum – one that both benefits states and safeguards the rights of refugees. Such common European values, if applied in a non-discriminatory manner to all refugees and asylum seekers, maintain safe access to territory for asylum seekers, fair and efficient procedures at borders, and predictable models of intra-EU solidarity.

Given the timeline for the completion of Pact negotiations by 2024 in the Roadmap, UNHCR reiterates its availability to provide practical and workable expertise to support MS and the Presidencies, together with the European Commission, in line with Better Protecting Refugees,¹¹ Recommendations for the

Pact,¹² Fair and Fast,¹³ and Practical Considerations for Fair and Fast Border Procedures and Solidarity in the EU.¹⁴ Concurrently, UNHCR reminds the forthcoming Swedish and Spanish Presidencies of the Council of the EU that progress made on responsibility, including external border management, should be accompanied by meaningful solidarity measures within the EU.

I. ENSURE ACCESS TO TERRITORY AND FAIR AND EFFICIENT ASYLUM PROCEDURES

On 22 June 2022, the Council adopted¹⁵ the negotiating mandates on Screening and Eurodac Regulations, key components of external border management under the new Pact. UNHCR has consistently advocated for a streamlined process on arrival,¹⁶ including crucial vulnerability screening and identification of specific needs; in this regard, UNHCR welcomes elements of the European Commission's proposal that must be carried out in line with legal safeguards and with full respect for the right to seek asylum.¹⁷ UNHCR is, however, concerned with the "pre-entry fiction" in the Pact's proposals for screening and border procedures, which potentially excludes important safeguards enshrined in international human rights and refugee law.

11 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: <https://www.refworld.org/docid/58385d4e4.html>

12 UNHCR, UNHCR Recommendations for the European Commission's Proposed Pact on Migration and Asylum, January 2020, available at: <https://www.refworld.org/docid/5e3171364.html>

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

14 UNHCR, Practical considerations for fair and fast border procedures and solidarity in the European Union, 15 October 2020, available at: <https://www.refworld.org/docid/5f8838974.html>

15 Council of the European Union, Press Release, Asylum and migration: the Council approves negotiating mandates on the Eurodac and screening regulations and 21 states adopt a declaration on solidarity, 22 June 2022, available at: <https://www.consilium.europa.eu/en/press/press-releases/2022/06/22/migration-and-asylum-pact-council-adopts-negotiating-mandates-on-the-eurodac-and-screening-regulations/>

16 UNHCR, UNHCR Recommendations for the European Commission's Proposed Pact on Migration and Asylum, January 2020, available at: <https://www.refworld.org/docid/5e3171364.html>

17 UNHCR emphasises that MS must continue to respect the primacy of EU law and international legal obligations. Despite any artificial construct or fiction of non-entry, States remain bound by their obligations under the EU Charter of Fundamental rights, the European Convention on Human Rights and the 1951 Convention.

Access to territory for persons wishing to seek asylum must be ensured in compliance with the right to seek asylum and the principle of non-refoulement. The Presidencies are reminded that these legal obligations cannot be derogated from, even in times of emergency or in situations where a third country instrumentalises irregular migratory flows. Drawing on recent experiences during the COVID-19 situation, and other large-scale emergencies, flexibility and adaptation needs in times of crisis still allow for the maintenance of basic registration to ensure access to essential services and assistance. Moreover, asylum procedures must be carried out in line with existing legal safeguards, including the right to an effective remedy. Additional procedural safeguards for persons with specific needs and vulnerabilities should always be in place.¹⁸

Screening procedures and the fiction of non-entry

UNHCR reminds the Presidencies, particularly in the context of the proposed Screening Regulation and the Instrumentalisation Regulation, that asylum seekers must not be penalised for their irregular arrival and that travel, or identity documents should not be a precondition for entry to the territory.¹⁹ As the CJEU recently underlined,²⁰ the right to seek asylum should not depend on the mode of arrival to the territory of the State.²¹

The Council's mandate for negotiating with the EP maintains the fiction of non-entry in the Screening Regulation but has a specific disclaimer that this does not mean the fiction will be extended to negotiations on the APR. In the context of discussions on the amended APR in the Council, UNHCR reiterates the concern around the fiction of non-entry in the proposed border procedure for asylum and return. In the Instrumentalisation Regulation the fiction of non-entry would continue to apply for 16 weeks in the emergency border procedure, an increase from 12 weeks in border procedures as proposed in the amended APR. UNHCR considers this period unjustifiably long and calls on the Presidencies to reconsider the fiction of non-entry given the multiple concerns. In particular, if reception conditions and the potential detention of persons would be governed by national law and the EU law registration obligations apply only after the screening is over, UNHCR is concerned that this will lead to delays in registration obligations, substandard reception conditions and prolonged detention.

An efficient screening on arrival, including early vulnerability screenings, is welcome, and can support a well-functioning asylum system. An initial screening should include early identification and effective referral mechanisms for victims of trafficking, persons with specific needs, and unaccompanied children to provide timely support and assistance, followed by a holistic assessment carried out by competent personnel.²²

¹⁸ In this respect, it must also be reminded that according to the jurisprudence of the Court of Justice of the EU (CJEU), non-refoulement and access to asylum procedures do not require a formal asylum request. See CJEU, Grand Chamber, *Commission v Hungary*, C-808/18, 17 December 2020, para. 97, according to which, the making of an asylum application requires no 'administrative formality whatsoever'.

¹⁹ UNHCR, Practical considerations for fair and fast border procedures and solidarity in the European Union, 15 October 2020, available at: <https://www.refworld.org/docid/5f8838974.html>

²⁰ See CJEU, First Chamber, *M.A. v. Valstybės sienos apsaugos tarnyba*, C-72/22 PPU, 30 June 2022, according to which a norm, which in mass influx situation forbids asylum seekers to apply for international protection and allows their detention for irregular entry, is not in compliance with EU law.

²¹ The EU Charter applies whenever States implement EU law and all rights guaranteed therein must be respected during screening and border procedures. These include the rights to dignity, liberty, an effective remedy, and the prohibition of ill-treatment and collective expulsions. Importantly, protection under the European Convention on Human Rights (ECHR) is not dependent on whether the applicant has been formally admitted to the territory, and States must comply with the relevant safeguards in border or transit zones, even where they might be termed "international zones". See: *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, 13 February 2020, para. 184; *Amuur v France*, no. 19776/92, 25 June 1996, para. 52.

²² UNHCR, Practical considerations for fair and fast border procedures and solidarity in the European Union, 15 October 2020, available at: <https://www.refworld.org/docid/5f8838974.html>

Fair and efficient procedures

Fair and efficient in-merits procedures within the EU continue to be the cornerstone of sustainable asylum reform. The Presidencies should ensure that full procedural safeguards are in place in asylum procedures, including accelerated assessments in asylum border procedures for manifestly unfounded claims, which should be determined on the basis of an in-merits assessment. The Presidencies should also consider in-merits simplified and prioritised procedures for manifestly well-founded claims to increase the efficiency of the procedure for those likely to have international protection needs and reduce “limbo” situations.²³ This is preferable to the use of admissibility procedures to quickly determine whether the applicant has the right to stay in the EU or is required to return.²⁴

Protection does not only need to be available according to the law. It also needs to be effective in practice. Therefore, the question of whether standards of treatment commensurate with the 1951 Convention, its 1967 Protocol and international human rights law are available cannot be answered without looking at the concerned State’s international legal obligations, domestic laws and actual practice of implementation.²⁵ A theoretical guarantee of non-refoulement and other key human rights safeguards, without being effective in practice, is not adequate.²⁶

UNHCR welcomes the entry into force of Regulation 2021/2303 in January 2022, which established the EUAA to replace the European Asylum Support

Office (EASO). As a fully-fledged asylum agency, EUAA has an expanded mandate to provide operational support to EU MS to better achieve implementation of the standards of the Common European Asylum System (CEAS) in a harmonised and consistent manner. EUAA’s enhanced authority provides greater opportunities for strengthening collaboration and seeking complementarity with UNHCR to develop fair and efficient asylum procedures in the EU, in full respect of the right to seek asylum and the principle of non-refoulement, which underpin the work of both agencies. Further efforts are also needed in the Western Balkans to develop protection sensitive border management in the context of the capacity-building support provided by EU agencies. The Presidencies are reminded that the EUAA mandate is to support MS abide by their asylum obligations under EU law and strengthen good practices.

The activation of the Temporary Protection Directive in response to the Ukraine emergency

Temporary protection is complementary to the international refugee protection regime and is effectively used as an emergency response to the large-scale movement of refugees.²⁷ The activation of the Temporary Protection Directive (TPD) in Europe is unprecedented, and its practical implementation demonstrates that large movements of refugees may be managed in a manner that provides recognition of international protection needs and guarantees swift access to safety, documentation, and human rights.²⁸

23 UNHCR, Fair and Fast: UNHCR Discussion Paper on Accelerated and Simplified Procedures in the European Union, 25 July 2018, available at: <https://www.refworld.org/docid/5b589eef4.html>; UNHCR, Practical considerations for fair and fast border procedures and solidarity in the European Union, 15 October 2020, available at: <https://www.refworld.org/docid/5f8838974.html>

24 UNHCR, Practical considerations for fair and fast border procedures and solidarity in the European Union, 15 October 2020, available at: <https://www.refworld.org/docid/5f8838974.html>

25 UNHCR, Legal considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries, April 2018, available at: <http://www.refworld.org/docid/5acb33ad4.html>

26 UNHCR, UNHCR Comments on the Law on ‘International Protection and other Provisions’ (Greece), February 2020, available at: <https://www.refworld.org/docid/5ee3590e4.html>

27 UNHCR, Guidelines on Temporary Protection or Stay Arrangements, February 2014, available at: <https://www.refworld.org/docid/52fba2404.html>

28 UNHCR, The EU Temporary Protection Directive in Practice 2022, May 2022, available at: <https://data.unhcr.org/en/documents/details/93633>

Six months on from the activation of the TPD, UNHCR has conducted research into the practical implementation of the Directive with a focus on refugees' access to rights.²⁹ In particular, it looks at the key barriers to refugees' ability to access their rights under the Directive, including registration, documentation, education, social protection, employment, healthcare, accommodation, family reunification and assistance to persons with specific needs.

UNHCR highlights that lessons learnt from the activation of the TPD, including the systems implemented by states under the TPD - which provided for expedited confirmation of status and fast-tracked access to rights and obligations – have further reaching and potentially positive consequences for the management of asylum systems. These approaches have the potential to enhance self-reliance, reduce dependency on reception, relief and social protection systems and enhance inclusion. UNHCR recommends that the Presidencies seek to build upon these experiences and, where applicable, extend them to asylum procedures. Experiences gained under the TPD have the potential to inspire positive and practical changes of the CEAS.

Derogations to the CEAS

Both the European Commission's proposed Instrumentalisation Regulation (2021) and Crisis and Force Majeure Regulation (2020) provide for significant derogations to MS obligations under the asylum *acquis* in situations of either instrumentalisation or crisis and *force majeure*. UNHCR is concerned the proposals normalise and politicise substantial derogations from the CEAS, which contributes to a shrinking of the protection space in the EU.

For example, given the vague definition of the central notion of 'instrumentalisation', the Proposal gives MS great leeway in activating an emergency

migration and asylum management procedure, which risks significantly curtailing human rights and guarantees of refugees and asylum seekers for a long period of time. In practice, this piece of legislation might encourage MS to deviate from the common rules of the existing asylum *acquis* in an arbitrary way, thus creating a situation of legal uncertainty, as well as diverging practices, within the EU. This includes lengthy mandatory border procedures for all applicants, delayed registration, limiting the right to material reception conditions, and the lack of specific provisions on the right to an effective remedy.

Key Recommendations:

- Ensure, through the Council and the participation in the EUAA Management Board, that the EUAA has adequate resources for its expanded mandate, and that synergies with other stakeholders are sought to maximise the ability to respond effectively to emerging challenges.
- Encourage MS to grant sustained access to territory and the asylum procedures, and advocate for a removal of the fiction of non-entry in the proposed Screening Regulation and the amended APR, and in the Instrumentalisation Regulation.
- Strongly caution against the use of wide derogations to the EU asylum system as proposed in the Instrumentalisation and Crisis Regulations, as such derogations could shrink the protection space in Europe and potentially undermine the goals of CEAS by jeopardising the potential for harmonised and uniform standards across MS.

²⁹ UNHCR, The Implementation Of The Temporary Protection Directive - Six Months On, October 2022, available at: <https://data.unhcr.org/en/documents/details/96266>

II. ADDRESS HUMAN RIGHTS VIOLATIONS AT THE BORDERS

UNHCR remains gravely concerned about systematic and increasingly violent pushbacks at the EU's external borders, that in many cases disproportionately affect the most vulnerable, including women and children. The various human rights violations they encompass are clearly at odds with EU and international law, including non-refoulement. MS must end these practices and investigations should be conducted into credible reports. As recently restated by the European Court of Human Rights, credible reports must be investigated,³⁰ while preserving access to territory and asylum procedures,³¹ including in times of pandemic, as demonstrated by many countries in Europe.

The Council mandate for the Screening Regulation has watered down Independent National Monitoring Mechanisms (INMMs) proposed therein, and reduced the role of the Fundamental Rights Agency (FRA). UNHCR reminds the Swedish and Spanish Presidencies that INMMs remain essential support tools for States' protection-sensitive border management. UNHCR has long advocated for such mechanisms to be put in place and is encouraged by the Pact's proposal in this regard that calls on EU MS to put in place such mechanisms without delay in view of the ongoing allegations of pushbacks at the common external borders.

Reports of serious human rights violations in the context of border management operations continue to be a source of great concern. UNHCR welcomes the proactive role of the Frontex Fundamental Rights Officer (FRO) in systematically monitoring operations along the EU external borders, issuing targeted recommendations, opinions and proposing mitigating measures. The FRO investigated incidents, including collective expulsions and ill-treat-

ment of people on the move, in relation to which he repeatedly raised his concerns with the Agency's Management Board urging MS to thoroughly investigate alleged violations and adopt adequate measures to ensure compliance with EU legislation.

To ensure effective investigations into credible incident reports, UNHCR continues to advocate for the establishment of effective INMMs equipped with the necessary resources and means to implement their mandate. Remedial actions and follow up on the investigation findings and related recommendations remain crucial and need to be pursued proactively. FRA has also reiterated the importance of INMMs and recently released guidance to support MS in establishing such mechanisms.³²

Further monitoring and accountability for the respect of human rights in the EU can be achieved also through the establishment of the EUAA FRO. As provided by the EUAA Regulation, the FRO will oversee the respect of human rights in all EUAA activities, in line with the human rights strategy that shall be adopted by the EUAA. The FRO mechanism, currently under development, will therefore play a key role for the protection of asylum seekers' human rights in EU MS.

In addition, the implementation of the multiannual strategic policy for European Integrated Border Management (EIBM), as foreseen in article 8(4) of the European Border and Coast Guard Agency (Frontex) Regulation 2019/1896, would be a prerequisite for the functioning of the Schengen area as it would allow for an integrated approach to the management of external borders and the effective implementation of Frontex's mandate. The respect of human rights should be duly reflected in the strategy.

30 European Court of Human Rights, *Safi and Others v Greece*, App. No. 5418/15, 7 July 2022

31 See European Court of Human Rights, *D.A. and Others v Poland*, App. No. 51246/17, 8 July 2021 and European Court of Human Rights, *M.K. and Others v Poland*, App. Nos 40503/17, 42902/17 and 43643/17, 23 July 2020

32 European Union Agency for Fundamental Rights, *Establishing national independent mechanisms to monitor fundamental rights compliance at EU external borders*, 14 October 2022, available at: <https://fra.europa.eu/en/publication/2022/border-rights-monitoring>

Key Recommendations:

- Call on MS to end pushbacks and violations of rights at the borders while ensuring proper investigation of all alleged violations at the borders, follow up to the recommendations of the Frontex FRO in adherence with applicable EU and international law in all border proceedings.
- Encourage Frontex new Management to advance with the implementation of due diligence measures in line with the recommendations of the FRO, the EP and relevant provisions of Regulation 2019/1896.
- Support the establishment of INMMs that guarantee transparency and effective investigation of incidents involving the violation of human rights.
- Support the implementation of the multiannual strategic policy for EIBM and the alignment of MS Integrated Border Management strategies with it.
- Ensure, through the Council and the participation in the EUAA Management Board, that adequate resources are allocated to the EUAA FRO to enable this new mechanism to contribute effectively to the monitoring and advancement of human rights in the EU.

III. ENHANCE MONITORING AND CONTINGENCY PLANNING

Early warning mechanisms, well-coordinated needs assessments, and robust contingency planning tools are crucial tools to ensure the EU is well prepared for cases of increased arrivals. These tools can establish mechanisms that can be swiftly activated in case of an increase of arrivals, allowing resources to be rapidly diverted where they are most needed, and ensuring a robust response that maintains respect for human rights, registration, reception and asylum procedures.³³ This is in addition to

INMMs for human rights at the EU external borders, referenced above, that UNHCR and the UN Human Rights Regional Office for Europe have called for.³⁴

In response to the Ukraine crisis, EUAA has stepped up its operational support to EU MS. Four new Operational Plans have been concluded in 2022 so far and further six were amended to assist MS in the implementation of temporary protection. The new EUAA Regulation places greater emphasis on contingency planning, including for example by setting up an Asylum Reserve Pool composed of experts from MS who will be quickly deployed in case of disproportionate pressure on asylum and reception system where EUAA is operational.

The EUAA Regulation tasks the EUAA with a mandate to monitor the implementation of the CEAS and assess MS's preparedness to manage situations of pressure. However, the EUAA monitoring mechanism is suspended under a 'sunrise clause'³⁵ which limits the EUAA's capacity to enhance its monitoring functions.

Key Recommendations:

- Encourage MS to use the supporting mechanisms the EUAA can offer, and to engage with the EUAA on effective contingency planning in coordination with relevant actors, especially in situations of pressure on asylum and reception systems. UNHCR stands ready to assist in this process.
- Ensure that by the time the 'sunrise clause' becomes active the monitoring role of the EUAA Regulation is duly implemented and ensure the Agency is given the tools to effectively monitor the implementation of the CEAS and actions can be taken on the findings of the monitoring exercise. UNHCR stands ready to support the EUAA monitoring mechanism.

33 For more details, please see UNHCR, UNHCR's Recommendations for the European Commission's Proposed Pact on Migration and Asylum, January 2020, available at: <https://www.refworld.org/docid/5e3171364.html>

34 UN Human Rights Regional Office for Europe and UNHCR, Joint Consultation on Independent National Monitoring Mechanisms proposed in the EU Pact on Migration and Asylum, 23 February 2021, available at: <https://europe.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?News-%20ID=2596&LangID=E>

35 Art. 73 EUAA Regulation.

IV. ENSURE ADEQUATE RECEPTION CONDITIONS AND DEVELOP ALTERNATIVES TO DETENTION (ATDS)

The Presidencies should underline the importance of sufficient reception capacity and safe and dignified reception conditions throughout the procedure. In addition, in the context of border procedures, MS should ensure that sufficient capacity and human resources are available to meet the obligations under current EU legislation, including providing adequate and timely information, ensuring people are heard in a personal interview, and providing free legal assistance, interpretation and representation. This would increase the speed as well as the fairness of procedures enabling a swifter determination of the asylum claim.

UNHCR advises against the use of detention of asylum seekers as a mandatory measure for all arrivals. When detention is applied, procedural guarantees and human rights need to be respected, particularly in relation to access to legal aid, including in the context of initial screening and debriefing activities conducted at the border by national law enforcement agents and the Frontex Standing Corps. Such considerations should be reflected in the final agreement on the multiannual strategic policy for EIBM. Children should never be detained for immigration-related purposes, and accessible and appropriate care arrangements need to be in place to ensure adequate reception of children and their families.³⁶ ATDs are preferable and possible.³⁷

UNHCR welcomes additional reference to ATDs in the Council negotiation mandate of the Screening Regulation and encourages discussions on relevant legislation including the amended APR to sim-

ilarly take ATDs into account. Concerningly, the Instrumentalisation Regulation does not preclude the possibility that the emergency procedure takes place in detention and risks allowing de facto detention. The CJEU has recently restated that, considering the importance of the right to liberty, detention should be limited to strictly necessary situations.³⁸

Key Recommendations:

- Call on MS to provide access to adequate reception conditions upon registration, particularly for asylum seekers arriving through the EU external borders, and make use of available EU funds and EU Agency support for this purpose.
- Advocate for identification of persons with specific needs promptly and referrals as necessary, including to accommodation appropriate to the needs identified (including for women-at-risk, single-headed households, unaccompanied and separated children, elderly persons, and persons with disabilities).
- Promote conducting safety audits at facilities used for reception purposes to identify potential risks, especially those related to Gender Based Violence, trafficking, or exploitation and abuse, with corresponding mitigation measures and monitoring systems put in place.
- Advocate for detention to be used only as a last resort, where proportionate and for a legitimate cause, and for children never to be detained for immigration-related purposes. Prioritize ATDs for all asylum seekers, particularly those with specific needs and ensure accessible and appropriate care arrangements for children and their families.

³⁶ For more details, please see IOM, UNHCR and UNICEF, Safety and dignity for refugee and migrant Children: recommendations for alternatives to detention and appropriate care arrangements in Europe, July 2022, available at: <https://www.unhcr.org/62c3f1464>.

³⁷ Resources include an online course by UNHCR and Human Rights Education for Legal Professionals (HELP) on Alternatives to Immigration Detention with the aim of supporting legal and other professionals working on migration. The course is based on the Council of Europe's Steering Committee on Human (CDDH) Analysis and Practical Guide on Alternatives to Immigration Detention. Course access: <http://help.elearning.ext.coe.int/login/index.php>; Council of Europe, CDDH, Practical guidance on alternatives to immigration detention: Fostering effective results, available at: <https://rm.coe.int/practical-guidance-on-alternatives-to-immigration-detention-fostering-/16809687b1>

³⁸ See CJEU [GC], M.A. v. Valstybės sienos apsaugos tarnyba, C-72/22 PP, 30 June 2022

V. ENHANCE INTRA-EU SOLIDARITY AND RESPONSIBILITY-SHARING

UNHCR welcomes the Solidarity Declaration, [agreed upon by the Council in June 2022](#).³⁹ Although voluntary, this scheme is an important step forward, providing for relocation places as well as financial support and responsibility-sharing across the EU with those MS where most asylum seekers arrive. UNHCR encourages MS under the Swedish and Spanish Presidencies' leadership to translate this political commitment into prompt and practical action for those most in need. Guiding principles when discussing relocation should include family unity regardless of the nature of the claim, effective links with a MS and the best interest of the child for unaccompanied children.

UNHCR further encourages the incoming Council Presidencies to continue to work toward establishing a legislative solidarity mechanism, particularly in the cases of SAR and disembarkation in the negotiations of the Pact. The Presidencies are encouraged to draw inspiration from ad hoc measures such as the 2019 Valetta Declaration and the 2022 Solidarity Declaration in the pursuit of sustainable legislative reform. In the meantime, UNHCR calls on the Presidencies to encourage MS to increase their SAR capacity and activities, including with Frontex support. SAR activities should be in line with UNHCR's non-return position to Libya⁴⁰ and disembarkation should be carried out in a port of safety. Search and rescue, like refugee protection, relies on effective international cooperation. Coastal States, flag States, other States, commercial shipping, and civil society all have a role to play.⁴¹

In accordance with the EU Action Plan against migrant smuggling,⁴² the EU should work to dismantle smuggling networks, while ensuring the protection of migrants and refugees, including by guaranteeing the right to seek asylum for those in need of international protection, identifying and referring vulnerable persons, preventing the separation of families during migratory journeys and developing search mechanisms for missing persons. MS should tackle migrant smuggling while avoiding the risks of criminalisation of those who provide humanitarian assistance to those in need.

Key Recommendations:

- Encourage MS to increase pledges and fulfil commitments under the Solidarity Declaration.
- Work toward the setting up of a legislative solidarity mechanism, in particular for cases of SAR and disembarkation in the negotiations of the Pact on Migration and Asylum.
- Encourage MS to increase their SAR capacity and activities, including with Frontex support.
- Encourage MS to effectively ensure the protection of migrants and refugees while tackling migrant smuggling.

VI. ENSURE SWIFT RETURN OF ASYLUM SEEKERS WHOSE ASYLUM APPLICATIONS HAVE BEEN REJECTED, FOLLOWING DUE PROCESS

The functioning and integrity of the EU's asylum systems is also dependent on the return of those found not in need of international protection. Effec-

³⁹ French Council Presidency of the Council of the European Union, First step in the gradual implementation of the European Pact on Migration and Asylum: modus operandi of a voluntary solidarity mechanism, 22 June 2022, available at: <https://presidence-francaise.consilium.europa.eu/en/news/first-step-in-the-gradual-implementation-of-the-european-pact-on-migration-and-asylum-modus-operandi-of-a-voluntary-solidarity-mechanism-1/>

⁴⁰ UNHCR, UNHCR Position on Returns to Libya – Update II, September 2018, available at: <https://www.refworld.org/docid/5b8d02314.html>

⁴¹ UNHCR, Legal considerations on the roles and responsibilities of States in relation to rescue at sea, non-refoulement, and access to asylum, 1 December 2022, available at: <https://www.refworld.org/docid/6389bfc84.html>

⁴² European Commission, A renewed EU action plan against migrant smuggling (2021-2025) - COM(2021), 29 September 2021, available at: https://home-affairs.ec.europa.eu/renewed-eu-action-plan-against-migrant-smuggling-2021-2025-com-2021-591_en

tive return policies and practices for persons who are not refugees are, therefore, essential to maintain credible asylum systems and to prevent onward movement. As such, UNHCR supports the use of all available instruments to ensure that returns and readmission are carried out effectively.

Throughout the procedure, asylum seekers should be informed about voluntary return programmes and have the opportunity to avail themselves of voluntary return assistance. If this is not taken up, returns can take place following a final negative asylum decision reached in a fair procedure, with due consideration of humanitarian and statelessness-related aspects. However, some recent practices refer to a refusal of entry without examination of the individual circumstance that undermines the right to seek asylum and the principle of non-refoulement.⁴³ States are required to grant individuals seeking asylum access to their territory and to fair and efficient procedures, before taking action to effect their removal.

UNHCR welcomes the expanded mandate of Frontex in facilitating also the voluntary return and reintegration of persons found not to be in need of international protection, and encourages closer collaboration with specialised entities, including from civil society, in accompanying returnees in their reintegration process. Equally, UNHCR is pleased with the increasing monitoring role of Frontex Fundamental Rights Monitors (FRMs) to ensure respect for human rights in all Frontex-led return operations. Such element should be duly reflected in the implementation of the multiannual strategic policy for EIBM, under its component on human rights. The

recently appointed EU Return Coordinator will also have an essential role in supporting MS render their return procedures more effective.

However, guarantees against refoulement and UNHCR's non-return positions, including, but not limited to, the latest positions pertaining to Ukraine, Ethiopia, Gaza, Libya and Afghanistan, should be respected.⁴⁴ Furthermore, all returns should be supported through comprehensive and sustainable re-integration measures that go beyond financial assistance packages and that accompany the person on their reintegration path in the medium- to long-term.

Key Recommendations:

- Support return procedures with comprehensive and sustainable reintegration measures. Ensure that agreements with third countries on returns are comprehensive and balanced.
- Promote the expansion of assisted voluntary return and reintegration (AVRR) programmes in all MS to support sustainable and dignified returns, including when progressing the recast Return Directive.
- Ensure that the new role of Frontex on returns, particularly on voluntary returns and post-return assistance, builds on the extensive expertise of international and civil society organisations.
- Encourage MS to work closely with the EU Return Coordinator, and build the capacity of the EU High-Level Network for Return to streamline and render more effective the return of rejected asylum seekers.

43 UNHCR, UNHCR observations on the draft law amending the Act on Foreigners and the Act on Granting Protection to Foreigners in the territory of the Republic of Poland (UD265), 16 September 2021, available at: <https://www.refworld.org/docid/61434b484.html>

44 UNHCR, UNHCR Position on Returns to Ukraine, March 2022, available at: <https://www.refworld.org/docid/621de9894.html>; UNHCR, UNHCR Guidance Note on the International Protection Needs of People Fleeing Afghanistan, February 2022, available at: <https://www.refworld.org/docid/61d851cd4.html>. This Guidance Note confirms the previous position on return, i.e. UNHCR, UNHCR Position on Returns to Afghanistan, August 2021, available at: <https://www.refworld.org/docid/611a4c5c4.html>; UNHCR, UNHCR Position on Returns to Ethiopia, March 2022, <https://www.refworld.org/docid/623079204.html>; UNHCR, UNHCR Position on Returns to Gaza, March 2022, available at: <https://www.refworld.org/docid/6239805f4.html>

VII. PROMOTE EFFECTIVE INTEGRATION AND INCLUSION FOR THOSE GRANTED ASYLUM

From the onset of the Ukrainian emergency, the European Commission and MS have highlighted the importance of ensuring inclusion and integration of beneficiaries. This priority area translated into several guidance documents for MS also building upon the Action Plan on Integration.⁴⁵ While significant progress has been made in recent years, the inclusion and integration of refugees and migrants remain a challenge across the EU. UNHCR welcomes the European Commission's Action Plan on Integration and Inclusion, embracing a multistakeholder and whole of society approach with extensive consultations, including refugees and asylum seekers. UNHCR recommends all stakeholders to build on this Action Plan and implement its objectives.

In addition, UNHCR supports the EC's proposal in the Long-Term Residents Directive to reduce the number of years of residency requirements, including for beneficiaries of international protection, from five to three years, and encourages the swift adoption of this file.

Key Recommendations:

- Encourage MS to ensure that a minimum of 30 per cent of the overall budget is earmarked to support integration measures and adopt practical measures and support for municipal officials and local actors in host communities, including through more direct access to AMIF funding and effective coordination.
- Encourage the swift adoption of the amendment to the Long-Term Residents Directive.

- Ask MS to provide timely and adequate support for, and reduce practical barriers to, socioeconomic inclusion of refugees.
- Stress to MS the good practice of refugee participation in the design, implementation, monitoring and review of integration programmes and promote a positive narrative about refugees and their contribution to host communities.

VIII. INCREASE ACCESS TO RESETTLEMENT AND COMPLEMENTARY PATHWAYS

It is estimated that the number of refugees in need of resettlement will increase to over 2 million by 2023.⁴⁶ The continued impact of COVID-19 and the recent crisis in Ukraine have brought significant challenges, causing an economic crisis and exacerbating the vulnerabilities of those most in need, including refugees. In this context, UNHCR warmly welcomes the recent development and agreement reached between the EP and the Council on the Union Resettlement Framework Regulation,⁴⁷ and calls on the Swedish and Spanish Presidencies to take steps to ensure the process is finalized and the Regulation is adopted.

The gap between the needs and the available resettlement places continues to increase. The global target for 2023 is to resettle 100,000 refugees, and UNHCR recommends that MS resettle at least 40,000 refugees in 2023 in addition to 8,500 places dedicated to Afghan refugees. UNHCR calls on the Swedish and Spanish Presidencies and MS to ensure that resettlement remains a top priority. Resettlement is a life-saving mechanism and a tool to

45 European Commission, Action Plan on Integration and Inclusion 2021 – 2027, 24 November 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0758&qid=1632299185798>

46 UNHCR, 2023 Projected Global Resettlement Needs, 21 June 2022, available at: <https://www.unhcr.org/publications/brochures/62b18e714/2023-projected-global-resettlement-needs.html>

47 European Parliament Press Release, Asylum and migration: deal reached on new EU resettlement framework, 15 December 2022, available at: <https://www.europarl.europa.eu/news/en/press-room/20221214IPR64717/asylum-and-migration-deal-reached-on-new-eu-resettlement-framework>

provide protection and a solution for those who are the most at risk, and should not be conditioned on other migration policy objectives.

While the Ukraine emergency has brought significant challenges, MS have demonstrated continued commitment to receiving and admitting vulnerable refugees on resettlement from across the globe. At times of significant crisis, solidarity, as envisaged in the Global Compact on Refugees (GCR),⁴⁸ is more relevant and needed than ever. The proposed Pact on Migration and Asylum has called for more solidarity and efforts by States and other actors to build and expand resettlement and complementary pathways programmes for refugees. The EU's plans for 2023 and beyond must continue to contribute meaningfully to these objectives. Other essential avenues, such as family reunification and complementary pathways, should be expanded and accessible to all refugee populations.

Key Recommendations:

- Maintain the EU's global leadership on resettlement and uphold EU's commitments to refugees worldwide. Call on MS to offer more resettlement places; to have more countries engaged; and to build quality resettlement programmes.
- Encourage the swift adoption of the Union Resettlement Framework to make resettlement programmes more predictable and sustainable and increase funding.
- Work with partners to expand access for refugees to complementary pathways programs, including access to labour and education pathways; expand community sponsorship programs to support admission programs and facilitate integration of refugees

- Ensure that resettlement remains a protection-centred tool and not conditioned on other (migration) policy objectives, such as implementing readmission agreements or reducing the number of asylum applications. Intra-EU relocation or evacuation programmes must remain separate and additional to resettlement commitments.

IX. ENSURE ACCESS TO FAMILY REUNIFICATION

The continued concerns about lack of access to EU territory for refugees and asylum seekers highlight the criticality of safe and legal pathways. Access to family reunification, as a rights-based pathway based on the right to family unity, and enshrined in international and regional instruments, must be strengthened. States have a positive duty to ensure flexible, prompt, and effective access to family reunification procedures. Throughout the EU, refugees' effective access to family reunification is hindered through legal and administrative obstacles. The GCR calls on States to put in place effective procedures and referral pathways to facilitate family reunification of refugees.

The Pact on Migration and Asylum called on States for more flexibility and to take concrete actions to address obstacles by streamlining family reunification criteria and procedures, facilitating access to information, as well as by providing legal advice and support. Displaced people and refugees must be given flexible, prompt and effective access to family reunification procedures and the opportunity to reunite with their loved ones.

48 UNHCR, The Global Compact on Refugees, available at: <https://www.unhcr.org/en-us/the-global-compact-on-refugees.html>

Key Recommendations:

- At a time of the 20th anniversary of the Family Reunification Directive, call on MS to reduce barriers in access to family reunification procedures for refugees and take measures to ensure flexible, prompt and effective access to family reunification procedures.
- Call on MS to increase cooperation between embassies and enhance the role of diplomatic representations abroad and to refrain from requiring refugees or family members to approach embassies or authorities of the Country of Origin.
- Call on MS to adopt flexible procedures for receiving and processing visa applications through the exemption from in person appearances where possible and to show flexibility in documentation requirements and evidentiary requirements through an holistic assessment of the sum of evidence.

The Presidency would be an opportune moment to carry this commitment forward and advocate with other MS for the eradication of statelessness. Similarly, following Sweden’s pledges at the 2019 High-Level Segment on Statelessness, UNHCR encourages the Swedish Government to continue its work on statelessness, and to bring these issues to the attention of other MS during its Presidency.

Key Recommendations:

- Develop a comprehensive EU strategy and an action plan to address statelessness within the EU and globally.
- Assume leadership in bringing the issue of statelessness to the attention of the Working Parties on Human Rights (CO-HOM), Development Cooperation and International Partnerships (CODEV), and Humanitarian Aid and Food Aid (COHA-FA) to support efforts to end statelessness globally.

X. ADDRESS STATELESSNESS

In line with UNHCR’s key calls to the EU on Statelessness, pursuant to UNHCR’s #IBelong Campaign to End Statelessness by 2024,⁴⁹ recalling the 2015 Council Conclusions, and ahead of the 2023 Global Refugee Forum (GRF), UNHCR calls on the Swedish and Spanish Council Presidencies to prioritise two main recommendations.

Spain has been a strong advocate for the rights of stateless people in the past and is encouraged to continue to promote the importance of ending statelessness in the EU during their Presidency. At the 2019 GRF, Spain pledged to improve its statelessness determination procedure.

⁴⁹ UNHCR, I Belong Campaign to End Statelessness, available at: <https://www.unhcr.org/ibelong/>

2 PROVIDING MORE SUPPORT TO COUNTRIES AND REGIONS WHERE MOST FORCIBLY DISPLACED PEOPLE LIVE

The latest Mid-Year Trends Report⁵⁰ found that 74 per cent of the world's refugees are hosted in low- and middle-income countries, with the least developed countries provided asylum to 22 per cent of the total. The existing prospects for traditional durable solutions to protracted refugee situations remain limited. Voluntary repatriation, local integration and resettlement are at the centre of EU response to forced displacement, yet the lack of a coherent approach makes them highly ineffective – voluntary repatriation is becoming less and less possible, efforts for local integration are curbed and resettlement numbers are far from reaching the required targets.

The Ukraine crisis, coupled with the climate crisis and Covid-19, have had widespread global social and economic repercussions, leading to people being forcibly displaced and increasing vulnerability among those already at risk.⁵¹ While these exceptional circumstances require exceptional support from all relevant actors including the EU, the protracted nature of conflicts around the world and the increasing disaster displacement,⁵² also require coherent EU policies as well as predictable and flexible EU financial support in line with the GCR.⁵³ The Swedish and Spanish Council Presidencies have a strong influence over the EU's engagement in protecting and seeking solutions for forcibly

displaced people while ensuring that progress is made towards the Sustainable Development Goals (SDGs).⁵⁴

The principles of global solidarity and responsibility sharing, as outlined in the GCR, have widely been referred to in the context of the EU's response to forced displacement. UNHCR welcomes progress made by the EU and its MS to promote inclusion of forcibly displaced people into their respective policies and financial instruments.

Yet, over the years, the principles of global solidarity and responsibility sharing have been applied incoherently. Regarding financing, the 2020 OECD refugee financing report⁵⁵ concluded that responsibility for hosting refugees was shared among the international community, but not evenly. The world's top ten Official Development Assistance (ODA) recipient asylum countries in 2019 hosted 50 per cent of the world's refugees, and only received 42 per cent of ODA financing for refugee situations.⁵⁶ Moreover, as seen through the EU's response to recent crises within its borders and at its periphery, solidarity is highly dependent on the political will of national governments and the establishment of dedicated solidarity mechanisms. Applying the principle of responsibility sharing at a global scale therefore requires coherence through targeted ac-

50 UNHCR, Mid-Year Trends 2022, 27 October, 2022, available at: <https://www.unhcr.org/statistics/unhcrstats/635a578f4/mid-year-trends-2022.html>

51 UNHCR, The price the world's forcibly displaced could pay, June 2022, available at: <https://reporting.unhcr.org/ukraine-situation/the-price-forcibly-displaced-could-pay>

52 UNHCR, Climate Change and Disaster Displacement, available at: <https://www.unhcr.org/climate-change-and-disasters.html>

53 The Global Refugee Forum is a central arrangement where States and other actors come together every four years to share good practices and contribute with financial support, technical expertise and policy changes to help reach the goals of the Global Compact. More information available at: <https://www.unhcr.org/global-refugee-forum.html>

54 United Nations, Sustainable Development Goals, available at: <https://sdgs.un.org/>

55 OECD, Financing Forced Displacement, available at: <https://www.oecd.org/dac/conflict-fragility-resilience/humanitarian-financing/financing-forced-displacement.htm>

56 OECD, Financing for Refugee Situations 2018-2019, 8 November 2021, available at: <https://www.oecd.org/dac/conflict-fragility-resilience/docs/financing-refugee-situations-2018-19.pdf>

tions. It requires applying a harmonized framework – both in and across the internal and external dimensions of forced displacement – and providing a consistent standard of protection to refugees within and beyond Europe’s borders.

I. PARTNERSHIP WITH THIRD COUNTRIES

UNHCR welcomes the creation of the operational coordination mechanism for the external dimension of migration (MOCADDEM) under the French Council Presidency, including the strategic partnership approach with key priority countries. UNHCR recognizes returns of those not found in need of international protection to be an important element of a well-functioning asylum system. In this regard, UNHCR supports the use of all available instruments to ensure that returns and readmission are carried out effectively. However, UNHCR urges the EU to recognize, through its relevant action plans, many of the priority partner countries as hosts of large refugee populations. Such recognition would allow partner countries to rely on the EU as a partner for political and financial support to maintain and strengthen protection space.

As a partner for solutions, UNHCR reiterates the importance for the EU to maintain dialogue with countries of origin, transit and asylum throughout the process for voluntary repatriation so that potential obstacles are identified and addressed, including through targeted financial assistance. In this context, UNHCR recognizes the important role of the upcoming Presidencies in operationalizing key partnerships through the implementation of the respective action plans and ensuring that large hosting countries benefit from the EU’s external action instruments.

Similarly, given that the EUAA is increasing its engagement in capacity-building initiatives outside of the EU - with a primary geographic focus on the Western Balkans, Turkey, the Middle East and North Africa (MENA) and Niger - UNHCR strongly encour-

ages the Presidencies to assist the EUAA in identifying its added value and enhancing complementarity with other actors such as UNHCR.

Key Recommendations:

- Regularly invite UNHCR to participate in MOCADDEM discussions to help inform decision-making processes on relevant action plans and external action more generally.
- Reflect the role of key partners as hosting countries for large refugee populations when developing respective action plans and ensure access to relevant external action instruments such as the Neighbourhood, Development and International Cooperation Instrument (NDICI).
- Support the EUAA in enhancing cooperation and complementarity with relevant actors in priority partner countries.

II. EU FINANCIAL SUPPORT NEEDS TO KEEP PACE WITH GROWING NEEDS

Global humanitarian needs continue to grow at a worryingly fast pace. In 2022, EUR 52 billion was required to meet them- EUR 14 billion more than in 2021. We should expect a similarly high level of needs in 2023. The EU once again demonstrated speedy and substantial support in response to new crises in 2022, including, but not limited to Ukraine, flooding in Pakistan and food insecurity.

This leadership role needs to be maintained in 2023, but this will only be possible if root causes of crises are addressed and the EU’s humanitarian budget keeps pace with the growing needs. While global inflationary pressures are having a severe impact in Europe, leading to strained budgets, it remains imperative that the EU continues to give hope to the millions who suffer from emergencies,

whether caused by conflict, climate, or a combination of both. The EU, in close cooperation with other actors, can and must step up to the challenge.

Key Recommendations:

- Advocate for an early increase in the European Commission 2023 humanitarian budget.
- Encourage MS to increase their humanitarian budgets
- Work together with the European Commission and MS to diversify funding sources.

III. EU FINANCIAL SUPPORT NEEDS TO BE FLEXIBLE

The EU wants to support causes close to its heart. This is understandable. However, so much of the global humanitarian and development funding is earmarked to specific situations at the risk of creating funding gaps for many others. It is therefore key that EU resources come without restrictions to their use and that they are as flexible as possible.

The EU as the largest donor globally has a leadership role to play in going above and beyond the commitments of the Grand Bargain and good donorship principles, and as such, in ensuring that the funding it allocates to its partners can be smoothly and swiftly allocated and reallocated where it is most needed. While there has been progress on multi-year and predictable funding, flexibility of funding is to be concretely explored.

Key Recommendations:

- Encourage a common approach between MS and the European Commission based on good practice of flexible funding successfully applied by some MS.
- Encourage the European Commission to design a road map towards more flexible funding and kick-start the discussion by organizing a roundtable with MS to identify concrete avenues.

IV. TEN PERCENT TARGET IN NDICI: EU NEEDS TO TRACK AND REPORT ITS SPENDING ON FORCED DISPLACEMENT IN A TRANSPARENT MANNER

UNHCR welcomes the 10 per cent spending target on migration and forced displacement, built in the NDICI. The inclusion of forced displacement in the non-humanitarian instrument is a clear recognition of the protracted nature of most forced displacement situation and the need for mid- and long-term support to people forced to flee and to communities that host them. The EU is one of few donors that has translated progressive policies⁵⁷ into financial instruments, a strong commitment to global solidarity so no-one is left behind as the international community progresses towards the SDGs.

Refugees, IDPs, host communities and governments in third countries that continue to host the majority of people forced to flee need tangible support from partners like the EU. The 10 percent target is a step in the right direction. However, to date, it is impossible to track how much the EU will have spent on forced displacement under the NDICI. Towards the end of the Spanish Presidency there is an oppor-

57 European Economic and Social Affairs Committee, Lives in Dignity: from Aid-dependence to Self-reliance, 2016, available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/lives-dignity-aid-dependence-self-reliance>; European Council, Council conclusions on the EU approach to forced displacement and development, 2016, available at: <https://www.consilium.europa.eu/en/press/press-releases/2016/05/12/conclusions-on-forced-displacement-and-development/>

tunity for the EU to present progress in support of forcibly displaced people and hosting communities at the second GRF in December 2023.

In addition, the OECD will track development financing to forced displacement to allow for assessment of each DAC member's contribution to responsibility sharing. To showcase the EU's support to global solidarity and to meaningfully contribute to the OECD tracking system, UNHCR encourages the EU to develop indicators that will allow to:

1. Measure direct financing to forced displacement;
2. Measure financing towards inclusion of forcibly displaced people in EU sectoral planning;
3. Measure impact of financing on the human development of people forced to flee and the communities that host them.

Key Recommendations:

- Encourage MS to work with the European Commission to develop and apply indicators to measure financing on forced displacement.
- Encourage MS to work with the European Commission and report on the progress made in financing forced displacement as part of the 10 per cent target on migration and forced displacement. Regular reporting should be carried out in the relevant Council Working Groups and made available publicly.

V. THE EU NEEDS TO SHOW PROGRESS ON THE NEXUS

Building more complementarity across the Humanitarian, Development and Peace (HDP) nexus from the onset of a crisis is critical when addressing root

causes of displacement and responding to its consequences. The EU is committed to the triple nexus in terms of policy⁵⁸ and is implementing the nexus in all major crises beyond the initial six EU pilot countries.⁵⁹ Transparent reporting is needed to assess whether and how EU integrated planning and implementation is bringing better results to people in need. Exchanging lessons learned from the seven years of EU policy implementation will allow to roll out good practices and address bottlenecks.

Key Recommendations:

- Initiate a roundtable discussion on the nexus implementation bringing international organizations, civil society, EU representatives as well as beneficiaries together to take stock on nexus implementation. The outcomes of the roundtable can help to inform future EU planning.
- Encourage MS to work with the European Commission through the relevant Working Groups to identify objectives and benchmarks for regional contexts that will guide the future implementation of the nexus until the end of this Multi Annual Financial Framework.

VI. CHAMPION FORGOTTEN CRISES

Forgotten crises are protracted humanitarian crises where people receive insufficient or no international aid. They are also often those that receive limited or no media spotlight. According to the UNHCR's 2022 Underfunded Report,⁶⁰ 12 of UNHCR's most important operations are severely underfunded, with \$612 million less in funding in 2022 than it spent in 2021. As a large global player, the EU has a key role in championing forgotten crises, financially and

58 OECD, DAC Recommendation on the Humanitarian-Development-Peace Nexus, February 2019, available at: [643.en.pdf \(oecd.org\)](https://legalinstruments.oecd.org/public/doc/643/643.en.pdf) <https://legalinstruments.oecd.org/public/doc/643/643.en.pdf>

59 Six priority countries, with specific emphasis on situations of protracted displacement: Chad, Iraq, Myanmar, Nigeria, Sudan, and Uganda. More information is available in the Council Conclusions, Operationalizing the Humanitarian-Development Nexus, May 2017, available at: <https://www.consilium.europa.eu/media/24010/nexus-st09383en17.pdf>

60 UNHCR, UNHCR's Underfunded Report, September 2022, available at: <https://reporting.unhcr.org/underfunded-report-2022>

politically. So far, the EU has committed to allocating at least 15 per cent of its initial annual humanitarian budget to forgotten crises and has shown leadership in chairing several international conferences and platforms on protracted crises. This welcome approach to forgotten crises should be maintained and, to the extent possible, enhanced. A higher share of the EU's budget should be allocated to forgotten crises to allow for coherence in financing based on needs.

Key Recommendations:

- At the next European Humanitarian Forum, increase the visibility of forgotten crises.
- Encourage the European Commission to report against the allocation of 15 per cent of its initial annual humanitarian budget to forgotten crises.
- Mobilize MS and the European Commission to take stock of their support to current forgotten crises and suggest a more harmonized approach.
- Commit to chairing conferences and platforms in support of protracted humanitarian situations in 2023.

UNHCR, January 2023