

Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council
UNHCR's Observations and Recommendations¹

Summary of Key Considerations

The proposal to establish a Union Resettlement Framework (hereinafter, “the Framework”) is a timely and welcome development as part of the EU’s collective response to contribute to responsibility-sharing for the international protection of refugees. In line with UNHCR’s mandate and its central role in implementing resettlement activities, and in an effort to support and align this initiative with the overarching objectives and existing frameworks governing resettlement, the following reflects some of UNHCR’s key considerations in relation to this proposal.

- ***Focusing on resettlement as a tool for protection and a durable solution***
While resettlement shares some similarities with migration pathways, it is a distinct pathway that should be underpinned by **protection considerations for the refugees concerned**. UNHCR understands States’ concerns and desire to deploy various tools to effectively manage migration. Yet, resettlement is, by design, **a tool to provide protection and a durable solution to refugees** rather than a migration management tool.
- ***Aligning the proposal with the existing international architecture and framework for resettlement and the roles and responsibilities of different partners***
Working together over the decades, resettlement States (including several EU Member States), UNHCR and other partners have built a **solid framework that guides and governs resettlement**. Through this framework, resettlement partners have reached agreements on some of the critical aspects of resettlement, including **the definition of resettlement, its objectives, its criteria, how it is implemented, as well as the roles and responsibilities of the different partners involved in the process**. UNHCR would be keen to see the proposal **aligned with this existing framework as well as the established roles and responsibilities of the different resettlement partners**.

In the same vein, UNHCR sees scope for further discussion and clarification regarding the exact role and nature of the High-Level Resettlement Committee. There is also a need to ensure robust programme planning for EU resettlement activities and to avoid parallel and duplicative structures. As a result, UNHCR is of the view **that the objectives of this committee can be achieved through the existing international resettlement architecture, including the Annual Tripartite Consultations on Resettlement (ATCR)**. This would also ensure that the Framework duly recognizes the important and complementary roles of the different partners in resettlement.

- ***Preserving family reunification as a complementary yet distinct pathway for refugees***
Through designating family members of persons legally residing in the EU as one of the eligible groups for resettlement to the EU, the Framework may inadvertently **blur the distinction between resettlement as a tool for protection and family reunification**.

¹ These UNHCR observations and recommendations, which were first issued in November 2016, address the draft *Proposal for a Union Resettlement Framework* that will be further discussed and developed over time. This document will therefore be updated as needed so as to reflect UNHCR’s views vis-à-vis the latest discussed version of the proposal.

The latter is independent of resettlement targets and quotas, and represents an important tool to help refugees and their families enjoy their fundamental right of family unity. In this regard, UNHCR would recall the New York Declaration and the commitment of States to pursue the expansion of resettlement and other legal pathways for admission of refugees, including family reunification. UNHCR would encourage resettlement States to **develop family reunification programmes outside of their resettlement quotas, preserving resettlement for vulnerable individuals with important protection needs.**

- ***Aligning the implementation approach with the size and scale of the programme***
The Framework sets out in detail the approach to be taken for its implementation. Experience in implementing resettlement programmes over the years has **shown that the size and scale of a resettlement programme are important considerations when determining the optimal approach for implementing it.** In this regard, and in recognition of the unprecedented global resettlement needs for refugees and the wide scope of the proposal, it is recommended that the number of refugees benefitting from resettlement through the **Framework is of a commensurate scale and size, and that the Framework makes reference to this.**

Background

The European Commission has set out a proposal framing the EU's policy on resettlement, providing a common approach to safe and legal arrival to the EU for persons in need of international protection. As outlined in the Explanatory Memorandum of the proposal, this proposal seeks to put in place a horizontal mechanism for launching targeted EU resettlement initiatives by setting out common EU rules on admission, distribution, status accorded to resettled persons, financial support, and measures to discourage onward movements.

UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions to refugee problems, as outlined in Paragraph 1 of UNHCR's Statute.² In the context of resettlement and this proposed Regulation, it is important to emphasize that UNHCR's role encompasses direct actions that aim to achieve the goal of seeking solutions for refugees as stated in its Statute. This direct engagement translates into a central role for UNHCR in the resettlement process, which is distinct from yet complementary to UNHCR's supervisory responsibility. Equally important, owing to its operational and first-hand engagement with refugees, host communities and host countries, UNHCR is uniquely positioned to identify situations where resettlement can be used strategically so that it does not only benefit those who are being resettled but also brings protection dividends to the rest of the refugee community (for example, through improved access to asylum). The strategic use of resettlement coupled with it being one of many protection tools deployed by UNHCR in countries of asylum may, in some cases, mitigate the potential for secondary movements and reduce the influence of trafficking/smuggling networks.

In line with the above and by virtue of its mandate, this note sets out UNHCR's primary observations and recommendations on the proposal to establish a Union Resettlement Framework. Section I of the document highlights certain aspects that UNHCR believes are a welcome addition to the resettlement architecture in the EU, while Section II discusses other areas

² UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), at: <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

of the proposal that may require further review and discussion. Finally, Section III provides a number of recommendations on elements that could be incorporated into the Framework with the aim of ensuring that this initiative effectively contributes to global responsibility-sharing on the part of the EU.

I. An Important and Timely Contribution to Global Responsibility-sharing

The Union Resettlement Framework represents an important step for the EU towards ensuring a more robust and sustainable contribution to global resettlement. The Framework includes a number of commendable components that will be instrumental in ensuring a robust EU resettlement programme. These include:

- ***Global responsibility-sharing and increased opportunities for protection and solutions***

UNHCR welcomes the EC's proposal to establish a Union Resettlement Framework that aims at delivering a "stable and reliable" EU resettlement programme. The Framework provides renewed impetus to the EU's efforts to make available additional opportunities for protection and solutions for refugees, including through financial incentives, while further contributing to global responsibility-sharing. The Framework could assist in providing more opportunities for solutions, and allow the EU to contribute more meaningfully towards global resettlement. This would demonstrate solidarity with the Global South, which hosts 86 per cent of the world's refugees. Such objectives would also be consistent with the recently adopted New York Declaration for Refugees and Migrants. However, to achieve this, the Framework should be responsive to **all refugee populations globally as reflected in UNHCR's annual Projected Global Resettlement Needs (PGRN) publication**. Moreover, UNHCR calls for this Framework to **support initiatives that are in addition to existing commitments**.

In recognition of the unprecedented global resettlement needs for refugees that currently stand at approximately 1.19 million persons, **commitments under this Framework would need to be commensurate in scale and size to this** if they are to be meaningful. This would, however, require investments of both financial and technical resources to ensure that all EU Member States have the necessary capacity to receive and integrate increasing numbers of resettled refugees.

- ***Complement to ongoing resettlement and humanitarian admission programmes***

UNHCR welcomes the clear reference in the Framework that it will complement existing resettlement and humanitarian admission programmes. This will not only ensure that the Framework **provides additional places**, but that it would also afford **existing national programmes the opportunity to continue to provide 'niche' solutions to specific resettlement needs**. This relates to, for example, the ability to respond to urgent and emergency resettlement needs and to receive dossier submissions, which have been the hallmarks of several EU Member States' resettlement programmes over a number of years.

In this regard, **a carefully designed Framework that safeguards these specific features of some national programmes and fosters their continued implementation would need to be considered**. This could be achieved through expanding the funding mechanisms linked to the Framework to support national programmes, or requiring that commitments under the Framework are additional to existing national commitments.

- ***Predictability, planning and resources***

It is noted that the objective of the Framework is to effectively deliver on Member States' concrete commitments. UNHCR welcomes this since it could **potentially aid improved predictability and planning for UNHCR on an annual basis** and, more importantly, in the resettlement outcomes for refugees themselves. It is recommended that **planning for EU resettlement, as envisaged in this proposal, is aligned, to the extent possible, with that of UNHCR, and that the resources needed for the identification, processing and referral of refugees are allocated to UNHCR**. Furthermore, **adopting a multi-year planning approach instead of an annual approach** could also help further strengthen the predictability component of the Framework.

- ***Expedited and efficient processing***

The incorporation into the Framework of **an expedited resettlement procedure, and particularly on humanitarian grounds or in cases of urgent legal or physical protection needs**, is in line with UNHCR and resettlement countries efforts to streamline resettlement procedures, reduce redundancy and avoid duplication.

The emphasis on concluding the resettlement process as soon as possible is also to be welcomed, with ideal timeframes of eight and four months, respectively, for the ordinary and expedited procedure. UNHCR is continually striving to balance the need for expedited processing in order to meet quotas while maintaining the integrity of systems, ensuring the identification of the most vulnerable cases, and managing the expectations of refugees. UNHCR therefore anticipates the opportunity, through this proposal, to identify means by which the common standard procedures **can be timely and responsive to the needs of refugees as well as EU Member States' resettlement targets**.

II. Maintaining the Focus on Resettlement as a Tool for Protection and a Durable solution

As noted, the Framework incorporates a number of positive elements. With a view to ensuring that the proposal integrates and supports the internationally accepted objectives of resettlement, this section outlines a number of aspects that UNHCR would be keen to discuss further. A central consideration in this regard is the need to keep the focus of the proposal on resettlement **as a tool for protection and a durable solution for refugees that is underpinned by protection considerations, including vulnerability criteria**, and that is not envisioned to act as a migration management tool.

- ***High-Level Resettlement Committee***

UNHCR appreciates the acknowledgement of its expertise in facilitating resettlement and other forms of admission for persons in need of international protection, which is reflected in the possibility for its participation in the deliberations of the High-Level Resettlement Committee. While UNHCR **remains committed to providing the support needed to EU resettlement efforts that** can best respond to global resettlement needs, we see scope for further discussion and clarification regarding the exact role and nature of this Committee. With a view to ensuring robust programme planning for EU resettlement activities, UNHCR believes that the objectives of this Committee, which may have far-reaching influence on resettlement to the EU, could be achieved through **the existing international resettlement architecture, including the ATRC**.

For over two decades, the ATRC has been the forum where States, UNHCR and other partners have worked together in a collaborative spirit to discuss, plan and prioritize resettlement activities for the forthcoming year. The ATRC is informed by UNHCR's

annual Projected Global Resettlement Needs publication and provides a unique opportunity for resettlement States to discuss and plan their resettlement programmes to ensure complementarity. Failing to coordinate such efforts may lead to **parallel and duplicative processes, which could result in an incoherent and uncoordinated response to global resettlement needs.**

- **Definition of Resettlement (Article 2)**

Over the years, and as part of UNHCR's mandated role in implementing resettlement activities, a definition for resettlement has been developed and agreed upon with resettlement States and other partners involved in resettlement, as reflected in UNHCR's Resettlement Handbook. This proposal formulates a definition for resettlement that differs from the globally accepted version and towards which processes have been designed. In this regard, **it is important that the proposal remains consistent with the existing definition of resettlement** (see also below the paragraph on "Eligibility Criteria").

- **Conditionality (Recital 9, 10 & Article 4 (d))**

Resettlement is a humanitarian activity that is driven by the imperative to provide protection and solutions to refugees. As such, resettlement, by design, is not envisioned to act as a migration management tool or to further foreign policy objectives and opportunities for leverage *vis-à-vis* third countries. While UNHCR advocates for the strategic use of resettlement where it can be used as part of a collective international effort to realize solutions and improve the protection environment in first countries of asylum, **this does not extend to making resettlement conditional on, for example, the implementation of return or readmission agreements by first countries of asylum.**

More broadly, it is equally important that the regions or countries from which resettlement is to take place **should be selected in accordance with the global resettlement needs, as reflected in UNHCR's annual Projected Global Resettlement Needs publication.**

- **Eligibility Criteria (Article 5)**

Several questions arise with regards to the proposed Regulation's integration into existing European instruments, including the Charter of Fundamental Rights, the Treaty on the Functioning of the European Union, and the Qualification Directive. Specifically, the Qualification Directive already defines eligibility criteria, therefore the use of this term in the proposed Regulation could be misleading.

As noted previously, the proposal introduces a new definition of resettlement, permitting eligibility for individuals who are still within their country of origin. While frameworks for the processing of such non-refugee population groups could be envisaged in the future, **these are likely to be significantly different from those that are currently being employed in the context of traditional resettlement, and would not be directly transferable as suggested by the Framework.**

Furthermore, in its current form, Article 5(c) could mean that Palestinian refugees falling under the inclusion part of Article 1D of the 1951 Refugee Convention would not be eligible for resettlement, unless they would have a well-founded fear of persecution. This may potentially **exclude Palestinian refugees from resettlement consideration under the Framework**, contrary to the intention of Article 1D, paragraph 2 of the 1951 Refugee Convention.

Additionally, given that UNHCR is best placed to identify refugees in need of resettlement due to the well-established and clearly defined vulnerability categories, and that it remains the primary entity responsible for identifying and referring refugees for resettlement by virtue of its mandate, **it is recommended that the proposed Regulation duly acknowledges UNHCR's resettlement submission categories and the role of UNHCR in identifying refugees who meet those categories.** In this regard, the proposals attempt to redefine the eligibility criteria for resettlement may inadvertently regulate a function that is normally carried out by UNHCR and not States.

In the same vein, the introduction of the **category of 'persons with socio-economic vulnerability' will require further clarification.** While this category may have been used under very specific circumstances in certain contexts, **this is not a clearly defined resettlement category and its inclusion risks diluting the existing categories.** It is important to note that UNHCR's resettlement processes and framework are currently geared towards the identification and referral of refugees in line with UNHCR's resettlement submission categories. The introduction of a new category may not only present policy challenges but also important implementation challenges.

- ***Eligibility Criteria – Family members (Article 5b ii)***

The vulnerability categories reflected in the Framework do not include **family reunification**, which is one of UNHCR's established resettlement submission categories. Instead, family members are included as a separate category of eligible persons under the Framework. Through designating family members of persons legally residing in the EU as one of the eligible groups for resettlement, the Framework may inadvertently **blur the distinction between resettlement as a tool for protection and family reunification. The latter is independent of resettlement targets and quotas, and represents an important mechanism to ensure that refugees and their families enjoy their fundamental right of family unity.**

While the principle of family unity is a crucial factor in the determination of resettlement needs, and it does influence UNHCR when deciding which State a case should be referred to, it is rarely the sole basis of this decision. Furthermore, and in line with UNHCR's Resettlement Handbook, the resettlement of family members **should generally not be used for persons who would otherwise have a legal right to join their family in a resettlement State in a timely manner through national or regional legislation.**

UNHCR recalls the New York Declaration and States' commitment to pursue the expansion of resettlement and other legal pathways for admission of refugees, including family reunification. UNHCR would therefore recommend that the Framework **makes a clear distinction between resettlement and family reunification.** UNHCR further encourages EU Member States to adopt generous and flexible family reunification policies, dedicate resources to permit speedy family reunification, **and ensure that family reunification programmes are developed outside of their resettlement quotas.** This will not only ensure that individuals who have the right to reunite with their family members have timely access to this basic right, but also that the already limited resettlement opportunities available to refugees are preserved for those who are most in need.

- ***Ineligibility (Recital 17 & Article 6)***

While article 6 makes reference to 'grounds for exclusion', the article discusses the different categories of individuals who would be ineligible for processing under the Framework. Since the term exclusion has a distinct meaning in the context of international

refugee protection, which strictly relates to individuals who may be undeserving of international protection, it is **recommended to make reference in the Framework to grounds for ‘ineligibility’ rather than ‘exclusion’**.

With respect to Article 6.1 (a) (i), which relates to individuals who may be excluded from international protection, there is a differing **standard of proof** reflected under the Framework to that of the 1951 Geneva Convention. More specifically, the former refers to ‘reasonable grounds for considering’ as opposed to ‘serious reasons for considering’ under the Convention, which is a much higher standard of proof.

Although currently an exclusion/ineligibility ground under the Framework, **the possibility to reconsider cases where persons refused to resettle to a participating State within the previous five years should remain possible**. This is particularly important as an individual’s protection needs and circumstances may change over the course of a five-year period. Moreover, and in line with UNHCR’s general recommendation to base resettlement solely on needs, it is recommended that the **Framework is designed to respond to those refugees who are most in need, regardless of whether or not they have previously entered or tried to enter the EU irregularly**. In this respect, it is important to highlight that persons are often compelled to undertake such irregular journeys precisely because of their vulnerability and the lack of a foreseeable alternative durable solution.

Similarly, a blanket policy whereby a case that falls under one of the reasons listed in Article (6) is considered rejected by all Member States for a period of five-years is of concern to UNHCR as it may potentially **limit UNHCR’s ability to find protection and solutions for refugees who are most in need**. Finally, it will be also important to note that the Framework should encourage States to provide **clear reasons for rejection** to allow UNHCR to make its own assessment whether or not a case should still be considered for resettlement elsewhere.

- **Identification of refugees for resettlement (Article 10)**

The wording of the proposal suggests that the identification of refugees for resettlement can be done directly by States or other actors, including UNHCR. By virtue of its mandate to seek solutions to refugee problems, **UNHCR is uniquely positioned to undertake the critical step of identifying vulnerable refugees in need of resettlement**, particularly as identification often takes place within the context of UNHCR’s ongoing work to ensure protection and access to solutions for all refugees.

Moreover, owing to its operational and first-hand engagement with refugees, host communities and host countries, UNHCR is uniquely positioned to identify situations where resettlement can be used strategically so that it does not only benefit those who are being resettled but also brings protection dividends to the rest of the refugee community. The strategic use of resettlement coupled with it being one of many protection tools deployed by UNHCR in countries of asylum may, in some cases, mitigate the potential for secondary movements through addressing the root causes of onward movement, and thereby reduce the influence of trafficking/smuggling networks.

For example, targeted approaches to resettlement may lead to a widening of the protection space, and enhance the quality of asylum or the overall refugee protection environment in the host country concerned. It may also create openings for refugees to access livelihoods opportunities, health care, employment, education, freedom of movement and residence.

As such, **UNHCR would recommend that the proposal acknowledges the central role for UNHCR in the resettlement process, and reflects agreed practice and standards for resettlement.**

Furthermore, it is suggested in the Framework that EU Member States will have the option to give preference to certain groups among those that are eligible for resettlement. While it is understood that this aims to facilitate the integration of resettled refugees in their new communities, **it is UNHCR's view that this should not be used to reject individuals submitted for resettlement who meet the eligibility criteria but who may not fall within the groups given preference by resettlement States.** UNHCR has called upon resettlement States to avoid the use of criteria related to "integration potential" in the selection of refugees for resettlement. In particular, in conjunction with the above-mentioned blanket policy whereby a case rejected by one Member State is considered a rejection by all, such an approach could **have a disproportionate and unjustifiable impact on refugees who are in need of resettlement.**

- **Legal status** (*Recital 11, 15 & Article 10 (7) (a), Article 11*)

The basis of resettlement as a durable solution is that States are expected to grant resettled persons refugee status and ideally provide them with permanent residence upon arrival. While the latter is the goal, the assumption is that resettled refugees will, at a minimum, **be given clear legal status from the moment of arrival and rights equivalent to refugee status in accordance with the applicable domestic legislation.** The status provided should offer long-term security, including the possibility to obtain citizenship, and should not restrict access to certain rights. In this context, UNHCR would recommend **a direct reference to the Qualification Directive so as to anchor this important aspect in the proposed Regulation, and ensure consistency with the European asylum *acquis* overall.**

The importance of the status provided has assumed greater significance owing to the increasingly restrictive family reunification possibilities now attached to subsidiary protection. In fact, in some cases, family reunification is not even possible with this status, which can have a significant impact upon such status-holders prospects for integration. Moreover, the proposals contained under the 'Qualification Regulation' entail a status review for all beneficiaries of international protection: After the first three years for those granted refugee status; and after the first year and subsequent three years for subsidiary protection holders. **The increased uncertainty that this could bring to beneficiaries of international protection should not be underestimated, while the impact upon their ability to invest themselves completely in integration measures could be undermined.**

Linked to this, while UNHCR very much welcomes the incorporation into the proposal of an expedited process, **this same procedure risks lowering the level of protection afforded by only providing for subsidiary protection.** Recent experience shows that a number of European countries can resettle refugees in an expeditious manner while ensuring that their status has been determined prior to admission. In consideration of these factors, **UNHCR recommends that the question of status is de-linked from the speed of the procedure.**

- **Procedural rules and safeguards**

UNHCR notes that the proposal only briefly touches upon procedural rules, leaving the inclusion of safeguards at the discretion of Member States. This seems to be at variance

with international standards, but importantly for the EU, with the Charter of Fundamental Rights. In this regard, it is also noted that the proposed Regulation, through its preamble, refers explicitly to Article 78(2)(d) of the Treaty on the Functioning of the European Union, i.e. to common procedures to the granting and withdrawing of status. Further, in recital 11, it refers to the need to lay down common standard procedures. **UNHCR would therefore recommend a review of the proposed Regulation to ensure consistency with the Charter of Fundamental Rights and the principle of fairness contained therein, the Treaty on the Functioning of the European Union, as well as other relevant standards.**

III. Further Scope for Enhancement of the Framework

While UNHCR has noted the many positive aspects of the proposal, as well as areas for continued consideration and discussion, there may also be scope for further enhancements to the Framework, which include the following:

- ***Emergency/urgent quota***
It is proposed that the Framework includes **a specific emergency/urgent quota on a dossier basis within the annual resettlement objectives agreed by the EU that is not linked to priority regions or populations.** This would serve to respond to emergency and urgent cases globally, for which there is currently a significant shortfall of places available.
- ***Multi-year planning and sustainable approaches***
Drawing inspiration from the Conclusions on Resettlement adopted by the Council of the European Union in July 2015 for a two-year period, **a multi-year approach through this Framework could be considered.** This would serve to provide increased predictability to UNHCR from a planning perspective, which would also be in the best interests of States when planning their annual intakes.
- ***Support to protracted refugee situations***
With a view to the Framework contributing to the strategic use of resettlement globally, **it is recommended that it makes reference to supporting protracted refugee situations as a matter of priority.** This is in keeping with the New York Declaration, in which support for protracted refugee situations features prominently.
- ***Sustainable resettlement programmes***
While the Explanatory Memorandum to the proposal does reference the importance of sustainable resettlement programmes linked to integration measures, and the legislative proposal indicates the intention to avoid onward movements within the EU, **the importance of this key aspect could feature more prominently within the proposal.** It could also make reference to the EC's *Action Plan on the integration of third country nationals* and the first policy priority identified; namely, Pre-departure/Pre-arrival measures.

Conclusion

As illustrated above, the proposed Union Resettlement Framework represents an important step towards enhancing the EU's contribution to global responsibility-sharing for refugee protection.

UNHCR remains committed to providing the support needed to EU resettlement efforts that can best respond to global resettlement needs. To maximize the potential added-value of this important initiative, UNHCR recommends that the proposal shifts its focus from resettlement primarily as a tool for migration management, to one of protection and a durable solution. Furthermore, the Framework would benefit from complementing and building upon the existing resettlement architecture, while at the same time ensuring that resettlement is informed by UNHCR's Projected Global Resettlement Needs.

More broadly, as elaborated in the paper, 'Better Protecting Refugees in the EU and Globally' of 5 December 2016, UNHCR proposes substantial increases in the resettlement of refugees to the EU. Further, UNHCR proposes that Member States immediately develop other credible and predictable forms of admission for refugees that can complement resettlement, including effective family reunification, private sponsorship schemes, student scholarship programmes and labour mobility opportunities. In support of the sustainability of such programmes, the centrality of greater and more targeted investments in integration reflects an underlying principle in establishing credible initiatives. As noted previously, this applies equally to resettlement.

UNHCR
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