

“Ensuring protection in Europe” UNHCR’s Recommendations to Lithuania for the EU Presidency

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Refugees
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UNHCR appreciates this opportunity to share recommendations in the area of protection and asylum with the incoming Lithuanian Presidency. With the adoption of recast asylum legislation in June 2013 by the Council and Parliament, the EU has taken an important further step towards achieving a Common European Asylum System (CEAS). While positive changes are welcomed, ongoing engagement and efforts will be needed to ensure effective implementation of the new legal standards in practice.

The Lithuanian Presidency – with its stated objective of promoting a ‘credible, growing and open Europe’ - has the opportunity to take the EU forward as it moves towards completing this crucial part of its Justice and Home Affairs agenda.

UNHCR stands ready and looks forward to work with the Lithuanian Presidency and other EU Member States and institutions to achieve a better protection for refugee in Europe over the coming six months.

Refugee protection in Europe in a global context

Global Refugee Trends – the displacement challenge of the 21st century

The need for high-quality asylum systems which can deliver effective protection across the EU is made starkly evident in UNHCR's 2012 Global Trends Report, which indicated that last year saw the highest number of refugees newly displaced since 1999: some 1.1 million.¹ UNHCR recorded 15.4 million refugees globally, as well as 937,000 asylum-seekers and 28.8 million people forced to flee within the borders of their own countries. Soaring above these figures, in 2013, those forced to flee from the Syria conflict into neighbouring countries has risen by over one million people to 1,700,000 by the beginning of July.

Worldwide, war and armed conflict remain the dominant causes of displacement. Some 55 % of all refugees listed in UNHCR's report come from just five war-affected countries: Afghanistan, Somalia, Iraq, Syria and Sudan. In addition, major new displacements are seen from Mali, the Democratic Republic of the Congo, and from Sudan.

Refugee protection – an international challenge

The global increase in forced displacement in 2012 is also reflected in the 27 Member States of the European Union, where 296,700 new asylum claims were registered in 2012, a 7 % increase compared to 2011. However, nowhere does the impact of conflict and flight strike harder than in developing countries, which host over 80 % of the world's refugees at the end of 2012, compared to 70 % ten years ago.

The Syrian Refugee Crisis

Since the conflict in Syria erupted in early 2011, EU Member States have received a substantial but manageable number of asylum applications from Syrians. At the end of May 2013, just over 40,000 applications had been made in the 27 States.² By contrast, the numbers of those who have fled to neighbouring countries – Lebanon, Jordan, Turkey and Iraq in particular – have dramatically exceeded all early projections, and tested the resources and capacity of those countries' governments and citizens, with more than 1.7 million Syrians refugees either registered or awaiting registration in the region. The generous responses from these host states call for continuing massive support from the international community. The UN has highlighted the need for continued financial assistance, in addition to the welcome contributions provided by the EU and Member States thus far, but also more concerted responses in Europe to the protection needs of those who have fled.

Protecting Syrian Refugees in Europe

UNHCR continues to express concern about apparent obstacles for refugees to have access to territory or asylum procedures in some Member States. It is not clear that border management activities are employing sufficient safeguards to ensure admission and referrals of Syrians to asylum processes in all locations where this is needed. In some states, the backlog of Syrian claims has reached more than 25% of the overall number of pending cases, raising concern that some states may be unable or unwilling to prioritise or decide these swiftly.

Of great concern is also the evident continuing variation in approaches to claim determination, and apparent failure to recognize and meet the protection needs of Syrians in determining claims for asylum. The responses of some Member States

¹ UNHCR, *Global Trends 2012. Displacement, The New 21st Century Challenge*, 19 June 2013, at: <http://www.refworld.org/docid/51c169d84.html>.

² Monthly asylum statistics as reported to UNHCR since April 2011. Information is not available from all countries for March, April and May of 2013 and thus the actual number may be higher.

have been positive, with protection being granted to most Syrian applicants – including notably in Germany and Sweden, which have received the greatest numbers (some 60 %) of Syrian asylum seekers in the Union since 2011. At the same time, in other Member States, many Syrian claims are rejected.

Where protection is granted, it is primarily subsidiary or humanitarian status, rather than refugee protection. The rights conferred by different Member States on those given protection therefore vary widely, creating uncertainty and hardship, as well as intra-EU imbalances and potential push factors. UNHCR has persistently stated its view that the vast majority of Syrians displaced by the conflict are refugees under the 1951 Convention and the Qualification Directive.³

UNHCR urges EU Member States and the Lithuanian Presidency:

- ✓ to take additional measures over the next six months to examine in detail the gaps in protection practices regarding Syrians, and take steps to ensure that Syrian refugees receive the protection to which they are entitled under the *acquis*;
- ✓ to engage in further positive responsibility-sharing efforts with the countries in the region shouldering the Syrian refugee crisis.

This includes:

- ✓ to make places available, in addition to existing quotas, for resettlement of refugees fleeing the Syrian conflict and show flexibility on documentary requirements and procedures, in light of the prevailing emergency conditions in the host countries;
- ✓ to follow Germany's example of offering alternative approaches to admission of Syrian refugees, such as the humanitarian admission programme (HAP), including for those with family links in EU Member States;
- ✓ to take concrete measures to facilitate and expedite effective family reunification for Syrian refugees, refraining from applying visa requirements, and take other proactive steps to allow Syrians to gain access to safety in the EU.

EU asylum *acquis*: Not yet a Common European Asylum System

Disparity – quantitatively & qualitatively

Of the 296,700 asylum applications made in the EU in 2012, Germany received the greatest number (64,500), while Nordic countries saw the most significant increase, being 38 % above the 2011 total. 70 % of claims in Nordic countries were filed in Sweden. By contrast, countries in Southern Europe saw a 27 % decrease to 48,600, the second lowest level in six years. Ten EU Member States received less than 1,000 applicants overall in 2012.

At the same time, countries at the EU external borders saw a higher percentage of asylum claims abandoned or withdrawn as asylum-seekers are, sometimes

³ UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update I*, December 2012, at: <http://www.refworld.org/docid/50d457b12.html>.

correctly, lacking in confidence that systems are in place to provide adequate protection.

The disparity among EU Member States is not only related to numbers of asylum-seekers. Despite the adoption of a common legal framework, serious challenges to the operation of a CEAS with consistent protection responses and harmonized approaches persist. In all areas affecting refugees, practices vary in ways which have tremendous impact on the lives of individuals and families. Use of detention, in poor conditions, is almost systematic in some countries, while others permit free movement for most or all asylum-seekers. Protection is granted to close to 0 % of applicants in some Member States, compared to almost 100 % in others for people originating from the same country. Integration support is so limited that there is a real risk of destitution and homelessness in some EU countries; while others provide full integration programmes and support aimed at empowering people and enabling them to contribute effectively and early to their host communities. These and other anomalies highlight that there are real challenges ahead to achieve a truly common asylum system in practice.

Below are eight areas where UNHCR urges the Lithuanian Presidency, other EU Member States and EU institutions to place particular attention.

1. Ensuring adequate funding support for protection

Adequate resources are fundamental to ensuring that protection in Europe can be delivered. In November 2011, the European Commission published its proposals for funding in the area of Home Affairs under the next Multiannual Financial Framework for the period between 2014 and 2020. Two foreseen new instruments include a Regulation establishing the Asylum and Migration Fund (AMF); and a Regulation providing for financial support for external borders and visa, as part of the Internal Security Fund (ISF). Both the AMF and the ISF concern persons falling under UNHCR's responsibility and substantial comments have been provided on these instruments.⁴

UNHCR welcomes the proposals for a more streamlined financial framework. The organisation recalls however that EU funding should complement and strengthen national systems; and should not be considered as a substitute for national resources that should be provided pursuant to Member States' unconditional obligations to protect those in need, in accordance with the 1951 Refugee Convention and the *acquis*.

UNHCR has also called for a proportionate distribution of funding within the AMF between the four objectives of (1) strengthening the Common European Asylum System, (2) supporting legal migration, (3) promoting return and (4) solidarity and responsibility sharing. The balance must reflect the EU's aim and Treaty obligation to establish a Common European Asylum System in accordance with international standards. The difficult economic situation in many Member States create a risk that important advances in legal standards are undermined by lack of appropriate prioritization of resources. To ensure that funding is best spent, UNHCR welcomes proposals to link funding more closely to gaps analysis, formulation and measuring of progress vis-à-vis indicators and more transparent monitoring and reporting.

2. Enhancing practical

While the recasts of the EU asylum legislation have improved a number of legal standards, the implementation and translation into action on the ground for

⁴ UNHCR, *Funding for International Protection in Europe: UNHCR Comments to the proposals for funding in the area of Home Affairs 2014-2020*, <http://www.unhcr.org/50e6e0099.html>

**cooperation as
a tool for
quality
protection**

refugees will remain a challenge. UNHCR urges states and EU institutions, working through the coordination of EASO, to improve practical cooperation in areas where protection is not consistently ensured in practice. In particular UNHCR sees scope to enhance cooperation and improve further tools and practices related to training of people dealing with asylum-seekers; access to and use of accurate and updated Country of Origin information; best practices in dealing with vulnerable individuals, and quality of decision-making. UNHCR will continue to collaborate closely with EASO, states and other stakeholders in this crucial area.

The Early Warning and Preparedness Mechanism, newly adopted under the recast Dublin Regulation, also affords a critical opportunity for EASO to establish – based on systematic information sharing by states and other informed observers – comprehensive information gathering and analytical processes relating to asylum practice in the Union. This has the potential to ensure that failures to meet requisite protection standards can be prevented, and the resulting problems both for individuals and states can be avoided. To work effectively, this system will require transparency and readiness to provide both critical assessments, complete and accurate information, and support on all sides.

**3. Reception
standards – a
first impression
with a lasting
impact**

Refugees coming to Europe are received in very different ways depending on the country in which they seek asylum, and sometimes depending on where and how they seek asylum within a country. The experience and treatment of asylum-seekers have a lasting impact on their lives. While some will return to their country of origin, others will begin a new life in Europe. Including for those who are granted a right to stay in a Member State, the impact of spending months, sometimes years in uncertainty, in destitution, homeless or in detention – or simply without meaningful activity – can have a devastating and lasting impact. With increased attention focused in many Member States on the need for newcomers to integrate effectively and contribute to Europe, adequate treatment on arrival could receive greater priority. The minimum reception standards are also crucial to ensure that applicants can present their claims in the most effective way, facilitating the task of asylum authorities to reach accurate decisions.

As the Member States and institutions discuss ways to achieve cost-effective and internationally-compliant implementation of new standards under the Reception Conditions Directive, good practices and experience in this area from within the Union and around the world should further be examined. UNHCR, based on its global engagement on reception conditions and regulation of detention, is also ready and well-equipped to contribute to such exchanges.

**4. Responding
to special
needs**

Special attention should be afforded to unaccompanied and separated children, to persons who are survivors of torture, to victims of trafficking and others who may be vulnerable and in need of special care and support. This is in line not only with new legal standards that Member States and Parliament have established in the recast instruments, but also the EU's tradition of commitment to human rights and social values.

Due to the nature of persecution, the suffering flowing from war and conflict and the often traumatic nature of flight, many refugees have suffered torture, inhumane and degrading treatment. They are in need of special attention and care in order to overcome their trauma and re-establish their lives. Yet many EU Member States

have limited experience and facilities to address needs in this field.

A recent UNHCR publication emphasized the importance of increased awareness and responses for women who are survivors, or are at risk, of female genital mutilation (FGM). “*Too Much Pain*” finds that as many as 20,000 women and girls from countries practising FGM seek protection within the EU each year, of which 9,000 may potentially already have been subjected to FGM and may be living with its life-long consequences. An estimated 2,000 asylum claims on grounds of FGM are heard every year. The publication highlights the need to enhance the capacity of national reception bodies and asylum authorities to identify and meet the specific needs of these women and girls. Addressing FGM also requires a comprehensive action plan at the EU level.⁵

5. Ensuring protection of children

Children moving irregularly across borders, including those seeking asylum, pose particular challenges for states. Where children are unaccompanied or separated from their parents or caregivers by law or custom (UASC), additional challenges arise. Many EU Member States have sophisticated child protection arrangements in place in their asylum and immigration systems to address the special needs of UASC. Nevertheless, caring for and finding durable solutions for these children which accord primary consideration to their best interests, in line with the Convention on the Rights of the Child, remains challenging in practice for many.

In 2012, UNHCR statistics indicate that Europe received two-thirds of the approximately 21,000 claims for asylum from unaccompanied and separated children lodged in the industrialised world. The need for strong safeguards, practical approaches and sophisticated mechanisms for identifying correctly their protection needs and finding durable solutions, is apparent. UNHCR has worked extensively on research and tools, including with partners, to assist states in their understanding of and responses to the needs of children. Specifically for the European context, UNHCR will, in autumn 2013, publish guidance on respecting the best interests of UASC in identification of durable solutions. This tool will draw on states’ experiences and legal and institutional frameworks, putting forward practical ways in which to respond to children seeking or in need of protection.

6. Ensuring the correct application of the Dublin Regulation

As the recast Dublin Regulation comes into force, UNHCR urges Member States to ensure that a protection-sensitive application of the Regulation is achieved. This reflects the protection goals of the Regulation, which seeks to ensure a fair examination of each asylum claim in one responsible European state.

Recent reports on the Dublin Regulation⁶ have provided information indicating that the “take charge” provisions of the Regulation are not always applied; leaving family separated and preventing refugees from seeking protection in countries in which they have stronger links. UNHCR considers that a correct and protection-sensitive application of the Dublin Regulation is fundamental to the CEAS and would remove one of the major causes of secondary movement by asylum-seekers in the EU.

⁵ UNHCR, *Too Much Pain: Female Genital Mutilation & Asylum in the European Union - A Statistical Overview*, February 2013, at: <http://www.refworld.org/docid/512c72ec2.html>.

⁶ Jesuit Refugee Service, *Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection (The DIASP project)*, 5 June 2013, at: <http://www.refworld.org/docid/51d152174.html>; and European Council on Refugees and Exiles, “*Dublin II Regulation: Lives on hold*” - *European Comparative Report*, February 2013, at: <http://www.refworld.org/docid/513ef9632.html>.

In addition, some of the improved legal standards will require efforts from states and EU institutions for their effective implementation. In particular, the recast provision ensuring information to asylum-seekers coming under the Regulation; the provisions ensuring the best interests of child and improving safeguards for children and the inclusion of an interview must be fully incorporated and observed in national practice to have the desired effect. Furthermore, jurisprudence from the Court of Justice must be reflected in practice as it develops and shapes the application of the Regulation.

7. Victims of trafficking: enhancing identification and referral

Victims of trafficking are another group of persons with specific needs; they may have been victimised before entering the EU, and/or within the EU. Some may be at risk of (re-)trafficking in their country of origin or another EU Member State. Victims of trafficking in the asylum system or otherwise in need of international protection are a highly vulnerable group and require effective cooperation from different actors to ensure their early identification and referral to the most appropriate services. Such cooperation is not always in place in the EU asylum systems, which also need to ensure that victims have access to their full rights, including the reflection and recovery period, specialist psycho-social assistance or safe shelter.

Many victims face (re-)trafficking risks within the borders of the European Union, which adds an additional dimension to their protection needs, for instance in the context of the operation of the Dublin Regulation. While transfer of a victim of trafficking under Dublin to a Member State where trafficking occurred may be permissible, an assessment risks including of (re-) trafficking should be undertaken and close coordination with the appropriate authorities in the receiving Member State put in place to ensure that the victim is protected from harm upon return. UNHCR has noted that such risk assessments and cooperation are often not in place.

8. Strengthening cooperation on integration

Integration support is an important aspect of providing a durable solution for refugees. The benefits of successful integration both for the individual beneficiary of protection and the host societies are evident and reflected in integration policies in many Member States as well as the recast Qualification Directive.

UNHCR has completed research on refugee integration in four EU Member States and will publish the findings in the second half of 2013. The interdependence of different integration policy areas; the need for initial targeted support for integration upon recognition; and the impact of the time in the asylum procedure and family separation on refugee integration have become evident from the consultations with refugees and stakeholders in this study. Significant differences of attitude towards refugees, integration support and policies in areas influencing integration remain in Europe. UNHCR encourages a more comprehensive approach to promote good practices on integration and to reflect this practice in national policy and programme.

In order to enhance the protection of refugees in Europe, UNHCR recommends to the Lithuanian Presidency, EU Member States and institutions:

- ✓ to agree on a multi-annual funding framework which complements and strengthens national systems to meet their obligations to protect those in need in accordance with the 1951 Refugee Convention and the *acquis*;

- ✓ to work, through the coordination of EASO, to improve practical cooperation in areas where protection is not consistently ensured in practice so as to enhance the operation of the CEAS, including through increased transparency and readiness to provide critical assessments and support in the application of the Early Warning and Preparedness Mechanism;
- ✓ to develop and use open reception arrangements based on free movement, as well as reporting requirements or other alternatives to detention;
- ✓ to discuss ways to achieve cost-effective and internationally-compliant implementation of new standards under the Reception Conditions Directive;
- ✓ to improve responses to refugees with special needs including through training and information sharing on how to respond to victims of torture and trafficking, and women and girls fearing or survivors of FGM; and develop a comprehensive EU plan of action to address FGM;
- ✓ to ensure full respect of the best interests of UASC throughout the asylum process and in identification of durable solutions;
- ✓ to take proactive steps to ensure correct and protection-sensitive application of the Dublin Regulation, including the “take charge” provisions on family reunification;
- ✓ to establish the necessary referral mechanisms for the early identification and referral of victims of trafficking to appropriate protection and assistance, including in the application of the Dublin Regulation; and
- ✓ to support a more comprehensive approach to promote good practices on integration and ways to reflect this practice in national policy and programmes.

EU asylum: border management and the external dimension

Further European cooperation on external borders

Within the context of states’ legitimate interest in effective control of the EU’s external borders, access to territory and protection for those seeking asylum must be ensured. UNHCR notes the Lithuanian Presidency’s emphasis on advancing progress on border management as a priority, and encourages its leadership on promotion of protection-sensitive border practices in full compliance with the fundamental rights applicable within the EU.

New tools based on high technology are foreseen in the “Smart Borders” package, which will allow for enhanced detection and prevention of irregular entry as part of integrated border management. As the tools for detection of illegal entry become more sophisticated, so should the systems for ensuring identification of asylum-seekers and access to asylum procedures, bearing in mind that many of those who flee persecution and conflict are forced to resort to irregular movement and the services of smugglers. Further efforts to put in place the “Eurosur” system of border surveillance must also respect international and European human rights obligations. Safeguards to preserve confidentiality, data protection and other individual rights should be included, as advocated by the EU Data Protection

Supervisor and others.

**Sea borders –
and rescue at
sea**

The Lithuanian Presidency has expressed its particular interest in achieving progress on the proposed Regulation on rules for monitoring external sea borders when implementing operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders (Frontex). The proposal, which aims to ensure the application of uniform rules for sea border monitoring activity carried out by Member States, will be a crucial instrument in ensuring that international rules on interception and rescue at sea are effectively implemented, including obligations to ensure rescued or intercepted people are disembarked in a safe port.

UNHCR expresses its deep concern about persons losing their lives at sea, including in the Mediterranean, while trying to reach safety in Europe. UNHCR has recorded some 40 deaths in the first six months of 2013 by people attempting to cross from North Africa, chiefly to Italy. With the efforts of the Italian and Maltese authorities, this figure has significantly decreased compared with 2012, where 500 people were reported dead or missing at sea. This highlights the crucial importance of rescue at sea as a lifesaving measure which must be carried out in line with international Law of the Sea at all times, including in the context of sea border activities. Furthermore, maritime border activities must be in accordance with the ruling of the European Court of Human Rights in the case of *Hirsi & Others v Italy*, which expressed the obligation of states to ensure that asylum-seekers have access to a functioning asylum procedure and that all rescued people are protected from torture, inhuman and degrading treatment.

**Strengthening
asylum in the
EU's Eastern
Neighbourhood**

With migration and border management being progressively strengthened at the EU's external borders, increasing numbers of refugees seek to access protection in the countries in EU's Eastern Neighbourhood. Eastern Neighbourhood countries have, to different degrees, made progress in building asylum systems, but more needs to be done in these countries to ensure effective protection of persons of concern to UNHCR. In some cases, the procedures do not meet minimum international and European standards, and adequate reception capacity is lacking. Limited integration prospects for recognized refugees are also a concern.

UNHCR encourages the EU and Member States to support further the Neighbourhood countries in improving their asylum systems, both by engaging in political dialogue and enhancing capacity-building efforts. The EU-funded UNHCR project "Asylum Systems Quality Initiative in Eastern Europe and South Caucasus", as well as a number of other projects implemented by UNHCR in partnership with the relevant governments, can assist the concerned Governments in making progress in this area.

On border control, UNHCR recommends to the Lithuanian Presidency, EU Member States and institutions:

- ✓ to show leadership on promotion of protection-sensitive border management in full compliance with the fundamental rights applicable within the EU;
- ✓ to ensure that rules for sea border monitoring activity carried out by Member States are reflecting international rules on interception and rescue at sea; and ensure that these principles are effectively implemented, including obligations to ensure rescued or

intercepted people are disembarked in a safe port;

- ✓ to support the Neighbourhood countries further in improving their asylum systems, both by engaging in political dialogue and enhancing capacity-building efforts;
- ✓ to remain engaged and provide additional funding for the on-going emergencies and protracted refugee situation.

Addressing and reducing statelessness in Europe

Accession – a step to end statelessness

UNHCR welcomes increased awareness of statelessness and actions to address it in EU Member States in recent years. The accession to the 1954 Convention related to the status of stateless persons (1954 Convention) and the 1961 Convention on the reduction of statelessness (1961 Convention) by Bulgaria and Portugal and the establishment of a statelessness determination procedure in the United Kingdom are examples of such actions. Pledges made by the EU on the occasion of the High Level Meeting on the Rule of Law in New York in September 2012 in relation to statelessness reflect this positive trend. These pledges call for accession to the statelessness conventions and allow for the development of a framework for raising issues of statelessness with third countries by 2014.

Further accession of EU Member States to both conventions would be an important additional step for the EU to set an example and to end statelessness; which persists also within the EU. While some stateless persons have migrated to countries in the EU, some are born stateless within the Union because of insufficient safeguards in the nationality legislation.

In preparation for the commemoration of the 60th anniversary of the 1954 Convention in 2014, UNHCR encourages the Lithuanian presidency to join UNHCR in calling on all EU Member States to take measures to prevent and reduce statelessness and to protect stateless persons in their territory. UNHCR stands ready to work with States on concrete ways to achieve such aims.

To end statelessness in Europe and ensure their protection UNHCR recommends:

- ✓ accession to the 1954 Convention related to the status of stateless Persons and the 1961 Convention on the reduction of statelessness for States not yet party to the conventions;
- ✓ that all EU Member States take measures to prevent and reduce statelessness and to protect stateless persons in their territory.

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