



A young Afghan makes hundreds of masks to protect a French village from COVID-19, 17 June 2020
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UNHCR'S RECOMMENDATIONS FOR THE FRENCH AND CZECH PRESIDENCIES OF THE COUNCIL OF THE EUROPEAN UNION (EU)

January - December 2022

EXECUTIVE SUMMARY

One year since the release of the European Commission's proposed Pact on Migration and Asylum, and five years since the Commission's first set of proposals to reform the Common European Asylum System (CEAS), agreement remains stalled. While there has been some progress, including new financial instruments put in place and expansion of the EU Agencies, Member States (MS) in the Council of the EU continue to negotiate core issues surrounding solidarity and border procedures and are yet to agree on a negotiating mandate with the European Parliament.

At this important time, France, and subsequently the Czech Republic, will take on the role of the Presidency of the Council of the EU in 2022, with significant agenda-setting power to further progress on the Pact. UNHCR calls on the Presidencies of the Council to urgently find a common and sustainable approach in the EU to protecting people forced to flee, and to commit to continued and increased global solidarity with refugees and their hosts.

Events over the summer, including the situation at the Latvian, Lithuanian and Polish borders, have highlighted the urgency for the EU to find a truly common, well-managed and predictable asylum and migration framework in accordance with international law. Instrumentalization of refugees and migrants by States for geo-political reasons is deplorable and must stop.¹ In addition, UNHCR is concerned with the "legislative walls" being constructed to restrict access to territory and asylum.

The political currents pushing to restrict the asylum space in the EU are likely to have negative repercussions elsewhere, especially in major refugee-hosting countries, which have fewer resources and are far more affected by refugee movements than the EU. While States have a legitimate interest in managing their borders, this does not exempt them from their asylum obligations, particularly the responsibility to admit asylum-seekers into their

territory and assess their international protection needs.

The 2022 UNHCR Presidency Recommendations outline two overarching opportunities for the EU and the Presidencies to show leadership in better protecting refugees in Europe and abroad:

1. Negotiating sustainable asylum reform based on the Pact and/or elements thereof;
2. Providing more support for the countries and regions where most forcibly displaced people live and addressing root causes of forced displacement and irregular migration.

This document identifies key priorities and recommendations for the incoming Presidencies of the Council of the EU at a time when sustainable reform is sorely needed.

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

- I. Access to territory and fair and fast asylum procedures;
- II. Addressing human rights violations at the borders;
- III. Enhancing monitoring and contingency planning;
- IV. Adequate reception conditions and alternatives to detention;
- V. Intra-EU solidarity and responsibility-sharing;
- VI. Return of asylum-seekers whose asylum applications have been rejected, following due process;
- VII. Effective integration and inclusion for those granted asylum;
- VIII. Resettlement and complementary pathways; and
- IX. Family reunification.

¹ UNHCR and IOM, "UNHCR and IOM call for immediate de-escalation at the Belarus-Poland border", Press Release, 9 November 2021, available at: <https://www.unhcr.org/news/press/2021/11/618a63674/unhcr-iom-call-immediate-de-escalation-belarus-poland-border.html>

While these nine components are crucial for constructing sustainable asylum systems, UNHCR highlights three priority areas for the Presidencies to consider:

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. Some 85 per cent of the world's refugees are hosted in low and middle-income countries, while numbers of arrivals in Europe are manageable. UNHCR remains gravely concerned about 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. MS must end these practices and investigations should be conducted into credible reports. To this end, the Presidencies are encouraged to work with MS to implement Independent National Monitoring Mechanisms without delay.

Developing fair and fast asylum procedures in the EU: It is key to continue to develop functional asylum systems to swiftly and fairly determine whether an asylum-seeker is in need of international protection. Fair and efficient procedures can support this, 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.

Enhancing intra-EU solidarity and responsibility-sharing: Fair and fast 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. Good practices and operational knowledge developed through ad hoc mechanisms, such as the 2019 Valetta Declaration, could serve as a basis for more effective and predictable solidarity.

Section Two of the Recommendations outlines areas for the Presidencies to prioritize in the EU's external action in third countries, especially in low and middle-income countries, which host 85 per cent of the world's refugees and Venezuelans displaced abroad and most of the world's internally displaced people. The Recommendations provide concrete areas for EU engagement in situations of refugee and migrant movements. This includes recommendations on how the EU can make more flexible and predictable humanitarian funding available for aid agencies and how targeted humanitarian and development funding support to countries hosting large refugee and/or internally displaced populations can improve access to protection and solutions.

INTRODUCTION

By mid-2021, 84 million people were forced to flee their homes and were either internally displaced or refugees.² This is a sharp increase from the 82.4 million recorded as of end 2020, when 85 per cent of all refugees globally were living in low and middle-income countries, and the least developed countries were hosting nearly one third of all refugees and displaced Venezuelans abroad.³ Large refugee-hosting countries came forward at the 2019 Global Refugee Forum (GRF) and pledged better policies that would allow refugees to have more rights and opportunities for self-reliance in the country of asylum.⁴ These countries need help to maintain and improve protection and the prospect of solutions.⁵

In 2021, UNHCR worked closely with the Portuguese and Slovenian Presidencies of the Council of the EU to advocate for the rights of displaced people in the EU and globally.⁶ Progress was made in 2021 on several important elements, including on the Blue Card Directive for highly skilled workers and the European Union Agency for Asylum (EUAA). On 1 December, the European Commission released a proposal under Article 78(3) of the Treaty of the Functioning of the EU.⁷ The proposal explicitly recalls the duty of MS to respect the principle of non-refoulement and guarantee the right to asylum. UNHCR recalls that any measures implemented under this emergency proposal will need to adhere to relevant international standards, and MS are expected to fully uphold the right to seek asylum and align their legislation and practice with EU law. This includes effective access to quality asylum procedures; appropriate reception conditions; detention only in very limited circumstances and never for children; and access to UNHCR, NGOs and legal

assistance. Humanitarian assistance is paramount to prevent loss of lives, requiring sustained access of the UN and its partners to affected areas on both sides of the EU external border.

The Pact presents a framework for MS to address asylum and migration. UNHCR is concerned that the lack of consensus for a common framework will encourage detrimental proposals to externalize or outsource asylum obligations to other countries. Such efforts would run counter to the spirit of the Global Compact on Refugees (GCR).⁸ Expressions of solidarity towards refugee-hosting countries cannot exonerate MS from preserving access to territory and asylum, in line with their international legal obligations. For example, proposals by the UK to overhaul its asylum system risk breaching international legal commitments, undermining global refugee cooperation and triggering damaging effects on asylum-seekers who arrive irregularly. The plans threaten to create a discriminatory two-tier asylum system, undermining the 1951 Refugee Convention and longstanding global cooperation on refugee issues.

Through policies and financing for the response to forced displacement, the EU has demonstrated leadership in the implementation of the GCR objectives. The new Multiannual Financial Framework 2021-2027 offers opportunities for further leadership, including through financing aid organizations and hosting countries/communities; the inclusion of refugees and internally displaced persons (IDPs) in the EU's strategic frameworks; and through political dialogue with host countries and local authorities to include refugees and IDPs in national and local development plans.

2 UN High Commissioner for Refugees (UNHCR), "Mid-Year Trends 2021", available at: <https://www.unhcr.org/statistics/unhcrstats/618ae4694/mid-year-trends-2021.html>

3 UNHCR, "Global Trends: Forced Displacement in 2020", available at: <https://www.unhcr.org/flagship-reports/globaltrends/>

4 Global Refugee Forum (GRF), 2019: <https://www.unhcr.org/programme-and-practical-information.html>

5 European Commission's proposed Pact on Migration and Asylum, 23 September 2020, available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum_en

6 Global Compact on Refugees, 2018: <https://www.unhcr.org/en-us/the-global-compact-on-refugees.html>

7 European Commission, "Proposal for a Council decision on provisional emergency measures for the benefit of Latvia, Lithuania and Poland", 1 December 2021, available at: https://ec.europa.eu/home-affairs/proposal-council-decision-com-2021-752_en

8 Global Compact on Refugees, 2018, <https://www.unhcr.org/en-us/the-global-compact-on-refugees.html>

European Commission Communication, "Lives in Dignity: From Aid-Dependence to Self-Reliance", April 2016, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016DC0234>; Council Conclusions on the EU's approach to forced displacement and development, May 2016, available at: <https://www.consilium.europa.eu/en/press/press-releases/2016/05/12/conclusions-on-forced-displacement-and-development/>

1 NEGOTIATING SUSTAINABLE ASYLUM REFORM BASED ON THE PACT

While discussions on the Pact on Migration and Asylum are ongoing in the Council of the EU, UNHCR reiterates to the Presidencies the importance of developing sustainable asylum systems within the territory to support with the fair and efficient processing of asylum claims, and of providing safety to those who are found to be in need of international protection.

Following the good example of the 2019 Valetta Declaration, where France played an important role, the Presidencies are encouraged to facilitate the establishment of a predictable search and rescue (SAR) and disembarkation mechanism. UNHCR remains ready to support the Presidencies to operationalize such a system using available evidence and operational experience.

The Presidencies are encouraged to adopt an evidence-based, coherent and pragmatic approach in carrying forward discussions on the Pact and to place this at the centre of their Presidential work. Recent simulation exercises may prove a good basis for evidence-based discussions on asylum reform. Similar exercises could be further explored and UNHCR is available to provide support together with the European Commission and MS, in line with Better Protecting Refugees,⁹ Recommendations for the Pact,¹⁰ Fair and Fast,¹¹ and most recently the Practical Considerations for Fair and Fast Border Procedures and Solidarity in the EU.¹² Within the EU, the Presidencies are advised to work to:

- I. Ensure access to territory and fair and fast asylum procedures;
- II. Address human rights violations at the borders;

- III. Enhance monitoring and contingency planning;
- IV. Ensure adequate reception conditions and develop alternatives to detention;
- V. Enhance intra-EU solidarity and responsibility-sharing;
- VI. Ensure swift return of asylum-seekers whose asylum applications have been rejected, following due process;
- VII. Promote effective integration and inclusion for those granted asylum;
- VIII. Increase access to resettlement and complementary pathways
- IX. Ensure access to family reunification.

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

The Presidencies should continue to promote access to territory for persons wishing to seek asylum, including those arriving irregularly in the EU, in compliance with the right to asylum and the principle of non-refoulement.

In particular, legal obligations of States remain despite the proposed artificial fiction of non-entry and MS are required under international law to provide admission to examine the claim. Financial aid, safe and legal pathways, including resettlement, should complement and not substitute access to territory and procedures for persons applying for asylum in European countries. Neither the 1951 Convention Relating to the Status of Refugees nor EU refugee law provide any legal basis for the suspension of the reception of asylum applications.¹³

9 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>

10 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>

11 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>

12 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>

13 UNHCR, "UNHCR statement on the situation at the Turkey-EU border", 2 March 2020, available at: <https://www.unhcr.org/news/press/2020/3/5e-5d08ad4/unhcr-statement-situation-turkey-eu-border.html>

UNHCR welcomes the agreement reached between the Council of the EU and the European Parliament on the EUAA Regulation. The mandate of the new Agency is to provide operational support to MS with the new procedures proposed in the Pact, in a harmonized manner to better achieve consistent implementation of European standards.

Screening procedures and the fiction of non-entry

UNHCR has consistently advocated for a streamlined process on arrival,¹⁴ including crucial vulnerability screening and identification of specific needs, and in this regard welcomes elements of the Commission's proposal that must be carried out in line with legal safeguards and with full respect for the right to seek asylum.¹⁵ UNHCR is, however, concerned with the "pre-entry fiction" in the Pact's proposals for a screening and border procedures, which potentially exclude important safeguards enshrined in international human rights and refugee law.

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.

UNHCR reminds the Presidencies, particularly in the context of the proposed Screening Regulation, that asylum-seekers must not be penalized for their irregular arrival, and that travel or identity documents should not be a precondition for entry to the territory.¹⁶

The right to seek asylum should not depend on the mode of arrival to the territory of the State. As the EU Charter applies whenever States implement EU law, including the Pact proposals,¹⁷ all rights guaranteed therein must be respected during screening and border procedures.¹⁸ Importantly, protection under the European Convention on Human Rights (ECHR)¹⁹ is not dependent on whether the applicant has been formally admitted to the territory,²⁰ and States must comply with the relevant safeguards in border or transit zones, even where they might be termed "international zones".²¹

Fair and Fast Procedures

Fair and fast 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 for 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 prioritized 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.²² 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.²³

UNHCR considers that the use of admissibility procedures based on the safe third country concept undermines efforts to share responsibility, instead shifting it to countries outside the EU with less capacity, which risks overloading nascent asylum

14 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>

15 UNHCR emphasizes 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.

16 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>, p.1.

17 Charter of Fundamental Rights of the EU, Article 51.

18 These include the rights to dignity, liberty and an effective remedy as well as the prohibition of ill-treatment and collective expulsions.

19 The ECHR applies in screening and border procedures as the State exercises jurisdiction.

20 N.D. and N.T. v. Spain [GC], nos. 8675/15 and 8697/15, 13 February 2020, para. 184.

21 *Amuur v France*, no. 19776/92, 25 June 1996, para. 52.

22 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>

23 UNHCR, UNHCR Discussion Paper Fair and Fast - 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>

systems in these countries. This creates a “chilling effect” on the development of the protection space in third countries. Additionally, protection does not only need to be available according to the law. It also needs to be effective in practice.

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.²⁴ A theoretical guarantee of non-refoulement and other key human rights safeguards, without being effective in practice, is not adequate.²⁵

In light of the proposal by the Commission to introduce derogations for three MS from aspects of the CEAS in situations of crisis and force majeure, the Presidencies are reminded that, as stated in the proposal, the right to asylum and protection against refoulement cannot be derogated from, even in times of emergency. Drawing on recent experiences during the COVID-19 situation, as well as 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.²⁶

Regarding the reform of the Schengen Borders Code, the Presidencies are encouraged to guide discussions on Schengen reform and links with the management of the external borders in line with international protection obligations. Synergies between national human rights institutions and the Fundamental Rights Agency (FRA) in the Schengen Evaluation and Monitoring Mechanism (SCHEVAL) revision are welcome.

Key Recommendations:

- At meetings of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) and the Justice and Home Affairs (JHA) Council, encourage MS to grant sustained access to territory and the asylum procedure. Advocate for a removal of the fiction of non-entry in both the proposed Screening Regulation and the revised Asylum Procedures Regulation.
- Ensure that MS implement essential procedural safeguards, such as the right to an effective remedy, provision of information, early vulnerability screening and prohibition of refoulement, and that these are upheld both in the Screening Regulation and the Asylum Procedures Regulation (APR); and support, wherever possible, a harmonization of safeguards at the level of EU law to avoid national fragmentation.
- Encourage the announced synergies between national human rights institutions and the FRA in the announced Schengen Evaluation and Monitoring Mechanism (SCHEVAL) revision, addressing concerns over the limitations of the current mechanism in detecting specific types of human rights violations.

II. ADDRESS HUMAN RIGHTS VIOLATIONS AT THE BORDERS

UNHCR remains concerned over systematic push-backs at the EU’s external borders. Such practices must end. Credible reports must be investigated, while preserving access to territory and asylum procedures, including in times of pandemic as demonstrated by many countries in Europe. UN-

24 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, para. 10, available at: <http://www.refworld.org/docid/5acb33ad4.html>

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

26 UNHCR, “Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic”, 9 April 2020, available at: <https://data2.unhcr.org/en/documents/details/75453>

HCR supports the establishment of Independent National Monitoring Mechanisms (INMM) in all MS as proposed in the Pact. The prerequisites for the independence and effectiveness of such Mechanisms were set out in consultation with international and European Treaty bodies and mechanisms hosted by UNHCR and UN Human Rights.²⁷ In addition, progress in fulfilling the European Border and Coast Guard Agency's (EBCG 2.0) mandate in hiring Fundamental Rights monitors is particularly welcome, and UNHCR encourages the Presidencies to help complete the process. Follow-up of reported human rights violations and adoption of remedial actions is encouraged in view of preventing their re-occurrence. UNHCR further welcomes the strengthened role of the Frontex Fundamental Rights Officer (FRO) and FRA in providing further guidance on the conduct of border checks and border surveillance, especially at sea.

Key Recommendations:

- At SCIFA and JHA meetings, encourage MS to end pushback practices and violations of rights at borders.
- Actively support the design and monitor the implementation of Independent National Monitoring Mechanisms (INMMs), as proposed in the Screening Regulation, to ensure that safeguards on transparency and independence are built into the negotiation text.
- Ensure that the sunrise clause in the EUAA Regulation is duly implemented to ensure the Agency can effectively monitor the implementation of the CEAS.
- Promote and support consolidation of human rights monitoring mechanisms as part of border management operations, including with Frontex par-

icipation, and support Frontex in advancing its internal reform and roll-out of responsibilities under Regulation 2019/1896, including on due diligence and human rights monitoring, building upon the series of recommendations by EU and other independent advisory bodies. Mechanisms must be able to undertake monitoring at borders and in locations where pushbacks are occurring.

III. ENHANCE MONITORING AND CONTINGENCY PLANNING

In addition to monitoring mechanisms to prevent human rights violations at the border, UNHCR supports effective monitoring and contingency planning to ensure that the EU is prepared in cases of increased arrivals, learning from the lessons of 2015-16, and to support MS in fulfilling their EU and international obligations. Early warning and well-coordinated needs assessments are required to establish mechanisms that can be activated in case an influx increases and ensure access to registration, reception and asylum procedures.²⁸ In this regard, the Presidencies are encouraged to swiftly finalize the adoption and operationalization of the EUAA, which would address issues such as the harmonization of implementation of the CEAS and allow for greater emphasis on contingency planning.

Key Recommendations:

- Encourage MS to engage with the EUAA on effective contingency planning. UNHCR stands ready to assist in this process.

²⁷ 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?NewsID=2596&LangID=E>

²⁸ 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>

IV. ENSURE ADEQUATE RECEPTION CONDITIONS AND DEVELOP ALTERNATIVES TO DETENTION

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. Alternatives to detention are preferable and possible.

In UNHCR's view, detention of asylum-seekers should not be used by default or be mandatory for all arrivals, but instead should remain the exception. Minimal periods in detention are permissible at the outset of the asylum procedure. Where detention is applied for a legitimate purpose, it needs to be provided for by law, based on an individual decision, strictly necessary and proportional, timebound and regularly reviewed. Detention should never apply to children.

Alternatives to detention, such as temporary movement restrictions, are generally preferable and possible in border procedures as per current practice in several EU+ MS.²⁹ Children should not 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.³⁰

Key Recommendations:

- Call on MS to provide access to adequate reception conditions, 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 detention to be used only as a last resort, where proportionate and for a legitimate cause, and for children not to be detained for immigration-related purposes.
- Prioritize alternatives to detention for all asylum-seekers, particularly those with specific needs and ensure accessible and appropriate care arrangements for children and their families.
- Explore the use of Alternatives to Detention at working meetings in the Council of the EU.

V. ENHANCE INTRA-EU SOLIDARITY AND RESPONSIBILITY-SHARING

A fair, transparent and proportional system for responsibility-sharing is needed and the Presidencies should therefore continue to develop predictable intra-EU solidarity measures. Good practices and operational knowledge developed through ad hoc mechanisms such as the 2019 Valetta Declaration could be used as a basis for more effective and predictable solidarity. France, as a leader in furthering such intra-EU solidarity mechanisms, should use its role in the Presidency to further encourage other MS to participate. For example, 4,638 asylum-seekers have been relocated from Greece including 1,076 unaccompanied children since April 2020.³¹ Beyond ad hoc mechanisms, predictable

²⁹ 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>. 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 [CDDH Analysis](#) and [Practical Guide](#) on Alternatives to Immigration Detention. Course access: <http://help.elearning.ext.coe.int/login/index.php>; Council of Europe, Steering Committee on Human rights (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>

³⁰ UNHCR, "UNHCR's position regarding the detention of refugee and migrant children in the migration context", January 2017, available at: <https://www.refworld.org/pdfid/5885c2434.pdf#:~:text=In%20this%20context%2C%20UNHCR's%20position,never%20in%20their%20best%20interests.&text=non%2Ddetention%20of%20children%20for%20immigration%20related%20purposes>.

³¹ Figures as of 21 December 2021. See <https://data2.unhcr.org/en/documents/download/90360>

relocation for manifestly well-founded and complex cases would contribute to a well-functioning CEAS. 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. In addition, the internal dimension of solidarity, such as relocation, should not be secondary to a focus on external measures that focus on support outside of the EU alone.

Predictable search and rescue (SAR) and disembarkation arrangements that move away from crisis-response and ad hoc approaches are urgently needed. UNHCR calls on the Presidencies to facilitate their swift adoption and to encourage MS to increase their SAR capacity and activities, including with Frontex support.

In addition, the EU should set up an EU funded and run SAR operation, including naval assets. SAR activities should be in line with UNHCR's non-return position to Libya³² and disembarkation should be carried out in a port of safety.

In accordance with the Commission's new EU action plan against migrant smuggling,³³ 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 risks of criminalization of those who provide humanitarian assistance to those in need.

Key Recommendations:

- Prioritize family unity within the intra-EU solidarity mechanism and the Dublin Regulation, or its proposed replacement, to help mitigate against

dangerous journeys and onward movement.

- Advocate for a swift and effective flexible family reunification procedure for refugees and persons granted subsidiary protection.
- Facilitate the advancement of the Asylum and Migration Management Regulation and swiftly establish a predictable solidarity mechanism, including in the context of SAR operations.
- Encourage MS to effectively ensure the protection of migrants and refugees while tackling migrant smuggling in line with the Commission's new EU Action Plan against 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. Effective return policies and practices for persons who are not refugees are therefore essential to maintain credible asylum systems and to prevent onward movement.

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.

The recently enhanced mandate for Frontex on returns provides additional support and resources of which MS should avail themselves.

³² UNHCR, "UNHCR Position on Returns to Libya – Update II", September 2018, available at: <https://www.refworld.org/docid/5b8d02314.html>

³³ European Commission, "A renewed EU action plan against migrant smuggling (2021-2025)", September 2021, available at: https://ec.europa.eu/home-affairs/system/files/2021-09/COM-2021-591_en_0.pdf

Guarantees against refoulement and UNHCR's non-return positions, however, such as those pertaining to Libya³⁴ and Afghanistan,³⁵ should be respected. Particularly with recent events in Afghanistan, UNHCR calls on the Presidencies and MS to suspend forced returns of asylum seeking Afghans whose asylum applications have been rejected.

Further, all returns should be supported through comprehensive and sustainable re-integration measures that go beyond the mere financial assistance package and that accompany the person on their reintegration path in the medium- to long-term.

Key Recommendations:

- 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 organizations.
- Support returns procedures with comprehensive and sustainable reintegration measures. Ensure that agreements with third countries on returns are comprehensive, balanced and without prejudice to EU support for protection and solutions in host countries.

VII. PROMOTE EFFECTIVE INTEGRATION AND INCLUSION FOR THOSE GRANTED ASYLUM

While significant progress has been made in recent years, the integration of refugees and migrants remains a challenge across the EU. UNHCR welcomes the Commission's Action Plan on Integration and Inclusion, embracing a multistakeholder and whole of society approach with extensive consulta-

tions, including refugees and asylum-seekers. UNHCR recommends all stakeholders to build on this Action Plan and implement its objectives.

The Presidencies are encouraged to support the renewed focus on the need to amend the Long-Term Residents Directive, in an effort to incentivize recognized refugees not to move onward within the EU from first asylum countries, for example by offering refugees the possibility to obtain long-term residence status after only three years of continuous residence.

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.
- Call on MS to provide timely and adequate support for and reduce practical barriers to socioeconomic inclusion of refugees, including through early integration measures, an evidence-based approach with systematic collection and analysis of data disaggregated by legal status and effective access to social, economic, financial and digital services.
- 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.

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

35 UNHCR, "UNHCR Position on Returns to Afghanistan", August 2021, available at: <https://www.refworld.org/docid/611a4c5c4.html>

VIII. INCREASE ACCESS TO RESETTLEMENT AND COMPLEMENTARY PATHWAYS

It is estimated that the number of refugees in need of resettlement will increase to over 1.47 million by 2022. The current situations in Afghanistan and elsewhere, reminds us of the need for solidarity among States to support large refugee-hosting countries and vulnerable populations. COVID-19 has brought significant challenges with an unprecedented health crisis affecting all without discrimination. It has also caused an economic crisis exacerbating the vulnerabilities of those most in need, including refugees.

Solidarity as envisaged in the Global Compact on Refugees is more relevant and needed than ever. The proposed Pact on Migration and Asylum has recalled the need for more solidarity and called for efforts by States and other actors to build and expand resettlement and complementary pathways programmes for refugees also in line with the goals of the Three-Year Strategy on Resettlement and Complementary Pathways.³⁶ More resettlement places are crucially needed for vulnerable refugees and more countries must join the effort to consolidate the EU as a leader in resettlement in 2022 and beyond. The establishment of the Union Resettlement Framework (URF) would ensure predictable and sustainable programming in this regard. In addition to resettlement, access for refugees to education and labour mobility pathways will be key to support refugee self-reliance through durable solutions, ease pressure on refugee-hosting communities and help prevent dangerous journeys.

Key Recommendations:

- Advance the EU's global leadership on resettlement by building on the High-level Resettlement Forum's commitments. More resettlement places, more EU States engaged in resettlement and increased quality of programmes are needed. Resettlement

commitments should be additional to intra-EU relocation or evacuation programmes.

- Ensure that resettlement remains a protection-centred tool and is not conditioned on other (migration) policy objectives, such as implementation of readmission agreements or reduced numbers of asylum applications. The right to seek asylum and access to territory for refugees must be upheld at all times.
- Encourage the swift adoption of the Union Resettlement Framework to make resettlement programmes more predictable and sustainable, and increase funding.

IX. ENSURE ACCESS TO FAMILY REUNIFICATION

The right to family unity, enshrined in international and regional instruments, must be upheld. Access to effective procedures must be facilitated. Too many legal and administrative obstacles to family reunification remain. The Global Compact on Refugees calls on States to put in place effective procedures and referral pathways to facilitate family reunification of refugees. The new Pact on Migration and Asylum is an opportunity for more flexibility and more concrete actions to address obstacles by streamlining family reunification criteria and procedures, facilitating access to information, legal advice and support.

Key Recommendations:

- Facilitate refugees' access to procedures to reunite with immediate and dependent family members by adopting a more flexible and inclusive approach; addressing legal and administrative barriers and simplifying procedures, including through innovative case processing methodologies and remote interviews.³⁷

³⁶ UNHCR, "Three-Year Strategy on Resettlement and Complementary Pathways", June 2019, available at: <https://www.unhcr.org/5d15db254.pdf>

³⁷ UNHCR, "UNHCR calls on states to expedite family reunification procedures for Afghan refugees", 15 October 2021, available at: <https://www.unhcr.org/news/briefing/2021/10/616935614/unhcr-calls-states-expedite-family-reunification-procedures-afghan-refugees.html>

2 PROVIDING MORE SUPPORT FOR THE COUNTRIES AND REGIONS WHERE MOST FORCIBLY DISPLACED PEOPLE LIVE, AND ADDRESSING ROOT CAUSES OF FORCED DISPLACEMENT ON PAR WITH IRREGULAR MIGRATION

In light of the growing number of forcibly displaced persons globally, UNHCR calls on the Presidencies to push for additional and more flexible EU humanitarian funding. The Presidencies are encouraged to ensure that forced displacement is adequately featured in the EU's development and cooperation aid planning, in line with its 2016 Lives in Dignity policy.³⁸

The EU's approach to cooperation with priority countries must be balanced, include the forced displacement dimension and genuinely involve partner countries. The Presidencies have a role to play in bringing together EU humanitarian assistance, development and political interventions in displacement crises while mainstreaming climate action. The forthcoming European Union – African Union (EU-AU) Summit under the French Presidency is another opportunity to reinforce the dialogue between the institutions on forced displacement.

The recommendations below underscore the role of the Presidencies in ensuring support to forcibly displaced persons and their hosts.

I. MIXED REFUGEE AND MIGRANT MOVEMENTS

As per the September 2020 proposed Pact on Migration and Asylum, the EU is moving forward with developing Action Plans on Migration with a certain number of target countries. It is important for UNHCR that these Actions Plans be comprehensive and balanced, and above all be jointly designed with partner countries, and not one sided with the mere objective of pursuing the EU's own interests, focusing on returns and readmissions. It is also important that the protection and forced displacement dimensions be fully integrated into the Action Plans, so that the root causes of displacement can be properly addressed in bilateral or regional cooperation frameworks such as the Valetta, Khartoum

and Rabat regional migration management processes as well as in EU programming. Additional efforts are also needed in South-East Europe to further progress on accession benchmarks relating to asylum and statelessness.

Key Recommendations:

- Ensure Migration Action Plans are tailor-made and jointly designed with partner countries.
- Ensure that Migration-related Team Europe Initiatives (TEIs) succeed in scaling up the EU's impact, and support funding mechanisms attached to them that are flexible enough to adapt to changes in mixed movement routes. UNHCR stands ready to contribute and help implement the Migration TEIs with relevant stakeholders.
- Work with the Chairs of the regional processes to turn these dialogues into more practical cooperation/sustainable twinning projects. Coordinate with UNHCR on GRF pledges and the Asylum Capacity Support Group and ensure that EU Legal Pathways to Protection are embedded into Action Plans and TEIs.
- Recognize the important role of cities and local authorities along key migratory routes and adjust EU instruments to enable direct support through projects with them, in particular regarding identification of victims of trafficking, referrals to competent agencies, provision of basic reception services, and integration measures.

³⁸ European Commission Communication, "Lives in Dignity: from Aid-dependence to Self-reliance", 26 April 2016, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016DC0234>

II. FACILITATE VOLUNTARY REPATRIATION TO COUNTRY OF ORIGIN IN SAFETY AND DIGNITY

When a change in circumstances in country of origin allows for return in safety and dignity, voluntary repatriation should be facilitated by all concerned stakeholders, with a view to supporting those who wish to opt for this durable solution. In this context, refugees shall be provided with all the necessary information regarding conditions in their country of origin, to ensure informed decision-making. Increased and targeted humanitarian funding should be provided to support the voluntary repatriation and reintegration of refugees to/in their countries of origin.

Key Recommendations:

- Support timely information sharing on conditions prevailing in countries of origin, when the circumstances would allow for safe, voluntary and dignified repatriation.
- Promote dialogue between all main parties; including countries of origin, transit and asylum so that potential obstacles for voluntary repatriation are identified and addressed, including through targeted humanitarian assistance, as required.
- Act as a catalyst for medium- and long-term support to countries of origin so that root causes of displacement are identified and progressively addressed.

III. PROVIDE INCREASED AND FLEXIBLE HUMANITARIAN FUNDING

In 2021, 235 million people, or 1 in 33 people worldwide, were in need of humanitarian assistance and protection, a significant increase from 1 in 45 at the launch of the Global Humanitarian Overview 2020,

which was already the highest figure in decades. Continued and increased humanitarian support from the EU, the largest donor globally, is crucial to save lives and protect people forced to flee. It is important that EU funds are flexible and go where there are needs.

The 2022 European Humanitarian Forum,³⁹ co-organized by the European Commission and the French Presidency of the Council, is a welcome opportunity for the EU and the Council Presidency to promote needs-based, additional, more flexible and unearmarked humanitarian funding. Progress towards good humanitarian donorship and Grand Bargain principles should build on the 20 May 2021 Council Conclusions on the EU's humanitarian action in which the Council "expresses its support for the use of multiannual and flexible funding arrangements with humanitarian partners".⁴⁰

Key Recommendations:

- In the context of the European Humanitarian Forum planned during the French Presidency, COVID permitting, ensure prioritization of the issue of additional and flexible funding considering unprecedented global needs.
- Encourage MS and the Commission to follow the good practice of flexible humanitarian funding of some MS, and establish coordination mechanisms for the Commission and MS to share good practices and report on progress made.

IV. PROMOTE BETTER COORDINATION BETWEEN HUMANITARIAN, DEVELOPMENT AND PEACE ACTORS - THE NEIGHBOURHOOD, DEVELOPMENT, AND INTERNATIONAL COOPERATION INSTRUMENT

UNHCR welcomes the EU's target to allocate 10 per cent of its Neighbourhood, Development and

³⁹ Upcoming European Humanitarian Forum (EHF) available at: https://ec.europa.eu/echo/news-stories/events/european-humanitarian-forum-ehf_en

⁴⁰ Council of the EU, "Conclusions on the Communication from the Commission on the EU's humanitarian action: New challenges, same principles", 20 May 2021, available at: <https://data.consilium.europa.eu/doc/document/ST-8966-2021-INIT/en/pdf>

International Cooperation Instrument (NDICI-Global Europe) budget for migration and forced displacement. This will help to further implement the 2016 Communication “Lives in Dignity”,⁴¹ and subsequent Council Conclusions on the EU approach to forced displacement and development.⁴² These policies recognize forced displacement as a development challenge, and highlight the potential of refugees and IDPs to actively contribute to and participate in the economy and society of host countries and communities.⁴³

The NDICI-Global Europe will also help the EU’s ambition to bring together humanitarian assistance, development and political interventions from the outset of a displacement crisis. UNHCR welcomes the “robust and transparent tracking system”⁴⁴ that will help measure progress made on the EU’s commitment to continued and increased global solidarity with refugees and their hosts.⁴⁵

Key Recommendations:

- Ensure that forced displacement situations feature in the Working Party on Development Cooperation and International Partnerships (CODEV) to measure progress on the EU’s goal to spend 10 per cent of the NDICI-Global Europe budget on migration and forced displacement.
- Ensure the Council and NDICI-Global Europe coordination bodies have transparent categories in place that will look at support to address forced displacement as distinct from migration.

V. EUROPEAN UNION – AFRICAN UNION RELATIONS

In view of the forthcoming 6th EU-AU Summit to be held in February 2022 under the French Presidency, the EU-AU dialogue on forced displacement needs to be sustained by constructive, open and transparent discussion among States, whether in bilateral or regional formats, with a view to upholding respect for the principle of non-refoulement.

The 2017 5th Summit Abidjan Declaration already expressed at the time a strong political commitment to address the root causes of irregular migration and forced displacement.⁴⁶ Both the EU-AU and EU-ACP (African, Caribbean and Pacific Group of States) processes are now at a crossroads, which represents a key opportunity to enhance relations between Europe and Africa, with a view to inter alia dedicate time and energy to address forced displacement at the core of the relationship.

Key Recommendations:

- Reinforce the institutional dialogue between the EU and AU institutions around issues of forced displacement.
- Ensure that EU-AU dialogue includes the joint search for sustainable solutions, as per the orientation of the Global Compact for Refugees, and with a view to upholding principles of international law related to asylum and forced displacement.
- Synchronize the EU-AU and the EU-ACP dialogues for optimized and mu-

41 European Commission Communication, “Lives in Dignity: From Aid-dependence to Self-reliance”, 26 April 2016, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016DC0234>

42 Council of the European Union, “Conclusions on the EU’s approach to forced displacement and development”, 12 May 2016, available at: <https://www.consilium.europa.eu/en/press/press-releases/2016/05/12/conclusions-on-forced-displacement-and-development/>

43 UN Sustainable Development Goals, available at: <https://sdgs.un.org/goals>

44 Article 51 of the NDICI-Global Europe regulation, Regulation (EU) 2021/947 of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument, 9 June 2021, <https://eur-lex.europa.eu/eli/reg/2021/947/oj> available at: <https://eur-lex.europa.eu/eli/reg/2021/947/oj>

45 Proposed Pact on Migration and Asylum, March 2020, available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum_en; Speech of Commissioner Urpilainen at the High-level closing panel of the Global Refugee Forum, 18 December 2019, available at: https://ec.europa.eu/commission/commissioners/2019-2024/urpilainen/announcements/speech-commissioner-urpilainen-high-level-closing-panel-global-refugee-forum_en

46 African Union - European Union Summit Declaration, Abidjan, 30 November 2017, available at: https://www.consilium.europa.eu/media/31991/33454-pr-final_declaration_au_eu_summit.pdf

tually supportive discussions on migration and asylum in both fora.

- Consider including local actors, cities, smaller cities, local NGOs and other civil society actors into the inter-continental discussion as they are often the first line service providers as demonstrated during the response to the pandemic.

VI. PROMOTE CLIMATE CHANGE ADAPTATION

The EU Strategy for Climate Change Adaptation, in line with its humanitarian and development commitments, should serve as the basis of a climate change strategy that takes into consideration the needs of refugees, internally displaced persons, stateless persons and host populations as particularly vulnerable to its effects. As the situation in the Sahel illustrates, the climate emergency puts pressure on civilian populations through disasters, as well as indirectly as another factor leading to conflicts notably through its impact on resources.

Key Recommendations:

- In line with the May 2021 Council Conclusions on the EU’s humanitarian action,⁴⁷ ensure mainstreaming of climate change as part of the nexus approach, with particular attention to the situation of the forcibly displaced, stateless persons and their hosts.
- Ensure that the EU remains a committed and ambitious driving force behind collective efforts that amplify the scale, impact and timeliness of climate action and the reduction of disaster risk for vulnerable and displaced populations worldwide.
- Ensure that the EU supports the work of humanitarian and development partners in “greening” their operations and reducing their environmental footprint.

VII. ADDRESS STATELESSNESS

In line with UNHCR’s key calls to the EU on Statelessness⁴⁸, pursuant to UNHCR’s #IBelong Campaign to End Statelessness by 2024, and recalling the 2015 Council Conclusions, the Council Presidencies should prioritize two main recommendations.

Key Recommendations:

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

UNHCR, December 2021

47 Council of the EU, “Conclusions on the Communication from the Commission on the EU’s humanitarian action: New challenges, same principles”, 20 May 2021, available at: <https://data.consilium.europa.eu/doc/document/ST-8966-2021-INIT/en/pdf>

48 UNHCR, “UNHCR’s Key calls to the European Union on Statelessness”, available at: <https://www.unhcr.org/europeanunion/statelessness/>