

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

I. Introduction

1. The UNHCR Regional Representation for Northern Europe (RRNE) is grateful to the Ministry of the Interior of Finland for the invitation to comment on the draft National Action Plan (NAP) for the Asylum, Migration and Integration Fund (AMIF).
2. UNHCR has a direct interest in proposals in the field of asylum, as the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees¹. According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]”² UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention Relating to the Status of Refugees (1951 Convention). Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR Handbook) and subsequent Guidelines on International Protection³. This supervisory responsibility is reiterated in Article 35 of the 1951 Convention, and in Article II of the 1967 Protocol relating to the Status of Refugees⁴.
3. UNHCR’s supervisory responsibility has also been reflected in European Union law, including by way of a general reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union (TFEU)⁵, as well as in Declaration 17 to the Treaty of Amsterdam, which provides that “*consultations shall be established with the United Nations High Commissioner for Refugees ... on matters relating to asylum policy*”⁶.

¹ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at:

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628> (“UNHCR Statute”).

² *Ibid.*, paragraph 8(a).

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

<http://www.refworld.org/docid/4f33c8d92.html>.

⁴ According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the 1951 Convention”.

⁵ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, OJ C 115/47 of 9.05.2008, available at:

<http://www.unhcr.org/refworld/docid/4b17a07e2.html>.

⁶ European Union, *Declaration on Article 73k of the Treaty establishing the European Community*, OJ C 340/134 of 10.11.1997, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/DCL/17: EN:HTML>.

4. UNHCR therefore welcomes this opportunity to provide comments on the draft NAP for Finland's national AMIF programme for the period 2014 - 2020. UNHCR shared preliminary recommendations on priority areas for funding under the Finnish National Programme for the 2014-2020 Asylum and Migration Fund (AMF) on 4 September 2013 and comments on the draft National Programme for the AMIF in May 2014. These recommendations and comments form the basis for UNHCR's observations below on the draft NAP.

II. Observations

Goal 1. Developing and strengthening the Common European Asylum System

5. Under goal 1, Finland prioritizes reception and asylum systems, assessing the asylum policies and resettlement.

National Goal 1.1. Reception and asylum systems

6. According to the draft NAP, the asylum process will be further developed, particularly as regards aspects of legality, efficiency and trans-sectorial cooperation. The capacity building of staff in the asylum and reception systems is also stressed. There is a focus on the initial stages of the asylum process. The draft NAP explicitly mentions age assessment and language analyses as methods to be developed.
7. In its letter of 4 September 2013 and comments of May 2014, UNHCR RRNE had recommended prioritizing improvement of the quality of the asylum procedure, including of decisions, interpretation and quality assurance at all stages of the procedure, as well as continuous capacity-building of the relevant authorities. UNHCR notes that some elements of the asylum process are dealt with under National Goal 1.1 in the NAP, while others are dealt with under National Goal 1.2 (assessing asylum policies). UNHCR recommends Finland to review this division to minimize confusion. UNHCR welcomes the inclusion in the draft NAP of capacity building of staff. Concerning language analyses as a means of identification, UNHCR recalls that language analyses may be regarded as one possible source of evidence that should be used together with the other individual and contextual circumstances of the case when an applicant's national identity, country of origin or former habitual residence are being assessed. Linguistic conclusions should therefore not be used as the only source of evidence. UNHCR suggests that qualified interpretation is also included as an element of a high quality asylum procedure. The quality of interpretation and information are crucial aspects for correct decision making which were highlighted in the findings of the project on quality of asylum decisions in the EU⁷.
8. Concerning reception of asylum-seekers, the draft NAP has a strong focus on access to and quality of legal aid, and on persons with specific vulnerabilities, including victims of torture. Activities and actions supporting the mental wellbeing of asylum-seekers, and further developing the guardianship system for unaccompanied children are also treated.

⁷ UN High Commissioner for Refugees (UNHCR), Further Developing Asylum Quality in the EU (FDQ): Summary Project Report, September 2011, available at: <http://www.refworld.org/docid/4e85b41f2.html>

9. In its letter of 4 September 2013 and comments of May 2014, UNHCR had suggested the prioritization of quality legal counseling/legal aid, as well as information provided to asylum-seekers. UNHCR therefore welcomes that access to and quality of legal aid features prominently in the draft NAP. In May 2014, UNHCR suggested that information to asylum-seekers be included not only under the goal, but also within the prioritized actions. UNHCR thus welcomes the inclusion of information to asylum-seekers in the draft NAP.
10. In its letter of 4 September 2013, UNHCR stressed the need for support to improve the identification of and assistance to asylum-seekers with specific needs, particularly victims of torture. UNHCR particularly recommended that focus be placed on their rehabilitation and on the implementation of the asylum-procedure in a way which takes account of their specific situations, including with regard to the credibility assessment and burden of proof. In May 2014 UNHCR suggested the inclusion of victims of torture, who have special needs in both reception and the asylum process, in the prioritized actions. UNHCR further suggested the inclusion of credibility assessment and burden of proof in the prioritized actions relating to asylum-seekers with specific needs. UNHCR studies and training on credibility assessment has brought further attention to the crucial value of correct credibility assessment for ensuring correct identification of persons with protection needs⁸. UNHCR thus welcomes the fact that the draft NAP focuses on the early identification of persons with specific vulnerabilities, including victims of torture, in an as early stage as possible of the asylum procedure. However, the draft NAP only does this in relation to the reception of asylum-seekers. UNHCR thus reiterates its recommendation to include the credibility assessment and burden of proof in cases concerning asylum-seekers with specific needs, as a specific element of developing the asylum process.
11. According to the draft NAP, the reason for providing information, services and support in the asylum process is to support the capability and participation of the asylum-seeker in the asylum process. UNHCR has studied meaningful participation and empowerment in reception of asylum-seekers and refugees in Finland. The results were published in May 2015 in the report *Speaking for Ourselves: Hearing Refugee Voices, A Journey Towards Empowerment*⁹. As expressed in the report, the asylum procedure is often experienced as a period of great uncertainty and powerlessness when one's future is in the hands of others. This situation is usually compounded by the poor management of the asylum reception centres, which has regularly been criticized for its lack of client-focus. Disempowerment is often associated with this phase of uncertainty.¹⁰ The EU asylum acquis recognizes the importance of participation by asylum-seekers in the management of centres. In Finland, Migri annually conducts client surveys among asylum-seekers in reception centres. UNHCR has studied these and recommended that reception centres also establish formal processes by which the voices of asylum-seekers are heard throughout the year on matters that have

⁸ UN High Commissioner for Refugees (UNHCR), *Beyond Proof, Credibility Assessment in EU Asylum Systems* : Full Report, May 2013, available at: <http://www.refworld.org/docid/519b1fb54.html>

⁹ UN High Commissioner for Refugees (UNHCR), *Speaking for Ourselves: Hearing Refugee Voices, A Journey Towards Empowerment*, May 2014, available at: <http://www.refworld.org/docid/537afd9e4.html>

¹⁰ Idem. Page 58.

an impact on them and their families, as suggested by the acquis¹¹. UNHCR thus suggests that the participation of asylum-seekers in reception is included in the NAP.

National Goal 1.2. Assessing asylum policies

12. The National Programme aims at safeguarding the quality of the asylum procedure and monitoring the reception capacity through developing assessment methods and the information systems of authorities. The aim is also to shorten processing times and to strengthen the quality of the asylum procedure. Sharing of country of origin information is moreover mentioned. The draft NAP states that the quality of decision making in the asylum procedure will be improved, for example in cooperation with UNHCR.
13. In its letter of 4 September 2013 and comments of May 2014, UNHCR RRNE had recommended prioritizing improvement of the quality of the asylum procedure, including of decisions and quality assurance at all stages of the procedure. UNHCR thus welcomes the inclusion of improving the decision making in the asylum procedure. The prioritization could be further developed by including references to frontloading and to the importance of high quality decision-making in the first instance of the asylum procedure.

National Goal 1.3. Resettlement

14. Refugees that are about to be or have already been resettled to Finland are included under national goal 1.3. Other actions connected to resettlement are included under special goals 5 and 6. Under goal 1.3, resettlement, Finland prioritizes local and regional actions and solution in order to improve reception capacities and to speed up the identification of municipality placements. According to the draft NAP, the regular cooperation between the authorities and UNHCR should be safeguarded. The speedy placement of emergency cases in municipalities has been considered especially important. There is an emphasis on participating in the further development of resettlement and on strengthening the cooperation and exchange of information with UNHCR.
15. UNHCR has already welcomed the inclusion of resettlement in the national priorities in Finland. Specifically, UNHCR finds the explicitly formulated goals to find placements for refugees more quickly in municipalities, to streamline practices between authorities and to enhance information gathering and distribution on situations in countries of origin and first asylum to be correct priorities. UNHCR especially welcomes the priority to cooperate between authorities, NGOs, other member states and UNHCR to share information, best practices and experiences to support resettlement and develop the system. The lack of municipality placements and the slow arrival of resettled refugees to Finland have during the last years been one of UNHCR biggest concerns in Finland and UNHCR appreciates the efforts of the Government of Finland to resolve the situation. Given the emphasis given to improving the reception of resettled emergency cases in the objectives of the draft NAP, UNHCR suggests that actions and expected results concerning emergence resettlement are to be included also in the financed actions and results parts of the finalized NAP.

¹¹ Idem. Page 60.

Further observations on National Goal 1.

16. UNHCR has in its letter of 4 September 2013, and again in May 2014, proposed that the national program would include protection of children, including those intercepted en route through EU Member States and children being, or at risk of being trafficked. Due to the complexity of these cases, dedicated resources and expertise are often required to deal with these cases in a fair and efficient manner. UNHCR notes that children are not included as a priority in the National Programme in Finland. Under National Goal 1, unaccompanied children are mentioned in connection with actions relating to vulnerable groups, and in relation to developing the guardian system and improving training given to guardians. Age assessment methods are also mentioned. UNHCR welcomes these inclusions, which are in line with UNHCR's earlier recommendations, but would nonetheless suggest including the following activities for AMIF funding: measures to improve the identification of unaccompanied and separated children, and to ensure child-friendly administrative procedures that take into account the best interests of the child, including the provision of child-specific and child-friendly information and availability of counselling.

National Goal 2. Integration and Legal Migration

17. The National Programme focuses on legal migration and integration under three headlines: legal migration, integration and developing preparedness. UNHCR comments on goal 2.2, integration.

National Goal 2.2. Integration

18. The aim in the draft NAP is to enhance the participation and well-being of immigrants from third countries. Those with refugee background are mentioned as a target group for integration measures financed through AMIF. There is a strong focus on participation, interaction with host communities and good ethnic relations. One central priority is the good quality actions at the initial stage of the integration process. The role of NGOs is stressed. Equal treatment is supported through developing actions where immigrants and their organizations participate in partnership with the authorities to develop integration and support the integration of immigrants from third countries. The need for training in observing gender and culture sensitive approaches in integration is mentioned.
19. UNHCR has welcomed that the National Programme stresses the dialogue between communities and the participation of migrants. In the report *Speaking for Ourselves*¹², the importance of refugees' participation in the planning, design and implementation of activities that have an impact on their lives, their families and their communities were demonstrated. Such participation can add significant value throughout the asylum processes and settlement particularly when made available to all groups in an Age-, Gender- and Diversity (AGD) sensitive manner. In its letter of 4 September 2013 and of May 2014, UNHCR highlighted the importance of including measures to enhance AGD and participatory approaches as a cross-cutting prioritized theme for AMIF funding. UNHCR believes many of the desired outcomes of the national programme will be better

¹² See footnote 9.

achieved by integrating AGD-considerations and participatory approaches as a cross-cutting theme. UNHCR therefore welcomes that participation is visibly included in the draft NAP under integration. Finland is here showing a good example on a European level. If the AGD-sensitive manner to safeguarding participation would be more clearly stated in the NAP, the value of the text on participation would be further enhanced.

20. The integration priorities stressing employment and learning the national languages are welcomed by UNHCR as is the emphasis laid on the early stages of integration. UNHCR also welcomes that persons with refugee background are listed as a target group, since they may need extra support in the integration process and to be able to enter the labour market.
21. In the context of integration, UNHCR would like to reiterate the recommendation to include support for the improvement of family reunification procedures, including family tracing; evidence assessment; travel documents and travel. The ability to reunify with one's family brings much needed stability and peace of mind to refugees settling in their new country. As such, the ability of beneficiaries of international protection to reunify with their family members is critical for their ability to focus on integration in their new home country, and thus a central element of an integration policy and program. At the same time, accessible and efficient reunification procedures provide family members with legal ways of reaching the country in which their family members have been granted international protection, and thus reduce their need to resort to scrupulous human smugglers. UNHCR recommends that also authorities under the foreign ministry are included in the actions concerning family reunification, since waiting times for family reunification interviews at Finnish embassies abroad have for some groups of applicants in recent years been a bottle neck in the family reunification procedure.
22. UNHCR also recommends including awareness-raising to improve the asylum and integration space in Finland and prevent and combat racism, xenophobia and intolerance in the NAP.

Goal 3. Return

23. Under goal 3, the national programme focuses on voluntary return, developing a re-integration support structure and developing removal procedures. UNHCR comments on the issue of detention under national goal 3.1, auxiliary actions to return.

National Goal 3.1. Auxiliary actions to return

24. UNHCR notes that the issues of detention and alternatives to detention are prioritized under the return-goal in the national programme. In May 2014, UNHCR recommended to clarify how AMIF funds will be used to develop detention. In particular, UNHCR stressed the importance of having alternatives to detention. UNHCR welcomes that the draft NAP contains a clear reference to the upcoming changes in the legislation concerning detention and that this necessitates actions where alternatives to detention can be developed and tested with AMI funding.

25. The draft NAP states that the contents of detention, alternatives to detention and cooperation between authorities will be developed, in order to safeguard the effective implementation of the new legislation and to observe the human rights obligations and best interests of the child assessments contained in the legislation. UNHCR welcomes the clear reference to the best interests of the child, but reiterates its position that, in principle, children should not be detained at all¹³. The United Nations Convention on the Rights of the Child¹⁴ (CRC) provides specific international legal obligations in relation to children and sets out a number of guiding principles regarding the protection of children. The extreme vulnerability of a child takes precedence over the status of an “illegal alien”¹⁵. The detention of children with their parents or primary caregivers needs to balance, inter alia, the right to family and private life of the family as a whole, the appropriateness of the detention facilities for children,¹⁶ and the best interests of the child.¹⁷

Goal 5. Safeguarding the continuity and functionality of Finland’s resettlement programme

26. Under goal 5, Finland prioritizes continuity of the Finnish resettlement programme and the effective implementation of the allocation decision and safeguarding that the yearly quota can be filled within the time frame agreed with UNHCR. To this end, the draft NAP focuses on developing the processes of national authorities and pre-departure orientation.

27. UNHCR welcomes the inclusion of continuity in the Finnish resettlement programme in the NAP. Information sharing between the authorities, capacity building and resources needed for resettlement work are good priorities in the NAP. UNHCR would like to ensure that also authorities under the foreign ministry are included in the actions since the documentation needed by refugees about to be resettled have in practice sometimes constituted a bottle neck for the speedy departure after a selection has been made.

Goal 6. Ensuring the functionality of municipality placements

28. The challenges Finland has experienced in recent years to find municipality placements for resettled refugees, are addressed under goal 6. The draft NAP especially focuses on the problem in identifying municipality placements for emergency resettlement cases, which is needed to ensure that refugees in urgent need of resettlement are not forced to wait in first countries of asylum for

¹³ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, para. 51.

¹⁴ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>

¹⁵ *Muskhadzhiyeva and others v. Belgium* (2010), ECtHR, App. No. 41442/07, available at: <http://www.unhcr.org/refworld/docid/4bd55f202.html>, in which it was held inter alia that detaining children in transit facilities designed for adults not only amounted to inhuman or degrading treatment in contravention of Article 3 of the ECHR, it also rendered their detention unlawful.

¹⁶ *Popov v. France*, (2012), ECtHR, App. No. 39472/07 and 39474/07, available at: <http://www.unhcr.org/refworld/docid/4f1990b22.html>.

¹⁷ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, para. 53.

prolonged periods, which may threaten their lives. The goal is to ensure enough municipality placements in the future. To this end, AMIF funds are proposed to be used to increase state subsidies to municipalities accepting refugees. As a concrete goal, the draft NAP mentions the pilot project with Tampere and Jyväskylä on speedy reception of cases of emergency resettlement and the intention to increase cities involved to 5 or 7.

29. UNHCR welcomes the inclusion of municipality placements in the draft NAP. The lack of municipality placements and the resulting delays in departures of resettled refugees to Finland has for the last years been one of UNHCR's main concerns in Finland. Especially the long waiting times for emergency cases have caused problems. UNHCR thus finds the priorities of the draft NAP to be aptly chosen.
30. Under goal 6, the draft NAP also mentions the integration of resettled refugees. The goal is to strengthen the well-being and health of refugees through developing their specialized health services and psychosocial services, as well as treatment of post traumatic symptoms. UNHCR welcomes this goal, but suggests that the participation of refugees is clearly mentioned under this goal in the draft NAP. Finland has a good practice in the form of "experts through experience", where persons who have experienced a certain situation are trained in expressing their experience to let authorities and others concerned understand how it feels to be, for example a patient, rehabilitee or – in this case – a resettled refugee. By mentioning refugee participation in an age, gender and diversity sensitive manner in connection to integration of resettled refugees, the NAP of Finland would set a further good example to be followed by other European countries.