



UNHCR's recommendations for the Finnish Presidency of the Council of the European Union (EU)

July - December 2019

The Republic of Finland (hereafter Finland) will hold the Presidency of the Council of the European Union (EU) at a critical juncture, against the backdrop of the 2019 European Parliament elections, the formation of a new European Commission, the last phase of the Multi-annual Financial Framework (MFF) negotiations and the ongoing discussions on the reform of the Common European Asylum System (CEAS).

In this context, UNHCR, the UN Refugee Agency, outlines the following key protection priorities for the Finnish Presidency:



Finnish pensioner couple takes Iraqi girl and her father under their wing.
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- In line with the Global Compact on Refugees (GCR)¹, protect refugees better through enhanced responsibility sharing in the EU and globally;
- Foster the development of fair, effective and well-managed asylum systems, including through the implementation/reform of a protection-oriented CEAS; and
- Promote EU MS pledges ahead of the 2019 High-Level Segment on statelessness.

These priorities form the foundation of UNHCR's full recommendations for the Finnish Presidency, and are to be read in conjunction with UNHCR's "Better Protecting Refugees in the EU and Globally"², which sets out the organization's proposals for EU asylum and migration policies.

I. An EU that contributes at the Global Refugee Forum (GRF) for the implementation of the Global Compact on Refugees

The GCR affirmed by the UN General Assembly in December 2018 represents the determination of the international community to strengthen solidarity with refugees and the main countries that host them. The first GRF³, to be held in December 2019, will be a unique opportunity for the International Community to come together to lay the foundations for the implementation of the GCR over the longer term.

¹ UN General Assembly, *Report of the United Nations High Commissioner for Refugees, Part II, Global compact on refugees, A/73/12*, New York, 2018, available at: <https://www.unhcr.org/excom/unhcrannual/5ba3a5d44/report-united-nations-high-commissioner-refugees-part-ii-globalcompact.html>.

² 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: <http://www.refworld.org/docid/58385d4e4.html>.

³ See UNHCR's webpage: <https://www.unhcr.org/global-refugee-forum.html>

In the lead up to and following the first GRF, UNHCR recommends that the Finnish Presidency:

- Considers opportunities to establish a reporting process for the EU and MS to provide progress updates on the implementation of their contributions to the GRF.
- Through diplomatic and other networks, builds momentum for the GRF amongst States and other actors that have not traditionally played a large role in the global refugee protection regime. The Finnish Presidency may wish to encourage the EU to adopt EU Council Conclusions on the GRF.

On burden and responsibility sharing, UNHCR recommends that the Finnish Presidency:

- In line with the EU policy “Lives in Dignity Communication”⁴, mainstreams refugee issues and forced displacement across the EU external action and advocates for systematic inclusion of refugees in EU programmes implemented in refugee-hosting areas as well as in national development plans. This policy continues to underpin the EU support to the application of the comprehensive approaches to forced displacement in large refugee hosting countries that brings together humanitarian and development actors to address the needs of both refugees and host communities (the CRRF approach).
- In the European context, measures aimed at expressing inter-EU solidarity (such as relocation mechanisms including in the context of disembarkation arrangements) would help easing the pressure on first line countries within the EU, in line with GCR objectives.

The Finnish Presidency may also wish to:

- Convene a joint meeting of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) and the High-Level Working Group on Asylum and Migration (HLWG) in the early stages of its mandate, to discuss implementation of the GCR, including opportunities in the lead-up to the GRF, both inside and outside the EU.
- Ensure that both humanitarian and developmental aspects of the GCR are discussed in relevant Council configurations and platforms (COHAFA, CODEV, COAFR, COLAT, COASI and the EU Eastern Partnership) to reflect the diverse set of opportunities that come with its implementation, both inside and outside the EU.

II. An EU that is engaged beyond its borders

1. Cooperating with countries that are not members of the EU with the objective of supporting quality protection space globally

Cooperation with countries that are not members of the EU must keep the protection of forcibly displaced persons’ fundamental rights at its centre and should not aim at shifting Europe’s protection obligations. In particular, the Finnish Presidency has indicated its willingness to

⁴ As called upon in the European Union: European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Lives in Dignity: from Aid-dependence to Self-reliance, Forced Displacement and Development*, COM(2016) 234 final, Brussels 26 April 2016, available at: http://ec.europa.eu/echo/files/policies/refugees-idp/Communication_Forced_Displacement_Development_2016.pdf.

reinforce the EU's dialogue with Africa on migration management, addressing more transparently joint challenges and opportunities. The 10th anniversary of the EU Eastern Partnership this year also offers such opportunities. UNHCR stands ready to support and contribute to these initiatives including through the Asylum Capacity Support Group (ACSG) that is in the process of being developed as part of the GCR in order to match capacity building needs with support offers. Any engagement in the area of search and rescue in the Mediterranean Sea and border control should be done with key protection considerations in mind, not with an intention of deterrence and externalisation of responsibilities. Regarding its closest neighbours, UNHCR continues to remain ready to work with the EU institutions and agencies, including EASO and Frontex, in developing protection-sensitive border management and capacitating asylum systems in Western Balkan countries. In particular, further efforts are needed in the Western Balkans to develop fair and efficient asylum procedures and first reception capacity, ensure a consistent approach to registration (preferably EURODAC compatible) strengthen access to fundamental rights and services, expand integration opportunities, and prevent and address statelessness in the region. The pre-accession process, as well as mechanisms such as the ACSG provide opportunities to address remaining gaps.

UNHCR recommends that the Finnish Presidency:

- Ensures that discussions in the relevant Council configurations on third country cooperation are guided by protection considerations and compliance with the EU Charter of Fundamental Rights⁵, which may apply also where the EU or its MS act outside of EU territory.
- Shows leadership in the Council, including in the Working Party on Enlargement and Countries Negotiating Accession to the EU, to ensure that accession benchmarks relating to asylum and statelessness are implemented by Western Balkan countries. This could also take into account and adapt the relevant inspiring practices from the implementation of the Comprehensive Refugee Response Framework (CRFF) in the pilot countries⁶.

2. Expanding resettlement and complementary pathways of admission

Resettlement needs are at an all-time high⁷. EU-led efforts are critical to address the shortage of resettlement opportunities. As part of the GCR, UNHCR and partners are devising a global three-year strategy⁸. The GRF provides an opportunity to announce ambitious plans for expanded resettlement and complementary pathway programmes. EU MS can show global solidarity by expanding legal pathways of admission for refugees, in addition to their continuous obligation to receive spontaneously arriving asylum-seekers in the EU. Moreover, family reunification should be facilitated for refugees and beneficiaries of subsidiary protection through streamlined procedures and strengthened information provision. This will reduce prolonged separation,

⁵ As called upon in the European Union: *Charter of fundamental rights of the European Union*, 2000/C 356/01, 18 December 2000, available at: https://www.europarl.europa.eu/charter/pdf/text_en.pdf.

⁶ UNHCR, *Global update on the Comprehensive Refugee Response Framework*, September 2018, available at: <https://www.unhcr.org/events/conferences/5bd041e33/global-update-comprehensive-refugee-response-framework.html>.

⁷ UNHCR, *UNHCR Projected Global Resettlement Needs 2019*, 25-26 June 2018, available at: <https://www.unhcr.org/5b28a7df4.pdf>.

⁸ See paragraph 91 of the GCR.

enhance integration prospects, and help mitigate irregular onward movement. Developments to build upon include the commitment of 20 EU MS to resettle over 50,000 refugees by October 2019⁹, the proposal for a Union Resettlement Framework Regulation¹⁰, as well as the interest in community based sponsorship.

UNHCR recommends that the Finnish Presidency:

- Encourages, in the Justice and Home Affairs Councils, EU MS to fully implement their commitments to resettle 50,000 refugees by October 2019.
- Supports, also through the SCIFA agenda, the roll-out of the three-year strategy on resettlement and complementary pathways of admission, as envisaged in the GCR, to increase the pool of resettlement places as well as the number of engaged countries, This could, for example, include practical cooperation between EU MS via projects such as EU-FRANK (“Facilitating Resettlement and Refugee Admission through New Knowledge”)¹¹ as well as by tapping into available support under the Emerging Resettlement Countries Joint Support Mechanism¹².
- Advances the Union Resettlement Framework in a way that builds on existing international frameworks and best practices through ensuring that it is protection-centered and responsive to global resettlement needs.

3. Giving prominence to the situation of internally displaced persons (IDPs)

Presently, some 40 million persons globally are internally displaced within the borders of their own country owing to war, conflict, violence and natural disasters¹³. This year is the 20th anniversary of the Guiding Principles on Internal Displacement¹⁴ and of the adoption of the GP20 Plan of Action¹⁵. It is also the 10th anniversary of the African Union Convention for the Protection and Assistance of IDPs in Africa (Kampala Convention)¹⁶. It is therefore an opportune moment for States affected by this situation to meet their primary responsibility to prevent internal displacement, to respond to the needs of displaced persons and help resolve causes of displacement, including through contributions to the GCR. To these ends, the Finnish Presidency also has a key role in reinforcing existing EU policies and instruments.

⁹ As called upon the European Union: European Commission, *Annex 5 to the Communication from the Commission to the European Parliament, the European Council and the Council on Progress report on the Implementation of the European Agenda on Migration*, COM(2018) 250 final, 14 March 2018, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180314_annex-5-progress-report-european-agenda-migration_en.pdf

¹⁰ As called upon the European Union: European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council*, COM/2016/0468 final - 2016/0225 (COD), 13 July 2016, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0468>.

¹¹ See EU-FRANK project's website, available at: <https://www.resettlement.eu/eu-frank>.

¹² IOM and UNHCR, *Emerging resettlement countries joint support mechanism (ERCM)*, available at: <http://reporting.unhcr.org/node/15495>.

¹³ UNHCR, *Mid-year trends 2018*, January 2019, available at: <https://www.unhcr.org/statistics/unhcrstats/5c52ea084/mid-year-trends-2018.html>.

¹⁴ UNHCR, *Guiding Principles on Internal Displacement*, 22 July 1998, ADM 1.1, PRL 12.1, PR00/98/109, available at: <https://www.refworld.org/docid/3c3da07f7.html>.

¹⁵ *GP20 Plan Of Action*, 23 May 2018, available at: http://globalprotectioncluster.org/_assets/files/20180523-gp20-plan-of-action-final.pdf

¹⁶ African Union, *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention")*, 23 October 2009, available at: <https://www.refworld.org/docid/4ae572d82.html>.

UNHCR recommends that the Finnish Presidency:

- Prioritizes preventing and addressing internal displacement in relevant Council configurations such as the Working Party on Human Rights (COHOM), the Council Working Party on Humanitarian Aid and Food Aid (COHAFA) and the Working Party on Development Cooperation (CODEV).

III. An EU that ensures access to a fair, effective and well-managed protection system

1. Fostering responsibility-sharing and solidarity

EU MS facing a disproportionate number of arrivals need to be supported by specific intra-EU solidarity mechanisms. Until structural changes are secured through the CEAS reform, existing frameworks need to be strengthened and used to foster responsibility-sharing and solidarity in the EU. Reforming the Dublin Regulation to include a relocation mechanism, complemented by swift asylum decisions and integration support for those granted protection to help mitigate onward movement, and strengthened return mechanisms for those who are found not to be in need for international protection, would be the most sustainable and effective way of sharing responsibility among EU MS. Until the reform is finalised, UNHCR underlines that it remains key to establish practical and reliable arrangements among EU MS to share responsibility for the disembarkation and processing of persons rescued at sea. IOM and UNHCR put forward a joint proposal¹⁷ to support the development and implementation of such arrangements, in which EU MS have a key role to play.

UNHCR recommends that the Finnish Presidency:

- Continues to advance efforts to establish an effective solidarity mechanism to support EU MS receiving a disproportionate number of asylum claims, in particular a relocation mechanism as part of the reform of the Dublin Regulation.
- Actively supports the establishment of predictable disembarkation and processing mechanisms in relation to the Mediterranean Sea, with the support of UNHCR and IOM and in line with UNHCR's non-return position on Libya¹⁸. This could, for example, further build upon the good practices from the ad hoc arrangements that have transpired already to-date.

2. Enabling protection-sensitive border management

An EU that protects starts with an EU that provides access to the territory for persons seeking international protection. Over the last years, the EU has taken important steps to enhance its border management capacities, both through increased funding and the exponential expansion

¹⁷ IOM and UNHCR, *Proposal for a regional cooperative arrangement ensuring predictable disembarkation and subsequent processing of persons rescued-at-sea*, July 2018, available at: <https://www.unhcr.org/5b35e60f4>.

¹⁸ UNHCR, *UNHCR Position on Returns to Libya - Update II*, September 2018, available at: <https://www.refworld.org/docid/5b8d02314.html>.

of Frontex. Likewise, rules designed to ensure effective access to EU asylum procedures for persons who reach the EU borders need to be safeguarded, including in the negotiations on the proposed Asylum Procedures Regulation. These efforts need to be underpinned by training for border and entry officials on international and EU standards for protection-sensitive border management¹⁹.

UNHCR recommends that the Finnish Presidency:

- Plays a crucial role in ensuring that negotiations do not lose sight of the right to asylum that requires access to the territory to have meaning, as guaranteed by the EU Charter of Fundamental Rights.

3. Fairly and efficiently determining protection needs in the EU

Registration and assessment of asylum claims should take place as soon as possible, taking into account the specific vulnerability of applicants. Adequate time frames for applicants to exercise their fundamental rights, in particular the right to an effective remedy, need to be provided. As per UNHCR's discussion paper ("Fair and Fast"²⁰) on the required steps to implement accelerated and simplified procedures, more efficient procedures are needed so that persons in need of international protection would be quickly accorded status and those who are not can be channelled into return proceedings. Due process and judicial oversight need to be fully guaranteed, including by ensuring that judicial bodies have sufficient capacities to conduct effective appeals procedures. Furthermore, detention of asylum-seekers should not be routine practice, either at the border or further inside the territory, and only be applied as a last resort when no alternative means are available to achieve a legitimate purpose. In addition, children should never be detained for immigration-related purposes. Accessible and appropriate care arrangements need to be in place to ensure adequate reception of children and their families.

UNHCR recommends that the Finnish Presidency:

- Further progresses on the identification and implementation of practical solutions on how fundamental rights can be fully upheld throughout a restructured and more efficient asylum procedure, including by drawing on UNHCR's expertise and proposals on accelerated and simplified procedures. Such procedures could draw on the multiple examples of State practices compiled in UNHCR's discussion paper ("Fair and Fast").
- Convenes an Asylum Working Party meeting on appeals procedures that incorporates an overview of CJEU and ECtHR case law on the right to effective judicial protection, which will inform negotiations on the proposed Asylum Procedures and Dublin Regulations, as well as the Returns Directive.
- Draws on the examples most recently outlined in UNHCR's Global Strategy Beyond Detention: Progress Report 2018²¹, in order to promote the use of Alternatives to

¹⁹ UNHCR, *UNHCR Protection Training Manual for European Border and Entry Officials*, April 2011, available at: <https://www.unhcr.org/publications/manuals/4d948c736/unhcr-protection-training-manual-european-border-entry-officials.html>

²⁰ 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>.

²¹ UNHCR, *Progress Report 2018: A Global Strategy to Support Governments to End the Detention of Asylum-Seekers & Refugees, 2014 - 2019*, February 2019, available at: <https://www.refworld.org/docid/5c9354074.html>.

Detention (ATDs), and encourages EU MS to actively use ATDs where a ground for detention exists. In doing so, the advice of organisations specialising in ATDs should be actively sought.

4. Fostering a sound, efficient and rights-based return system

The reform of the Returns Directive will be on the agenda during the mandate of the Finnish Presidency. The integrity of the EU's asylum space is dependent on a functioning return system. For those that have sought international protection, returns should only take place following a final negative asylum decision reached in a fair procedure, with due consideration of the *non-refoulement* principle, as well as humanitarian and statelessness-related aspects. It is also paramount to ensure that persons found not to be in need of international protection have an opportunity to avail themselves of voluntary return assistance.

UNHCR recommends that the Finnish Presidency:

- Ensures that the negotiations on the proposed reform of the Returns Directive take place in a way that fosters a sound, efficient, and rights-based return system.

IV. An EU that provides sufficient financial support to effectively address forced displacement and protection needs

The Finnish Presidency will be working on advancing, if not concluding, the difficult dossier of the 2021-2027 MFF negotiations. Consensus-building in the area of the EU budget is linked to EU political priorities which will emerge following the European Parliament elections.

UNHCR recommends that:

- The EU humanitarian funding remains at a high level, keeping the EU as one of the most important humanitarian donors of the international community and matching global rising needs.
- In line with the humanitarian and development nexus, sufficient development resources should be dedicated to forced displacement situations and needs through the Neighbourhood, Development and Cooperation Instrument (NDICI).
- With regard to the internal migration and asylum systems and policies of the EU, it is important that the future AMIF reflects the high level of commitments of the EU towards persons in need of international protection, highlighting its complementarity and added value vis-à-vis national funding. It is also important to cap the amount of AMIF funding to be spent in countries outside of the EU, to frame it under appropriate safeguards including the pursuit of the genuine interests of concerned countries.

V. An EU that addresses statelessness

In October 2019, as part of its Executive Committee meeting, UNHCR will convene a global High-Level Segment (HLS) on Statelessness to mark the mid-point of the ten year #IBelong Campaign to End Statelessness²². The HLS shall assess achievements to date, showcase good practices, and encourage pledges by States and others, including regional actors, in order to take action to address statelessness in the remaining five years of the Campaign. Despite the December 2015 Council Conclusions on Statelessness²³ and most EU MS being parties to the two UN Statelessness Conventions²⁴, only a few provide sufficient and formal identification and protection mechanisms for stateless persons on their territory, and adequately prevent statelessness at birth.

UNHCR recommends that the Finnish Presidency:

- Encourages EU MS to pledge ahead of the 2019 High-Level Segment on statelessness building on the discussions during the International Conference on Statelessness co-hosted by the Government of Spain and UNHCR in Madrid on 25/26 April 2019.
- Calls on EU MS to accede, without reservations, to the 1954 and 1961 Statelessness Conventions.
- Follows up on the December 2015 Council Conclusions on Statelessness by encouraging further action and exchanges of information and good practices, including on implementing statelessness determination procedures²⁵ and safeguards against statelessness at birth, also via encouraging the further use of the European Migration Network as a platform to exchange good practices²⁶.
- Shows leadership in bringing the issue of statelessness to the attention of COHOM, CODEV and COHAFA to support efforts to end statelessness globally.

UNHCR, June 2019

²² See UNHCR's webpage: <https://www.unhcr.org/ibelong-campaign-to-end-statelessness.html>.

²³ Council of the European Union, *Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness*, 4 December 2015, available at: <https://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>.

²⁴ UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <http://www.refworld.org/docid/3ae6b3840.html>, and *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <https://www.refworld.org/docid/3ae6b39620.html>.

²⁵ UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, 11 July 2016, available at: <https://www.refworld.org/docid/57836cff4.html>.

²⁶ See EMN Platform on Statelessness, available at: https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/expert-groups_en/platform-statelessness_en.