

## UNHCR's Recommendations to Hungary for its EU Presidency

January – June 2011



1956 – Volunteers drag Hungarian refugees to safety across the Austrian border Photo:UNHCR

### 1. Commemorating 60 years of the 1951 Refugee Convention and 50 years of the 1961 Convention on the Reduction of Statelessness

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In 2011, UNHCR marks the 60th anniversary of the 1951 Convention Relating to the Status of Refugees and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness. These commemorations provide an opportunity to broaden and renew support for refugees and stateless persons worldwide. The commemorations year will end with a Ministerial Meeting in Geneva in December 2011, where the UN High Commissioner for Refugees will invite participating States and organizations to “pledge” positive steps they will take to strengthen protection for refugees and stateless people.

Hungary thus assumes the Presidency at the beginning of a year in which UNHCR looks to the European Union (EU) to play a leadership role in upholding support for the central values of international protection. UNHCR urges Hungary to lead reflection on how the EU can best demonstrate its ongoing dedication to those values.

**The EU should consider accession to 1951 Convention**

The Stockholm Programme reaffirmed that a Common European Asylum Policy should be based on the full and inclusive application of the 1951 Convention and its 1967 Protocol, as well as other relevant treaties. It furthermore indicated that, subject to a report from the Commission on the matter, the EU should seek to accede to the 1951 Convention and its 1967 Protocol. The Hungarian Presidency could lead an initial discussion on this issue, which could then be the subject of a pledge to take the deliberations further by the European Union at the Ministerial Meeting in December 2011.

**Protection for those fleeing from violence**

Addressing and filling protection gaps will be a major theme of UNHCR's commemorations year. At EU level, UNHCR encourages in particular a careful examination of protection gaps with respect to persons fleeing generalized or indiscriminate violence. UNHCR research reveals very different, and not always satisfactory, approaches. In-depth consideration of how to ensure consistent approaches to the relevant legal criteria, in a way which provides protection to those who need it, would be a positive step. A UNHCR expert forum on protection for people fleeing generalized and/or indiscriminate violence, to be held in Brussels in January 2011, will provide an opportunity to begin this discussion.

In the commemorations year, UNHCR also aims to reinforce awareness of the situation of people who are stateless, and to promote further accessions to the two key international instruments relating to statelessness, the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Through a series of resolutions, the UN General Assembly has given UNHCR a formal mandate to help States to prevent and reduce statelessness, and to protect the rights of stateless people.

**The right to a nationality**

Article 15 of the Universal Declaration of Human Rights affirms that "everyone has the right to a nationality". Yet millions of people around the world never acquire or are deprived of a nationality. Because they lack the bond of a nationality, stateless persons need special attention to ensure they can exercise their basic rights.

Hungary is one of just 13 EU Member States which are parties to both the 1954 and 1961 Conventions on Statelessness, and one of a small number of EU countries to have established a formal procedure for the determination of statelessness. The Hungarian Presidency could encourage more Member States to accede to these two important instruments. More broadly, UNHCR urges Hungary to use its Presidency to bring increased attention to the needs of stateless persons around the globe, and to promote the exchange of information and experience in order to identify and address gaps in law or practice.

***In the context of its commemorations year in 2011, UNHCR urges the Hungarian Presidency to:***

- *Open discussions on EU accession to the 1951 Convention and its 1967 Protocol;*
- *Encourage all EU Member States to accede to both the 1954 and 1961 Statelessness Conventions;*
- *Draw attention to the issue of statelessness, and promote the exchange of information and experience among Member States with a view to filling gaps in law or practice.*

## 2. Completion of the Common European Asylum System

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The Stockholm Programme confirmed the Union's political commitment to complete the Common European Asylum System (CEAS) by 2012. Like all systems of law, the EU asylum *acquis* is by nature dynamic and will need to continue to evolve in order to respond to changing circumstances and new challenges.

### The legislative agenda

The Hungarian Presidency will inherit a challenging agenda of legislative discussions. Although the Belgian Presidency has made commendable progress on some instruments, Hungary will need to take forward work on the Dublin II and Eurodac Regulations, and on the Qualification Directive. Once political agreement is reached, UNHCR encourages Hungary to work constructively with the European Parliament to enable swift enactment of amendments that will improve standards, efficiency and legal certainty in the EU's asylum *acquis*.

#### Secure agreement on amendments

Concerning the [Qualification Directive](#), UNHCR calls on the Presidency to maintain momentum and show the leadership needed to secure agreement on amendments which will improve the rights of asylum-seekers and those needing protection. This includes strengthening the rights of subsidiary protection beneficiaries and more closely aligning their rights to those of refugees.

Greater safeguards are urgently needed for people subject to the [Dublin II Regulation](#). Clear and enforceable rules for the temporary suspension of that mechanism would contribute to addressing situations of particular pressure, and help to ensure that asylum-seekers have access to asylum procedures, in accordance with their *acquis*, when this cannot be achieved through strict application of the Regulation. This issue should not, however, distract attention from other important suggestions for amendment of the Dublin II Regulation, including proposals to require a personal interview in every Dublin case; to clarify the criteria for responsibility for claims of unaccompanied children and provide them with other safeguards; and to ensure access to legal assistance.

#### New texts expected in early 2011

In November 2010, the European Commission announced that it would revise its proposed recasts of the [Asylum Procedures Directive](#) and the [Reception Conditions Directive](#), and issue new proposals in early 2011. Hungary is thus expected to preside over initial discussions on the new texts. Some elements of the EC's initial recasts were broadly acceptable to States, and should be retained. Other changes are needed to ensure conformity with Member States' international and European obligations, and to strengthen and clarify the EU asylum instruments, in the interests of asylum-seekers and States alike. While the content of the EC's adjusted proposals is not yet known, UNHCR urges Hungary to lead a positive debate in the Council.

Recent decisions of the European Court of Human Rights necessitate some changes in the [Asylum Procedures Directive](#). One example is the obligation to provide for suspensive effect of appeals in most cases. Other changes could help

to resolve the ambiguity of some of the existing provisions, thus limiting the wide divergence in approach to – and outcomes of – protection claims, and contributing to the goal of greater harmonisation as set out in the Lisbon Treaty and the Stockholm Programme. One such amendment would restrict the grounds for dealing with claims in accelerated procedures, and reiterate the need for basic safeguards in such processes. Some critics consider that this might encourage abuse of the asylum process. However, it will still be possible to accelerate the processing of claims that are made in bad faith or are clearly without merit. Similarly, concern has been expressed about the cost of implementing common EU training standards for asylum authorities, among other things. UNHCR firmly believes that investment in training leads to better quality asylum decisions, which are more accurate and sustainable in court, thus reducing costs arising from legal proceedings to correct erroneous first instance determinations.

### **Regulate detention of asylum- seekers**

In the revised [Reception Conditions Directive](#), one area of crucial importance is the detention of asylum-seekers, including the need for clear rules on the grounds, conditions and procedural safeguards pertaining to detention, including requirements for periodic review of whether asylum-seekers' detention continues to be lawful. At present there are virtually no EU legal standards on these issues. As a result, there are better safeguards in place for detention of suspected and convicted criminals than for detained asylum-seekers. The EU Directives provide that asylum-seekers are legally on the territory of an EU Member State while their claims are pending. They should thus be entitled to fundamental safeguards, including to regulate their detention.

A further priority issue in the revised proposal will be the obligation for Member States to design and implement systems for early identification of asylum-seekers with specific needs. UNHCR believes that without a clear procedure for their identification, safeguards for these vulnerable people remain largely devoid of meaning.

### **Practical cooperation**

During the Hungarian Presidency, the [European Asylum Support Office](#) (EASO) will establish its structures and prepare for its first activities. It will take some time before the EASO will be fully staffed, processes are in place and the work plan can be tackled. The initial EASO priorities will include continuation of ongoing work, such as the coordination of the EURASIL network; the further development of the European Asylum Curriculum (EAC); and continued work towards a common EU country-of-origin information (COI) portal. It will also seek to take on coordination of measures to assist Member States facing particular pressures, and specifically in Greece. Until the EASO is fully able to assume that role, however, UNHCR believes it will be necessary for Member States, working with the Greek Government, the European Commission, UNHCR and other actors, to contribute directly to the implementation of the Greek authorities' Action Plan for asylum reform.

UNHCR looks forward to playing a constructive role as a member of the EASO's Management Board, and to making a concrete and practical contribution to its work. UNHCR will pursue cooperation with the EASO through a working arrangement, as foreseen in Article 50 of EASO's Regulation, and in the

implementation of UNHCR's mandate and supervisory role as set out in Article 35 of the 1951 Convention, and under Article 21 of the Asylum Procedures Directive. UNHCR will encourage and seek to assist the EASO to take on the improvement of the quality of asylum decision-making as a priority, in line with the Stockholm Programme and UNHCR's own observation of asylum decision-making in the EU.

### Quality of asylum procedures

#### **Decision making varies widely**

Harmonising EU laws can help to reduce discrepancies in asylum decision-making. However, divergent interpretations of legal provisions, and the varying quality of asylum procedures, mean that asylum outcomes continue to differ tremendously from one Member State to another, even for similar groups of asylum-seekers. For a number of years, UNHCR has made the quality of asylum decision-making a priority in its European operations, building on its experience with the **Quality Initiative** in the UK<sup>1</sup> and two **multi-country quality projects**<sup>2</sup> carried out with financial support of the European Refugee Fund. In these projects, UNHCR staff work closely with national asylum services to identify areas where quality needs to be strengthened and to develop practical approaches to address the identified problems.

In the long term, States should assume ownership of quality assurance arrangements, by ensuring regular oversight of the asylum-decision making process, ideally through an institutionalised national quality assurance unit. The Hungarian Presidency, with its positive experience as a participant in two multi-country quality assurance projects, is well-placed to promote cooperation among States on the quality of asylum procedures, including under coordination of the EASO once it is operational. UNHCR remains ready to support the EASO and individual Member States in these endeavours.

#### **Regarding completion of the CEAS, UNHCR urges Hungary to:**

- *Finalise negotiations on the recast Qualification Directive and Dublin II Regulation. On forthcoming new proposals for amendments to the Asylum Procedures Directive and the Reception Conditions Directive, UNHCR calls on the Presidency to lead negotiations in a practical and principled manner, to reach agreement on amendments needed to bring the EU asylum acquis in line with international and European law and jurisprudence, and to reduce disparities in asylum procedures within the EU;*
- *Promote actions to improve the quality of asylum procedures, building on the experience of UNHCR-led quality initiatives in Central and Southern Europe.*

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<sup>1</sup> Quality Initiative and Integration, available at: <http://www.unhcr.org.uk/what-we-do-in-the-uk/quality-initiative-and-integration.html>.

<sup>2</sup> Asylum Systems Quality Assurance and Evaluation Mechanisms (ASQAEM) Project in the Central and Eastern Europe sub-region (Austria, Bulgaria, Germany, Hungary, Poland, Romania, Slovakia and Slovenia) between September 2008 and February 2010; and Further Developing Asylum Quality in Southern and Central Europe (Bulgaria, Cyprus, Greece, Hungary, Italy, Poland, Portugal, Romania and Slovakia) between April 2010 and September 2011.

### 3. Responsibility-sharing

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In the 2009 Stockholm Programme, Member States reaffirmed their commitment to responsibility-sharing within the EU. Since then, the dramatic situation in Greece has brought the need for action to the forefront. The Greek asylum system is in crisis, and pressure on it is compounded by the country's geographical position and the fact that other entry routes to the EU have effectively been closed. Greece was recently invited by the European Commission to table an Action Plan for the implementation of far-reaching proposals to reform the asylum system. The EC has pledged substantial funding for emergency measures on asylum and migration management for six months to support this plan, while a number of Member States have offered practical cooperation and other help. However, it is apparent that a long-term, sustained commitment will be needed, on the part of Greece and the EU, to establish an effective asylum system in Greece. The financial and practical support offered so far is welcome, but remains limited relative to the magnitude of the challenges.

#### **Pressure on the Dublin II Regulation**

In the meantime, several national courts have held that the situation in Greece is such that other States should not transfer asylum-seekers to Greece under the Dublin II Regulation. The European Court of Human Rights (ECtHR) recently asked several States to desist from transfers to Greece for the time being. This development, which follows the position set out in UNHCR's December 2009 paper on Greece,<sup>3</sup> has made the discussion on possible amendments to the Dublin II Regulation more pressing.

However, even if the Dublin II Regulation is amended to strengthen protection of asylum-seekers' rights, it is clear that new approaches to intra-EU solidarity need to be developed. While the Dublin II Regulation establishes rules relating to the responsibility for examining asylum requests, it does not ensure the equitable sharing of responsibility among the EU-27.

One approach to responsibility-sharing which would merit further exploration is joint processing, put forward for consideration by the Council in the Stockholm Programme, potentially combined with redistribution within the European Union of persons found to be in need of international protection. Although the engagement of Member States in the pilot project for relocation of protection beneficiaries from Malta would suggest that the appetite for such programmes is limited, the possibility of relocation combined with joint processing would, in UNHCR's view, deserve consideration. The EASO could coordinate a pilot project involving a specific group of asylum-seekers. Such a project could inform the study on joint processing of asylum claims foreseen by the Stockholm Programme. UNHCR encourages the Hungarian Presidency to explore, with the EASO leadership, the possibility of such a project.

**Resettlement** of refugees from outside the European Union remains an important

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<sup>3</sup> UNHCR, *Observations on Greece as a country of asylum*, December 2009, available at: <http://www.unhcr.org/refworld/docid/4b4b3fc82.html>

means for the EU, not only to provide refugees with a durable solution, but also to express solidarity with States hosting vast numbers of refugees. At present, all EU Member States combined offer only around 7,000 resettlement places annually, or approximately 8% of the total resettlement places worldwide. UNHCR notes with satisfaction that Hungary is planning to join the ranks of resettlement countries, through the establishment of a resettlement programme.

UNHCR regrets that progress on the joint EU resettlement scheme remains stalled, for reasons largely unrelated to the substance of this proposal. UNHCR urges the Hungarian Presidency to make its best efforts to achieve progress in negotiations on the scheme. A durable solution for refugees for whom resettlement is the only option for a safe and sustainable future should not be held hostage to institutional disagreement.

***On responsibility-sharing, UNHCR encourages the Hungarian Presidency to:***

- *Lead negotiations on amendment of the Dublin II Regulation in a principled manner, seeking to ensure that arrangements for temporary relief for States under particular pressure can contribute to greater respect for asylum-seekers' rights, and a more even distribution of the responsibility for asylum claims;*
- *Explore implementation of a pilot project for joint processing of asylum claims, in coordination with the EASO leadership; and*
- *Seek to unblock negotiations on the Joint EU Resettlement Scheme.*

#### 4. Border Management

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Hungary will preside over continuing negotiations on the [revision of the Frontex Regulation](#). In its comments on that proposal, UNHCR has emphasized in particular the importance of compliance with fundamental rights, including the right to asylum, in joint operations.

Rapid Border Intervention Teams ([RABITs](#)) have recently been deployed for the first time on Greece's land border with Turkey. UNHCR recommends that the impact of this deployment on persons seeking international protection, including its methods for screening new arrivals, should be the subject of thorough and independent evaluation. Any lessons learned should inform future operations.

***On border management, the Hungarian Presidency is encouraged to:***

- *Make every effort to ensure that the revised Frontex Regulation ensures better compliance with fundamental rights, including the right to seek asylum, in the context of joint operations and other Frontex actions; and*
- *Call for an in-depth evaluation of the impact of the first deployment of Rapid Border Intervention teams, at the Greek-Turkey land border. Such an evaluation should review, among other things, the screening methods applied by the RABITs and their impact on persons seeking international protection.*

## 5. Situation of Roma

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Recent developments have brought to the fore a range of issues concerning Roma in the EU, whether originating from Member States or from outside the EU. These issues are not limited to the area of asylum, and extend more broadly into the fields of fundamental rights and social integration. The European Commission is expected, during the period of the Hungarian Presidency, to issue a proposed EU Framework for National Roma Integration Strategies. In addition, there is to be a meeting of the European Platform for Roma Inclusion in April 2011. UNHCR calls on the EU to use all available legal and financial instruments to guarantee the full enjoyment by Roma of their rights.

A significant number of Roma from outside the European Union, in particular from former Yugoslavia, have sought asylum in EU Member States. While many have been recognized as needing international protection, the claims of others have been turned down, including members of the Roma community from Kosovo. UNHCR advocates for a broad approach to the assessment of their protection needs, in particular where the individuals have resided for long periods in EU Member States. UNHCR notes that those who are subject to enforced return very often do not remain in the countries to which they are sent back, but rather, seek to return to the EU as soon as possible. The enforced return of children who have grown up in EU Member States creates particular challenges. Ensuring that the return of Roma to countries of origin is both safe and sustainable should be a priority.

Statelessness is an issue of concern to UNHCR with respect to Roma. In particular in the Western Balkans, many have not obtained or have lost civil documentation, such as birth certificates or identity cards. As a result, they may be unable to exercise civil, political, social and economic rights. UNHCR calls on the EU to support projects to facilitate the acquisition of documentation and citizenship by affected Roma.

UNHCR encourages the Hungarian Presidency to maintain a focus on the situation of Roma inside and outside the European Union, and to work with partners to find effective solutions to problems faced by Roma.

### ***With regard to Roma, the Hungarian Presidency is encouraged to:***

- *Support development and implementation of effective strategies to ensure respect for the rights of Roma, and to combat racism and discrimination in all its manifestations.*