

# EU RESETTLEMENT FOR PROTECTION

## ECRE'S ANALYSIS OF THE LATEST DEVELOPMENTS IN THE PREPARATION OF AN EU RESETTLEMENT FRAMEWORK

### I. INTRODUCTION

The Proposal for a Regulation establishing a Union Resettlement Framework (URF), tabled on 13 July 2016 and currently under discussion in the Council and European Parliament (EP), is an important instrument that will shape future resettlement programmes in European states. It comes at a crucial time, given the global discussions on solidarity and responsibility sharing following the New York Declaration of 2016 and the run-up to the Global Compact on Refugees (GCR) in 2018. The EP's rapporteur has presented her report and the shadow rapporteurs their amendments. In the Council, the Member States (EUMS) are far from agreement as the issue of humanitarian admission programmes is proving more divisive than expected. Triologies will start in the autumn if there is sufficient progress on the other CEAS proposals and in particular on the Qualification Regulation with which the URF proposal is aligned on status, eligibility and exclusion. ECRE set out its concerns about the objectives, scope and procedures in the URF proposal in an earlier Policy Note.<sup>1</sup> In 2017, a number of contentious issues have emerged in the negotiations with the potential to change the nature and impact of the URF. The inclusion of Humanitarian Admission Programmes (HAP) is perhaps the most important. Here, ECRE explains the key issues that have arisen and provides its recommendations for a URF that increases the quantity and quality of resettlement in Europe and preserves resettlement's protection function.

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1. *Untying the EU Resettlement Framework; ECRE'S recommendations on breaking the link with migration control and preserving the humanitarian focus on resettlement*, ECRE, October 2016, <https://www.ecre.org/wp-content/uploads/2016/10/Policy-Note-01.pdf>

## II. ANALYSIS

### I. OBJECTIVES OF THE PROPOSED UNION RESETTLEMENT FRAMEWORK (URF)

ECRE has suggested that resettlement should function as a protection tool, a durable solution for the most vulnerable, and as a global solidarity mechanism, a view shared by the EP's rapporteur. Therefore, the URF's definition of resettlement should include references to durable solutions and global responsibility sharing and omit references to reducing migratory flows, to the Partnership Framework, and to discouraging secondary movement. The URF should be strengthened by making the 1951 Geneva Convention and 1967 Protocol its conceptual and normative basis, as well as by ensuring that resettlement does not replace the right to seek asylum in the EU. Particularly concerning is the reference to using resettlement to create the conditions for application of the "first country of asylum" and "safe third country" concepts for the return of rejected asylum seekers. ECRE believes that European states should not use resettlement as leverage to promote these concepts (which are widely criticised) or for broader migration control and deterrence purposes.

A related issue is the "strategic use of resettlement." Mentioned informally in discussions with EUMS and put forward by the shadow rapporteurs in their amendments to the Parliament report, "strategic use" is used in relation to the provisions determining the regions and third countries from which resettlement should occur. Here, "strategic" is understood as a way to use resettlement to serve specific foreign policy objectives, such as migration control. This is a different interpretation of the term from that used by UNHCR, for which the "strategic use of resettlement" is understood as the integration of resettlement into broader protection strategies to generate positive benefits beyond those experienced by the resettled persons, such as unlocking durable solutions and strengthening protection in the refugee hosting country. ECRE recommends using UNHCR's definition.

For ECRE, given that resettlement already occurs, a main added value of the URF would be to increase the scale of resettlement into Europe. This cannot be achieved without concrete targets. The Commission proposal and Council discussions deliberately avoid any reference to figures. ECRE has proposed that Europe should gradually expand resettlement so that Europe covers at least 25% of global resettlement and that the numbers should be based on UNHCR's assessment. Again, the EP rapporteur concurs. That level of resettlement will render it an important channel of access to Europe and an alternative to irregular means of entry (provided that it does not replace the right to seek asylum in the EU).

### II. ELIGIBILITY CRITERIA

ECRE's view is that the URF should use eligibility criteria that replicate UNHCR's submission criteria, which take into account vulnerabilities and provide durable solutions. In particular, with regards to the inclusion of family members, ECRE and others underline that it is important that EUMS are not absolved from their obligation to support family reunification under national and EU legislation through including persons eligible under these laws in resettlement and HAP places. In addition, and while certain candidates may have social and cultural ties with specific states that facilitate inclusion, the URF should not use "integration potential" as an eligibility criterion for resettlement or HAP, as proposed by some EUMS.

Similarly, ineligibility is also debated, with EUMS supporting criteria that are more restrictive than in the Geneva Convention and the asylum *acquis*. Although this relates to exclusion from an admission programme rather than from asylum, ECRE believes that the grounds should still mirror the exclusion grounds in the Geneva Convention. For example, the proposals to exclude persons who during the previous five years have tried to enter Europe illegally, have not given or have taken back their consent to be resettled, have been rejected for resettlement by other EUMS, or have been excluded *prima facie*, would be excessive. Individual circumstances change over time and some flexibility should be allowed to assess case by case.

### III. STATUS OF RESETTLED PERSONS

ECRE believes that resettled refugees should be granted refugee status in order to support durable solutions and a permanent stay. However, and in line with the Qualification Regulation also being negotiated, the URF proposes that the status granted to persons admitted be either refugee status or subsidiary protection. The latter reduces the right of family reunification (notwithstanding references to it in the URF proposal). Some EUMS also favour granting an equivalent national status of temporary duration, whereas Parliament's rapporteur opens up the option of EUMS granting residence permits of permanent or unlimited validity as per Article 13 of the Long Term Residents Directive.

The issue of the registration of data of persons admitted for resettlement has also come to the fore. An addition to the EUODAC Regulation has been proposed providing that persons identified for EU resettlement or HAP programmes, as well as national programmes, should be registered in EUODAC prior to the assessment of their eligibility. EUODAC would thus include both positive and negative decisions on admission in order to allow EUMS to exchange information on rejected cases. This is likely to serve as an administrative burden and facilitate the use of the additional – problematic – exclusion grounds mentioned above.

#### IV. INTEGRATION OF HUMANITARIAN ADMISSION PROGRAMMES INTO THE URF

Perhaps the most controversial issue is whether the URF should include both resettlement and other humanitarian admission programmes (HAP) or whether it should remain a framework for resettlement alone. While the Commission proposal and the Parliament rapporteur so far favour a model including an "ordinary" and an "expedited" procedure, without naming these as resettlement or HAP, current discussions in the Council are moving towards the explicit inclusion of HAP in the URF. This would mean that HAP places count as part of the EUMS' total contribution and allow them to receive EU funding. Should it be the case that resettlement and HAP are brought together in the URF, a second issue arises: whether HAP should be codified at EU level in the Regulation to standardise procedures, eligibility, and status or whether they should be national programmes defined by EUMS.

Based on experience in Europe, "Humanitarian Admission Programmes" is used as an umbrella term for different types of admission programme that include some combination of the following: wider family reunification, expedited processing to enable refugees to depart quickly, usually (but not always) a temporary stay, and different referral mechanisms including actors other than UNHCR. For example, the German and Austrian programmes have admitted many cases through referrals from family members, churches and civil society, with the rest processed by UNHCR using resettlement protection and vulnerability criteria.

The status offered under HAP in Europe has varied from two-year temporary residency status (Germany and Ireland), to five-year temporary residency (UK), subsidiary protection (France), and full refugee status (Austria and France). The expedited nature of HAP is one of their main advantages and they have used expedited processing tools and procedures for UNHCR submitted cases, including admission of *prima facie* refugees who do not go through Refugee Status Determination (RSD). HAP have also contributed to family reunification for cases that would otherwise not qualify under family reunification laws. Moreover, HAP for Syrian refugees have positively influenced some European countries that did not have annual resettlement quotas to start admission programmes. At the same time, while some HAP were based on UNHCR submission criteria, others have been based on "first come, first served" rather than vulnerability. Importantly, EU funding through AMIF (lump sums) was provided to the HAP that granted persons refugee status and not temporary status since the aim of AMIF was to support durable solutions.

There are three possible ways in which HAPs can relate to the URF: (1) the EU Resettlement + HAP model, where HAP are fully included in the URF Regulation through the URF Schemes, and their eligibility criteria, referrals and procedures are codified under EU law; (2) the national model, where HAP are not part of the URF Regulation but are defined at national level and the URF only covers resettlement; and (3) the mixed model, where HAP are part of the EUMS' EU quota in the URF Plan and funding, and to some extent codified in the Regulation, but certain elements are decided at national level.

Within these models, there are different options, with varying degrees of flexibility, protection considerations and rights, and roles for different actors. In all models, the HAP could follow expedited and simplified procedures using specialised tools, and referrals could be conducted by UNHCR and by other actors. Using UNHCR submission criteria could be possible under all options as well, which would ensure that HAP are protection-oriented. In ECRE's view, flexibility should be maintained for procedures and referrals, but UNHCR submission criteria should be prioritised. EUMS' national priorities could be accommodated under both national and mixed models, with regions or population groups to be decided by the individual EUMS. In ECRE's view, EUMS' resettlement and HAP efforts to include geographic regions or refugee populations other than those identified by the EU should be supported as long as they prioritise vulnerabilities and protection needs; this could ensure that places are offered to protracted refugee situations or forgotten crises.

The EUMS' main intention when including HAP in the URF may be to secure EU financial support and count HAP places in their overall quota of resettlement places. ECRE believes that EU funding should be available for HAP programmes in the EU model and mixed models. This will reduce the financial burden on receiving families and ensure access to basic services for all, not just for those with affluent family members. However, EU funding for HAP should be less than that for resettlement as an additional safeguard to ensure that EUMS do not use HAP *instead* of resettlement. For example, the EU could provide a lump sum of EUR 10,000 for resettlement and EUR 6,000 for HAP. EU funding could also be available to support national programmes through AMIF or other sources.

The status granted under the EU model or mixed model will normally have to be in line with the Qualification

Regulation, whereas in a national programme it can be either of the two protection statuses (refugee status and subsidiary protection) or national equivalent. The link to the Long Term Residents Directive could also be made in all models. ECRE suggests that EUMS grant refugee status under all resettlement and HAP programmes, and that, if granting subsidiary protection or other status, they allow asylum applications and a durable solution at a later stage.

For family members, the latest Council discussions on the URF consider a wide range of family members as eligible for resettlement, including those that would normally fall under family reunification legislation, stating that this would be “without prejudice” to the 2003 Directive on family reunification, or national family reunification laws. For the HAP, however, eligibility is even wider, with application of eligibility criteria for refugee/subsidiary status *prima facie* only, and without persons having to fall within at least one of the other categories, including family members. ECRE suggests that EUMS use resettlement and HAP for family members otherwise not covered by family reunification laws.

### III. RECOMMENDATIONS

ECRE believes the priorities for the EU should be 1) to increase the number of persons able to access protection in Europe through safe and legal channels and 2) to improve the quality of protection provided. ECRE thus argues for an increase in resettlement places in Europe through the expansion of resettlement programmes, but also for an increase in the numbers benefiting from Humanitarian Admission Programmes (HAP). The key question is not whether or not HAP are regulated at the EU level, but rather whether they have the right objectives and support protection. That said, as it is now possible that resettlement and HAP will be brought together in the URF, it is also necessary to consider how that could be done in a way that does not undermine protection or reduce overall numbers.

Rather than suggesting one particular model, ECRE believes that the following elements need to be in place.

**Complementary to resettlement:** The objective of HAP should be to complement resettlement with opportunities for additional categories of persons who would not otherwise benefit from resettlement, such as extended family members or persons from countries and regions that are not a geographic priority.

**Safeguarding resettlement places:** If HAP are to be included in the Member States’ commitments under the URF, it is essential to ensure that a certain *proportion* of the quota in the URF Plans is kept for resettlement, either through a fixed percentage of the quota, or through differentiated funding for resettlement and HAP.

**Use UNHCR exclusion grounds:** The Refugee Convention exclusion grounds should be the only permissible grounds for exclusion from resettlement programmes and HAP.

**Differentiated levels of funding:** HAP should be supported financially to ensure that groups outside EU priority regions can also access admission programmes. EU funding can help reduce the financial burden on receiving families and ensure equality of access to basic services. EU funding for HAP should be less than that for resettlement as an additional safeguard to ensure that Member States do not use HAP instead.

**Expedited tools with access to status:** Experience shows that it is possible to use the UNHCR submission criteria and provide full refugee status through HAP. If Member States grant temporary or subsidiary protection status, it should be renewable, persons should be informed of the options for applying for permanent status, and where this requires an asylum request, it should be considered for *prima facie* recognition.

**More actors for referrals:** UNHCR is well positioned to conduct referrals, particularly since identification often takes place within UNHCR’s ongoing protection work in refugee hosting countries. However, HAP should also allow for different referral mechanisms, including civil society organisations, while ensuring that vulnerabilities and protection needs are prioritised. Capacity building is needed to support actors in identifying vulnerabilities and special needs.

**HAP should not replace emergency resettlement:** it is important to distinguish between HAP and emergency resettlement, and to ensure that a set amount of resettlement places is earmarked for urgent cases. These places should not be linked to geographic priorities and should be based on UNHCR submissions.

**Pre-departure and post arrival support for all:** irrespective of whether places are under resettlement, HAP or emergency provisions, all persons admitted should be given integration support from cultural orientation at pre-departure until the initial post-arrival period. There should be provisions in the URF Regulation to this end, including on involvement of civil society providing such services.