European Commission proposal for a Regulation establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council COM(2016) 468, 13 July 2016

Joint Comments Paper by:
Caritas Europa, Churches' Commission for Migrants in Europe (CCME), European Council for Refugees and Exiles (ECRE), International Catholic Migration Commission (ICMC Europe), International Rescue Committee (IRC), Red Cross EU office

Background

Since 2009, the European Commission has sought to coordinate resettlement efforts in order to firmly integrate resettlement in the external dimension of the EU's asylum policy and to improve its strategic use in the context of the Joint EU Resettlement Programme.[1]

Our signatory organisations and member organisations, which have intervened in all stages of the resettlement process, have relentlessly supported European resettlement over the last decades, advocating for an increase in resettlement places as well as a high quality of programmes. Recognising that resettlement is a partnership activity requiring cooperation by the United Nations High Commissioner for Refugees (UNHCR), Member States and civil society, we have cooperated at European level through practical cooperation programmes like the European Resettlement Network (ERN), and implemented national resettlement programmes offering settlement and integration services to resettled refugees at local level. To prevent further deaths at sea, our organisations have also advocated to expand legal pathways to Europe in addition to places provided for under national resettlement programmes.

In this capacity we present a set of comments on the Commission proposal for a Regulation establishing a Union Resettlement Framework, published on 13 July 2016.

Introduction

We acknowledge the important efforts of the European Commission, in bringing forward this proposal, to further strengthen and harmonise resettlement across Member States. We believe a Union Resettlement Framework that builds upon the extensive existing resettlement experience acquired in Europe over the last years has the potential to increase the quantity and quality of resettlement.

However, the current proposal falls far short of this potential and requires substantial amendments in order to add value, not limitations to these efforts. We are particularly concerned that the proposed Framework is overly reactive and focuses unduly on migration

[1] Communication from the Commission to the European Parliament and the Council of 2 September 2009 on the establishment of a joint EU Resettlement programme [COM(2009) 447 final.

control objectives, to the potential detriment of resettlement's function as a lifesaving tool and a durable solution.

We consider it essential for any Union Resettlement Framework to be an ambitious programme through which Europe can further strengthen its humanitarian commitment to achieving protection and durable solutions for vulnerable refugees across the globe. In addition, resettlement must be regarded as complementary to, and not a replacement of, spontaneous arrivals and the right to seek asylum in Europe.

The minimum required changes to the proposal which we consider necessary to achieve this are outlined below.

Summary of views and recommendations

1. **The Framework should increase the quantity and quality of resettlement and should not merge resettlement with other legal pathways to protection**

The current proposal addresses a variety of distinct legal pathways to protection under the heading of 'resettlement', in a way that may potentially weaken the quality of resettlement as well as other established safe and legal routes, such as family reunification. While we recognise the importance of increasing other legal pathways for refugees to reach Europe and seek protection, these programmes must not decrease places for the most vulnerable and most in need. The proposed Regulation needs to clearly define and spell out the types of programmes that will be used and the modalities for their functioning, namely when referrals and identification will be done by UNHCR, as is currently standard practice, and when these will be done by Member States directly. The role of the EU Asylum Agency (EUAA) also needs to be defined in this respect.

The voluntary nature of the proposal, combined with the lack of clarity described above, means that it will not necessarily lead to an increase in the quantity of resettlement in the EU. We believe this should be a fundamental objective of EU action on resettlement, and therefore recommend:

- Amending Article 2 to add "upon referral from the UNHCR or Member States".

- Amending Article 3 to add the provision of protection, the support for durable solutions and an increase in the number and quality of resettlement places as objectives of the Framework.

- Amending Article 7 to include "target", rather than "maximum" numbers, as well as an explicit reference to UNHCR Annual Projected Global Needs – either within this Article or the Recitals to the Regulation – which must be taken into account when agreeing these numbers.

- Amending Article 8 to make a clear distinction between:

i. The UNHCR framework for resettlement, in which refugees are identified by UNHCR on the basis of UNHCR resettlement criteria; and

ii. Resettlement or other legal pathways, where refugees (or other categories of person in need of protection) are identified by Member States or other actors.

- Including a percentage in the Regulation that will set the target for an appropriate and proportionate number of EU resettlement places each year, with explicit reference to UNHCR Annual Projected Global Needs. A realistic target could be that through the Joint Resettlement Framework, the EU commits to receive at least one quarter (25%) of resettled persons globally every year; that is a fair share of global efforts and a concrete initial target for the planning of annual plans and schemes.

- Developing benchmarks to monitor and evaluate overall numbers of refugees accepted by Member States under various legal pathways. We welcome the Commission's monthly reports on relocation and resettlement, however additional benchmarks are needed to ensure that numbers are disaggregated according to programme, do not double-count refugees and clearly show an increase in overall numbers.

2. The Framework should not make resettlement conditional upon third country cooperation with the EU on asylum and migration

We are concerned that the Framework appears to regard resettlement primarily as a migration management tool, with priority regions being selected on the basis of political cooperation of hosting countries with the EU. This migration management approach to resettlement is a major shift away from the humanitarian objectives of resettlement being a tool to provide vulnerable refugees with protection and durable solutions and showing solidarity with those countries hosting the majority of refugees in the world. The humanitarian essence of resettlement must be safeguarded, and resettlement must continue to be based on the needs of the most vulnerable refugees. To this end we recommend:

- Deleting Article 4(c) and the second half of (a)

- Deleting Article 4(d), with the exception of (iii)

- Replacing Article 4(c) with "regions experiencing protracted refugee situations"

3. The Framework should build upon existing frameworks, experience and expertise on resettlement

UNHCR, IOM and civil society organisations like ours have vast experience and expertise in designing, managing and implementing resettlement programmes both internationally and in Europe. In this context our organisations have for many years invested in raising awareness in local communities to increase and maintain citizen support for resettlement as a durable

solution and protection tool. As in other more experience resettlement countries, an EU Resettlement Framework would benefit from a tripartite approach at all stages of resettlement procedures to systematically include UNHCR, governments and non-governmental organisations. We would therefore recommend explicit reference to the tripartite approach in resettlement for the EU. In order to harness NGO's existing experience in the most effective and transparent manner, we recommend:

- Amending Article 13(1) to guarantee IOM and UNHCR a seat on the high-level resettlement committee, by replacing "may" with "shall".

- Further amending Article 13(1) to give civil society organisations an institutionalised voice in the committee.

4. EU financial support for resettlement should not be limited to priority regions but focused on global resettlement needs and identified protection situations, including protracted refugee situations

We are concerned that, by limiting EU financial support to the priorities under the Partnership Framework, the EU will discourage Member States from continuing or expanding existing national resettlement programmes. Funding should be applied flexibly to allow for the greatest possible number of refugees in need to be granted resettlement, regardless of whether they are being hosted by a priority region. Financial support must encourage Member States to expand existing national resettlement programmes and to develop new and sustainable annual programmes. Such programmes should be able to take into account UNHCR Projected Global Needs and UNHCR submission criteria. The proposal should be amended in order to provide such encouragement. For example, amendments could:

- Maintain the two track approach included in the current AMIF Article 17, whereby Member States receive EUR 10,000 per person for resettled refugees belonging to EU priority categories and vulnerable groups, and EUR 6,000 per person for refugees admitted outside these priorities.

5. Eligibility for resettlement under the Framework should be in line with UNHCR submission categories

The Framework introduces new eligibility criteria for resettlement, going beyond those long-established by UNHCR in some instances, and not meeting them in others. We believe that resettlement should remain linked to UNHCR submission categories, and therefore recommend:

- Amending Article 5(b)(i) to add the category of "persons lacking alternative durable solutions".

- Adding an Article 5(b)(iii) to include the category of "refugees from Regional Development and Protection Programmes".

- Deleting or at least clarifying the reference to "persons with socio-economic vulnerabilities" under Article 5(b)(i).

- Adding an explicit caveat to Article 5(b)(ii) that such persons should be resettled for the purpose of family reunification only where this is not possible through other, existing, legal means (including the 2003 EU Directive on Family Reunification)

6. The Framework should avoid arbitrary and disproportionate exclusion criteria

Under Article 1F of the Refugee Convention, exclusion is reserved for those who have committed war crimes, crimes against humanity, terrorist acts or other serious criminal offences. These persons are excluded from refugee status, even where they meet the refugee definition. The Framework, however, introduces additional arbitrary and disproportionate exclusion criteria, going beyond those long-established under the 1951 Refugee Convention. In order to allow for nuanced, individual decision-making, we recommend:

- Deleting Article 6(d) and (f). These punitive elements should be removed, as refugees should not be excluded from resettlement due to previous irregular entry into the EU, and should not be excluded from re-submission if rejected by one Member State.

- Deleting Article 6(2).

7. The Framework should build upon and seek to improve existing procedures

Despite long-standing resettlement experience across Europe developed under national programmes since the 1970s, the procedures foreseen by the Framework appear to build mainly on the very limited European and country specific experience of the "1:1 programme" under the EU-Turkey Deal. A future Regulation should be able to address refugee processing in all refugee situations and all refugee hosting countries. The different steps with respect to identification, referral and assessment (selection) are currently unclear. We recommend:

- Amending Articles 10 and 11, in order to

    i. Include the current role of UNHCR to identify third country nationals and stateless persons according to UNHCR priorities and vulnerable categories, and to refer cases to Member States, taking into account long-established procedures and existing frameworks as developed under national resettlement programmes.

    ii. Clarify other channels and processes for identification for resettlement and alternative pathways undertaken by Member States (humanitarian evacuation of IDPS, humanitarian visas, (extended) family reunification), adding the possibility that such identification and referral can be supported by NGOs or other actors; and

iii. Require the provision of full refugee status, rather than subsidiary protection, under the Framework, and encouraging Member States to grant permanent residence status to resettled refugees. Article 10(7)(a) should be amended accordingly. The distinction between refugee and subsidiary protection following the recently proposed Qualification Regulation (COM(2016) 466 final) would risk undermining resettlement as a durable solution.

- In particular, amending Article 11 to reflect standard UNHCR and Member State practice and timelines in conducting emergency resettlement, while ensuring that refugees resettled under this procedure are granted refugee status prior to or immediately upon arrival and can be resettled outside regional priorities .

8. The Framework should encourage and facilitate planning for reception and integration

The Framework currently makes reference only to pre-departure cultural orientation, ignoring the EU's potential to contribute to improved post-arrival planning and the better early integration of resettled refugees. We regard integration efforts as integral to any successful EU resettlement scheme, and therefore recommend:

- Amending Article 10(7) to require Member States to plan, implement and monitor appropriate and accessible reception and integration programmes for resettled refugees. This must be done in full cooperation with stakeholders at local level, and adequate funding must be allocated for such programmes.

- Making full use of the EU's capacity to encourage, facilitate and coordinate post arrival and national integration policies, e.g. by encouraging the development of indicators and guidelines to monitor and steer refugee integration.

Brussels, 14/11/2016