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Position paper

THE PROPOSED EU RESETTLEMENT FRAMEWORK

SUMMARY

On 13 July 2016, the European Commission published a proposal for a Regulation establishing a Union Resettlement Framework.¹ The proposal sets a framework within which the Union will implement resettlement in the future. It establishes in essence the general objectives of the EU resettlement policy; common EU rules on admission of third country nationals through resettlement; common EU rules on eligibility and exclusion criteria; standard procedures governing all stages of the resettlement process; status to be accorded to resettled persons; decision-making procedures; and financial support to member states. It does not prescribe the scale of resettlement or the regions/countries from which to resettle as this is left to implementing acts by the Council and the Commission. However, under the proposed framework, the selection of priority regions and countries is to be predominantly linked to the EU's migration control objectives.

Within the proposed framework, targets should be set on an annual basis by the Council on the basis of a plan proposed by the Commission which would include also details of member states' participation and contribution, and overall geographical priorities. Taking into account the annual plan, the Commission would establish targeted resettlement schemes tailored to specific regions or third countries and specifying the scale of resettlement, type of procedure to be applied, duration of the scheme. Targeted resettlement schemes would be guided by a range of factors, but would focus particularly on a third country's effective cooperation with the EU in reducing irregular migration to the EU, and in increasing the rate of readmission and return of migrants from the EU or indeed asylum seekers by creating conditions for the use of "first country of asylum" or "safe third country concepts". This constitutes a dramatic change to resettlement policy making it a bargaining chip to convince third countries to enforce the EU's migration policy.

Amnesty International believes that a framework for a structured and coordinated approach to resettlement within the EU can ensure greater participation and commitment towards resettlement from member states, and allow the EU to contribute more meaningfully towards global resettlement. However, there are serious concerns with key aspects of the proposal. Amnesty International strongly objects to resettlement becoming instrumental to the objective of migration deterrence and returns. Resettlement is a key protection tool providing a durable solution for refugees and should not become a migration management tool. Moreover, Amnesty International is concerned that the proposal would entrench EU-wide ineligibility criteria which aim to discourage irregular movement to and within the EU.

RESETTLEMENT PRIORITIES (ART. 4)

In the implementing acts establishing a targeted Union resettlement scheme and the annual Union resettlement plans, the Commission and the Council shall, when specifying the regions or third countries from which resettlement shall take place, take into account a number of factors which indicate the situation of persons in need of protection, the countries from which resettlement should take place, and the number of persons in need international protection displaced to or within the specific regions or third countries. According to the proposal, third countries' effective cooperation with the Union in the area of migration and asylum will be an important element on which the Commission will base its decision. Such cooperation should be reflected in terms of the third country's efforts to reduce the number of persons irregularly crossing the Union's border from its territory, their cooperation with the Union on readmission and return of persons irregularly staying in the territory of the member states, and increasing their capacity for the reception and protection of refugees, including through the development of an effective asylum

¹ 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) 468, 13 July 2016.

system.

Amnesty International is concerned that the proposal entrenches the instrumental use of resettlement as a tool to secure third country cooperation on migration management, as foreseen by the EU's New Partnership Framework for migration cooperation with third countries.² This risks for instance undermining any prospect for durable solutions to protracted refugee situations in countries not linked to migratory flows to the EU. Common resettlement priorities should not be based on migration management objectives, but on addressing protection needs, such as those identified by UNHCR's resettlement forecast, and target persons who are in greatest need.³

Amnesty International recommends to delete Article 4. Prioritisation of countries or caseloads should continue to be guided by protection considerations and vulnerability criteria, not by migration containment objectives and opportunities to leverage for readmission and returns.

ELIGIBILITY CRITERIA (ART. 5)

Other than falling within the scope of each targeted Union resettlement scheme, persons who may be considered for resettlement must meet eligibility criteria and not fall within the scope of mandatory "exclusion" grounds.

Under the proposal, eligibility is based on UNHCR vulnerability criteria (women and children at risk, survivors of torture and GBV, persons with medical needs or disabilities, persons with legal or physical protection needs) and includes persons who have been displaced within their own country. In addition, the proposals includes persons with socio-economic vulnerability, and those with family links in the EU. The inclusion of persons with socio-economic vulnerability and those with family links follows the approach agreed within the Standard Operating Procedures (SOPs) guiding the implementation of the resettlement of Syrians from Turkey in the framework of the EU-Turkey Statement of 18 March 2016.

Whilst in principle the widening of the classical resettlement categories is to be welcomed, it is not clear what socio-economic vulnerability means. Moreover, Amnesty International is concerned by the inclusion of persons who have family links with somebody residing in the EU. Resettlement is a tool which provides safe and legal avenues to protection that should be in addition to other legal pathways for admission of refugees to the EU, including by application of the EU acquis on family reunification. Refugees who meet the family reunification criteria under EU law should be granted admission to the EU independently of resettlement targets and quotas.

Amnesty International recommends to clarify the reference in Article 5(b)(i) to "persons with socio-economic vulnerabilities" and to amend Article 5(b)(ii) to ensure that family reunification is independent of resettlement targets and quotas, as family members should be able to exercise their right to family unity under the EU Family Reunification Directive.

"EXCLUSION" GROUNDS (ART. 6)

Other than meeting the eligibility criteria as set out above, persons who may be considered for resettlement will be assessed against obligatory "exclusion" grounds.⁴ These comprise (a) those broadly based on Article 1F of the Refugee Convention; (b) grounds related to endangering the community, public policy, security, public health or international relations (c) refusal of entry as recorded in the Schengen Information System or national database; (d) irregular or attempted irregular entry or stay during the previous 5 years; (e) persons already resettled under a previous Union or national scheme; and (f) persons whose resettlement had already been refused by a member state during the previous 5 years.⁵

² COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL AND THE EUROPEAN INVESTMENT BANK on establishing a new Partnership Framework with third countries under the European Agenda on Migration, COM (2016) 385 final, 7 June 2016.

³ The Regulation (EU) No.516/2014 establishing the Asylum, Immigration and Integration Fund (AMIF) lays down the following criteria (Art.17.3): The common Union resettlement priorities shall be based on the following general categories of persons: (a) persons from a country or region designated for the implementation of a Regional Protection Programme; (b) persons from a country or region which has been identified in the UNHCR resettlement forecast and where Union common action would have a significant impact on addressing the protection needs; (c) persons belonging to a specific category falling within the UNHCR resettlement criteria.

⁴ Exclusion has a specific meaning in international refugee law. Criteria in Article 6 refer to both grounds for exclusion and for ineligibility. Exclusion, as referred to in Article 6, is therefore used in inverted commas.

⁵ Proposed Regulation, Art.6.1.

“Exclusion” grounds under point (a) and (b) may also apply *prima facie*.⁶

Amnesty International notes exclusion grounds based on the Refugee Convention refer to “reasonable grounds” which is a much lower standards of proof than the “serious reasons” applicable under the Convention. Moreover, Amnesty International is greatly concerned that, other than being unduly broad, the grounds *de facto* subject resettlement to the higher imperative of border control. This proposal thus seeks to entrench EU-wide the punitive approach agreed for the resettlement of Syrians from Turkey under the EU-Turkey deal, whereby those who previously tried to enter the EU spontaneously to seek asylum are disqualified from resettlement. Irregular entry or stay, and irregular secondary movement, should not be grounds for ineligibility from resettlement, as vulnerable persons often undertake irregular journeys precisely because of the lack of any foreseeable alternative solution. Ineligibility on those grounds is a punitive measure that is unjustified and against the spirit of Article 31 of the Refugee Convention. Resettlement is not a discretionary humanitarian measure; it is a measure necessary to ensure the respect, protection and fulfilment of the rights of vulnerable refugees. Ensuring the rights of the refugees to be resettled should have priority over border control. In the same vein, it is an unnecessary restriction to exclude resubmission of cases rejected by one member state in the previous 5 years, as an individual’s protection needs and circumstances may change over time.

It is moreover alarming to suggest that ineligibility grounds may apply *prima facie*. Given the far-reaching implication of ineligibility, it needs a very careful assessment of the individual circumstances.

Amnesty International recommends aligning exclusion grounds in Article 6.1(a) to those of the Refugee Convention and deleting Article 6.1(c), (d) and (f) as they unduly limit the ability to resettle for reasons solely related to irregular border crossings or on account of a previous rejection by one member state.

Amnesty International recommends also deletion of Article 6.2 since “exclusion” should in all circumstances be duly justified and based on an individual assessment.

STANDARD RESETTLEMENT PROCEDURES (ARTS. 10 AND 11)

The Commission proposes that the Union Resettlement Framework should allow for two types of resettlement procedures: an ordinary and an expedited.⁷ The ordinary procedure reflects resettlement standards and practices normally followed by member states: cases are identified further to referral by UNHCR, the European Asylum Support Office (EASO), other international organisations or member states themselves; eligibility checks are conducted by member states; a full refugee status determination (RSD) is conducted in the third country leading to either refugee or subsidiary status. This procedure should be conducted within 8 months, extendable by another 4 months. Refugee status cannot be sought in the country of resettlement.

The expedited procedure reflects the approach agreed in the SOPs for the resettlement of Syrians from Turkey following the EU-Turkey Statement of 18 March. It is foreseen for specific humanitarian grounds or urgent legal or physical protection needs. This procedure should be conducted within 4 months, extendable by another 2 months. It does not foresee full RSD but only eligibility for subsidiary protection. Full refugee qualification assessment can be requested upon admission to resettling member states.

People resettled would be required to comply with the revised asylum rules seeking to discourage secondary movements (if and when adopted).

Full refugee qualification assessment should lead to refugee status, not subsidiary protection status. Similarly, expedited processing should also lead to a full refugee qualification assessment prior to admission. The question of status should not be linked to the type of procedure. Amnesty International is concerned that resettled refugees granted subsidiary status will not enjoy the whole spectrum of rights under the Refugee Convention and EU acquis, particularly the right to be joined by their family, thus undermining resettlement as a durable solution.

Amnesty International recommends amending Articles 10.7 and 11 to require the provision of full refugee status and full refugee status determination for individuals to be resettled, whether under the ordinary or emergency procedure.

⁶ Proposed Regulation, Art.6.2.

⁷ Proposed Regulation, Arts.10 and 11, respectively.

FINANCIAL SUPPORT (ART. 17)

The proposals accords member states a financial incentive (lump sum) of EUR 10,000 for each person they resettle in accordance with a targeted Union resettlement scheme.⁸ Only resettlement through this framework will entitle member states to receive EU money. Resettlement outside this framework will no longer be supported financially from the Union budget. This is currently the case under the AMIF Regulation, which provides a lump sum of EUR 6,000 per person resettled outside the EU framework.⁹

Member states would continue to be able to adopt and implement national resettlement programmes, but these are expected to be in addition to contributions to resettlement places made under the EU schemes established by this Regulation.¹⁰ This, along with the financial incentive limited to participation in an EU scheme, could jeopardize continued implementation of national programmes as member states have an incentive to pool quotas under the EU framework. Moreover, the maximum EU budget available for resettlement every year would limit commitments under this Framework.¹¹ Thus, while contributing resettlement within the EU Framework, member states should continue to undertake and significantly upscale resettlement under national programmes to meet the growing global resettlement needs.¹²

In order not to disincentivise resettlement under national programmes and undermine a significant upscaling of resettlement overall, Amnesty International recommends to ensure that resettlement commitments under the Framework are additional to existing national commitments and that funding for resettlement outside the EU Framework be continued.

CONCLUSIONS

Support for this legislative initiative is conditioned upon no migration management objective being attached to it. The proposal should re-centre resettlement around its key purpose of providing protection and a durable solution for refugees and ensure it is not used as a tool to deter irregular migration flows to the EU and increase returns and readmission from Europe. It is also key that punitive measure, not related to protection considerations but to border control, be taken out of the proposal and that altogether streamlining of resettlement procedures does not lead to lowering standards EU-wide. Subject to this, establishing an EU Framework could play a role in ensuring that more member states undertake resettlement and effectively deliver on commitments. Amnesty International would also hope that this could ultimately result in the EU taking a fairer, increased share of the global responsibility to host and assist refugees around the world.

⁸ Proposed Regulation, Art.17, amending Regulation (EU) No 516/2014 establishing the Asylum, Migration and Integration Fund (AMIF).

⁹ The AMIF Regulation currently stipulates that member states receive EUR 10,000 for each person resettled under common EU resettlement priorities set out in the EU scheme, and EUR 6,000 for each person resettled outside the EU scheme (Art.17.1).

¹⁰ Proposed Regulation, recital 31.

¹¹ The AMIF Regulation allocates EUR 360 million to resettlement and intra-EU relocation. This is over a 7 year period (hence EUR 72 million per year). In 2015, the Commission proposed to increase by EUR 50 million the amounts for resettlement under EU schemes for the years 2015 and 2016. This would provide for EUR 97 million for each year, equalling a maximum of 9,700 resettlement places if all the money were used for the resettlement under the EU scheme.

¹² See [UNHCR projected Global Resettlement Needs 2017](#): global resettlement needs are estimated to be over 1,190,000 persons, including of refugees in a protracted situation. Syrians account for 40% of this figure.