**INTERNATIONAL
ORGANIZATION
FOR MIGRATION**

RECOMMENDATIONS TO THE BULGARIAN PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION

January - June 2018

Executive Summary

The first semester of 2018 will be critical for defining migration policy globally. Indeed, in September 2018, the international community will come together to adopt a **Global Compact for Safe, Orderly and Regular Migration** and a **Global Compact on Refugees**. The EU and its Member States have the expertise, experience and responsibility to **take a leading role** to effectively contribute **in the negotiations for the Global Compact for Migration**.

Efforts are especially needed to **strengthen consistency between policies** so that EU actions all go in the same direction. Improving the links between the EU's internal and external policies, while ensuring the protection and promotion of fundamental rights, also in relation to third countries, should be at the front of the EU's vision on migration.

One of the tools that the EU has at its disposal to showcase its vision is the **reform of the Common European Asylum System** (CEAS), which should set high standards of fairness and solidarity. While the scope of the CEAS specifically focuses on international protection, there remains a need to recognize that persons not seeking international protection may nevertheless have specific protection needs – this is why IOM proposes to **create an EU visa for vulnerable migrants**. Such an instrument can play a significant role in the larger EU migration governance framework, in which return should play a supportive rather than a key role.

Also, while Assisted Voluntary Return and Reintegration (AVRR) programmes are an integral part of migration policies, it is essential to ensure a **rights-based, non-discriminatory and comprehensive approach in return and reintegration policies**.

IOM Recommendations

1. Take a leading role in the negotiations for the Global Compact for Migration

The EU and its Member States should **show leadership** in the negotiations for the Global Compact for Migration. IOM calls on the Bulgarian Presidency to ensure the adoption of an ambitious agreement that provides a unifying framework of common principles, commitments and understanding amongst Member States on all aspects of migration. The Compact should also be grounded in existing international norms, focus on practical implementation and include mechanisms for follow-up and review.

2. Support the adoption of a reformed Common European Asylum System based on fairness and solidarity

The reform of the Common European Asylum System (CEAS) should create a fairer, more efficient and more sustainable system. IOM calls on the Bulgarian Presidency to support progress and, if possible, completion of the CEAS reform, notably by:

- Supporting the adoption of the **Dublin Regulation (recast)**, so as to introduce a permanent and automatic relocation mechanism, incentivize migrants to stay within the system and, thus, decrease irregular secondary movement, accelerate family reunification, and ensure special care for children in the asylum process.
- Supporting the adoption of a common and unified approach to resettlement through a **Union Resettlement Framework**.

3. Institutionalize a visa for vulnerable migrants

Establishing an EU visa for vulnerable migrants would allow Member States to manage the movement of the **most vulnerable migrants with specific protection needs** and uphold their fundamental rights. The visa would help ensure these migrants' safe and legal access to the EU and their protection therein. At the same time, the visa-holders' regular entry would also enhance the Schengen external border management, while the registration of migrants' biometric data for the visa application would strengthen identity management and, subsequently, facilitate the return of those visa-holders whose applicable form of protection has been denied.

4. Support a rights-based, non-discriminatory and comprehensive approach to return and reintegration

Assisted Voluntary Return and Reintegration (AVRR) is an indispensable part of a comprehensive approach to migration management. However, return migration should support rather than define an effective migration governance framework. IOM calls on the Bulgarian Presidency to:

- Adopt **concerted policies on AVRR** at the international, regional, and national levels.
- Support the provision of **comprehensive reintegration assistance for all returnees**.

RECOMMENDATION I. Take a leading role in the negotiations for the Global Compact for Migration

A Global Compact for Safe, Orderly and Regular Migration is due to be adopted in September 2018 and presents a historical opportunity for achieving a world in which migrants move as a matter of choice rather than necessity, through safe, orderly and regular channels, and in which migration is well governed and able to act as a positive force for individuals, societies and states. IOM calls on the Bulgarian EU Presidency to **show leadership in the negotiations for the Global Compact for Migration** (GCM) to ensure that it provides a shared ambition for the future of international cooperation on and governance of migration that puts the rights, needs, capacities and contributions of migrants at its core, with a view to ensuring their safety, dignity and human rights.[1]

National legislation should be aligned with obligations and standards on the **protection of the rights of migrants** in relevant international law, including norms aimed at combatting discrimination, xenophobia and racism, and ensuring migrants' access to justice. In addition, efforts are needed to enhance the socioeconomic well-being of migrants and society by welcoming newcomers and helping them adapt to their new homes so as to maximize the contributions that migrants make and reduce instances of discrimination and xenophobia, which in turn fosters mutual understanding and respect, social cohesion and political stability.

A **whole-of government approach to migration and partnership between stakeholders** is also essential. It is important that the Bulgarian Presidency and the EU aim to institute and maintain regular inter-ministerial or interdepartmental coordination systems to guarantee coordination of policy on immigration, development, human rights, education, health, policing, labour, environment, disaster response, and other relevant sectors to ensure that migrants and migration are appropriately factored into policies across all sectors. Regular consultations and partnerships between government actors, civil society and the private sector on migration policy development and implementation should also be established and maintained. Bilateral, regional, inter-regional, and global cooperation on and governance of migration should be enhanced by reaffirming/formally adopting the Berne Initiative International Agenda for Migration Management,[2] containing common understandings and effective practices for comprehensive and balanced migration management.

Furthermore, the **mobility dimensions of crises** need to be addressed by adopting, implementing and incorporating into national practice the relevant commitments, initiatives and measures that support populations and communities at risk of, and those affected by or recovering from, crisis, and respond to them if they occur, in a way that supports sustainable and development-oriented recovery.

A critical aspect of the GCM negotiations will be the **framework for the GCM's implementation, follow-up and review**. IOM calls on the Bulgarian Presidency to ensure that the GCM follow-up includes: benchmark and regular review of progress in implementing GCM actionable commitments to identify achievements, barriers and priorities for action; capacity building measures in line with identified priorities; and on-going broad-based dialogue to continue forging consensus on outstanding issues and address emerging challenges. This follow-up should be aligned with the implementation and review of the 2030 Agenda for Sustainable Development[3] and the Sustainable Development Goals (SDGs)[4], both within the EU and in the EU's external action. Implementation of the GCM and the migration-related SDGs should be mutually reinforcing at global, regional and national levels.

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[1] For more details, see the *International Organization for Migration Input to the UN Secretary General's Report on the Global compact for Safe, Orderly and Regular Migration* and the *International Organization for Migration Supplemental Input to the UN Secretary General's Report on the Global Compact for Safe, Orderly and Regular Migration: Actionable Commitments*.

[2] The Berne Initiative (2005) *International Agenda for Migration Management*.

[3] United Nations (2016) *Transforming our world: the 2030 Agenda for Sustainable Development*.

[4] United Nations (2016) *Global follow-up and review of the 2030 Agenda for Sustainable Development*.

RECOMMENDATION II. Support the adoption of a reformed Common European Asylum System based on fairness and solidarity

IOM has welcomed the European Commission's efforts to reform the Common European Asylum System (CEAS).[5] This is necessary for the EU so as to **move from a system that places a disproportionate responsibility on certain Member States (MS) to a fairer scheme.** As the reform process will enter its fifth Council Presidency, the European Council assessed that efforts are still needed, and are insufficient when it comes to the reform of the Dublin system.[6]

IOM commends the European Parliament's (EP) proposal to reform the **Dublin regulation**, which is the cornerstone of the European asylum system.[7] According to the EP's proposal, the first countries of arrival would no longer be automatically responsible for the applicants for international protection, as those who have genuine links to a MS would be relocated there, while applicants lacking such links would be assigned to an EU MS according to a fixed distribution key after a security check and swift assessment of their eligibility. These measures would prevent the most exposed MS carrying a disproportionate responsibility, while speeding up procedures. The EP's proposal also brings welcome solutions to the sanctions suggested in the European Commission's document by incentivizing applicants to remain within the official system thanks to an improved provision of information, legal aid and support combined with more effective procedures. By enabling a swift determination of a responsible MS, improving family reunification procedures and allowing applicants to be relocated in groups, secondary movements will be avoided. Furthermore, IOM recommends, in line with international and EU law, that unaccompanied migrant children are guaranteed unconditional access to legal representation regardless of their status and MS of presence, and that speedy status determination and protection to all unaccompanied children are ensured, with their participation and best interest as overarching concern.

IOM also welcomes the proposal for a common and unified approach on resettlement so that protection is offered to those in need and pressure on countries hosting large numbers of refugees alleviated. Resettlement plays an important part in the New York Declaration for Refugees and Migrants.[8] A **Union Resettlement Framework**[9] will enable the EU to contribute to global resettlement initiatives and increase MS resettlement efforts. For this objective to materialize, IOM encourages commitments under the framework to be commensurate in scale and size to the needs set out in the Annual Projected Global Resettlement Needs publication.[10] In line with a rights-based approach, IOM has expressed its concern that determining geographical priorities for resettlement based on third countries cooperation in the area of migration and asylum and leveraging resettlement to reach foreign policy objectives would jeopardize a humanitarian, needs-based and international protection approach. The Framework should instead focus on resettlement as a tool for protection and a durable solution to the most vulnerable refugees.

> **Integration**. Resettlement requires a long-term commitment by resettling states and are not ending with the arrival of refugees in the receiving country. On the contrary, successful resettlement can only be achieved if refugees are successfully integrated into the host society – an effort that requires assistance from local authorities and civil society and requires political will and a change in the narrative on refugees and migrants. Integration is a two-way process of mutual adaptation between migrants and host societies in which migrants are incorporated into the social, economic, cultural and political life of the receiving community. As such, integration entails a set of joint responsibilities for migrants and host communities.
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> See IOM (2017) *Global Compact Thematic Paper – Integration and social cohesion: key elements for reaping the benefits of migration*

[5] European Commission (2016) *Communication: Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe*.

[6] European Council (2017) *Implementing the Bratislava Roadmap*.

[7] European Parliament (2017) *EU asylum policy: reforming the Dublin rules to create a fairer system*.

[8] United Nations General Assembly (2016) *New York Declaration for Refugees and Migrants*. In the Declaration, MS expressed their intention to "expand the number and range of legal pathways available for refugees to be admitted or resettled in third countries."

[9] European Commission (2016) *Regulation establishing a Union Resettlement Framework*.

[10] UNHCR (2016) *Global Resettlement Needs*.

RECOMMENDATION III. Institutionalize a visa for vulnerable migrants

Various instruments and mechanisms exist and are under revision and/or development both at EU and MS levels to ensure that asylum-seekers and refugees (and their family members) are availed an opportunity to seek legal access to the EU MS for the purposes of international protection.[11] What is still lacking at EU level is a **legal and safe avenue for vulnerable migrants with specific protection needs** to access an EU MS in order to seek available and applicable forms of protection.

IOM proposes to establish an **EU visa for vulnerable migrants**, which would address the human rights and regular movement needs of migrants thus far not directly covered by any EU-wide instrument. While would-be refugees and asylum seekers would continue to be supported by the abovementioned existing avenues, an EU visa for vulnerable migrants would be applicable to vulnerable migrants not eligible for international protection,[12] but who have other specific protection needs and vulnerabilities, and seek access to an EU MS for protection purposes arising from human rights considerations.

Establishing an **EU visa for vulnerable migrants** would: allow vulnerable migrants to **legally and safely seek access** to available forms of protection in the EU MS and ensure the **respect of their human rights**; enable the **EU to uphold its commitments**; **reduce risk to life**; **counter the smuggling business model**; support the **EU's external border management**; increase the **EU's internal identity management**; and facilitate sustainable and rights-based **return** as well as **readmission** implementation with third countries. The following paragraphs focus on these three last aspects.

Introducing an **EU visa for vulnerable migrants** would enable MS to exercise **enhanced immigration and border management controls** by conducting satisfactory personal identification of applicants, enrolment of their biometric data in VIS upon visa application, subsequent security vetting against international criminal databases, and approval of their entry into the MS prior to applicants' arrival to EU territory. This would allow the tracking of a person's entry into the EU and their identity.

In addition, the registration of migrants' biometric data for the visa application would **strengthen identity management.** This will **facilitate the return of those visa-holders whose applicable form of protection has been denied**, with no prejudice to applicable principles of international refugee and human rights law. Identification and proof of nationality of a returnee subject to return would no longer be necessary, while obtainment of travel documents from the third country government would be facilitated or unnecessary if the temporary European Travel Document for Return[13] is accepted by the third country government.

> **Protection of human rights and vulnerability.** The vast majority of States have ratified international instruments reflecting the principle that all persons, including all migrants irrespective of their migration status, are entitled to have their human rights respected, protected, and fulfilled. Yet there are too many instances in which migrants are subject to human rights violations. Without legal avenues, migrants may turn to irregular and unsafe migration routes. There is in fact no lack of legal protection, but an acute lack of implementation of that legal protection when it comes to vulnerable migrants. There is therefore a pressing need for the international community to agree on a common definition of vulnerability. IOM defines vulnerability within a migration context as the diminished capacity of an individual or group to resist, cope with, or recover from violence, exploitation, abuse, and violation(s) of their rights. It is determined by the presence, absence, and interaction of factors and circumstances that (a) increase the risk of, and exposure to, or (b) protect against, violence, exploitation, abuse, and rights violations.
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> See IOM (2017) *Protection of Human Rights and Vulnerable Migrants*

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[11] These avenues include, but are not limited to: resettlement, humanitarian admission (including the so called "humanitarian corridors"), private and community sponsorship initiatives, family reunification, and the use of the Schengen Limited Territorial Validity (LTV) Visa on "humanitarian grounds."

[12] As defined in the recast Qualification Directive 2011/95/EU, i.e. "refugee status and subsidiary protection status" (Art. 2(a)).

[13] European Parliament and Council (2016) *Regulation on the establishment of a European travel document for the return of illegally staying third-country nationals*.

RECOMMENDATION IV. Support a rights-based, non-discriminatory and comprehensive approach to return and reintegration

The EU has a long history of supporting **Assisted Voluntary Return and Reintegration (AVRR) programmes** both within EU MS and in the EU's partner countries. An effective AVRR, which is a humane and dignified manner for a migrant to return to one's country of origin, has been recognized as a means to safeguard the human rights of returning migrants, uphold international principles and standards, and contribute to preserving the integrity of regular migration structures and asylum systems. From a State perspective, it is a cost-effective option that avoids a systematic and generally costly use of law enforcement.[14]

Yet, recent EU policy developments[15] have moved towards a stricter interpretation of the EU Return Directive[16], with the focus being disproportionately placed on increasing return numbers and the effectiveness of returns, including through detention and heightened focus on forced returns. This has been done to the detriment of remedies and safeguards protecting migrants' rights, including children's rights. IOM calls on the Bulgarian presidency to **continue implementing and further develop comprehensive AVRR programmes that are accessible to all migrants who are willing to return in a non-discriminatory manner**. Comprehensive pre-departure assistance, which provides information about voluntary return and available services, should be proposed and always embedded in broad and global information provision on overall migration perspectives and realities within the EU.

> **Collaboration with the EU's partner countries.** Dialogue among countries of origin, transit and destination, linked to mutually agreed political commitments on return and readmission, is essential for effective international cooperation on migration governance. In line with the aid effectiveness and policy coherence principles to which the EU has committed, IOM remains convinced that balanced partnership reflecting the priorities of all stakeholders, genuine co-ownership and mutual trust will be more effective in achieving results.

IOM has long held that tailored and individual **reintegration assistance** in countries of origin is essential to enhancing migrant well-being upon return and is, therefore, a crucial component of AVRR programmes. It is equally relevant for those migrants who are forcibly returned and in vulnerable situations due to extended periods of time spent abroad, lack of preparedness before return, stigmatization linked to deportation or otherwise.[17] **IOM advocates for an integrated approach to reintegration assistance that brings together the initiatives of MS and development actors to ensure impactful assistance, while respecting the principles and objectives of development cooperation**. Such assistance should address individual/household, community and structural factors that impact the economic, social and psychosocial dimensions of returnees' reintegration.[18] Only if all levels are properly considered and relevant stakeholders work together, can a truly integrated approach to reintegration be achieved.

In this regard, while IOM welcomes the European Council's call for financial support to IOM efforts in Libya, the Sahel and the region[19], IOM urges EU MS to extend support beyond voluntary returns programs and to ensure adequate and coordinated resources are allocated for migrant protection, reintegration and capacity building in priority partner countries in Africa, Asia and the Gulf. Ultimately, IOM advocates for **return and reintegration management to be a shared responsibility** as no single entity has the capacity, reach or mandate to address the profound implications of return and reintegration on affected stakeholders on its own, and insists upon the need to foster dialogue and partnerships.

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[14] IOM (2017) *IOM Thematic Paper: Supporting safe, orderly and dignified migration through Assisted Voluntary Return and Reintegration.*
[15] European Commission (2017) *Communication: Action Plan on Return* and *Recommendation: Making returns more effective*.
[16] European Parliament and Council (2016) *Directive on common standards and procedures in Member States for returning illegally staying third-country nationals*.
[17] IOM (2017) *IOM Thematic Paper: Enhancing migrant well-being upon return through an integrated approach to reintegration*.
[18] IOM (2017) *Towards an integrated approach to reintegration assistance*.
[19] European Council (2017) *European Council meeting (19 October 2017) – Conclusions*.

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