

UNHCR Legal Considerations¹

with regard to the EU Commission's Guidelines for border management measures to protect health and ensure the availability of goods and essential services

On 16 March, the EU Commission presented its [guidelines](#) on health-related border management measures in the context of the COVID-19 pandemic. These guidelines were agreed to by Member States on 17 March. The guidelines put forward a series of recommended measures at the EU's external borders, which may also impact on asylum-seekers and refugees, notably:

- *The implementation of entry and exit screening measures for persons arriving from and travelling to affected areas or countries (paras 12 (a) and (c));*
- *The provision of information material at arrival and departure (para 12 b); and*
- *The possibility to refuse entry to non-resident third country nationals where they present relevant symptoms or have been particularly exposed to a risk of infection and are considered to be a threat to public health (paras 15-17).*

UNHCR has consistently reiterated the legitimate right of States under international and EU law to manage their borders. This also includes measures to ascertain and manage risks to public health in the context of the current COVID-19 outbreak. However, international law and EU law also provide that measures to this effect may not prevent non-nationals from seeking protection from persecution or ill-treatment. In order to give effect to their right to asylum under Article 18 of the Charter of Fundamental Rights of the EU and the principle of *non-refoulement*, States have a duty vis-à-vis persons who have arrived at their borders and who seek international protection, which need to be taken into consideration while implementing measures to address public health considerations. Bearing these principles in mind, UNHCR wishes to note the following:

- The introduction of non-discriminatory health screenings at border points is an example of a legitimate measure to protect public health.
- UNHCR further appreciates the guidelines' recognition of the importance of information material at departure and arrival and encourages the material to be made available in relevant languages and formats that are accessible to children and others with specific needs. UNHCR has worked with many States to develop such information material and is ready to support current efforts as needed.
- Related to the possibility to refuse entry to third country nationals, including asylum-seekers, UNHCR notes the requirement for such decisions to be proportionate and non-discriminatory as provided for in para 17 of the guidelines. UNHCR understands that these requirements include considerations of continued access to asylum procedures and respect for the principle of *non-refoulement*, in line with applicable international and EU law.

Imposing a blanket and indefinite measure against the admission of all asylum-seekers, or of those of a particular nationality, could lead to a risk of violation of the principle of *non-refoulement*.

Furthermore, safeguards are needed to ensure that measures taken in this context are consistent with the Charter of Fundamental Rights of the EU. The principle of proportionality is firmly set out

¹ See also UNHCR, *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response*, 16 March 2020, available at: <https://www.refworld.org/docid/5e7132834.html>

in Article 52(1) of the Charter of Fundamental Rights of the EU, and allows limitations to the rights set out therein, including the right to asylum, only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others. Where a public health risk has been confirmed, UNHCR would also like to highlight available alternative measures, such as isolation and quarantine, mentioned in para 16 of the guidelines. Such measures may enable authorities to manage the arrival of asylum-seekers in a safe and orderly manner, while respecting the right to asylum and the principle of *non-refoulement*. UNHCR therefore urges Member States to ensure that the guidelines are implemented with due consideration to the use of such alternative measures, as well as the principles of non-discrimination and proportionality outlined in these guidelines, in line with primary EU law.

In light of the above, UNHCR urges the EU Commission to guide and monitor their implementation. In particular, the Commission should ensure that in case of any temporary restrictions of access to the EU due consideration be given to the particular situation of persons who are seeking international protection. UNHCR stands ready to provide support or advice to individual Member States on border procedures that are fully in line with their international and European legal obligations.

UNHCR, 18 March 2020