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COMMENTS ON THE PROPOSED REFORM OF THE COMMON EUROPEAN ASYLUM SYSTEM OF 13TH JULY 2016

Our organisations represent Churches throughout Europe – Anglican, Catholic, Orthodox, Protestant – as well as Christian agencies particularly concerned and dedicated to work with migrants, refugees and asylum seekers. As Christian organisations we are deeply committed to the inviolable dignity of the human person created in the image of God, as well as to the concepts of the common good, of global solidarity and of the promotion of a society that welcomes strangers. We also hold the conviction that the core values of the European Union as an area of freedom and justice must be reflected by day-to-day politics. It is against this background that we make the following comments.

Recent years have been marked by unprecedented numbers of refugees and asylum seekers forced to leave their countries. As a global phenomenon, international displacement has been on the highest level since World War II: according to the UNHCR, in 2016 65 million people were forcibly displaced because of conflicts, violence and human rights violations, in addition to people displaced on account of natural disasters, 40.8 million are internally displaced persons (IDPs) and 21.3 million refugees outside their country. The UN estimates that 95% of displacement occurs in the global south.

Already before the so-called "European refugee crisis" in 2015 when 1,392,155 refugees applied for asylum in the European Union and Schengen countries (EU+)[1], many academics, churches and NGOs[2], European agencies and policy makers have been calling upon the European Union to do more for the protection of human rights of asylum seekers and migrants. The "Common European Asylum System" (CEAS) has been criticised for its unsustainability, as it has largely undermined pan-European solidarity with Member States on the external borders. Moreover, it pays insufficient attention to the respect of the human dignity of refugees and asylum seekers. With rising numbers of people arriving on the European territory, the CEAS has again proved its limitations to protect asylum seekers and its urgent need to be reformed. A second package of proposals for the reform of

[1] EASO Annual Report 2015, p. 5
[2] As for example JRS Europe, Protection Interrupted (report), http://www.jrs.net/assets/Publications/File/protection-Interrupted_JRS-Europe.pdf

the CEAS was released on 13 July 2016 by the European Commission – which includes proposals for an **Asylum Procedure Regulation (APR), a Qualification Regulation (QR), a Reception Conditions Directive (RCD) and an EU-Resettlement Framework.**

With this paper, Churches, Christian organisations and agencies working on asylum and migration wish to comment on the new CEAS package. In our view, the proposed reform falls short in offering a fair, transparent and efficient asylum system based on high protection standards. Quite to the contrary, it intends to lower protection standards, externalises international protection to third-countries, enhances the use of detention and other punitive measures, and limits legal channels, e.g. by using resettlement as the prioritised way for "cherry-picking", or pre-selecting particular groups of refugees to access protection in Europe. Such a system neither addresses the current challenges Europe and the world are facing, nor does it provide the urgently needed reforms. Our organisations are deeply worried about the approach of the European Commission not only to ignore settled case law of the European Court of Justice (ECJ) and the European Court for Human Rights (ECHR), but also to undermine international law, such as the 1951 Geneva Refugee Convention.

With these introductory remarks, we would like to reiterate our view that safe and legal ways to protection must be complementary to an effective, humane and sustainable Common European Asylum System. In other words, the asylum system in Europe has to take responsibility for those coming both spontaneously, even if irregularly, and as resettled refugees, those on their way to international protection and those whose status has already been granted. As developed by the UNHCR, asylum, local integration and resettlement are complementary protection tools, and they ought to be applied as such to provide the protection needed by so many persons. Playing one instrument against the other would seriously harm the international refugee protection system.
This paper reflects transversal aspects of the above-named proposals currently on the agenda. We see the proposals as an intention to:

- externalise international protection to third-countries by mainstreaming the concepts of safe country of origin and safe third country;
- reduce protection standards for asylum seekers and already recognised beneficiaries of international protection through punitive measures;
- limit the prospects for integration of beneficiaries of protection into the hosting society – despite the positive developments related to employment access.

I. Externalisation

1. Safe countries concepts

1.1. The proposal for an Asylum Procedures Regulation (APR) foresees that if an asylum seeker's country of origin is deemed safe, an accelerated procedure will apply (art. 40 (1d) APR) and the application will be declared manifestly unfounded (art. 37 (3) APR). If the asylum seeker comes from a "first country of asylum" or a "safe third country", the application is deemed inadmissible and is rejected (art. 36 (1a, b) APR), with no examination on the merits of the application.

1.2. We wish to reiterate our general reservations with regard to the excessive use of the safe country concepts. With the automatic application of the concepts of safe third country, first country of asylum and safe country of origin as foreseen in the proposed reform, there is a high risk of sending persons back into life-threatening conditions and thus violating the non-refoulement principle after examining their travel route rather than their individual circumstances and reasons to apply for protection.

1.3. The mandatory application of the safe countries concepts would result in a systematic shift of the responsibility for the protection of people in need to the neighbouring countries of war regions and conflict zones. We already see that the current application of these concepts in practice is not

based on in-depth analysis of protection guarantees in a respective country, but rather relies on political considerations, in particular on the number and nationality of asylum seekers originating or transiting through those countries. Currently only a minority of EU Member States apply safe country of origin and safe third country concepts in their asylum procedures, and it remains controversial to have common lists of such countries between Member States. Obliging Member States to conduct accelerated procedures based on such ambiguous grounds has a high potential of breaching fundamental rights.

1.4. The **first country of asylum** becomes mandatory with the new regulation (art. 44 (1) APR). To be determined as a first country of asylum, a country must provide the applicant with "protection in accordance with the Geneva Convention" or with "sufficient protection" (art. 44 APR). Art. 44 (1a) APR no longer contains the condition of being "recognised in that country as a refugee" as in the current directive. Therefore it remains unclear what kind of protection status the third country should have provided to the applicant in order to be deemed a first country of asylum. Moreover, we are very concerned by the fact that Member States can individually determine whether an asylum seeker enjoyed sufficient protection in a third country, through which he or she transited, even if this protection is not in line with the Geneva Convention. We fear that this concept will be used to reduce the number of asylum seekers on the EU territory with little consideration for the effective protection of the persons concerned.

1.5. The **safe third country** concept will be mandatory, too. In addition, the protection standard is lowered by no longer requiring "the existence of the possibility to request refugee status" in the third country but "to receive protection in accordance with the substantive standards of the Geneva Convention or sufficient protection" (art. 45 (1e) APR). As already stated for the "first country of asylum concept", it remains also in this case unclear what kind of protection status will be necessary for a third country to be considered as safe. It is equally concerning that art. 45 APR makes the dangerous assumption that an asylum applicant has a connection to the third country and that it is therefore safe for him or her, inter alia because the asylum seeker has transited through a third country "which is geographically close to the country of origin" (art. 45 (3a) APR). In current circumstances very few safe and legal ways to reach protection in Europe exist, and those who come irregularly to seek international protection have no choice but to transit through neighbouring countries. Transit alone cannot be considered a significant link to a country, even if transit may take sometimes weeks or months. The implementation of this concept creates discriminatory situations on the basis of migratory routes and punishes asylum seekers because of the lack of political will to develop safe and legal pathways to protection in the EU and for the EU to take its responsibility and fair share in international refugee protection.

1.6. The **safe country of origin** concept is based on the presumption that there is no risk of persecution in the country of origin (art. 47 APR). We would like to stress again, that the assessment of an asylum application should be done on an individual and non-discriminatory basis with respect to nationality. To reverse the presumption of the safety of a country, the asylum seeker will have to provide evidence proving that his/her country is not safe for him or her; the burden of proof lies solely with the applicant, who may find it extremely difficult to first refute an assumption before talking about the merits of his/her case.

1.7. Currently, the national lists of safe countries differ greatly, showing that Member States have different interpretations of what is deemed a safe country. This alludes to the difficulty, if not impossibility, of determining at Union level which third country/country of origin is safe and which is not, while also ensuring the list is constantly updated in view of a fast-changing political and security context. The co-existence of EU-lists and national lists while applying safe country concepts as mandatory is likely to lead to further disparities with regard to protection, thus runs against the aims of a common system. In addition, the double examining of the safe third country and the first country of asylum by different Member States should be ruled out (art. 36 (4) APR).

1.8. As already emphasised in our comments on the Dublin IV Regulation proposal[3], we are concerned that the positive extension of the family definition, even though needed and welcomed, will probably have no positive impact on the family unity in reality due to mandatory and extended application of the safe countries' concepts. Family unity should be of utmost importance and therefore primarily safeguarded.

2. Internal Flight Alternatives

2.1. The assessment of the availability of internal protection in the country of origin becomes mandatory as part of the assessment of the application for international protection (art. 8 Qualification Regulation (QR).

2.2. Although we welcome the more detailed provisions and guarantees for the scrutiny of the internal flight alternative, we wonder how the consistency can be guaranteed and arbitrariness prevented. While we appreciate the reference to the country of origin information of the planned European Agency for Asylum (EAA), it remains unclear how contradictions between EAA country of origin information and UNHCR information would be handled. To avoid risks, also country information of human rights organisations ought to be considered.

2.3. The notion of the internal flight alternative will increase the likelihood of Member States sending people to countries which are, in the best case, only partially safe, and in which the security situation in general may change quickly. We fear that the assessment of a region as providing an internal flight alternative could depend essentially on political rather than on human rights considerations, as we currently see in the discussion about safe zones in Afghanistan.

2.4. In this context, Churches, Christian organisations and agencies raise their concern about the negotiation of deals focusing on readmission with countries where violence occurs daily, e.g. with Afghanistan ("EU-Afghanistan Joint Way Forward"). We would like to reiterate that internal flight alternatives cannot be considered if a country is not safe for certain groups of a refugee population. Therefore, the individual assessment of cases is of utmost importance.

II. Access to procedures

1. Accelerated procedures

1.1. In the proposed Asylum Procedures Regulation the accelerated procedure becomes mandatory, inter alia, in cases where the applicant comes from a "safe country of origin", in cases where there is non-compliance with the obligation to apply in the Member State of first entry, i.e. secondary movement, or in case of a subsequent application; the maximum duration is now normally limited to 2 months and foresees the possibility for the Member State to change from the accelerated to the regular procedure in complex cases (art. 40 APR).

1.2. The accelerated procedure foresees inter alia shorter time limits (e.g. 1 or 2 weeks' time limit to lodge the appeal (art. 53 (6a, b) APR)) and in some cases no automatic suspensive effect of the appeal, e.g. when an application is considered manifestly unfounded (art. 54 (2a) APR), which increases the risk of human rights violations.

1.3. The application of the accelerated procedures due to e.g. the origin from a "safe country" or the non-compliance with the obligation to apply in the Member State of first entry are not directly related to the well-founded fear of persecution as reason for the asylum application, and thus should not lead to a reduction of safeguards and time limits. In addition, accelerated procedures will likely and often be challenged in court; an increase of the workload for the national administration has thus to be expected. The right to asylum is an individual right; therefore an application should always be subject to an in-depth assessment on the merits. Asylum applicants should all be

[3] http://www.ekd.de/download/161031ChrorgcommntsDublinIVfinal.pdf

protected by the same safeguards. These should not be lowered in order to rush a decision, to punish or deter persons in need. In particular, the use of accelerated procedures as a means of punishment for secondary movement is a distortion of the asylum procedure. From our experience, people move to other countries often when they do not receive a sufficient level of protection, when reception conditions are below standard, or when they have received insufficient information. In some cases, people move to unite with family members already present in the territory, and some turn to personal contacts, friends, for comfort and support, especially when they do not understand or trust the system in place. Our organisations frequently meet people for whom moving onward is a real "matter of survival". As unaccompanied minors are particularly vulnerable, accelerated procedure should never apply to them.

2. Short time limits

2.1. The APR proposal introduces extremely short deadlines at every step of the asylum procedure. Member States have three days to register an application from the moment when a person makes an application (art. 27 (1) APR), applications must then be lodged within ten working days (art. 28 (1) APR). The Member States have one month for examining the admissibility of the application (only ten working days in case the safe third countries concepts are applied) and six months for examining the application on the merits (art. 34 APR).

2.2. Concerning the appeal phase, asylum seekers must lodge an appeal within only one week in the case of a subsequent application, two weeks in case of inadmissibility or accelerated procedure, and one month if ruled unfounded on the merits (art. 53 (6) APR). Member States will then have to give their decision on the appeal within one month in case of a subsequent application, two months if the application was deemed inadmissible or in case of an accelerated procedure, and within six months if the application was rejected on the merits (art. 55 APR).

2.3. Though we also consider that asylum seekers should have their application examined swiftly, the proposed deadlines may in reality be too short and not guarantee the effectiveness of procedural safeguards that are included in the proposal, including the possibility to rebut presumptions of safety, which will become central in the proposed common asylum procedure. The time-limit to lodge an appeal is particularly preoccupying, as such short deadlines might undermine in practice the effectiveness of an appeal and therefore the quality of the whole asylum procedure, in particular in a system where the suspensive effect of an appeal needs to be requested and is not automatic in cases of an accelerated procedure or inadmissibility due to the safe third country concept (art. 54 (2) APR).

2.4. It is contradictory that the Commission proposes strict time limits at all procedural stages and maintains at the same time the possibility for Member States to postpone the conclusion of the examination due to an uncertain situation in the country of origin, which is expected to be temporary for up to 15 months (art. 34 (5) APR). The decision on an asylum application should be based on the current situation and not be hampered due to a possible development in the future. In addition, the provision is not necessary since a protection status can be withdrawn in the case of the cessation of the protection need. Such an open clause leaves wide speculative margin to Member States, at the detriment of persons in need of protection finding certainty.

2.5. Our major concerns however stem from the efforts to externalise refugee protection, with Member States deciding within only ten working days if an application is admissible or not on the grounds of the safe country concept. Likewise, the decision on appeal will be subject to very tight deadlines (two weeks) and the appeal procedure will not necessarily have a suspensive effect, hence putting people at risk of being sent to countries in which they may face life-threatening situations.

3. Vulnerabilities

3.1. We welcome the special procedural guarantees for those with special needs (Chapter 2 Section 4 of the APR) in the new proposal. We support in particular the safeguards for children, including for unaccompanied children, such as the assessment of their needs upon arrival, the provision of support and guidance (art. 21-22 APR) and the harmonising of guardianship (art. 22 APR).

3.2. Regarding the Border Procedures (art. 41 (5) APR), we however oppose the idea that the border procedure, which includes automatic detention, can be applied on unaccompanied minors, inter alia when they come from a safe country of origin or have transited through a safe third country. Considering their vulnerability and the expedited nature of the procedures, we believe they should be excluded from the border procedure, and certainly children ought not to be detained. There is a range of tested alternatives to detention, which particularly for children must be used.

3.3. We welcome the special procedural guarantees for women, in particular those who have been victims of violence. However, the possibility to apply for asylum on behalf of a spouse (art. 31 APR) will not sufficiently protect women victims of domestic violence and may prevent them from being independent, as their right to stay in the Member State will depend on their spouse's refugee status. Although this article includes the possibility for a spouse to lodge an own asylum application, women victims of domestic violence might be pressured not to do this, or might not dare to do it, fearing violent repercussions.

3.4. It would be helpful to include in the APR the obligation for Member States to inform applicants that they can require an interpreter and an interviewer of the same sex as themselves, and to guarantee the effectiveness of this right by ensuring that a pool of female interviewers and interpreters exists. The proposed art. 12 (8) APR only provides for the possibility for asylum seekers to ask for an interpreter and interviewer of the same sex. As such sensitive information might not come forward, despite its potential relevance for the evaluation of their asylum application, it is crucial to guarantee that asylum seekers can feel comfortable to talk with someone of the same sex, i.a. about sex-based violence they may have suffered.

3.5. The improvements in the Reception Conditions Directive (RCD) are very important and appreciated, namely the improvements regarding the non-exhaustive catalogue of applicants with special reception needs in art. 2 no. 13 RCD and art. 21 (1) RCD which demands the identification of special reception needs to be assessed "as early as possible" rather than "within a reasonable time limit" and "systematically".

4. Access to legal assistance

4.1. We appreciate that the right to free legal assistance and representation free of charge is strengthened in the proposal, and that these must be guaranteed at all stages of the procedure (art. 15 APR). However, we are concerned by the possible exclusion of free legal assistance in case of "subsequent application" and application with "no tangible prospect of success" (art. 15 (3, 5) APR).

4.2. These provisions should not be left to potentially diverse interpretations within Member States. Due to the different and strict time limits and the comprehensive application of the safe country concepts, a high number of cases may be presumed inadmissible and unfounded, and therefore could be interpreted by Member States as lacking a tangible prospect of success. Particularly during extremely short procedures and when the burden of proof is shifted to the asylum applicant when the safe country concept is applied, safeguards through free legal assistance and representation need to be guaranteed.

5. Scope of the Qualification regulation

The proposed Qualification regulation abolishes Art. 3 of the current Qualification Directive. As a consequence, Member States no longer have the possibility to apply more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection and the content of international protection. The proposal states that Member States may still issue "other national humanitarian statuses" for those who do not qualify for refugee or subsidiary protection status. However, these statuses shall be issued in such a way as to not entail a risk of confusion with international protection (recital 9 QR). Therefore, the scope of application for such national humanitarian statuses is rather unclear und seems to limit national discretion.

III. Punitive approach

1. Connections with the Long-Term Residence Directive

The Qualification Regulation proposal contains an amendment to the Long-Term Residence Directive (2003/109/EU). The new provision foresees that where a beneficiary of international protection is found in a Member State other than the one that granted the protection status, without a right to stay there, the period of legal stay preceding this situation shall not be taken into account when the 5-year period necessary for long-term residence status is calculated. In our view, this punitive provision with potentially far-reaching consequences cannot be left to an administrative decision. The reasons why beneficiaries of international protection have moved to another Member State need to be considered. Often this happens because the Member State granting the status does not provide sufficient reception conditions or integration perspectives. Or if a beneficiary of international protection overstayed his/her otherwise legal stay in another Member State by only a few days, such a penalty may be disproportionate. In our view it will be important to foresee freedom of movement for beneficiaries of international protection earlier than their entitlement to a long-term residence status. It would be important to foresee that the protection status will be mutually recognised by other EU Member States to facilitate self-reliance, e.g. through job opportunities, and the approximation of rights to those of EU citizens.

2. Restrictions on freedom of movement and issues related to detention

2.1. The RCD proposal introduces definitions of "absconding" and the "risk of absconding". Art. 2 (10) RCD defines absconding as an action by which an applicant, i.a. in order to avoid asylum procedures, does not remain available to the competent authorities. This definition has an inherent presumption that an applicant moves to a second Member State "in order to avoid asylum procedures". From research undertaken in the past year, the reasons for persons to move vary, but are most of the times due to a lack of reliable information[4]. Moreover, it is unclear what it means when an applicant "does not remain available". Even worse the definition of "risk of absconding" is ultimately left to the discretion of the Member States through the power to define objective criteria (art. 2 (11) RCD). Therefore, the regulation opens the field to arbitrariness. Against the background of related serious consequences, the definition of absconding should be restrictive, clearer and objective.

2.2. Art. 7 RCD contains new reasons for the obligatory assigning of an applicant to a specific place and reporting obligations. One reason for this is the swift processing and effective monitoring of a Dublin transfer (art. 7 (2c) RCD). In addition, art. 7 (3) RCD lays down that, where there is a risk that an applicant may abscond, Member States shall, where necessary, require the applicant to report to the competent authorities. Since the assignment to a specific place as well as reporting obligations are a restriction of free movement, which is guaranteed inter alia by art. 26 of the

[4] Crossing the Mediterranean Sea by Boat: Mapping and documenting migratory journeys and experiences, http://www2.warwick.ac.uk/fac/soc/pais/research/researchcentres/irs/crossingthemed/output/crossing_the_med_evidence_brief_ii.pdf

Geneva Convention, and art. 5 of the European Convention on Human Rights, these reasons must fulfil certain requirements. For example, they should be sufficiently precise and clear, necessary for a legitimate purpose laid down by law, and proportionate. The use of restrictions for the sheer facilitation of administrative procedures and without precise definitions and clear limitations to individual cases does not fulfil these requirements.

2.3. Art. 8 (3c) RCD adds an additional detention ground in the case of non-compliance with a residence restriction and the existing risk of absconding. Reality proves that detention of asylum applicants is already used arbitrarily and on a large scale. We observe a strong trend to detain asylum seekers, particularly in the hotspots in Greece and Italy, but also in other Member States. Persons with special needs and unaccompanied minors are no longer excluded from detention (art. 11 (1, 2) RCD). However, seeking asylum is a right and a lawful act, which must not be punished. Rather than widening detention for persons who have not committed a crime, more restraint in using detention is necessary, more safeguards and stricter rules on detention are needed, and alternatives to detention ought to be foreseen.

3. Access to reception conditions

3.1. Art. 17 (1) RCD provides a clearer and more protective definition of material conditions and requisite standards by clarifying that all forms of accommodation must "supply an adequate standard of living". Furthermore, art. 17 (9) RCD obliges States to guarantee a "dignified standard of living" and health care in cases when Member States set different modalities for material reception conditions, in particular when "housing capacities normally available are temporarily exhausted". The current text only refers to "basic needs". In addition, material reception conditions can no longer be withdrawn (art. 19 (1b) RCD). Moreover, the qualification regulation provides more clarity regarding social benefits through the definition of social security and social assistance (art. 2 no. 17, 18 QR).

3.2. Art. 17a (1) RCD of the proposed reception directive foresees excluding asylum seekers from reception conditions, who are in a Member States other than the one in which the applicant is required to be present – with the caveat that Member States shall ensure a dignified standard of living for all applicants (art. 17a (2)). The proposed text excludes schooling for minors (art. 17a (3) by requiring only "access to suitable educational activities", health care not limited to emergencies (art. 18); and an adequate standard of living, which guarantees livelihood and protects physical and mental health (art. 16). This provision contradicts the principle of entitlement to reception conditions, laid down in the Cimade and Gisti (C-179/11) judgement of the European Court of Justice that includes as beneficiaries those asylum seekers that will be sent back to the EU Member State responsible for their application. Such stipulations even punish asylum seekers who comply with the Dublin procedure and who are waiting to be transferred to the responsible Member State because a Member State other than the one of first arrival would be responsible due to family unity or the relocation mechanism.

3.3. In addition, art. 19 (2) RCD contains four new grounds for "Replacement, reduction or withdrawal of material reception condition" inter alia, when an asylum applicant has not applied for asylum in the first Member State of entry and has instead travelled to another Member State without adequate justification, and submitted an application there, or where an asylum applicant has been sent back after having absconded to another Member State.

3.4. The exclusion and the reduction of reception conditions plays into the sanction approach to prevent secondary movement. Yet, the European Commission itself admits in the "Explanatory Memorandum" that "there have been persistent problems in ensuring adherence to the receptions standards required for a dignified treatment of applicants" in some Member States. "This has contributed to secondary movements and has put pressure on certain Member States (...)". Therefore, the appropriate measure to prevent secondary movement would be to reach high quality reception conditions throughout Europe. A second and no less important measure is to provide

understandable and correct information on the procedure. How the sanctions listed in art. 19 (2) RCD shall be implemented in practice is rather questionable.

3.5. In general, we deplore the lack of positive incentives in all the proposals. In order to tackle the reality of secondary movements, we would have preferred the development of positive initiatives, e.g. introducing a higher level of reception conditions, the mutual recognition of positive asylum decisions, and changes in the Long Term Residence Directive in order to allow for a quicker access to the long-term resident status for refugees.

IV. Integration

1. Status review

1.1. An obligatory regular status review is also newly introduced when the determining authority has to renew the residence permit, or in the case that at the EU level, information related to the country of origin indicate a significant change in the country of origin (art. 14-15, 20-21 QR). The Commission claims that with the status review no additional administrative burden will occur. However, our experience from Member States which do a regular status review shows clearly that it generates a substantial administrative burden. The assessment of the situation in a country of origin may also be influenced by political considerations rather than by the actual situation – as currently the case for e.g. Afghanistan, and that the protection needs of the applicant may become secondary.

1.2. The mandatory status review may hamper the integration perspective of the beneficiary of international protection. Firstly, beneficiaries of international protection will have to live with the constant fear of being sent back to their country of origin. The constant risk of a withdrawal of the status may become a disincentive for integration efforts. Secondly, the status review has also an impact on the labour market opportunities for beneficiaries of international protection, as, generally, an employer will not hire an employee and invest in his/her qualification when the residence permit is only valid for one year, as is the case for a person with subsidiary protection, or the all-time risk of losing the employee due to the status reviews.

1.3. The three-month period of grace softens the devastating impact of these provisions but will not produce relief since the perspective of the administrative barrier already deters employers from hiring refugees and subsidiary protected persons.

1.4. We deplore that contrary to the intention of the 2011 recast to further align the refugee and the subsidiary protection status, the new proposal extends the distinction between the two protection statuses and adds to a fragmentation of the asylum system. The European Commission claims that for the purpose of further harmonisation, the determination of the validity period and the format of residence permits are necessary. Therefore the proposal states that the residence permit for subsidiary protection is valid for one year (renewable two years each time), and for refugee status, three years (renewable for three years each time) (art. 26 (1) QR). The current Qualification Directive provides that these timeframes are a minimum validity and allows Member States to provide residence permits beyond this minimum. Consequently, with the new proposal, the European Commission increases the divergence of the two statuses with the determination of the validity of the residence permit without any data or other verifiable evidence showing that the protection need of persons benefitting from subsidiary protection persons is more temporary as the one of refugees. This new provision is not necessary if one takes into account integration aspects or consideration for harmonisation. The proposal of the two protection statuses seems largely influenced by political reasons. Unfortunately, the differentiation between the two statuses is also maintained relating to social assistance, since the possibility to limit social assistance to core benefits for subsidiary protected persons is still included in the QR (art 34 (2)).

1.5. These stipulations are likely to have a seriously detrimental effect on a large number of persons under subsidiary protection status. Their family life is often restricted, which has negative effects on integration. Their chances to employment will likely decrease, therefore they will depend for longer periods on social assistance. Both factors will lead to further exclusion from societal participation, while, in turn, societies will look at them as a burden. The consequences of disintegration and fragmentation in societies for this group of persons, who have been recognised as in need of subsidiary protection, will be negative for all. We therefore plead to improve this status, allow family life, certainty of status and integration prospects.

2. **Access to labour market and equal treatment**

2.1. The reduction of the time limit for accessing the labour market from nine to six months during the asylum procedure is a positive step. Nonetheless, the exclusion of individuals falling under an accelerated procedure from this provision (art. 15 (1) subparagraph 2 RCD) contravenes the principle of non-discrimination inter alia laid down in art. 14 of the European Convention on Human Rights. As the accelerated procedure should not take longer than two months, this provision is redundant.

2.2. Art. 15 (2) RDC, which requires asylum seekers' access to the labour market to be effective, is a very positive development but should be clarified for the sake of effectiveness. The principle of equal treatment with nationals- regarding inter alia working conditions as well as health and safety requirements at work laid down in art. 15 (3a-e) RCD are steps forward in the right direction.

3. **Access to integration measures**

The QR proposal allows Member States to make participation in integration measures compulsory (art. 38 (2) QR). In addition, art. 34 provides for the possibility to make access to certain social assistance, specified in national law, conditional on the effective participation in these integration measures. However, both provisions lack legal certainty. Art. 38 (2) QR does not contain any criteria in which cases the integration measures should be compulsory. It is up to the discretion of the Member States to decide, and therefore the application may be arbitrary. The Commission should lay down some preconditions for a compulsory course (accessibility, free of charge, undue hardship, etc.), particularly if participation became a condition for access to social services. The concept of effective participation lacks clarity, too.

Recommendations:

1. The concepts of "first country of asylum" and "safe third country" should not be mandatory. The protection status standard provided by a third country should definitely not be lowered in these concepts. The right to asylum is an individual right, not based on nationality, ethnicity or country of origin. An application should always be subject to an in-depth assessment on the merits. Therefore, the provisions on the concept of a "safe country of origin" should be deleted since they are contradictory to the individual right to asylum and discriminatory; they may lead to a violation of the non-refoulement principle.

2. The Internal Flight Alternative should remain a non-compulsory concept that can be employed only in certain circumstances after each case and individual circumstances have been thoroughly examined based on high-quality and independent Country of Origin Information.

3. All asylum applications should be conducted with procedural safeguards. The EU as a rule of law-based entity must not lower procedural standards and safeguards to deter persons in need from accessing protection on its territory. The accelerated procedures should only be used in exceptional circumstances, without putting any more men, women and children in danger of being sent back to life-threatening situations, when they are trying to reach international protection in Europe. Certainly, accelerated procedures must not be used as a means of punishment for secondary movement; this would not provide for a more efficient and humane asylum system.

4. Although, not opposing a fast procedure in general, we recommend reviewing the shortened time limits, for example, the time limit for an appeal in the case of a subsequent application, or the ten working days' time limit in the case of an admissibility procedure on the basis of safe third country concepts. An appeal must always have a suspensive effect to be an effective remedy. The provision on exclusion from free legal assistance in case of "subsequent application" and "no tangible prospect of success" should be deleted.

5. Vulnerable persons, and especially minors, must be excluded from the accelerated and the border procedure as well as from detention.

6. The proposals contain several sanctions to prevent secondary movement, such as the exclusion and the reduction of reception conditions, or the re-calculation of the period of legal stay required for a long-term residence permit. We are convinced that an incentive-based approach in combination with high reception condition standards for beneficiaries throughout Europe would be far more efficient to reduce secondary movement. We therefore recommend providing for all beneficiaries of international protection the right to free movement after a maximum of two years of legal residence and the mutual recognition of positive asylum decisions throughout the Union.

7. We strongly oppose the far-reaching, blanket application of restrictions to free movement for asylum seekers and beneficiaries of international protection, and their detention for sheer administrative reasons. Such restrictions of fundamental rights have to fulfil the necessary requirements such as a clear legal basis, necessity and proportionality as stipulated by primarily law, the ECJ, the European Convention of Human Rights and its Court.

8. The provisions on the obligatory regular status review should be deleted. In addition, the European Institutions should refrain from further differentiating both protection statuses adding to a fragmentation of the asylum system, but rather align them since there are no differences regarding the need of protection in practice. This includes in particular the validity period of the two protection statuses, which should be adjusted on the level of the refugee status.

9. The provision excluding asylum seekers in an accelerated procedure from access to labour market should be deleted.

10. Social benefits should not be linked to integration measures. The access to integration measures should be facilitated. In the case of mandatory integration measures, certain conditions, like 'free of costs', 'effective access' and 'undue hardship' should be clearly defined in the directive.

While we are aware of the controversy in political debates about refugees arriving in Europe, we wish to nevertheless maintain the aim of a Europe which upholds human rights and the dignity of every person. The protection of persons who have had to flee persecution and violence is an international obligation, and we sincerely hope that Europe can and will do more to share the responsibility to protect.

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