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COMMENTS ON THE EUROPEAN COMMISSION'S PROPOSAL FOR A REGULATION ESTABLISHING THE CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATE RESPONSIBLE FOR EXAMINING AN APPLICATION FOR INTERNATIONAL PROTECTION LODGED IN ONE OF THE MEMBERS STATES BY A THIRD-COUNTRY NATIONAL OR STATELESS PERSON - DUBLIN IV - (RECAST – COM (2016) 270 FINAL)

Our organisations represent Churches throughout Europe – Anglican, Orthodox, Protestant and Roman Catholic – as well as Christian agencies particularly concerned 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 on the European Commission's Proposal for a Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), commonly known as the Dublin IV regulation.

The current Commission proposals have been formulated at a time when countries are above all preoccupied to reduce arrivals of refugees and migrants in Europe, rather than fundamentally addressing the shortcomings of a Dublin system, which have been signalled consistently over the

last five years. At the same time, the majority of Member States have been rather reluctant with regard to new solidarity mechanisms, such as resettlement of refugees from major refugee hosting countries and relocation of asylum applicants inside the European Union.

Our organisations recognise that Member States of the EU need to restore mutual trust at a time when the Schengen *aquis* appears to be under threat. However, several evaluations and reviews of the Dublin system have shown the need for a sustainable and durable system, which restores mutual trust and cooperation among Member States, while proposing a system that offers refugees a fair chance to obtain protection and an opportunity to reconstruct their lives in a dignified and durable manner.

We wish to reiterate our view that **Europe needs a more humane approach to asylum and protection**, and that fair sharing of responsibilities ought to be achieved. We regret that the current proposal **preserves the original logic of the system**, while making some **legal provisions much more rigid**.

We would have wished for a sustainable new system of responsibility sharing. We nevertheless hope that the comments below will provide input for reconsidering and amending some of the proposals made.

The proposed Dublin reform

The European Commission proposes a reform of the Dublin III Regulation focussing on four major issues:

- **I.** Enhancing the efficiency and effectiveness of the system by
  - **1.** Strengthening the first (ir-)regular entry criterion
  - **2.** Broadening the family definition
  - **3.** Limiting safeguards for unaccompanied minors
  - **4.** Introducing a "pre-Dublin procedure" for asylum applications by persons from safe countries of first asylum, safe third countries or safe countries of origin.
  - **5.** Deletion of clauses of cessation of responsibility and reducing the scope of discretionary clauses
- **II.** Introduction of sanctions and deterrence measures against secondary movements
- **III.** Shortening procedural time limits, limiting the scope of remedies against transfers, and inclusion of beneficiaries of international protection
- **IV.** Introducing a corrective allocation mechanism to share responsibilities for asylum applications more equally among Member States

Comments and Recommendations

I. Enhancing the efficiency and effectiveness of the system?

1. Strengthening the first (ir-)regular entry criterion

The **first (ir-)regular entry criterion** has been and still is the pitfall of the Dublin system, as it shifts the **main responsibility** for asylum application examinations **to EU countries with external EU or Schengen borders.** Allocating the responsibility mainly on these **geographic grounds** is

rather **arbitrary,** and its application has caused considerable **costs in human**[1] **and financial** terms[2], over the last years. By maintaining the same allocation principle, the Commission does not deliver a new structural approach to address the imbalances and burden on the major countries of first entry.

Furthermore, the proposal does not foresee any say of the applicants for protection with regard to the country where they may wish to apply.[3] Thus, the current proposal is ignoring any needs, links, characteristics, or preferences that an asylum seeker might have for good reasons. Family unity and the protection of unaccompanied minors are the only reasons to derogate from these rules. Based on the experience of our members in counselling applicants for international protection, we recommend a system where other well-founded preferences besides family unity are taken into account. Meeting such preferences would facilitate cooperation and enhance trust of asylum applicants in the protection system, and this would ease integration processes tremendously. Matching would also have to consider integration prospects in Member States, as they vary substantially due to socio-economic differences. We are convinced a matching system[4] for refugees and societies would foster protection and reduce unwanted secondary movements. We suggest at least undertaking pilot-projects with thorough evaluation to test such a system.

2. Broadening the family definition

Family life is of utmost importance for the wellbeing of asylum seekers and refugees, and it is crucial for their successful integration. We therefore welcome the proposed **broadening of the definition of "family member"** (Article 2 [g]), and recommend that family ties should be taken into consideration according to the jurisprudence of Art. 8 ECtHR in these cases. The definition should also include the relationship between young adults, who have not yet founded a family of their own, and their parents[5]. Art. 2 (h) should then read as follows: relative means the applicant's adult aunt, uncle, grandparent or cousin, who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law.

Although the Commission is aiming at more efficiency in the family unity procedures, the current proposal could even prolong waiting periods: when the corrective **allocation mechanism** is triggered, the **family reunion procedure** will only be conducted after the transfer to and by the allocating Member State. Besides longer procedures this would also mean that applicants for family reunion including unaccompanied minors might be transferred twice after lodging their application: first, when they are allocated via the corrective fairness mechanism and second, when they wish to join their family, who may be in a different Member State. Given the slow relocation

[1] C.f.: CCME (2016) Sharing the Responsibility for Refugee Protection: Beyond the Dublin III Regulation, seminar 23-24 February 2016. TO BE PUBLISHED, p. 16.
[2] C.f.: Susanne Fratzke (2015) Not adding up – The Fading promise of Europe's Dublin System. Brussels Migration Policy Institute Europe.
[3] "[that] the right to apply for international protection does not encompass any choice of the applicant which Member State shall be responsible for examining the application for international protection." (Article 6(1) a), COM (2016) 270 final).
[4] Will Jones and Alexander Teytelboym, "The Refugee Match", Forced Migration, FMR 51, January 2016; Di Filippo, Marcello (2016) From Dublin to Athens: A plea for a Radical Rethinking of the Allocation of Jurisdiction in Asylum Procedures – Policy Brief – January 2016, International Institute for Humanitarian Law. Online: http://immigrazione.jus.unipi.it/wp-content/uploads/2016/02/IIHL-A-plea-for-the-reform-of-the-Dublin-system-policy-brief-def.pdf, last visited on 10 May 2016.
[5] see ECtHR Maslov v. Austria [GC], § 62

practice between Member States, we would recommend prioritising family unity over any other procedure and therefore, family reunion should be achieved in the shortest delays.

Regrettably, the "Pre-Dublin" procedure may even overrule the **right to family unity** of applicants that would normally fall under the responsibility of a Member State, which is hosting family members of the applicants[6]. Analysing admissibility before and without assessing the existence of family ties or the needs of minors is a breach of **the right to family unity**, guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union and Article 8 of the European Convention of Human Rights. It also weakens the effects of the Commission's proposal with regard to the family definition. Rather than creating further obstacles, **assistance to unite families** speedily is what is needed: an asylum examination for all family members present in Europe in the same place will be beneficial to the asylum **applicants**, the **authorities** and for the prospects of integration, as applicants could settle down more easily.

The newly introduced right of appeal (Article 28 [5]), if no transfer decision is taken is surely important for family members waiting for a transfer decision for family reunion for an unreasonable long time. The same applies to negative decisions on family reunion.[7] However, its scope of application remains rather unclear in practice. In this context, we want to underline the importance of family life for the psychosocial wellbeing of refugees and its positive effect on integration.[8]

The Commission's proposal provides **that costs of transfers** shall not be borne by the persons to be transferred. This should be explicitly clarified for family **reunion** procedures under the Dublin Regulation. There have been several cases where family reunion has been hindered because Member States could not afford transport costs due to budget restrictions.[9] The costs could be paid from the EU budget, as it has been proposed for the costs of transfers linked to the corrective fairness mechanism.

3. Limiting safeguards for unaccompanied minors

The Commission proposes to strengthen children's rights by introducing more detailed provisions with regard to the best interest of the child assessment and by setting out a mechanism for determining these best interests in all circumstances implying the transfer of a minor[10]. We welcome the Commission's plan to appoint a guardian to unaccompanied children after five days of arrival. Such clarifications are very important, and we support that these **procedures,** in the child's best interest, "shall be done swiftly by staff with the qualifications and expertise".

However, this improvement is undermined by provisions in Article 8 (2) which stipulate that unaccompanied minors' rights **to assistance** for an asylum application through a **representative** should only be guaranteed in a Member State in which **he or she is obliged to be present.** Article 10 (5) foresees that the Member State where an **unaccompanied** minor **has first lodged his/her**

[6] Article 3 [3]
[7] C.f.: CCME (2016) Sharing the Responsibility for Refugee Protection: Beyond the Dublin III Regulation, seminar 23-24 February 2016. TO BE PUBLISHED, p. 16.
[8] C.f.: CCME et al. (2012): 75 NGOs call the EU Member States and the European Commission to safeguard family life of migrants and refugees. Online available: http://www.ccme.be/fileadmin/filer/ccme/20_Areas_of_Work/01_Refugee_Protection/120606_-_FamilyLife_NGO_statement_75.pdf, last visited 24th of June 2016.
[9] C.f.: ibidem, p. 8.
[10] Article 8 (4)

application is responsible for the application, unless it is not in the best interests of the minor. This is not in line with the current ECJ jurisprudence. In *MA and Others v. Secretary of State for the Home Department.* of 6 June 2013 (C-648/11,), the Court held that when an unaccompanied minor without family members living legally in the EU lodges an asylum application, the main criterion for establishing the responsible Member State is based on where the minor is **actually present after having lodged** an asylum application. This is valid even if the child has already lodged asylum applications in more than one Member State. Consequently, it is not necessarily the first Member State where the child has lodged his or her application that is responsible for its examination. The Court has pointed out that, since unaccompanied minors form a category of particularly vulnerable persons, it is important **not to extend more than is strictly necessary** the procedure for determining the Member State responsible, and to ensure that unaccompanied minors have **prompt access** to the procedures for determining refugee status. Hence, the **child's best interests** must be a primary consideration in all Dublin-related decisions. It follows from this that unaccompanied minors who have lodged an asylum application in one Member State **must not, as a rule, be transferred** to another Member State where they lodged the first asylum application, except for family reunion purposes. The Commission's proposal seems also inconsistent with the previous proposal from 2014[11] seeking to implement the CJEU M.A. ruling, which puts as a priority the protection of unaccompanied children and their best interests.

No clause should prevent unaccompanied minors from lodging an application for asylum and family reunion, even if they have moved to another country. With such stipulations, minors are held responsible for moving, while as a matter of principle they should **not** be held responsible. There may have been **reasons for minors to move** on, e.g. being **victim of inhumane or degrading treatment** in the Member State where they first asked for asylum, family links or **not being properly informed** on the rules. In case of absconding and secondary movements it may thus be necessary to have **access to a representative** also in the Member State where the applicant is actually present, even if this is not the one where he/she is **obliged to be**. It should be beyond dispute that the Convention on the Rights of the Child and the best interest of the child determination must guide the procedural rules of the Dublin regulation. Thus we recommend that the European Commission, the European Parliament and the EU Council amend the stipulations to provide for legal representation in the country where the children are present. In this context we would like to refer to our policy paper commenting the Commission's 2014 proposal COM(2014) 382 final, amending Regulation (EU) No 604/2013 as regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State.[12]

4. Introducing a "pre-Dublin admissibility procedure" for asylum applications by persons from "safe countries of first asylum", safe countries of origin, or "safe third countries".

The European Commission proposes a "**pre-Dublin procedure**" obliging the Member State to first examine whether an applicant has come through a non EU-country that is considered a first country of asylum or a "safe" third country and if so, to declare this asylum seeker's application to be inadmissible. The Member State would also be obliged to conduct an examination in an accelerated procedure, when the applicant originates form a "safe" country of origin, as listed in the

[11] C.f.: COM(2014) 0382 final

[12] C.f.: Christian Group (2015): Comments on the European Commission's proposal for amendments to the Dublin III Regulation regarding unaccompanied minors, 22 January 2015.

common EU list of "safe" countries of origin proposed by the European Commission.[13] Until now, only a minority of EU Member States apply such concepts[14], which according to this proposal however would have to become the norm.

The Dublin procedure itself is already a pre-procedure to an asylum procedure; another pre-procedure would add yet another layer and extend rather than shorten the asylum procedures. The Member States having the largest numbers of first applications would solely be responsible for such procedures. No sharing of the bureaucratic burden is suggested; on the contrary, cases of inadmissibility or of accelerated procedures would not even be considered in the proposed corrective mechanism. Such procedures will mainly check the route refugees have taken, and postpone the examination of the merits of a protection application.

Such an approach leads to further **externalisation of Europe's protection regime**, as asylum seekers from countries declared as safe would be excluded from access to international protection in Europe. It is the sad reality that asylum seekers from non-EU countries cannot apply for a refugee status in many neighbouring countries of the EU, e.g. because they have not fully ratified the Geneva Refugee Convention of 1951 and its additional protocol of 1967 and do not provide the necessary protection.

We wish to reiterate our **general reservations** to the concept of declaring countries as safe: the **risk** of sending persons into life-threatening conditions after examining their route rather than their protection claim is too high. In addition, a country perceived as safe for the majority of the population might be truly dangerous for specific groups, such as ethnic minorities, or persons affiliated to a religious minority. Member States of the EU and the European Parliament have not been able to agree on a common list since 2005, and we believe there are good reasons for this. If an accelerated procedure leads to an expulsion without an appeal having a suspensive effect, and safeguards for refugees in so-called safe countries are not established in the individual case, such a procedure entails a high risk of violating the principle of *non-refoulement*. While our organisations are seriously concerned about the use of this concept, we appreciate the European Parliament's approach to reviewing such list regularly.

Besides the general questionability of these concepts, we already see that their current application in practice is not based on in-depth analyses of protection guarantees, but on political will. Examples are hastened legislation passed by national parliaments in order to apply **the "safe" third country** and the **"first country of asylum"** concepts to countries, which do not fully apply the Geneva Refugee Convention. If it is unclear whether pushbacks, *refoulement* or other violations of the Convention are committed by a country, and if no legal remedies are available, such a country can by no means qualify as a safe third country for asylum seekers.

[13] C.f.: COM (2015) 452.
[14] C.f.: EPRS (2015): Briefing – EU legislation in progress: Safe Countries of Origin – Proposed common EU list. Online available: http://www.europarl.europa.eu/EPRS/EPRS-Briefing-569008-Safe-countries-of-origin-FINAL.pdf, last visited 24th of June 2016.

5. Deleting clauses of cessation of responsibility and reducing the scope of discretionary clauses

In its assessment of the Dublin III Regulation, the Commission concluded that cessation of responsibility clauses had created **incentives for secondary movements**.[15] The Commission proposes therefore to **delete cessation of responsibility clauses** (COM 604/2013: Article 13, 17, 29) creating a responsibility **once and forever** for the Member State that has been determined to be responsible for the examination of a protection application according to the Dublin criteria.[16] In combination with a **reduced scope of the discretionary** clauses[17] this could reintroduce the problem of protection applicants not having an examination at all, and thus remaining in orbit. Avoiding such situations was one of the main reasons for the establishment of the Dublin regulation, and this problem was addressed by introducing the cessation of responsibility clauses. The new proposals do not take into account situations where more flexibility is required to ensure a humane treatment of the applicants or where swift access to an asylum procedure can only be guaranteed, if responsibilities can shift.[18] We are convinced that Member States should not be prevented from taking responsibility based on humanitarian reasons, and therefore call on the European Parliament and the Council of the EU to reintroduce such a clause, permitting a shifting of responsibility as foreseen in articles 17 and 19 of the current Dublin III Regulation (COM 604/2013).

Maintaining such clauses is even more important as the current proposal does not foresee situations where a transfer is not put into practice once a transfer decision has been taken. Even though Article 30 mentions clear time limits for transfers, there is no explicit provision for Member States to assume the **responsibility for non-transferred persons** after given time limits elapse. Without clear stipulations, persons could face a permanent threat of being transferred, regardless of the length of their presence on the territory. Another scenario could be that the Member State found responsible does not accept a Dublin transfer after some time has passed. Looking at the practice of Dublin referrals in the past years, both scenarios are more than likely. There should therefore be an explicit provision to assume the responsibility for non-transferred persons after given time limits elapse. Refugees should not be left without protection determination procedures when authorities fail to accept their responsibility.

Based on evaluations and our insights into the practice of the current Dublin system, we cannot help but conclude that the new provisions **will fail the aim of enhancing the system**'s capacity to determine effectively and efficiently the Member State responsible for examining an application for international protection. On the contrary, the proposal **ignores the realities** on the ground and will create **unfair and lengthy bureaucratic procedures**. We cannot see how such procedures would help overcome the shortcomings in the implementation of the current Dublin System. Furthermore, the asylum systems in Member States facing a high number of arrivals of applicants for protection are already under high pressure. To place additional bureaucratic burdens on their systems is contrary to what is needed: assistance and resources to receive applicants for protection and to carry out fair and efficient procedures for protection applications.

[15] COM (2016) 271 final, p. 16
[16] COM (2016) 271 final, Recital 25
[17] (COM (2016) 197 final, Article 19)
[18] For example, if an applicant cannot be transferred due to health reasons.

II. Sanctions and deterrence measures against secondary movement

There is no proof substantiating the presumption that reception standards in some EU Member States were too high and therefore created a **"pull" factor.** According to our and other organisations' experience, people move to other countries where their **dignity** is respected[19] and where they see chances of social inclusion and access to the labour market[20]. Poor reception conditions (access to accommodation, food, clothing, as well as other subsistence needs), the lack of protection and the absence of a possibility to lead a **dignified life** were the crucial elements for **asylum seekers** to leave a country of first arrival. Thus, a person's decision to move from one Member State with low standards of reception to another is in most cases **'a matter of survival'**. Despite the absence of proof, the Commission's proposal foresees a series of **sanctions for applicants** who do not comply with their obligation to lodge their asylum application in the first country of (ir-)regular entry[21].

The **underlying presumption** is that all applicants move to another EU Member State by intent, leaving out the possibility that many persons may not know all detailed stipulations of EU asylum procedures, that they were not properly informed or did not understand the information provided.

The proposal denies the possibility for applicants to provide additional relevant information, once the **interview** for assessing the responsibility for the examination of an asylum claim has been conducted and if it is assumed that information already delivered is sufficient to examine the claim (Art. 4). In this context, the **shortening of time limits** for asylum seekers may also hamper the provision of necessary information, as crucial information is not always at hand for displaced persons; some might have lost their documents, or they were stolen or their medical conditions might prevent them from delivering information on time (e.g. those suffering from PTSD or victims of trafficking in human beings). If relevant **elements appear after the personal interview** mentioned in Article 7, applicants should have the **opportunity to provide** these. We know of cases where unaccompanied minors could not enter the **family reunion** procedure, because their parents' asylum application had not been registered for a considerable time by the authorities of a second Member State.[22] Therefore, each case must be assessed more thoroughly, also for reasons beyond applicant's control. The following currently valid clause should be re-introduced: "The Member State undertaking the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible before a decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1)." Applicants who have absconded will not have the possibility to provide relevant information for assessing which Member State is responsible for examining the protection claim. Such a clause disregards the reality that persons applying for protection often have to wait for long periods before they have their first interview. During such waiting periods, they often receive conflicting information, sometimes also from officials. There should always be a possibility to provide relevant information; the proposed clause could for a number of persons become a disproportionate penalty. This could be particularly relevant for cases such as **family reunion.**

[19] C.f.: JRS Europe (2013): Protection Interrupted. Online available: http://www.jrs.net/assets/Publications/File/protection-Interrupted_JRS-Europe.pdf, last visited 24th of June 2016.
[20] C.f.: Brekke, Brochmann (2014): Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation, Journal of Refugee Studies Vol. 28, No. 2, Oxford University Press.
[21] Explicitly laid down in Art. 4 [1]
[22] C.f.: CCME (2016) Sharing the Responsibility for Refugee Protection: Beyond the Dublin III Regulation, seminar 23-24 February 2016. TO BE PUBLISHED, p. 7 – 8.

An **accelerated procedure** will apply to applicants who have been **returned to the Member State** responsible for their asylum claim under the Dublin Regulation, may this responsibility derive from the hierarchy of criteria or the corrective allocation mechanism[23]. Applying an **accelerated procedure** as a norm makes this a **punitive measure** which could undermine the person's **effective access to a fair asylum procedure**. We maintain that as a matter of principle all applications for international protection need to be treated **fairly, profoundly, efficiently**, and **swiftly**. Swiftly must in our view not mean **applying an accelerated procedure** as foreseen as a norm for any applicant for protection who **has travelled through other EU** or Schengen Member States before (or after) lodging an application. Swiftly must never translate in lowering the quality of the evaluation of the protection needs of a person. The merits of an application must be profoundly checked in all cases, this is also valid for applicants coming from so-called "safe" countries.

The Commission proposes to **exempt** applicants from **reception conditions** (Article 5 [3]) with the exception of emergency health care, during the procedures under the new Dublin Regulation in any other Member State than the one in which he or she is required to be present. Reception conditions however need to ensure a minimum of dignified life during the procedure, as has been ruled by the CJEU in the case brought forward by *CIMADE and GISTI*[24]. Not providing asylum applicants with reception conditions is inhuman and in breach of European fundamental and social rights and values; and it would make them even more vulnerable to exploitation.

Concerning the new detention rules in the proposal, we welcome the reduction of the detention periods for Dublin transfers from **12 to a maximum of 7 weeks** (Art. 29). However, we wish to underline that detention should always remain a measure of last resort and alternatives to detention should always be a priority. Children ought not to be detained as detention can never be in **the child's best interests.**

Unfortunately, the Commission only relies on punitive measures for preventing secondary movements. This approach does not match with our experience and the everyday realities of refugees; and therefore, we dare say, are bound to fail. We are convinced that secondary movement can be drastically reduced through credible information, the provision of high level of reception conditions, high quality asylum procedures and through the mutual recognition of positive asylum decisions allowing for free movement of persons enjoying an international protection status in the EU after a limited period of time, therefore these must become the priority.

Under the current EU legislation, recognised refugees and persons under subsidiary protection have to stay in the asylum-granting Member States for at least 5 years, irrespective of their possibilities to sustain themselves. While they can travel freely, moving to another Member State permanently, e.g. to take up employment, requires first to apply for a work and residence permit. Although expulsion decisions by Member States, e.g. after a **negative** asylum decisions, are **mutually recognised** in all EU-Member States[25] there is still no mutual recognition of **positive asylum decisions**. The current proposal may therefore exacerbate the imbalance if the scope of the regulation would be extended to beneficiaries of international protection (Art. 20 [1]b). Instead of reinforcing restrictions of free movement for beneficiaries of international protection, EU Member States should foster the mutual recognition of protection statuses throughout the Union, as the

[23] Art. 5 [1
[24] CJEU, 4th chamber, 27 September 2012, Cimade & Gisti, C-179/11.
[25] Council Directive 2001/40/EC of 28 May 2001

Qualification Directive (2011/95/EU) stipulates a **uniform status of asylum** and as Article 78 (2 a) TFEU requests. This would also help to build asylum seekers' trust in the asylum system.

III. Shortening procedural time limits and limiting the scope of remedies against transfers

In order to ensure **quick transfers** of applicants who fall under the scope of the Dublin Regulation, the Commission proposes to **shorten several procedural time limits.** Even though this is concerning authorities (Article 24, 25, 26, 29, 30) and protection seekers (Article 4 [2]), 7, 28), States do not risk much in case of not meeting the time limits, as sanctions for non-compliance are only targeting applicants for protection and other third country nationals. Essential decisions, such as family reunification or receiving protection (Article 4 [2]) will directly or indirectly depend on compliance with such short time limits. However, applicants are not able to enforce their rights if authorities act slowly and not in line with the stipulations. In our experience, unfortunately, not all authorities have the qualified and knowledgeable staff; and as we have seen with a sudden increase of arrivals, many authorities are not able to cope. While this cannot be regulated in a legal act alone, it would be useful to highlight the need for training of competent staff.

The proposed time limit for **appeals** against transfer decisions of **seven days** is too short, as it is likely to diminish the chances of applicants to prepare legal action and gather necessary documentation in order to exercise their full right to effective remedies against transfer decisions; therefore this clause risks to violate Article 47 of the European Charter of Fundamental Rights. As the CJEU ruled in the *Diouf* case (C-69/10) any **time limit** to appeal must provide applicants with the possibility "to prepare and bring an effective action".[26]

The newly introduced **obligatory suspensive** effect of appeals against, or reviews of transfer decisions (Article 28 [3]), will avoid situations where applicants are moved back and forth due to unfounded transfer decisions. This new measure will protect applicants against unnecessary psychological harm.

All protection seekers should have the right to effective remedy against a transfer decision. However, the current proposal will exclude protection seekers from this right, enshrined in the EU Charter of Fundamental Rights (Article 47), as it limits **the scope of remedies** to an assessment of the existence of a risk of **inhuman or degrading treatment** and of **family reasons** (Art. 28 [4]). However, this would contradict the CJEU ruling in the *Ghezelbash* case (C-63/15), which acknowledges the right to appeal against a transfer based on a wrong application of the visa criteria[27], as the Meijers Committee has noted[28].

Furthermore, international protection seekers, whose asylum application has been rejected in another Member State, will no longer have the right to make an appeal, as provided in the asylum procedure directive (Art. 46 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection), against that decision when returned to that Member State (Art. 20 [1d], Art. 20 [5] Dublin IV).

[26] CJEU, 2nd chamber, 28 July 2011, Brahim Samba Diouf. v. Ministre du Travail, de l'Emploi et de l'Immigration, C-69/10

[27] CJEU, Grand Chamber, 7 June 2016, Mehrdad Ghezelbash v. Staatssecretaris van Veiligheid en Justitie, C- 63/15.

[28] C.f.: Meijers Committee (2016): Note on the proposed reforms of the Dublin Regulation (COM (2016) 197), the EURODAC recast proposal (COM (2016) 272 final), and the proposal for an EU Asylum Agency (COM (2016) 271 final. Online available: http://www.commissie-meijers.nl/sites/all/files/cm1609_note.pdf, last visited 24th of June 2016.

This provision breaches the fundamental right to an effective remedy provided by both, Art. 47 of the EU Charter of Fundamental Rights and Article 13 of the European Convention on Human Rights.

IV. The corrective allocation mechanism: needs, characteristics and preferences still not taken into account

To support states under high migratory pressure, the Commission proposes an automatic **corrective allocation mechanism**, which would be triggered if a state is under disproportionate pressure, technically when a State exceeds the threshold of 150% of the quota of asylum applicants it should receive according to a distribution key (calculated on the basis of national GDP and population size). The European Asylum Support Office is supposed to follow-up with regard to the asylum figures reached.

This **threshold** of 150% means that solidarity will come into play only when a Member State's system is already rather **strained**, and potentially **already in a crisis**, with the inherent risk of **poor reception conditions** (lack of food, of hygiene provisions, overcrowded centres...) which will be threatening the human dignity and the fundamental rights of asylum seekers. It also means applicants for protection arriving before the triggering of the allocation mechanism would be stuck in an overburdened system, and **only** asylum seekers arriving after will fall under the allocation mechanism.

To become meaningful, such a mechanism should be triggered as soon as the state **has** received a large number of **applications to avoid unnecessary and disproportionate pressures** on **the asylum system as well as long waiting periods** for an asylum procedure and inhumane reception conditions for applicants.

It remains unclear whether and how the affected Member States will actually benefit from this mechanism**,** since applicants coming from "**safe" countries of origin, first countries of asylum** and "**safe" third countries will be exempted** and hence remain in the overburdened Member States (Article 3 [3] and 36 [3]). If applied to Greece in a similar situation as the one in 2015, **the mechanism could not deliver the needed release of pressure** if inadmissible cases were not to be considered for the triggering of the corrective fairness mechanism, as presumably most applicants would come to Greece via Turkey, which has now been declared a **"safe" third country**.[29] Even if the mechanism was activated, Greece would still be left alone with the processing of **inadmissible claims** and **asylum claims** in accelerated procedures which are exempted from the mechanism. Both of these procedures are likely to be **resource intensive for** countries of first (ir-)regular entry, especially for their judicial system, as they will also be confronted with high numbers of appeals. Therefore, this proposed mechanism does not deliver **any sustainable solution** for the current European solidarity crisis, nor would it alleviate the burden of countries of first entry. In order to deliver quick and substantial release of pressure, a distribution mechanism of applicants for international protection should **apply to all applicants irrespective of their nationality**, origin or travel route.

[29] C.f.: COM (2016): MEMO/16/1664 - fact sheet - Implementing the EU-Turkey Statement – Questions and Answers, 15th June, 2016. Online available: http://europa.eu/rapid/press-release_MEMO-16-1664_de.htm, last visited 24 June 2016.

The corrective allocation mechanism will also not have the intended result if it does not go hand in hand with the suspension of Dublin transfers (take back). Thus, in cases of an overburdened asylum system in a first country of entry, the first step should be the suspension of transfers, the second the additional transfer/relocation of applicants for protection.

We are convinced that a distribution mechanism, which applies a **matching tool** that takes into consideration the applicant's characteristics, needs and preferences, and Member States' potential, could be developed and provide better results. It should not be implemented, as is now proposed, as a blind dispersal mechanism which renders the allocation process **completely arbitrary** and comparable to a lottery. The current proposal considers needs of refugees even less than the Commission's crisis relocation mechanism proposal of September 2015[30], which – while weak **regarding the preferences** of the asylum seeker - foresees in recital 34 that the "Integration of applicants in clear need of international protection in the host society is the cornerstone of a well-functioning Common European Asylum System. Therefore, in order to decide which specific Member State should be the Member State of relocation, specific account should be given to the **specific qualifications** and **characteristics** of the applicants concerned, such as their **language skills** and **other individual indications** based on demonstrated **family, cultural or social ties** which could facilitate their **integration** into the Member State of relocation."[31]

Previous experiences have shown that applicants tend to move to countries where they see chances of social inclusion and economic prospects.[32] If aspirations are continuously crushed, integration prospects will suffer, which is detrimental for the well-being of the person, but may also prove a recipe for **failed integration policy**. This, we believe, European societies cannot afford. Therefore, **investing in a good matching system** in the process of developing a credible relocation mechanism may not only facilitate the integration of refugees, but also **improve trust in the system by refugees and receiving societies.** [33]

At the same time, the Commission proposes a possibility for those Member States who do not want to participate in the corrective allocation system, to pay an amount of **250 000 EUR** per non-admitted refugee, called "a solidarity contribution" (Article 37). Our preference would be to create incentives rather than penalties, as the financial bail-out risks to label protection applicants only as a cost factor.

We **welcome** the Commission's will to integrate the Member States **efforts in resettlement** into the calculation of the **allocation contingents**. If Member States strengthened their engagement in resettlement linked to UNHCR resettlement needs, this would reduce dangerous journeys for people seeking protection in Europe. But by no means should Member States differentiate between asylum seekers arriving through safe and legal channels, such as resettlement, and those arriving irregularly requesting asylum on their territories. Asylum and resettlement are complementary.

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[30] C.f.: COM (2015): 450 final.

[31] Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece

[32] C.f.: Brekke, Brochmann (2014): Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation, Journal of Refugee Studies Vol. 28, No. 2, Oxford University Press.

[33] For further information c.f.: Di Filippo, Marcello (2016) From Dublin to Athens : A plea for a Radical Rethinking of the Allocation of Jurisdiction in Asylum Procedures – Policy Brief – January 2016, International Institute for Humanitarian Law. Online: http://immigrazione.jus.unipi.it/wp-content/uploads/2016/02/IIHL-A-plea-for-the-reform-of-the-Dublin-system-policy-brief-def.pdf, last visited on 10 May 2016.

Conclusion

Instead of establishing a fair, efficient and human rights based Dublin reform, a return to a flawed system is envisaged, adding yet **another layer of barriers** before an asylum claim is actually examined - adding a "pre-Dublin procedure" to the arbitrary first (ir-)regular entry criteria which has proven to be a major obstacle to equal sharing of responsibility among Member States.

We wish to appeal to the European Commission, the European Parliament and the EU Council of Ministers to examine these proposals in view of a truly **Common** but also **humane European Asylum System**.

Although not only to be considered in this proposal, we call upon the Commission to further develop an asylum system which would take into account other needs, preferences and characteristics of persons applying for protection, which guides them to the best suitable place for them rather than prescribing one for them. Instead of forcing people into countries where they do not want to be, where they even may be afraid to stay, a **matching system** should be designed and implemented. Such a system would integrate the applicant's and the Member States' preferences in the allocation process[34] in order to enable both applicants and Member States to fulfil their potential. This would not only be humane, it would most likely reduce future secondary movements and foster integration. Such a system can but does not have to be directly connected to a regulation determining the Member State responsible for examining a protection claim.

In this context, we also call on the European Commission to finally come up with a proposal for the **mutual recognition of the positive protection decisions** valid throughout the Union, to enable intra EU mobility for those who have been granted protection and who will stay in Europe for a longer time. By allowing for movement of beneficiaries of international protection between Member States under certain conditions comparable to those of EU citizens, **access to labour market and self-reliance would become viable options; irregular secondary movement would thus no longer be a necessity for survival as it currently is**.

Some of the subsequent criticisms of the Dublin system, and some of the reasons why refugees refrain from lodging their application in the first country of entry, would be considerably reduced. Such an approach offers better chances to succeed compared to the envisaged **punitive measures** on secondary movements, which would most likely lead to **unprecedented numbers of irregular** and undocumented **migrants** all over Europe. The current proposal leaves the bureaucratic burden largely on the countries of first arrival and will put many asylum seekers and beneficiaries of international protection **under precarious living conditions** as most of the affected countries also suffer from the economic crisis. This, we believe, must be avoided by all means.

From our experience, based on practice in different EU Member States, **reliable and correct information** on **asylum procedures, rights and obligations** is crucial and contributes to creating more trust in the system. Ever changing rules or practice, the often **arbitrary distinctions** of protection status, lowering reception conditions and subsequent rights, particularly of family reunification for persons accorded subsidiary protection, are likely to prove counterproductive.

[34] C.f.: for example: Di Filippo, Marcello (2016) From Dublin to Athens: A plea for a Radical Rethinking of the Allocation of Jurisdiction in Asylum Procedures – Policy Brief – January 2016, International Institute for Humanitarian Law. Online: http://immigrazione.jus.unipi.it/wp-content/uploads/2016/02/IIHL-A-plea-for-the-reform-of-the-Dublin-system-policy-brief-def.pdf, last visited on 10 May 2016.

As much as it is appreciable that the proposal encourages **more resettlement policies** and while we appreciate the Commission's will to engage in more robust resettlement policies and to develop other **safe and legal** ways to reach protection in Europe, neither of these ought to or can replace the **right to asylum** and **effective access to protection** for persons **arriving on their own**. Refugees need to be able to bring forward the **reasons for seeking protection**, rather than **describing the route** which they travelled.

A Common European Asylum System has to work, particularly under pressure. Therefore, it **needs to be practical** and **take into account the persons concerned**. Refugees and persons seeking protection are not goods which can be stored in warehouses. They are human beings, as we believe created in the image of God. European conventions and charters, but also national constitutions stipulate that every person's dignity shall be safeguarded. Such a humane approach is the most likely to succeed as it could build up the **asylum seekers' trust in the system**, but also the trust of European citizens in a credible system.

This is why churches and Christian organisations are calling for a more humane and therefore also more sustainable approach to asylum: to save people's lives, to guard and respect their dignity, to let refugees start to rebuild their lives in European societies.

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