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166, Rue Joseph II, 1000 Bruxelles

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COMMENTS ON THE EUROPEAN COMMISSION'S PROPOSAL FOR A RECAST OF THE RETURN DIRECTIVE (COM(2018) 634 FINAL)

Our organisations represent Churches throughout Europe – Anglican, Orthodox, Protestant and 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 share the conviction that the core values of the European Union (EU) must be reflected in daily EU politics, including its policies in the area of freedom, security and justice.

Against this background we question whether the European Commission proposal (COM(2018) 634 FINAL) for a recast of the Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (2008/115/EC) - in which a shorter period for voluntary departure shall be granted, appeal restrictions implemented, detention expanded and which introduces a new chapter on border procedure - is proportionate, fit for purpose and fully respecting fundamental rights.

We wholeheartedly agree with ECRE's comments¹ on the Commission's proposal and support their remarks. In light of the importance of the inherent dignity of all human beings and the right to liberty as granted in the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union, and based on our "Recommendations for humane return policies in Europe"² published in May 2018, we would like to address the provisions on voluntary return, detention and the border procedure as particularly problematic.

Primacy of Voluntary Return Over Forced Return

As we have repeatedly stressed, voluntary return should always be the preferred option.

¹ [ECRE comments on the Commission proposal for a recast Return Directive COM\(2018\) 634.](#)

² [Recommendations for humane return policies in Europe.](#)

It is more dignified and humane for migrants as well as more cost-effective and sustainable than forced return. The current proposal clearly diverges from this principle and might de facto lead to an abolition of the option of voluntary return.

Experience from our member organisations across Europe confirms that an effective and humane voluntary return requires adequate time and is more successful if programmes provide good pre-departure advice. A successful voluntary return is the fruit of an informed decision, which empowers the beneficiary to start a new life and experience full personal reintegration in the country of return.³ Systematic withdrawing of financial assistance to irregular migrants in order to encourage them to enrol on a voluntary return programme leads to people falling into destitution, which is unacceptable given the European commitment to the protection of human dignity. Furthermore, when the returnee is not adequately prepared for reintegration, this increases the re-emigration possibility. Thus, we ask for pre-departure advice, information on reintegration policies in the country of return, tailor-made reintegration assistance and monitoring after return.⁴ To guarantee an effective voluntary return with pre-departure advice and an integration support package, a minimum period of 30 days before departure should be foreseen in all cases. We ask that Article 9, 1-3 be amended accordingly.

We deplore the fact that migrants considered at risk of absconding (Article 9, 4 (a)), whose application for a legal stay has been dismissed as manifestly unfounded or fraudulent (Article 9, 4 (b)) or presenting a risk to public policy, public security or national security (Article 9, 4 (c)) will not be granted a period for voluntary departure. Given the broad definition of the risk of absconding, the likelihood of an application being dismissed as manifestly unfounded or fraudulent and the vagueness of the legal concepts of risk to public policy or public security across European countries, many people would not be able to benefit from voluntary return programmes as foreseen in Article 9, 4. This greatly undermines efforts to promote voluntary return stated in recital 14.⁵ We ask that Article 9, 4 be deleted.

Detention

The draft encompasses a wide range of cases in which most migrants are considered likely to abscond and are therefore at high risk of being detained. Yet, detention should only be a last resort measure - reasonable and proportionate – not a primary migration management tool to prevent absconding.⁶ The assessment of the risk of absconding as provided in the draft creates uncertainty, moreover, leads to a vicious circle: the higher the chances of being detained are, the higher is the likelihood that the person concerned will try to abscond. We appreciate the attempt to standardise the assessment of the risk of absconding by implementing objective criteria. Nevertheless, we call for an exhaustive list of criteria, which does not penalise migrants for reasons beyond their control. In that sense, for example Article 6, 1 (c) and (d) are particularly worrying, as the lack of financial resources and/or an illegal entry do not determine the cooperation or will of the person concerned to cooperate. We ask for an assessment of the risk of absconding that is accessible, precise and foreseeable.

Extending the detention period cannot be the answer to a cry for a successful return procedure. Detention periods should be, as Article 18, 1 of the draft states, as short as possible. We ask to refrain from raising the initial minimum detention period, as foreseen in Article 18, 5.

We ask too that non-custodial measures will be developed and implemented as they have proven to be more cost-effective and respectful of human dignity than detention.

³ [Caritas Europa position paper on return, page 10.](#)

⁴ [Caritas Europa position paper on return, page 14.](#)

⁵ [ECRE comments on the Commission proposal for a recast Return Directive COM\(2018\) 634, page 11.](#)

⁶ [Caritas Europa position paper on return, page 13.](#)

Accelerated Border Procedures

With the proposal a “return border procedure” is introduced which is punitive and, in several points, runs the risk of undermining human rights and the rule of law. It is highly problematic that appeal restrictions and detention, as laid down in the draft, serve during the border procedure as motivators for irregular migrants to return voluntarily.

Article 22, 4 foresees that in border procedures a minimum period of time for voluntary return shall not be granted. This hinders the chance of realistic voluntary return. Article 22, 5 foresees a maximum period of 48 hours for lodging an appeal against a return decision in a border procedure. 48 hours is an insufficient period to get legal aid. As a result, the right to effective remedy, which is both in the ECHR and the EU’s Charter, is at risk. Article 22, 7 foresees that detention should not exceed four months, but it may be maintained as long as removal arrangements are in progress and executed with due diligence. When the return decision cannot be enforced within the maximum period referred to in this paragraph, the third-country national may be further detained in accordance with Article 18. In a worst case scenario this would mean a person could be detained up to 22 months. This is unacceptable.

We ask that Article 22 and with it the Chapter of Border Procedure be deleted.

In summary, therefore, this proposed recast of the Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals falls far short of meeting standards of procedures for returning irregular migrants, which fully recognise the inherent dignity of all human beings.

We call on you to support the necessary amendments to ensure that return can be carried out in full respect of fundamental rights and principles.

Brussels, 7th February 2019