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COMMENTS ON THE EUROPEAN COMMISSION'S PROPOSAL FOR AMENDMENTS TO THE DUBLIN III REGULATION REGARDING UNACCOMPANIED MINORS

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 share 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 of the European Parliament and the Council amending Regulation (EU) No. 604/2013 as regards the determination of 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 – COM(2014)0382 final.

General observations

1. It must be borne in mind that unaccompanied minors applying for international protection are the most vulnerable among the vulnerable:
    - They often have experienced horrendous forms of human rights violations committed against themselves and/or against their families in their countries of origin. Additionally, many of them have been traumatised by the experiences they had to endure during their flight and on their way to Europe.
    - After arrival in Europe, they live in an oftentimes very strange and unfamiliar environment in which they cannot turn to family members or other familiar persons to seek guidance, protection or emotional comfort.
    - As children, they have even more difficulties than many adults to cope with the bureaucratic and technical requirements of recognition procedures.
2. The Dublin Regulation has a considerable impact on the situation of asylum seekers in general. As studies reveal,[1] many protection seekers know little or nothing about the Dublin system. Nor do they know how to appeal their case before a court. Additionally, people are frequently removed to EU countries that do not offer decent housing and basic services, leaving many people homeless and destitute. Finally, asylum seekers are detained in multiple EU countries, seemingly for no other reason than being in the Dublin procedure.

[1] E.g., Jesuit Refugee Service Europe (2013), *Protection Interrupted. The Dublin Regulation's Impact on Asylum Seekers' Protection (The DIASP project).* Brussels.

Above all, the psychological well-being of asylum seekers (including the unaccompanied minors) is severely impacted, to the detriment of the individual, as they are subjected to decisions taken by governments and authorities on their asylum cases, without having any possibility to personally influence the outcome. This results in a sense of disempowerment and diminishes their potential to influence their own lives and be self-sufficient.

Given the particular vulnerability of unaccompanied minors, the dire impact of the Dublin system is especially heavy on this group of protection seekers.

3. The best interests of the child should be a primary consideration of States when dealing with cases of minors. This principle is enunciated in Article 3 (1) of the UN Convention on the Rights of the Child, which prescribes that "[in] all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". The same principle arises from Article 24(2) of the EU Charter of Fundamental Rights, in conjunction with Article 51(1) thereof. The need for this is specifically true in cases of unaccompanied minors. Their specific needs must have absolute priority over any other consideration. Consequently, all law-making, political and practical activities must aim at ensuring that protection of these children is as effective as possible.

4. In the judgment of 6 June 2013 (C-648/11, *MA and Others*), the Court of Justice of the European Union (CJEU) has applied these principles to the cases of unaccompanied minors who are subjected to the Dublin system. The Court has held that in a case of an unaccompanied minor without family members living legally in the EU 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 the examination. The Court has pointed out that, since unaccompanied minors form a category of particularly vulnerable persons, it is important not to prolong 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 with which they lodged the first asylum application.

Assessment of the Commission's proposal

5. Against this background, our organisations very much welcome the Commission's proposal that takes properly into account the aforementioned CJEU ruling. We wholeheartedly agree with the European Parliament's rapporteur, Ms Cecilia Wikström MEP, in that the proposed Article 8 (4a) – (4d) of Regulation (EU) No. 604/2013 should, in principle, remain intact.[2]

6. The amendments that are currently discussed in the Council would result in the Member State that already has taken a decision at first instance regarding the substance of the asylum application remaining the responsible Member State.[3] These amendments run against the overall objective of the new article and of the aforementioned CJEU decision, i.e. to ensure that the procedure for determining the responsible Member State is not unnecessarily prolonged. If the Member State where an unaccompanied minor has lodged an asylum application would first have to check whether any other Member State has already made a first instance decision on the substance of the claim the individual minor would not have prompt access to a proper protection procedure which, in turn, would be a violation of the 'best interests of the child' principle. The amendments are also not necessary for preventing 'asylum shopping' because, as the Court has stated, an unaccompanied minor whose asylum application has been rejected in the substance in one Member State cannot subsequently compel another Member State to examine an *identical* application. Article 33 (2) (d) of the recast Asylum Procedure Directive (Directive No 2013/32/EU) already provides for a Member State to be able to declare such an asylum application inadmissible.

[2] See Ms Wikström's Draft Report, dated 6.1.2015, PE544.476v02-00.
[3] See Council document 15567/14, 20 Nov. 2014.

Proposals for amendments

7. We would like to propose amendments that do not change the substance of the new Article 8 (4a) – (4d) but would result in some clarification:

   Firstly, there should be a set of criteria to be considered in order to respect the 'best interests of the child'. This would ensure that too much variation in the interpretations by Member States is avoided and that the personal perspective of the individual minor is properly taken into account.

   To this end, the *2008 UNHCR Guidelines on Determining the Best Interests of the Child* should be referred to in the Recitals.

   Moreover, the new Recital (2a) as proposed by the European Parliament's Rapporteur could be partly taken on, and Article 23 (2) of the Reception Conditions Directive (Directive 2013/33/EU) could be used as a template. Consequently, we propose to include a new paragraph in Article 8 of Regulation (EU) 604/2013 after paragraph 4c as proposed by the Commission. This new paragraph could read as follows:

   "4c1. Pursuant to paragraphs 4a to 4c, Member States shall assess the best interest of the child on an individual basis and before the decision on the Member State responsible is taken. In their assessment, Member States shall in particular take due account of the following criteria:

   (a) the views of the minor in accordance with his or her age and maturity;
   (b) the minor's well-being and social development, taking into particular consideration the minor's background;
   (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;
   (d) family reunification possibilities."

8. Secondly, we support the Meijers Committee's opinion[4] that Article 27 of Regulation (EU) 604/2013 should be amended in order to clarify that effective remedies must also be possible against a decision *not* to transfer an applicant to another Member State. There are some cases where the minor explicitly wished to be transferred to another Member State (for instance, because of having persons close to his or her family living there) but was denied. It must be possible to contest such a decision as well.

   As the Meijers Committee has proposed, Article 27 (1) could be amended as follows:

   "Article 27 - Remedies

   1. The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, <u>before a court or tribunal, against a transfer decision, a failure to submit a take-charge or take-back request as referred to in Articles 21, 23 and 24, or a decision on the request to take charge or to take back as referred to in Articles 22 and 25.</u>"

9. Details of the information provided to the minor according to Article 8 (4b) and the cooperation between Member States pursuant to Article 8 (4c) and (4d) as proposed by the Commission cannot be laid down in the Regulation itself. However, in order to avoid too much variation or even conflicting practices in Member States, the Co-Legislators should, in the context of their legislative decisions, call on the Commission to develop interpretative guidelines. These guidelines could, for instance, foresee that the format and content of the information provided to the minor is child-friendly and adapted to the individual child's age, level of maturity and level of literacy. Also, guidelines on the cooperation between Member States could establish standards and time frames for the respective procedures and clarify which information shall be exchanged.

Brussels, 23 January 2015

[4] Meijers Committee, *Note on the proposal of the European Commission of 26 June 2014 to amend Regulation (EU) 604/2013 (the Dublin III Regulation)*. 2 December 2014.