Christian Group statement

on the European Commission proposal

for a new common European system for returns

Our organisations represent Churches throughout Europe – Anglican, Orthodox, Protestant and Catholic – as well as Christian agencies particularly concerned with migrants, refugees, asylum seekers and forcibly displaced people. As Christian organisations, we are deeply committed to the inviolable dignity of every human being created in the image of God, as well as to the principles of the common good, of solidarity and subsidiarity, and of the promotion of a society that welcomes strangers and cares for the Other. We also share the conviction - and wish to remind - that the core values of the European Union (EU), such as the respect for human dignity, the rule of law and human rights [1], must be reflected in daily EU politics, including its policies in the area of freedom, security and justice. Besides, these are not merely theoretical constructions and aspirational ideals; they are binding obligations for the member states (MS) stemming from EU law [2].

Policies and legislation related to migration and asylum constitute a central topic of European political landscape. Hence migration, instead of being presented as the complex and multifactorial issue it truly is, is often being highly politicized and oversimplified. This is a worrying tendency that we have been noticing for several years and which was further confirmed by the latest proposals of the Commission, for example to accelerate the implementation of certain aspects of the Pact on Migration and Asylum and to facilitate the application of the safe third country concept.

In recent years, the return of non-EU nationals has gained growing prominence within the EU's migration policy agenda, with a heightened focus on trying to increase the return rate. While we recognise that return is one element of a comprehensive migration and asylum system, human rights rooted in human dignity must always be respected, and proportionality should be guaranteed in the measures proposed and implemented. The EU and its Member States have invested human and financial resources to try to return as many people in an irregular situation as possible, yet according to the European Commission the return rate remains stuck at around 20% [3]. Many obstacles in the return procedure are still linked to shortcomings in national administration, for instance the difficulties in the identification of the returnees and in the cooperation with third countries and further legal and practical difficulties.

To address these low numbers, in March 2025, the European Commission proposed a draft regulation [4], which, if adopted, will repeal the European Return Directive [5] that is currently in force since 2008.

Overall, we are very concerned that the proposed reform prioritises forced return over voluntary return and adopts a punitive and security-oriented approach, which could lead to the systematic detention of migrants—including children and families—and severely restrict their rights. Seeing this proposal in combination with the Pact on Migration and Asylum and its manifold proposals to restrict the right to asylum, and to put people into detention or de-facto detention is worrying. We acknowledge some positive -albeit limited- developments such as the strengthening of the assessment of the risk of *non-refoulement*, the introduction of a mandatory independent fundamental rights monitoring system, and the expansion of support for return and reintegration.

Generally speaking, we are very concerned to note that our *"Comments on the European Commission's proposal for a Recast of the Return Directive [COM(2018)634 Final]",* published in 2019 [6], remain absolutely pertinent today. We therefore reiterate our principled stance,

based on the inherent dignity of every human person, an absolute principle that cannot be violated and must be respected and protected, as enshrined in the first article of the Charter of Fundamental Rights of the EU. We also recall the right to liberty as recognised by both the European Convention of Human Rights and the EU Charter. In light of the aforementioned considerations and the evidence-based knowledge that we have been able to gather over many years of working alongside migrants and asylum seekers, we would like to address the provisions in the current proposal on returns related to the expansion of detention, the de-prioritization of voluntary return, the agreements with third countries including the introduction of the so-called "return hubs", the punitive approach towards returnees, the limitations of remedies against a return decision and the risk of violating the principle of *non-refoulement,* among others. We note with concern that the proposal does not include an impact assessment - which is particularly troubling as the European Parliament's substitute impact assessment of the 2008 return proposal had indicated that most of the measures proposed in 2018 - and now - would at best be without impact.

❖ Detention: Ineffective, yet extended

The draft proposed regulation allows EU MS to detain a person on different grounds, including the risk of absconding, which are very broad, legally vague and hard to prove, often involving circumstances out of the control of the returnees (article 29). While article 30 lists criteria for assessing the risk of absconding, it is concerning that the formulation is ambiguous and offers wide discretion to authorities in charge, as do the cases of paragraphs 2(e) and (g) of article 30. 2(a) is also problematic as the 'lack of residence or reliable address' may be intrinsic to the situation of an irregularly staying person and, by itself, should not be interpreted as an indicator of an intention to abscond. With regard to article 32, the maximum detention period may exceed 24 months, with the possibility to apply alternatives to detention *after* that period. We are also concerned that safeguards surrounding the use of detention are weakened with the deletion of the obligation that detention be only a "last resort" measure

for everyone. We regret that detention is used as a main tool to manage returns, although to date it has not been proven that prolonged detention leads to increased returns or a decrease of irregular migration.

We therefore reiterate our call for **detention to be used only as a *last resort* in all cases**, as it constitutes not only a measure which is harmful to the person but also is expensive and ineffective for the state [8]. Alarmingly, detention of children and minors is not prohibited under the current draft. We strongly emphasize that detention is never in the best interest of the child [9], even if their parents or guardians must be detained [10]. This also contradicts Article 13 (2) paragraph 1 of the Directive (EU) 2024/1346 on reception conditions [11] which specifies that, as a rule, children shall not be detained. That said, we appreciate the obligation for the MS (article 31) to provide for alternative measures to detention. **We strongly recommend considering them or any other less coercive measure first, before resorting to detention.** However, we regret the reference to very restrictive alternatives to detention such as the use of electronic monitoring, which is highly intrusive and used for criminal purposes, so can thus be considered even *de facto* detention [12]. As such, **we recommend that the article 31 (2) (e) regarding electronic monitoring should be removed** from the draft proposal.

❖ Voluntary return must be prioritised

We reiterate that voluntary return must remain the first and preferred option and should always be prioritised over forced removal. It is the most sustainable, cost-efficient and least harmful return procedure - for both the individual and the state. However, under article 13 of the proposal, voluntary return is considered when the person is not subject to a forced removal (article 12), thus relegating voluntary return to a secondary role as forced return is presented as the default option. MS should incentivize and support adequate reintegration measures and consider the best alternatives for ensuring that their reintegration is not hindered or jeopardized and that the right to a dignified life is respected. Preparing for return

takes time and practice shows that the 30 days' timeframe foreseen in the proposal is not sufficient and should be extended. In addition, Member States don't need any more to foresee a minimum timeframe. **We therefore recommend introducing a minimum threshold of 30 days and increasing the maximum period of 30 days to 3 months**.

❖ A return in dignity - Adequate counselling and reintegration support

We welcome the introduction of an article which calls on MS to create structures for return counselling and to provide support for reintegration (Art. 46). Access to return counselling and reintegration programmes and information about them are strengthened, for example by calling on the MS to create structures for return counselling and to provide support for reintegration. We are concerned though, that the degree of support and counselling depends on the returnees' willingness to cooperate and their need for protection (Art. 46(5)(e)), which undermines the trust with the counsellor and the voluntariness of the process. We recommend to ensure that the return counselling and reintegration support is provided by independent institutions, including NGOs and faith-based organisations for instance, and that adequate support is provided to the returnee, linking adequately the pre-return and post-return phases.

❖ A strong independent forced return monitoring

We welcome the introduction of a mandatory, independent fundamental rights monitoring mechanism to oversee the implementation of returns to third countries (Art. 15). We have been advocating for such a mechanism for years. **We recommend that the independent return monitoring is strengthened, adequately resourced and funded and given a strong and independent mandate to ensure that returns are carried out in accordance with the rule of law, transparently and in compliance with the EU's human rights obligations. The monitoring mechanism should be implemented independently from authorities and the**

right to access the returnees at any time during the removal procedure should be emphasised.

❖ Externalisation: delegating responsibility will lead to more violations of fundamental rights

We regret that the present draft includes two concerning and legally ambiguous provisions: the so-called "return hubs" (article 17) and cooperation with non-recognized entities (article 37). These two provisions are a result of the political pressure exerted by certain MS towards the European Commission for 'firm' and 'innovative' solutions. The "return hubs" -facilities outside the EU where people in an irregular situation will be transferred to await deportation- could represent a risk for fundamental rights [13], particularly due to the difficulties of ensuring effective monitoring related to human rights and missing complaint mechanisms. As a result, the accountability and transparency of any such procedures are questionable, which in turn places the rule of law, one of the core EU values, at risk. Importantly, the legal and practical feasibility of such measures have been widely called into question, on top of the widespread risk of human rights violations and chain refoulement. This included the European Commission's own legal analysis, which warned in 2018 that "it is not possible under EU law on returns to send someone, against their will, to a country they do not originate from or have not transited through. An agreement with a third country would be a necessary pre-condition for implementing this scenario, as is a revision of EU rules. The risk of infringing the principle of *non-refoulement* is high [14].

Similarly, we fear that cooperation with autocratic and unstable regimes, like those in Syria or Afghanistan, will be rendered legitimate under the pretext of conducting administrative procedures related to reintegration or readmission, if this proposal is adopted. **We recommend that articles 17 and 37 should be deleted**.

❖ Effective remedies - Appeals should always have an automatic suspensive effect

The returnee, according to the draft proposal, will have the right to challenge, through an appeal before a judicial authority, return decisions, entry bans and decisions ordering the removal. However, the appeal will not have an automatic suspensive effect which may only be granted upon application and within a time limit of 14 days (article 28), which can lead to a violation of the right to an effective legal remedy, and, consequently, EU law [15]. Moreover, this contradicts the *Gnandi v. Belgium* [16] judgement, in which the Court of Justice of the EU ruled that EU MS are entitled to adopt a return decision as soon as an application for international protection is rejected, provided that the return procedure is suspended pending the outcome of an appeal against that rejection. The non-suspensive effect of the appeal further increases the risk that the principle of *non-refoulement* is violated as individuals may be returned, while awaiting the outcomes of their appeal which might be positive. Additionally, the proposed procedure heavily depends on access to legal aid, which is essential for navigating the complex administrative and legal procedures involved. Problematically, access to a lawyer is being restricted though, despite its utmost importance [17]. **We recommend that all appeals in this proposal retain an automatic suspensive effect to ensure respect for the right to an effective legal remedy and therefore article 28 should be amended accordingly.**

❖ Punitive approach

We regret that the draft proposal seeks to increase the return rate by opting for coercive measures and choosing a punitive approach in case of a cooperation not deemed adequate (art. 22). We consider that the consequences or sanctions in case of non-compliance by the returnee with the obligation to cooperate are very strict, far-reaching and disproportionate,

ranging from refusal or reduction of benefits and allowance to refusal or reduction of voluntary return incentives; from refusal or withdrawal of work permits to financial penalties. It must be always ensured that people are not prevented from fulfilling their basic needs, potentially leading to inhumane or degrading treatment, in violation of the Article 3 of the European Convention of Human Rights. In some cases, rejected asylum seekers or visa over-stayers might for reasons beyond their control not be able to cooperate due to their specific situation (such as physical health, age, trauma) and the circumstances of their journey. Unfortunately, the proposal does not foresee provisions to challenge the assessment of the authorities and to enable the returnees to provide an explanation as to why they were not able to cooperate with the authorities. **We recommend an engagement-based approach** as experience on the ground shows **that is much more likely to increase the willingness to cooperate and to achieve sustainable solutions.**

Last but not least, we underline the need to give status on compassionate/humanitarian grounds to persons whose residence application has been rejected, but who will in the next years not be able to return and who have often for years been stuck in legal limbo - in line with Art 6 (4) of the existing return directive.

To conclude, human dignity and safety as well as evidence-based policy making must be at the heart of the legislative process. Given the analysis above, we see the risks that the proposal for a 'common European system for returns' seeking to increase returns' effectiveness could come at the cost of human rights and the respect of human dignity while not increasing efficiency. In light of these concerns, the importance of establishing truly independent monitoring mechanisms is to be stressed again.

As it stands now, we are concerned that the current proposal will result in widespread detention, more human suffering, human rights violations and will further fuel an anti-immigrant and xenophobic narrative that is harmful for the society as a whole.

We therefore hope that our concerns and our expertise in working with migrants and people in return procedures will be taken into consideration to ensure a dignified return process.

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[1] Article 2, Treaty on the European Union (TEU) https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

[2] Article 7, TEU, see above

[3] https://home-affairs.ec.europa.eu/news/new-common-european-system-returns-2025-03-11_en

[4] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025PC0101

[5] Directive 2008/115/EC https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115

[6] https://www.caritas.eu/a-call-for-humane-eu-return-policies/

[7] https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2019)631727

[8] https://pace.coe.int/en/files/21130/html?utm_source=chatgpt.com , https://www.hrw.org/news/2021/11/15/immigrant-detention-expensive-and-alternatives-are-just-effective?utm_source=chatgpt.com

[9] https://www.refworld.org/reference/research/idc/2017/en/101441v , https://www.refworld.org/legal/general/cmw/2017/en/119567

[10] https://www.ohchr.org/en/documents/general-comments-and-recommendations/joint-general-comment-no-4-cmw-and-no-23-crc-2017

[11] https://eur-lex.europa.eu/eli/dir/2024/1346/oj/eng

[12] https://idcoalition.org/digital-technology-detention-and-alternatives/ , https://fra.europa.eu/en/publication/2015/alternatives-detention-asylum-seekers-and-people-return-procedures

[13] https://frontiers.csls.ox.ac.uk/eu-return-hubs-in-third-countries/

[14] European Commission, 2018, The Legal and Practical Feasibility of Disembarkation Options, Statewatch, Pg. 5, eu-council-com-paper-disembarkation-options.pdf, 28/04/2025.

[15] Article 13 ECHR, article 47 Charter of Fundamental Rights of the EU

[16] Case C-181/16 CJEU https://curia.europa.eu/juris/document/document.jsf;jsessionid=496819F13F7E39EB21F78A632E39186B?text=&docid=203108&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3234295

[17] https://jrseurope.org/en/resource/detained-and-unprotected-access-to-justice-and-legal-aid-in-immigration-detention-across-europe/

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- *Caritas Europa, www.caritas.eu*
- *Churches' Commission for Migrants in Europe - CCME, www.ccme.eu*
- *Commission of the Bishops' Conferences of the European Union (Secretariat) - COMECE, www.comece.eu*
- *Don Bosco International, www.donboscointernational.eu*
- *Eurodiaconia, www.eurodiaconia.org*
- *International Catholic Migration Commission - ICMC, www.icmc.net/europe/*
- *Jesuit Refugee Service (JRS) Europe, www.jrseurope.org*
- *Protestant Church in Germany (EKD) Brussels Office, www.ekd.de*
- *Quaker Council for European Affairs – QCEA, www.qcea.org*
- *Sant'Egidio BXL Europe, www.santegidio.org*