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Opinion of the Deutscher Caritasverband (German Caritas Association)

On the proposal for a **Regulation** of the European Parliament and of the Council **establishing a Union Resettlement Framework**¹

1. Introduction

On 13 July 2016 the European Commission submitted its proposal for a Regulation establishing an **EU Resettlement Framework**.

The objectives of the Resettlement Framework are to allow third-country nationals or stateless persons in need of international protection to enter the EU safely and legally; to reduce the risk of a “large-scale irregular inflow” of third-country nationals or stateless persons to the EU; and to contribute to global resettlement initiatives. The proposed Regulation seeks to make resettlement the preferred avenue to gaining international protection in the EU.² The draft Regulation is part of the planned reforms to the Common European Asylum System. The proposal for reforming the Dublin IV Regulation refers to the EU Resettlement Framework. It states that the protection of people in their region of origin and the resettlement of affected people from such region to the EU should be the model for the future.³

The development of resettlement as an instrument has mainly been undertaken by UNHCR. Along with voluntary repatriation and integration in the country of refuge, it constitutes what is known as the third durable solution for refugees, the implementation of which falls under the UNHCR mandate as defined by the international community.⁴ UNHCR estimates that 1.19 million people around the world will require resettlement in 2017. In the last five years, all of the world’s host countries combined have made 60,000 to 100,000 resettlement places available per year.⁵

¹COM(2016) 468 final

²Cf. COM(2016) 468 final, p. 13

³Cf. COM(2016) 270 final, p. 2 and 23

⁴Cf. UNHCR Resettlement Handbook, Geneva, 2012, p.36

⁵Cf. UNHCR Projected Global Resettlement Needs 2017, Geneva, p.16 and p.311 and UNHCR Global Trends 2015, Geneva, p.3

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The German Caritas Association welcomes the fact that the Commission is prioritising the expansion of resettlement in the EU with its proposed Regulation. The German Caritas Association appreciates that this creates more opportunities for the legal and safe entry to the EU of third-country nationals or stateless persons. The establishment of a Resettlement Framework will allow existing avenues into the EU to be expanded with new, legal avenues. The German Caritas Association welcomes the fact that more groups of people will be eligible for resettlement programmes in the proposed Resettlement Framework than is usual in national resettlement programmes. This is based on the assumption that it will allow additional groups of particularly vulnerable people in need of protection to be granted protection by an EU Member State.

However, at the same time the German Caritas Association is concerned that considering more groups of people for resettlement might not adequately address the needs of vulnerable people in need of protection in the resettlement selection process. Therefore, the total number of people admitted should be increased in line with the larger numbers of people who might need resettlement. The German Caritas Association believes that resettlement should not replace regular asylum procedures but should be an additional way of protecting particularly vulnerable people. Individual refugees must continue to receive protection in all EU Member States. The right to claim asylum and international protection on the part of refugees who enter an EU Member State by any avenue other than resettlement must not be impaired by the Resettlement Framework. The German Caritas Association is extremely critical of the way the draft Regulation links resettlement to migration control at several points in the document.

2. Assessment of selected Articles

Hereinafter a detailed opinion is given on selected Articles in the proposed Regulation.

2.1 Definition of resettlement (Article 2)

According to Article 2, resettlement means the admission of third-country nationals and stateless persons in need of international protection from a third country to which or within which they have been displaced to the territory of the EU with a view to granting them international protection.⁶

With this definition, the Commission is expanding the group of people who may be considered for resettlement so as to include internally displaced persons. The definition of a refugee as set forth in the Geneva Refugee Convention is limited to people who are outside their home countries.⁷ As a result, previous UNHCR resettlement initiatives have as a rule only included people who are seeking protection outside their country of origin.⁸

⁶Cf. COM (2016) 468 final, p.23

⁷Cf. Article 1, section A, paragraph 2 of the Refugee Convention of 28 July 1951 as contained in its Protocol relating to the status of refugees of 11 July 1969.

⁸Cf. UNHCR Resettlement Handbook, Geneva, 2012, p.3

Assessment:

The UNHCR mandate has established resettlement as an instrument for protecting particularly vulnerable refugees. The EU Resettlement Framework in addition benefits those who have been displaced within their home country, which they have never left. Unlike people who have fled their countries of origin, until now internally displaced persons have not been specifically covered by any international legal instrument, although they are usually displaced by the same causes. They may also fulfil the criteria for a particularly acute need of protection. For example, this may particularly be the case if they are unable to flee to another country because of physical impairment or extreme psychological trauma. Therefore, the German Caritas Association welcomes the new protection granted to internally displaced persons through resettlement.

However, the German Caritas Association has misgivings due to a number of fuzzy issues and challenges from a legal and practical standpoint regarding eligibility of internally displaced persons for admission to resettlement programmes. Countries from which internally displaced persons are to be resettled are generally unwilling to play an active part in the procedures for resettlement. Furthermore, the necessary cooperation with government agencies may place the persons involved in significant danger, for example if they are subject to persecution by the state. Therefore, although participation of internally displaced persons in their own resettlement is usually desirable, this should not cause them to be exposed to additional perils.

Resettlement needs will grow considerably when internally displaced persons are included in the assessment of needs. Accordingly, the overall total number of admitted persons should also be increased to meet this additional need.

2.2 Selection of regions and countries (Article 4)

Article 4 lists five factors that should be considered when determining from which regions and countries candidates for resettlement should be chosen. They are: (a) the number of persons in need of international protection displaced to or within a third country and any onward movement of those persons to the EU; (b) complementarity with financial and technical assistance provided to the third countries involved; (c) the EU's overall relations with the third countries; (d) a third country's effective cooperation with the EU in migration and asylum matters; and (e) the scale and content of commitments to resettlement undertaken by third countries. Under letter (d) the Commission includes (i) reducing the number of third-country nationals irregularly crossing the border into the EU; (ii) creating the conditions for applying the concept of country of first asylum and safe third country; (iii) increasing capacity for admitting and protecting persons in need of international protection staying in that country, including through the development of an effective asylum system; and (iv) increasing the rate of readmission of third-country nationals by concluding readmission agreements.⁹

⁹Cf. COM (2016) 468 final, p.24

Assessment:

The factors for determining from which regions and countries resettlement should be conducted illustrate how the Commission believes resettlement is not merely a tool that complements the traditional asylum procedure to protect vulnerable people, but that it should also be used henceforth for controlling migration. Article 3 of the proposal is expressly setting the goal of reducing “the risk of a large-scale irregular inflow of third-country nationals and stateless persons in need of international protection to the EU”.¹⁰ The German Caritas Association views this link between resettlement and migration control as extremely problematic. The German Caritas Association believes that resettlement should specifically help the weakest, most vulnerable refugees and displaced persons. This makes resettlement an instrument that complements the regular asylum system. Excluding vulnerable people from admission because the third country where they are staying does not cooperate as desired with the EU on migration and asylum issues runs counter to the humanitarian aspect, which should be the focus of resettlement. People who have fled their homes can not influence the “Union’s overall relations” or “effective cooperation” of the country of refuge where they are staying with the EU. Accordingly these conditions listed in points (c) and (d) of Article 4 constitute unacceptable criteria for exclusion.

The meaning of the words “and any onward movement of those persons to the territory of the Member States” in (a) is unclear. They may be understood to mean that a great number of onward journeys from a third country to EU Member States has a negative impact on the Union’s decision to resettle them from this third country. Consequently, like Article 4 point (d) paragraph (i), it harbours the danger that third countries will violate people’s right to leave any country as stipulated in Article 13 of the Universal Declaration of Human Rights, and prevent them from seeking international protection. In addition, paragraphs (ii) and (iv) of Article 4 (d) make foreign policy the basis for designating resettlement countries and regions, instead of humanitarian factors. What is more, linking resettlement to the conditions set forth in Article 4 (d) (ii) means that precisely people in countries with the lowest likelihood of gaining adequate protection are penalised when it comes to being eligible for resettlement. In order to increase the rate of readmission, as indicated in Article 4 (d) (iv) it is necessary to ensure that affected people are afforded access to a fair asylum procedure in the region or country to which they will be readmitted, and can claim protection in accordance with the criteria of the Refugee Convention, and are afforded sufficient protection there.

The German Caritas Association recommends that point (a) should expressly state that a large number of onward journeys from a third country could only have a positive impact on the admittance of this third country into the planned resettlement programme; failing that, the words “and any onward movement of those persons to the territory of the Member States” should be removed. The German Caritas Association also recommends the deletion of Article 4 points (c) and (d) with the exception of paragraph (iii). Instead, the Resettlement Framework should follow the direction set by the UNHCR’s annual Global Resettlement Needs Report, in which geographical priorities are set and regional and country-specific needs for resettlement are detailed based on actual protection needs.

¹⁰ Cf. COM (2016) 468 final, p.23

Since more than 80% of persons in need of international protection stay in their region of origin¹¹, the German Caritas Association believes it is very important to strengthen protective capacities and expand the asylum systems in first countries of asylum. The German Caritas Association therefore expressly agrees with Article 4 point (d) paragraph (iii). Therefore, third countries should definitely receive the support they need to implement the Refugee Convention and other international treaties on the rights of refugees. First countries of asylum are frequently overburdened and, for them, resettlement can be a key means of support. It is therefore of strategic significance for maintaining and expanding the protective capabilities of these countries. It should be made clear that the resettlement obligations set forth in Article 4 point (e) do not relate to resettlement in third countries from which resettlement is to occur. Otherwise, point (e) should be deleted.

2.3 Eligibility criteria (Article 5) and meaning of “preferences” (Article 10)

Article 5 of the Commission’s proposal lists groups of people who may be eligible for resettlement as part of the EU’s resettlement scheme.

According to paragraph (a) these include people who in accordance with (i) have fled to another country or part of the country due to “a well-founded fear of being persecuted”, or (ii) “in respect of whom substantial grounds have been shown for believing that they, if returned to or staying in their country of origin or former habitual residence, would face a real risk of suffering serious harm”.

Article 5 point (b) paragraph (i) states that vulnerable persons should be considered for resettlement if they fall into at least one of the following categories: women and girls at risk; children and adolescents at risk; survivors of violence and/or torture; persons with legal and/or physical protection needs; persons with medical needs or disabilities; and socio-economically vulnerable persons. Paragraph (ii) also mentions people who have certain family ties to third-country nationals or stateless persons or Union citizens legally residing in a Member State. Article 10 section 1 also states that Member States should give preference to people with (a) family links and (b) social or cultural links, or other characteristics likely to ease integration in the participating Member State, or (c) particular protection needs or vulnerabilities.

Assessment:

Resettlement procedures are tested mechanisms to ensure that vulnerable refugees are given protection. The German Caritas Association is of the opinion that resettlement should take into account the specific needs of particularly vulnerable persons in need of international protection. People whose life, safety, or health is in danger or whose fundamental human rights cannot be guaranteed in the country where they have sought refuge are in particular need of resettlement. Therefore, the German Caritas Association welcomes the fact that Article 5 point (b) of the

¹¹Cf. UNHCR Global Trends Forced Displacement in 2015, Geneva, p.2

Commission's proposal includes most vulnerable groups of people who are normally considered for resettlement according to the usual UNHCR criteria (women and girls, children and adolescents, victims of violence and/or torture, persons with legal and/or physical protection needs, and persons with medical needs or disabilities).

The Commission's proposal goes beyond the normal UNHCR criteria by including internally displaced persons (point (a)), socio-economically vulnerable persons (point (b) paragraph (i)), and persons with family links (point (b) paragraph (ii)). This expansion of the eligibility criteria is welcomed by the German Caritas Association in cases where the protective aspect of resettlement is served, as with the eligibility of internally displaced persons.

However, it is unclear who falls into the category of "socio-economically vulnerable persons". In order to prevent persons in need of international protection in accordance with Directive 2011/95/EU being conflated with other groups - such as persons who are seeking to enter an EU Member State for economic reasons - we recommend the category "socio-economically vulnerable persons" in Article 5 point (b) paragraph (i) should be made more specific. The German Caritas Association views the Commission's proposal's emphasis on the importance of family reunification positively. However, the possibility of using resettlement as a means of reunifying families should not replace other existing legal avenues for accomplishing this purpose. Refugees who fulfil the criteria for family reunification according to national or EU laws must be allowed to enter the EU regardless of resettlement targets and quotas. These people must not be included in the limited number of places allowed in the resettlement process, as this could cause places to be blocked for persons in need of protection who have no other way of legally entering the EU. Therefore, a proviso should be added to Article 5 point (b) paragraph (ii) to the effect that only those persons will be considered for resettlement for the purposes of family reunification who have no other legal avenue to gain family reunification, or for whom it is ascertained after detailed examination that it is not feasible. In parallel, the administrative and personnel capacities of the authorities responsible should be adapted to meet the existing legal requirements for the regular process of bringing over families.

The proposal for a Resettlement Framework does not expressly mention the otherwise usual UNHCR category of persons who for other reasons have no prospect of being integrated into the country they are currently staying in. The German Caritas Association emphasises that vulnerable groups of people must be given special consideration when being admitted via the EU Resettlement Framework. Therefore, the German Caritas Association calls for guarantees that vulnerable groups of people who have no possibility of being integrated into the first country of asylum - such as second and third-generation refugees who are living in refugee camps under extremely difficult conditions, people who are illegal aliens, or older refugees - should also be eligible for a resettlement process.

It is unclear how the preferences mentioned in Article 10 section 1 should be applied, particularly as special needs and family ties may also be listed as eligibility criteria under Article 5 point (b). The German Caritas Association would welcome clarification of this point.

2.4 Grounds for exclusion (Article 6)

The Commission proposes that persons should only be considered for resettlement as part of the EU Resettlement Framework if they fulfil the eligibility criteria set out in Article 5 and are additionally not affected by the grounds for exclusion listed in Article 6.¹²

Persons shall be excluded from resettlement schemes if, in the five years before resettlement, they have (d) irregularly stayed, irregularly entered, or attempted to irregularly enter the territory of the Member States; (e) already been resettled as part of a European or national scheme; or (f) their resettlement has been refused by a Member State. Article 6, section 2 states that third-country nationals or stateless persons may be excluded from targeted Union resettlement schemes established in accordance with Article 8, where one of the grounds for exclusion referred to in points (a) or (b) of paragraph 1 applies *prima facie*.¹³ Article 6, point (a) describes crimes and actions that are largely based on the grounds for exclusion listed in Article 1 section F of the Refugee Convention¹⁴. Article 6, point (b) gives reasons relating to being a danger to the community, public policy, security, public health or international relations.

Assessment:

The EU Resettlement Framework should focus on vulnerable refugees who are in particular need of protection. Therefore, eligibility for resettlement should not depend on whether a person has previously entered a Member State irregularly or stayed there irregularly. The individual's need for protection and external circumstances may have changed over a period of five years. Therefore, it should be possible to examine cases or persons whose applications have previously been rejected because they entered the country irregularly without applying for asylum within the planned period of five years. Rejection by one Member State may also have occurred for reasons that do not apply in another Member State. It should, therefore, be possible to transfer refugees who, for example, were rejected by one Member State because of a lack of specialist medical treatment options, to another Member State. The German Caritas Association recommends that points (d) and (f) in Article 6 section 1 should be deleted, or the period of 5 years should at least be significantly reduced because these provisions inordinately restrict access to resettlement.

In order to assess resettlement needs, it is necessary to pay close attention to individual circumstances. In order to exclude people from resettlement in accordance with Article 6 section 1 points (a) and (b) the German Caritas Association believes there must be serious reasons that at least provide adequate proof of strong suspicion. The German Caritas Association believes the proposal that people should also *prima facie* be refused resettlement in accordance with Article 6 section 2 is a step too far, despite justifiable security concerns. The German Caritas Association therefore recommends that Article 6 section 2 should be deleted.

¹²Cf. COM(2016) 468 final, p.11

¹³Cf. COM(2016) 468 final, p.26

¹⁴Cf. Art. 1, section F of the Refugee Convention of 28 July 1951 as contained in its Protocol of 11 July 1969

2.5 Ordinary procedure (Article 10) and expedited procedure (Article 11)

In the EU's proposed Resettlement Framework, the Commission suggests two resettlement procedures: The ordinary procedure (Article 10) and the expedited procedure (Article 11). The former is designed to take eight months with the possibility of extending it by a further four months, and the expedited procedure is designed to take less than four months with the possibility of extending it by a further two months.¹⁵

The ordinary procedure builds on the resettlement standards and practices of the Member States.¹⁶ Following the identification of third-country nationals and stateless persons as planned on the basis of a dossier prepared by UNHCR, the proposed European Agency for Asylum or other relevant international institutions, or autonomously by a Member State, the respective EU Member State has to assess whether the persons identified meet the eligibility criteria for resettlement. In the event of a positive decision, the persons to be resettled should be awarded refugee status or subsidiary protection status after entering the Member State. An additional asylum procedure for recognition as a refugee for persons who have already been awarded subsidiary protection as part of the resettlement process would not be permitted in the ordinary procedure. The Explanatory Memorandum in the Commission's proposal describes resettlement as the preferred avenue to international protection in a Member State.¹⁷

The expedited procedure is based on the standard procedure for resettling Syrians from Turkey that was designed as part of the EU-Turkey Statement of 18 March 2016.¹⁸ It is to be used when there are specific humanitarian grounds or urgent legal or physical protection needs. In contrast to the ordinary procedure, only an initial assessment has to be performed in the first country of asylum in order to decide whether subsidiary protection is applicable. The resettled persons then receive subsidiary protection status but can still apply for further international protection in the EU Member State that admits them.

Assessment:

The German Caritas Association notes that Articles 10 and 11 harbour the danger of reducing the quality of the existing resettlement procedure in some Member States. Persons who are resettled in the framework of the Commission's proposal and who only receive subsidiary protection status may find that they cannot fully benefit from further rights existent under national laws. In principle, subsidiary protection status is not designed for permanent residency in a host country; in this way, the concept of resettlement is in danger of being undermined as a durable solution. The German Caritas Association therefore recommends that Article 10 section 7 point (a) should be amended to the effect that all persons who are selected for resettlement under the ordinary procedure should have all rights, related to their recognition as refugees, recognised at the very latest when they enter the Member State, regardless of their refugee status or subsidiary protection status.

¹⁵ Cf. COM (2016) 468 final, p. 28

¹⁶ Cf. COM(2016) 468 final, p.11

¹⁷ Cf. COM (2016) 468 final, p.12

¹⁸ Cf. COM (2016) 468 final, p.13

As with any decision, the procedure for granting international protection status by a Member State under Article 10 may result in errors. If, after a resettled person has arrived in an EU Member State, it is ascertained that a person who has been granted subsidiary protection status also meets the conditions for recognition as a refugee, then the resettled person must have the option of appealing the original decision. The German Caritas Association therefore calls for resettled persons to be granted legal protection without fail.

The German Caritas Association welcomes the fact that the expedited procedure will make it possible for persons in need of protection to be able to enter an EU Member State quickly, safely and legally. In order to respond appropriately in emergencies, the expedited procedure should not be tied to the geographical priorities mentioned in Article 4.

According to the UNHCR definition¹⁹ and the guidelines followed in most countries, resettlement is an instrument designed to allow persons permanent admission and provide comprehensive protection for refugees. Therefore, in order to carry out resettlement under the EU Resettlement Plan (cf. point 2.6) the ordinary procedure should always be used, upon implementation of the above-mentioned stipulations. The expedited procedure only guarantees transfer to an EU Member State, so it should only be used as a supplementary instrument in acute emergency situations. The German Caritas Association therefore recommends an emergency contingent should be allocated for the expedited procedure over and above the annual admission, for use in acute emergency situations. The existing annual resettlement obligations should not be affected by the expedited procedure.

With its federal and state humanitarian admission programmes, Germany has some excellent instruments for responding quickly to crises, and the German Caritas Association has recommended elsewhere that these programmes should be expanded.²⁰ Keeping this in mind, it is clear that these instruments must definitely be maintained in parallel with the EU's resettlement procedures.

It is gratifying that Article 10 section 7 point (c) supports offering pre-departure orientation programmes by Member States.²¹ Our experience shows that affected persons need to be well informed about their rights and obligations and that they find it easier to integrate when they have attended language classes and received information about the Member State's social, cultural and political set-up. Therefore, in Article 10 section 7 point (c) the word "may" should be replaced with "should".

Furthermore, when identifying and referring resettled persons to an EU Member State that is willing to accept them it must be ensured that the actors involved in the identification process are not affected by state interference on the part of the first country of asylum and country of origin of the resettled persons. Our experience with the implementation of the EU-Turkey Statement shows that resettled persons must clearly know who is responsible for the identifica-

¹⁹Cf. UNHCR Resettlement Handbook, Geneva, 2012, p.3

²⁰Cf. Letter from Dr Peter Neher et al. to Klaus Boullion, Chairman of the Standing Conference of Interior Ministers, and the interior ministers and senators of the German Federal Republic and States dated 22 November 2016, p.2

²¹Cf. COM (2016) 468 final, p.29

tion and resettlement process, who is tracking it, and what eligibility criteria it is based on. For example, we believe UNHCR is one such autonomous and transparent actor. The EU's resettlement procedures should make more use of the extensive experience in resettlement gained by UNHCR through the implementation of national resettlement programmes.

The Commission's proposal that resettlement should be the preferred means of gaining international protection in a Member State²² and the focus on legal and safe entry from a first country of asylum is in principle welcomed by the German Caritas Association. However, resettlement should not replace normal asylum procedures, but instead should be an additional way of protecting particularly vulnerable refugees. The right to asylum for persons in need of protection who reach the European Union by other avenues should not be affected.

2.6 Resettlement plan (Article 7), resettlement schemes (Article 8) and High-Level Resettlement Committee (Article 13)

Article 7 of the proposal states that the Council should adopt an annual resettlement plan on the basis of a Commission proposal. This plan is to be underpinned by resettlement schemes which are adopted as implementing acts by the Commission (Article 8). The resettlement plan and resettlement schemes are to include details on the maximum total number of persons to be resettled, overall geographical priorities and the procedures to be used (ordinary or expedited processes) (Article 7). A High-Level Resettlement Committee is to be set up and chaired by the Commission (Article 13). The High-Level Committee will meet at the invitation of the Commission or a Member State and will advise the Commission on the development of the annual resettlement plan.²³

Assessment:

Resettlement is a time-consuming process involving complex processes of identification, eligibility, and emigration, along with intensive preparation of the persons being resettled in the third country. Before entry, national reception organisations have to be informed and prepared in order to ensure everything goes smoothly. The German Caritas Association therefore recommends establishing a resettlement plan with a term of at least two years.

The resettlement plan and resettlement schemes should also state a minimum, rather than a maximum, number of persons to be resettled. The Regulation should also include a gradual increase in this minimum number as the years go by. A gradual increase is recommended so that Member States that have not previously had a resettlement program or national bodies for admission have the time to build their capacity in this respect. In order to meet the target set in the proposed Regulation, contribute to international resettlement efforts, and ease the burden on first countries of asylum, the admission figures should increase in such a way that, in the long

²²Cf. COM(2016) 468 final, p.13

²³Cf. COM(2016) 468 final, p.14 and p.30

term, the EU makes available a substantial proportion of the places that are needed and requested by UNHCR.²⁴

The German Caritas Association welcomes the proposed establishment of the High-Level Committee, which will include representatives of the Member States, the Council, the Commission and the European Parliament and act as an advisory board for the development of resettlement policies. The proposal addresses the possibility of the High-Level Committee consulting with UNHCR and IOM. The German Caritas Association calls for this option²⁵ to be put into practice and recommends that the experience of UNHCR and IOM regarding the implementation of resettlement plans should be drawn on when implementing the EU Resettlement Framework. Furthermore, a number of civil society organisations should be made permanent members of the High-Level Committee. In this way, the EU would create a link with the internationally established trilateral advisory structure between state and non-state bodies and UNHCR. The resettlement plan proposed by the Commission should be drafted in close consultation with the Committee. The German Caritas Association would be pleased if, as stipulated in the proposal's Explanatory Memorandum²⁶, the Council takes full account of discussions within the High-Level Resettlement Committee.

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²⁴Cf. UNHCR Projected Global Resettlement Needs 2017, Geneva

²⁵Cf. COM(2016) 468 final, p.31

²⁶Cf. COM(2016) 468 final, p.14