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## STATEMENT ON SERIOUS AND SYSTEMIC RISKS OF VIOLATIONS OF FUNDAMENTAL RIGHTS IN RELATION TO THE DRAFT EUROPEAN REGULATION ESTABLISHING A COMMON SYSTEM FOR RETURN

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The Committee on Migration Issues of the Conference of INGOs of the Council of Europe expresses its deep concern regarding the developments in the negotiations on the proposal for a Regulation establishing a common system for the return of third-country nationals staying irregularly, following the general approach adopted by the Council of the European Union and in view of its forthcoming examination by the European Parliament.

While States retain the competence to control entry and residence on their territory, the exercise of this power is strictly circumscribed by their obligations under international conventions. No reform in the field of migration may disregard the fundamental guarantees enshrined in the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, and the established case-law of the European Court of Human Rights.

The text currently under negotiation contains, in several of its substantive provisions, systemic risks likely to affect the effective enjoyment of the rights guaranteed by the Convention. Although the draft formally reaffirms respect for fundamental rights and the principle of non-refoulement, certain policy choices give rise to a serious risk of violations of the Convention obligations that are legally binding upon Member States.

In this context, the Committee wishes to recall the fundamental requirements that must imperatively guide the adoption of the future European framework to ensure its legal robustness and its compliance with the rule of law.

The principle of non-refoulement constitutes an absolute limit to any removal measure. While the draft Regulation formally reaffirms respect for fundamental rights, the practical implementation of return decisions must ensure an individualised, rigorous and up-to-date assessment of the risk faced by the person concerned in the country of destination. The effectiveness of this protection requires that the country of return be identified in a sufficiently clear and specific manner to allow for genuine and effective judicial review. Any procedure that weakens this requirement would expose Member States to a serious risk of violating their Convention obligations.

The draft Regulation also establishes a legal basis for transfers to a third country designated as “safe” with which an agreement exists, including in the absence of a substantial link between the person concerned and that State. Such an approach calls for vigilance. The absence of a genuine connection with the country of destination may weaken procedural safeguards and increase the risk of indirect refoulement, especially where an individualised risk assessment is not fully ensured.

Effective compliance with the principle of non-refoulement requires not only the absence of risk in the immediate country of destination, but also the assurance that the person concerned will not be exposed, directly or indirectly, to a subsequent transfer to a State where they would face treatment contrary to Articles 2 or 3 of the Convention.

Enhanced protection must be guaranteed for persons in situations of vulnerability, for whom transfer to a third country lacking a genuine link may entail serious and disproportionate consequences for their fundamental rights.

Access to an effective remedy constitutes another essential safeguard. In accordance with Article 13 of the European Convention on Human Rights and Article 47 of the Charter, the persons concerned must be able to effectively challenge a return decision, where a risk of treatment contrary to Article 3 of the Convention is invoked. The speed of procedures must not come at the expense of an independent, thorough and individualised examination of the situation.

Strengthening mutual recognition of return decisions among Member States may contribute to greater European coherence. However, it requires a high level of judicial trust, equivalent procedural standards and effective monitoring of compliance with fundamental rights in the executing State. Mutualisation of decisions must not result in a dilution of the individual responsibilities of States, which remain fully engaged under the Convention system.

Administrative detention for the purpose of removal must remain an exceptional measure, strictly necessary and proportionate. European case-law requires that it be limited in time, based on a realistic prospect of removal and subject to effective judicial review. While the European Convention on Human Rights does not set a fixed maximum duration, the Court has consistently held that detention may continue only as long as removal proceedings are conducted with due diligence and removal remains reasonably foreseeable. Maximum periods reaching twenty-four months, and potentially longer in practice in the event of successive procedures, raise serious concerns considering the principle of proportionality enshrined in Article 5 of the Convention and call for heightened vigilance. Regarding minors, and unaccompanied or separated children, deprivation of liberty should be considered only as a measure of last resort, for the shortest possible period and in a framework strictly consistent with the best interests of the child. The bodies of the Council of Europe have repeatedly called for an end to the detention of children for migration control purposes, advocating for non-custodial alternatives. Vigilance is also required regarding persons in situations of vulnerability, whose deprivation of liberty may result in serious and disproportionate infringements of their fundamental rights.

Specific attention must be paid to children’s rights. Any return decision concerning a minor, whether unaccompanied or accompanied by an adult, requires an explicit and individualised assessment of their best interests, in accordance with Article 24 of the Charter of Fundamental Rights of the European Union and the United Nations Convention on the

Rights of the Child. The best interests of the child cannot be presumed to automatically coincide with the administrative situation of the parents; it must be subject to a distinct and reasoned assessment, including a concrete evaluation of reception, protection and care conditions in the country of destination. The vulnerability of children requires reinforced safeguards at every stage of the procedure.

The credibility of the reform will depend on its ability to ensure, both in its design and in its implementation, full respect for the rule of law. European experience demonstrates that migration policies can only be sustainable if they are fully embedded within the framework of binding legal obligations that are incumbent upon Member States.

A European return policy cannot be solid or coherent unless it is grounded in the effective respect of fundamental rights. Only under this condition can it be durably anchored in the international and European commitments of the Member States.

The Committee on Migration Issues calls on the European co-legislators to ensure that the future Regulation strengthens procedural safeguards, provides effective protection against refoulement, maintains detention as a measure of last resort, and guarantees a genuine and autonomous assessment of the best interests of each child concerned.