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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the 72nd session of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees with regard to the adoption of the conclusion on international protection and durable solutions in the context of a public health emergency

Delegations will find attached document COM(2021) 597 final.

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EUROPEAN
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Brussels, 30.9.2021
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2021/0306 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the 72nd session of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees with regard to the adoption of the conclusion on international protection and durable solutions in the context of a public health emergency

EXPLANATORY MEMORANDUM

1. SUBJECT-MATTER OF THE PROPOSAL

The present proposal concerns the decision establishing the position to be adopted on behalf of the Union in the 72nd session of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees (hereafter: 'the Executive Committee') in connection with the envisaged adoption of a conclusion on international protection and durable solutions in the context of a public health emergency.

2. CONTEXT OF THE PROPOSAL

2.1. The Resolution of the United Nations Economic and Social Council of 30 April 1958 on the Establishment of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees

The Executive Committee was established by the United Nations Economic and Social Council by Resolution of 30 April 1958 on the Establishment of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees (E/RES/672 (XXV)). Pursuant to that Resolution, the Executive Committee acts as an advisory body as regards norms and policy with respect to international refugee protection.2.2. The Executive Committee of the Programme of the United Nations High Commissioner for Refugees

The Executive Committee comprises both members and observers. Membership is limited to States. Observer status is granted both to States and other entities. Currently, the Executive Committee counts 107 Member States, including 27 EU Member States, 16 observer states and 39 non-state observers, including the European Union.

Observers, unlike members, do not have the right to vote, but are entitled to speak at the public meetings of the Executive Committee. As regards intergovernmental organisations that hold observer status in the Executive Committee, Rule 38, second paragraph, of the Rules of Procedure of the Executive Committee, as last amended in October 2016, provides: *'The Committee, upon a recommendation from the Standing Committee, may decide on an annual basis to invite intergovernmental organizations that hold observer status in the Committee to participate in its private meetings on asylum and refugee matters within their competence.'* On the basis of that provision, the Executive Committee invited the European Union on 5 May 2017 to participate in its private meetings on asylum and refugee matters within the European Union's competence.

The Executive Committee regularly adopts thematic conclusions on refugee protection by consensus of its members. They are being prepared in a series of private meetings by members of the Executive Committee and intergovernmental organisations, who, in their capacity as observers, have been invited to participate in those private meetings, in cooperation with United Nations High Commissioner for Refugees (hereafter: UNHCR) experts.

2.2. The envisaged act of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees

On 4-8 October 2021, during its 72nd session, the Executive Committee is to adopt a conclusion on international protection and durable solutions in the context of a public health emergency (hereafter: 'the envisaged conclusion').

Based on the invitation by the Executive Committee on the basis of Rule 38, second paragraph, of its Rules of Procedure, the European Union is participating in the preparation of the envisaged conclusion. The EU Member States, who are also members of the Executive Committee, participate in the adoption of the envisaged conclusion.

The purpose of the draft envisaged conclusion, as it resulted from the private meetings on 12 and 18 May, 1 June, 16 June, and 8 July 2021, is to recognise the impact of the COVID-19 pandemic on refugees, asylum seekers, refugee returnees, stateless persons, and internally displaced persons (hereafter 'persons of concern to UNHCR') and host communities, to recall the key principles of international refugee and humanitarian law that need to be upheld in the context of a health emergency, to draw the lessons learned from the measures taken by UNHCR, States and other stakeholders to adress the COVID-19 pandemic, while trying to ensure access to international protection, including by using innovative tools and to encourage States to continue supporting durable solutions and access to health care services to persons of concern to UNHCR.

All of the preambular and most of the operational paragraphs have been agreed ad referendum, four operational paragraphs remain open.

The agreed paragraphs of the conclusion recognise that a public health emergency of international concern, such as the COVID-19 pandemic, requires a global response based on unity, solidarity and strengthened multilateral cooperation and reaffirms States' commitment to international solidarity and responsibility and burden–sharing. It acknowledges the right of States to take measures to protect public health, while recalling that such measures need to be implemented in a manner consistent with States' obligations under international law, including international refugee, human rights and, where applicable, international humanitarian law. The conclusion recalls that States have the sovereign power to regulate the entry of non-nationals, with full respect for the principle of non-refoulement, and subject to applicable international law, including international refugee law.

Regarding addressing wider impacts of public health emergencies, the envisaged conclusion encourages States to work towards further inclusion in health care services of persons of concern to UNHCR and to identify and address specific health needs and barriers in the context of public health emergencies, including mental health and psychosocial wellbeing and calls upon States and other partners to urgently support funding, the equitable distribution of safe and effective diagnostics, therapeutics and vaccines.

Regarding limitations on entry and movement and access to asylum, the envisaged conclusion welcomes steps taken by States to ensure that measures taken to limit entry at borders in connection with public health emergencies are temporary, non-discriminatory, necessary, proportionate and reasonable in the circumstances, and applied in a manner respecting the right to seek and enjoy asylum and the principle of non-refoulement. It also welcomes adaptive measures taken by States and UNHCR to ensure continued access to and operation of asylum and statelessness determination procedures, registration and issuance of

documentation. The envisaged conclusion notes the importance of ensuring that any restrictions of movement for persons of concern to UNHCR for the purposes of protecting public health are non-discriminatory, provided by law, necessary, reasonable in the circumstances and otherwise consistent with international law, and welcomes the use of alternatives to detention that ensure compliance with public health measures.

Regarding durable solutions, the envisaged conclusion expresses concern about the impact of COVID-19 on the pursuit of durable solutions, underlines their importance and calls for further engagement to promote the enabling conditions in countries of origin, including efforts to address the root causes and for implementation of voluntary repatriation of refugees in safety and dignity, as well as sustainable reintegration, to support resettlement and facilitate access to complementary pathways including family reunification, labour market and study opportunities, in accordance with national law.

The issues on which EU competence exists and on which no agreement ad referendum has so far been reached in the private meetings are as follows:

1. including survivors of sexual and gender-based violence as "persons of concern to UNHCR" when encouraging States to promote availability of emergency mental health and psychosocial support to such persons and encouraging further strengthening of such measures, including through international support (OP6);

2. a paragraph proposed by Iran strongly urges all states to refrain from taking any unilateral coercive measures that may adversely affect the capacity of the host countries to protect refugees and narrow humanitarian space, particularly during the ongoing pandemic (OP7terAlt). This proposal was presented by Iran at a very late stage of the negotiations process and might still be rejected on procedural grounds;

3. a reference to include sexual and reproductive health care services as well as vaccines among the humanitarian needs of persons of concern to UNHCR and their host communities, which the conclusions calls upon States to assess and address as components of humanitarian response in public health emergencies (renumbered OP13);

4. a reference to sexual and reproductive health care services as an addition to basic health care services and psychosocial support which Member States are urged to ensure safe and reliable access to for persons of concern to UNHCR, in cooperation with UNHCR, and with support of other stakeholders (OP 14).

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The Union should support the adoption of an Executive Committee conclusion on international protection and durable solutions in the context of a public health emergency.

The Union should support the already agreed parts of the conclusions and should establish its position on the still open issues regarding which the EU has a competence.

The EU should support that the principles of international refugee law are maintained in the context of a health emergency, in particular the principle of non-refoulement, which is also a principle under EU asylum law enshrined in Article 78 of the Treaty on the Functioning of the European Union, as well as in Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international

protection[1] (the 'Asylum Procedures Directive') and the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted[2] ('Qualification Directive') and guaranteed as a fundamental right by Articles 18 and 19(2) of the Charter of Fundamental Rights of the European Union.

The EU should also support, in line with existing EU acquis and policy that entry restrictions and other measures taken to limit entry at borders in connection with public health emergencies are applied in a manner, which safeguards public health while ensuring respect for the right to seek and enjoy asylum and the principle of non-refoulement. The EU should also welcome and support that States have taken adaptive measures to ensure continued access to and operation of asylum and statelessness determination procedures, registration and issuance of documentation and other relevant processes for persons of concern to UNHCR, including use of technology for remote interviewing.

Access to the asylum procedure is covered in the Asylum Procedures Directive (2013/32/EU) as a basic principle and guarantee, notably in Article 3 on the Scope of the Directive, as applying to all applications made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States and in Article 6 on granting access to the procedure by registration and ensuring an effective lodging opportunity. The principle of *non-refoulement* in accordance with the Geneva Convention Relating to the Status of Refugees of 28 July 1951[3], as amended by the New York Protocol of 31 January 1967[4] ("the 1951 Convention and its 1967 Protocol") is affirmed under the Directive and should be respected in particular where exceptions are made to the right to remain during the examination of applications or when applying the concepts of safe country of origin or safe third country. In 2016, the Commission presented a proposal establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU[5], which upholds the same principles and guarantees.

While the regular entry conditions for third-country nationals into the Schengen area in the Schengen Borders Code include the requirement that the person does not pose a threat to public health in any of the Member States[6], this is without prejudice to the rights of refugees and persons requesting international protection, in particular as regards non-refoulement[7]. On 16 March 2020, the Commission adopted a Communication to the European Parliament, the

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1 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, *OJ L 180, 29.6.2013, p. 60–95*

2 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), *OJ L 337, 20.12.2011, p. 9–26*

3 The 1951 Convention relating to the Status of Refugees, 189 U.N.T.S. 137, entered into force 22 April 1954.

4 The 1967 Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force 4 October 1967.

5 COM(2016) 467 final, amended by the proposal COM(2020) 611 final 2016/0224(COD) Brussels, 23.9.2020

6 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, p. 1–52, Article 6.

7 Schengen Borders Code, Article 3.

European Council and the Council, calling for a Temporary Restriction on Non-Essential Travel to the EU in view of COVID-19[8] and on 30 June 2020, the Council adopted a Recommendation[9] on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction, which provide for exemptions to these temporary restrictions for persons in need of international protection or who must be admitted to the territory of the Member States for other humanitarian reasons. The Commission guidance of 16 April 2020[10] stipulates that measures taken by Member States to contain and limit the further spread of COVID-19 should be based on risk assessments and scientific advice, and must remain proportionate. Any restrictions in the field of asylum, return and resettlement must be proportionate, be implemented in a non-discriminatory way and take into account the principle of non-refoulement and obligations under international law.

The EU should support recalling the importance of ensuring that any restrictions of movement for persons of concern to UNHCR for the purposes of protecting public health are non-discriminatory, provided by law, necessary, reasonable in the circumstances and otherwise consistent with international law and should welcome alternatives to detention. Detention and limitations on free movement are covered by the Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection[11] ('Reception Conditions Directive') - to which Article 26 of the Asylum Procedures Directive on Detention refers - and in particular Article 7 on residence and freedom of movement and Articles 8 to 11 on detention. Before ordering detention of asylum applicants, Member States have an obligation to first consider less coercive alternative measures. Article 8 (3) (e) of this Directive provides for the possibility of detention where the protection of national security or public order so requires.

The EU should support, in line with existing EU rules that States ensure reliable and safe access for persons of concern to UNHCR to basic health care services and psychosocial support. As regards reception conditions, Member States may make use of the possibility under the Reception Conditions Directive 2013/33/EU to exceptionally set, in duly justified cases and for a reasonable period that should be as short as possible, different modalities for material reception conditions from those normally required. Such modalities must in any event cover the basic needs including health care, for which detailed rules are provided for under Article 19 of the Reception Conditions Directive.

Regarding durable solutions and in line with existing EU rules and policy - in particular the various conclusions of the European Council[12] and the Justice and Home Affairs Council, the Pact on migration and asylum[13], the EU Strategy on voluntary return and reintegration[14], the Action Plan on integration and inclusion 2021-2027[15], the Proposal for a Regulation establishing a Union Resettlement Framework[16] -, the EU should support expressing concern

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8 COM (2020) 115 final

9 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction ST/9208/2020/INIT OJ L 208I , 1.7.2020, p. 1–7.

10 COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement, Brussels, 16.4.2020 C(2020) 2516 final

11 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), *OJ L 180, 29.6.2013, p. 96–116.*

12 F.ex. the European Council conclusions of 24 June 2021

13 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a new Pact on migration and asylum COM/2020/609 final.

14 COM(2021) 120 final.

15 COM(2020) 758 final.

16 COM (2016) 468 final.

about the impact of COVID-19 on the pursuit of durable solutions, underlining their importance and calling for further engagement to a) promote the enabling conditions in countries of origin, including efforts to address the root causes and for implementation of voluntary repatriation of refugees, b) support resettlement and c) facilitate access to complementary pathways including family reunification, labour market and study opportunities, in accordance with national law and d) facilitate self-reliance and provide opportunities for integration.

Regarding the still outstanding issues, the EU should:

1. support including survivors of sexual and gender-based violence as "persons of concern to UNHCR" when encouraging States to promote availability of emergency mental health and psychosocial support to such persons and encouraging further strengthening of such measures, including through international support (OP6);

As stated in the EU Gender Equality Strategy 2020-2025, the European Union will do all it can to prevent and combat gender-based violence, support and protect victims, and hold perpetrators accountable.

The proposed operational paragraph 6 (OP6) does not create a legal obligation and only encourages Member States to address mental health and psychosocial wellbeing in their response to the pandemic by promoting availability of emergency mental health and psychosocial support to persons of concern to UNHCR. Member States are already obliged to provide essential treatment of illnesses and of serious mental disorders under the Reception Conditions Directive to applicants for international protection, and to take into account gender and age-specific concerns. According to the Qualification Directive, access to healthcare, including both physical and mental healthcare, should be ensured to beneficiaries of international protection. This includes the treatment of mental disorders when needed, to beneficiaries of international protection who have special needs, such as persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.

2. support including sexual and reproductive health care services as well as vaccines among the humanitarian needs of persons of concern to UNHCR and their host communities, which the conclusion calls upon States to assess and address as components of humanitarian response in public health emergencies (renumbered OP13).

Since the EU's proposed position (under 1) is that survivors of sexual and gender-based violence should be considered as "persons of concern to UNCHR", the protection needs of these persons also include support through sexual and reproductive health care services.

Health is a core sector of humanitarian assistance. Since the onset of the COVID-19 pandemic, Team Europe, which combines resources from the EU, its Member States and European financial institutions delivered financial aid to mitigate the socio-economic consequences of the pandemic. Ensuring access to safe and affordable COVID-19 vaccines around the world, and notably for low and middle-income countries, is a priority for the European Union, delivered mainly via COVAX.

3. support an explicit reference to sexual and reproductive health care services for persons of concern to UNHCR as a way to promote gender equality and the empowerment of women in all stages of the response to public health emergencies (OP14).

Neither the Reception Conditions Directive (Article 19), the Qualification Directive (Article 30) nor the Proposal for a recast Directive of 2016[17] (Article 18) foresee explicitly the provision of sexual and reproductive health care services. They stipulate that Member States shall ensure the necessary health care, which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders, and provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed. It is therefore appropriate to establish the position of the EU on this issue.

4. reject any proposal included in OP7terAlt to include a reference in the conclusion that urges States not to use unilateral coercive measures that may adversely affect the capacity of the host countries to protect refugees and narrow the humanitarian space.

Restrictive measures (sanctions) are an essential tool in the EU's Common Foreign and Security Policy (CFSP), through which the EU can intervene where necessary to prevent conflict or respond to emerging or current crises.

It is in any event appropriate to establish the position to be adopted on behalf of the Union in the Executive Committee, as the envisaged conclusion may affect common rules contained in Reception Conditions Directive as well as the Asylum Procedures Directive as presented above.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'*

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement at issue.[18]

The notion of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'.[19]

4.1.2. Application to the present case

The Executive Committee is a body set up by an agreement, namely the Resolution of the United Nations Economic and Social Council of 30 April 1958 on the Establishment of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees.

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17 Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) COM/2016/0465 final - 2016/0222 (COD)

18 Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraph 64.

19 Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

The conclusion which the Executive Committee is called upon to adopt constitutes an act having legal effects. Although Executive Committee conclusions are not legally binding, they contribute to the interpretation and further development of international standards on refugee protection. They play an important role in determining the manner in which the 1951 Convention and 1967 Protocol are interpreted and applied. The Office of the High Commissioner for Refugees (UNHCR) uses Executive Committee conclusions in exercising its duty of supervising the application of the provisions of the 1951 Convention and the 1967 Protocol, which States parties are to facilitate in accordance with Article 35 of the 1951 Convention. Executive Committee conclusions play a role in further developing the international refugee protection regime in a way that complements and strengthens the 1951 Convention and its 1967 Protocol, which the States parties have committed to[20] and which the UN General Assembly has welcomed[21]. They provide evidence of an already established rule of customary international law, or lead to law creation. They are sometimes given considerable weight by national and international courts, including by the European Court of Human Rights.[22]

Article 18 of the Charter of Fundamental Rights of the European Union guarantees the right to asylum with due respect for the rules of the 1951 Convention and the 1967 Protocol. Secondary EU legislation builds on the 1951 Convention and its 1967 Protocol:

The Common European Asylum System is based on the full and inclusive application of the 1951 Convention and the 1967 Protocol, affirming the principle of non-refoulement (see recital 3 of the Qualification Directive, Reception Conditions Directive and the Asylum Procedures Directive).

The Qualification Directive lays down standards for the definition and content of refugee status to guide the competent national bodies of Member States in the application of the 1951 Convention (recital 23). It also sets standards for the definition and content of subsidiary protection status which is complementary and additional to the refugee protection enshrined in the 1951 Convention (recital 33, see also recital 25 of the Asylum Procedures Directive). Finally, its implementation should be evaluated in particular as regards the evolution of the international obligations of Member States regarding non-refoulement (recital 48).

Under the Reception Conditions Directive (recital 15), the detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the 1951 Convention.

These considerations are likely to apply to the envisaged conclusion. The envisaged conclusion provides for standards and agreed state practice in providing access to asylum procedures, restrictions on entry and movement of people of concern to UNHCR and provision of health care in the context of a health emergency, based on the experience of the COVID-19 pandemic. It develops the international refugee protection regime further by acknowledging the importance of upholding the principles of international refugee law in the context of a health emergency, in particular the principle of non-refoulement, by applying entry restrictions and other measures taken to limit entry at borders in connection with public

[20] Point 7 of the Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees of 13 December 2001.

[21] Resolution A/RES/57/187, para. 4, of 18 December 2001.

[22] ECtHR (Grand Chamber), 29 January 2008, Saadi v United Kingdom (Application No. 13229/03).

health emergencies in a manner, which respects the right to seek and enjoy asylum and the principle of non-refoulement, by applying restrictions of movement for persons of concern to UNHCR for the purposes of protecting public health in a non-discriminatory, and only if they are provided by law, necessary and reasonable in the circumstances, ensuring provision of health care to persons of concern to UNHCR in the context of a health emergency and by welcoming adaptive measures to ensure continued access to and operation of asylum and statelessness determination procedures. The above mentioned aspects are regulated by EU law, which should be applied consistently with the 1951 Convention and the Protocol of 31 January 1967. In this sense, the envisaged conclusion is capable of decisevely influencing the content and the application of EU legislation.

The envisaged act does not supplement or amend the institutional framework of the agreement.

The procedural legal basis for the proposed decision, therefore, is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is adopted on behalf of the Union. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the proposed decision relate to the Union's common policy on asylum.

The substantive legal basis of the proposed decision, therefore, is Article 78(2) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 78(2) TFEU in conjunction with Article 218(9) TFEU.

2021/0306 (NLE)

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on the position to be taken on behalf of the European Union in the 72nd session of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees with regard to the adoption of the conclusion on international protection and durable solutions in the context of a public health emergency

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Resolution on the Establishment of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees (hereafter: UNCHR) was adopted by the United Nations Economic and Social Council by Resolution of 30 April 1958.

(2) Pursuant to the Resolution, the Executive Committee of the Programme of the United Nations High Commissioner for Refugees acts as an advisory body as regards norms and policy with respect to international refugee protection.

(3) The Executive Committee of the Programme of the United Nations High Commission for Refugees, during its 72nd session on 4-8 October 2021, is to adopt a conclusion on international protection and durable solutions in the context of a public health emergency.

(4) This conclusion is being prepared in a series of private meetings by members of the Executive Committee and intergovernmental organisations, who, in their capacity as observers, have been invited to participate in those private meetings, in cooperation with UNHCR experts. The European Union, in its capacity as observer, does not have the right to vote, but is entitled to speak at the public meetings of the Executive Committee and is invited to participate in private meetings of the Executive Committee on asylum and refugee matters within their competence.

(5) It is appropriate to establish the position to be adopted on behalf of the Union in the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, as the envisaged conclusion is capable of decisively influencing the content of Union law.

(6) The Union should support the adoption of the envisaged conclusion on international protection and durable solutions in the context of a public health emergency.

(7) The Union should support that the principles of international refugee law and in particular the principle of non-refoulement as well as the right to seek and enjoy asylum are maintained in the context of a health emergency and that restictions on movement are non-discriminatory, provided by law, necessary, reasonable in the circumstances and in line with international law.

(8) The Union should also support that entry restrictions and other measures taken to limit entry at borders in connection with public health emergencies are temporary, non-discriminatory, necessary, proportionate and reasonable in the circumstances, and are applied in a manner, which safeguards public health while ensuring respect for the right to seek and enjoy asylum and the principle of non-refoulement and complying with applicable obligations under international law, including international refugee law.

(9) "Persons of concern to UNCHR" include refugees, asylum seekers, refugee returnees, stateless persons, and internally displaced persons. The Union should support including survivors of sexual and gender-based violence among "persons of concern to UNHCR" when encouraging States to address mental health and psychosocial wellbeing in their response to the pandemic by promoting availability of emergency mental health and psychosocial support to such persons and encouraging further strengthening of such measures, including through international support.

(10) The Union should support including sexual and reproductive health care services as well as vaccines among the humanitarian needs of persons of concern to UNHCR and their host communities, to be assessed and addressed by States as components of humanitarian response in public health emergencies.

(11) The Union should support including sexual and reproductive health care services as an addition to the provision of basic health care services and psychological support to persons of concern to UNHCR only in response to a public health emergency.

(12) The Union should reject any proposal related to the use of unilateral coercive measures.

(13) The position of the Union is to be expressed by the Member States of the Union that are members of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, acting jointly.

(14) [In accordance with Articles 1 and 2 of Protocol No 21 on the position of Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union (TEU) and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.] OR [In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Decision.]

(15) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken, on behalf of the Union, in the 72nd session of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees with regard to the adoption of the conclusion on international protection and durable solutions in the context of a public health emergency shall be based on the draft conclusions of the Executive Committee attached to this Decision.

Article 2

Where new proposals regarding the subject matter in the Annex are made at, or before, the 72nd session of the Executive Committee, on which there is not yet a Union position, the Union position shall be specified by means of Union coordination before the Executive Committee adopts the conclusion. In such cases, the Union position shall be in line with existing Union policies and legislation.

Article 3

The position referred to in Article 1 shall be expressed by the Member States of the Union that are members of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees and that participate at its 72nd session, acting jointly.

Article 4

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President