

**Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the right to education; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls**

Ref.: OL OTH 166/2025  
(Please use this reference in your reply)

26 January 2026

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the right to education; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on violence against women and girls, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 52/20, 60/8, 53/14, 53/7, 58/10, 60/10, 52/10, 52/4, 53/12, 53/10, 52/36, 59/5, 51/15, 53/9, 59/20 and 59/14.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 59 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on

Permanent Delegation of the European Union  
to the United Nations Office and other international organizations in Geneva

allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of the European Commission, the European Parliament and the Council of the European Union our concerns regarding the **Proposal for a Regulation establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC, which may have negative impacts on the human rights of migrants and asylum seekers, including children and those in vulnerable situations.**

In this communication, we do not aim at providing a comprehensive analysis of the proposed Regulation and its compatibility with international human rights law and standards. We focus on those aspects of the proposal falling within the scope of the mandates entrusted to us by the Human Rights Council with the aim of highlighting major issues.

According to the information received:

On 11 March 2025, the European Commission published a Proposal for a Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC (hereafter “the Proposal” or “Return Regulation”).<sup>1</sup> The stated aim of the proposal is to increase the efficiency of the return process by providing European Union (hereinafter EU) Member States with clear, modern, simplified and common rules for returning migrants in an irregular situation.

The European Parliament’s Committee on Civil Liberties, Justice and Home Affairs presented its draft report on the Commission’s proposal on 11 November 2025.<sup>2</sup> The Council of the European Union agreed on its “general approach” on

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<sup>1</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC, COM/2025/101 final, 11 March 2025, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025PC0101>

<sup>2</sup> European Parliament, LIBE, Draft Report on the proposal for a regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC, 30 October 2025, [https://www.europarl.europa.eu/doceo/document/LIBE-PR-779352\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/LIBE-PR-779352_EN.pdf)

8 December 2025.<sup>3</sup> Once the European Parliament issues its final report, the co-legislators will enter into inter-institutional negotiations to finalise and eventually adopt the legislative text.

The proposal forms part of a broader legislative reform, including the proposed revision of the EU Facilitators' Package (in November 2023) and the adoption of the Pact on Migration and Asylum (in May 2024) which triggered concerns of several special procedures mandate holders as reflected in [OL OTH 144/2023](#) and [OL OTH 119/2025](#).<sup>4</sup>

As the European Parliament and the Council of the European Union will soon begin inter-institutional negotiations on this legislative instrument, we wish to express our concern that the text proposed by the European Commission and the Council's general approach raise doubts about their compatibility with international human rights obligations. While the current Return Directive already raises several human rights issues, as the communication by ten Special Procedures mandate holders in 2008 underscores,<sup>5</sup> the proposed Regulation appears to prioritize coercive responses to migration and externalization of migration control.

#### *The principle of non-refoulement*

Under international human rights law, the principle of non-refoulement is the absolute and non-derogable prohibition of returning any person to a situation in which they face a real risk of irreparable harm, including death, torture, ill-treatment, enforced disappearance and persecution. Among its many sources in international treaties are articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR) and articles 3 and 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The prohibition of refoulement has also attained the status of international customary law. It protects any person, regardless of their status or conduct. While the proposal for the Regulation, just like the current Directive, refers to the principle of non-refoulement (Art. 5), we are concerned that the proposed rules will result in a violation of this principle in practice. Just as the current Directive does, the Commission's proposal maintains the general obligation to issue a return decision to any person in an irregular situation without a prior independent assessment of the potential risks to the human rights of the person concerned. At the same time, as discussed below (see section below "Lack of alternatives to return"), it removes the possibility of not issuing a return decision on compassionate, humanitarian or other grounds. The Council's proposal is even more concerning, as it explicitly provides that States should not be precluded from issuing a return decision where there is a risk of refoulement, but that such a decision should state that removal to the country concerned is postponed (Art. 7(4a)). We are gravely concerned that issuing a return decision in such circumstances – irrespective of any possible postponement of removal – may, in practice, result in refoulement, especially since the Council curtails the automatic

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<sup>3</sup> Council of the European Union, General approach: Proposal for a Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and of the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC, 5 December 2025, <https://data.consilium.europa.eu/doc/document/ST-16521-2025-INIT/en/pdf>

<sup>4</sup> [OL OTH 144/2023](#) and [OL OTH 119/2025](#)

<sup>5</sup> Communication sent to the French Government on 16 July 2008 (and the reply), [A/HRC/11/7/Add.1](#), para. 81-122.

suspensive effect of an appeal (see section below “Due process and effective remedy”). The proposed assessment before removal does not ease our concerns as it may be carried out by the same authorities as issued or enforce the return decision, and may be dispensed with entirely where a prior assessment exists or where the relevant information is deemed insufficiently substantiated (Art. 12(3)-(3a)).

#### *Due process and effective remedy*

We are concerned about the reduction of procedural safeguards, which are intended to ensure a comprehensive individual assessment of human rights protection needs. As introduced by the Commission and reinforced by the Council, a return decision need not specify the country of return. The Commission’s proposal allows issuing a return decision to more than one country if the country of return cannot be determined at the time of issuing it (Art. 7(4)). This shows that authorities are not required to assess, prior to issuing a return decision, whether removal would raise risks of refoulement or other human rights concerns, including related to family life and unity, the best interests of the child, health, or situations of vulnerability. The Council’s proposal aggravates the risks, including as regards non-refoulement, as it allows a return decision not to specify a country of return (Art. 7(4)) and a removal decision to identify more than one country (Art. 4(4b)). The possibility of issuing a return or removal decision that does not relate to one specific country of return undermines legal certainty and clarity, and ultimately due process guarantees referred to in Objective 21 of the Global Compact for Safe, Orderly and Regular Migration.<sup>6</sup> It places an excessive burden on individuals to prove a risk of refoulement in relation to several potential destinations, which is aggravated by the fact that the proposals do not set a minimum period for appealing. In this regard, the Special Rapporteur on the human rights of migrants urged States to guarantee that the return procedure ensures that the migrant is duly represented, has access to appropriate legal assistance and interpretation services, and has an effective opportunity to explain why a return would respect their rights.<sup>7</sup>

We are also concerned about weakening the right to an effective remedy as guaranteed by article 2(3)(a) of the ICCPR and reflected in EU law in article 47 of the Charter of Fundamental Rights of the EU. Automatic suspensive effect is no longer guaranteed; instead, Member States may grant it only upon request (Art. 28(1)). In view of the irreversible harm arising from violations of the principle of non-refoulement and the function of the right to an effective remedy, the suspensive effect of appeal should be automatic.<sup>8</sup>

#### *De-prioritisation of voluntary departure*

The Commission’s proposal significantly weakens the priority currently given to “voluntary” departure/return, making forced return the default option. It does so by introducing broad grounds on which forced returns would be mandatory and by removing the current minimum period of seven days for “voluntary” departure (Art. 12-13). While “voluntary” departure/return within the EU return framework is generally not genuinely voluntary, as the person is under the obligation to leave the EU

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<sup>6</sup> A/RES/73/195.

<sup>7</sup> A/HRC/38/41, para. 92.

<sup>8</sup> A/HRC/38/41, para. 92.

territory,<sup>9</sup> this form of return is preferable over forced return. It is better suited to ensure that the return is safe and respects the person’s dignity, as States committed to in Objective 21 of the Global Compact for Safe, Orderly and Regular Migration. According to the Special Rapporteur on the human rights of migrants, “[forced] returns should always be a measure of last resort” and “[given] the potentially dramatic consequences, including rights violations, of forced or coerced returns, priority should be given to independent and voluntary returns at all times.”<sup>10</sup>

### *Expansion of detention*

We are concerned about the expansion of immigration detention under the proposed Return Regulation, both in terms of the grounds for detention and its length. This may conflict with several safeguards flowing from the right to liberty protected in article 9 of the ICCPR.

Under the current Directive, States may not apply detention if “other sufficient but less coercive measures can be applied effectively in a specific case.” The Commission’s proposal removes this requirement (Art. 29(1)-(2)). This risks leading to detention being applied as the rule rather than the exception, which is at odds with the Human Rights Committee jurisprudence and related standards. According to the Committee, immigration detention should be considered arbitrary if the State does not demonstrate that there are no less invasive means of achieving compliance with its immigration policies.<sup>11</sup>

At the same time, the Commission’s proposal introduces five restrictive measures (such as reporting obligations, residing in a specific place and electronic monitoring), calling them “alternatives to detention” (Art. 31). However, unlike genuine alternatives to detention, these measures are not to be imposed instead of detention but in addition to detention – when detention is not or no longer justified (Art. 32). Labelling such measures as “alternatives to detention” is therefore misleading and normalises the use of restrictive measures and surveillance. We oppose using alternatives to detention as alternatives to release and turning personal freedom into an exception. As the Special Rapporteur on the human rights of migrants recommended, there should be safeguards in place to ensure that those eligible for release are not diverted into alternative measures.<sup>12</sup>

The proposed Regulation significantly expands the legal basis justifying detention. In addition to the two grounds for detention under the Return Directive (risk of absconding and hampering of return), the Commission’s proposal introduces three additional grounds (Art. 29(3)). Among these grounds is posing widely described “security risks” which include a threat to public policy or security (Art. 16(1)(a)). This leaves broad scope for States to impose detention and creates a risk of expanding administrative detention into areas more appropriately addressed through criminal law,

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<sup>9</sup> Indeed, according to the Special Rapporteur on the human rights of migrants, “[a] return cannot be considered voluntary if a migrant decides to return in order to, inter alia, avoid deportation or detention, flee from abusive or exploitative situations in destination or transit countries, or avoid the deprivation of socioeconomic rights in the destination country,” see A/HRC/38/41, para. 88.

<sup>10</sup> A/HRC/38/41, paras. 87 and 89.

<sup>11</sup> Human Rights Committee, *Madafferi v. Australia*, CCPR/C/81/D/1011/2001, 26 July 2004, para. 9(2); Human Rights Committee, *F.K.A.G. et al. v. Australia*, CCPR/C/108/D/2094/2011, 26 July 2013, para. 9(3).

<sup>12</sup> A/HRC/20/24, para. 73.

thus reinforcing stereotypes associating migration with security threats. Another new ground is for determining identity and nationality, and it is not accompanied by any safeguards to recognise that many migrants, in particular stateless persons, are unable to obtain documentation. This ground would allow unnecessary and prolonged detention of individuals whose nationality is disputed, not recognised, or who are stateless. In addition, the proposal provides a long list of criteria for determining that a person poses a risk of absconding, including a lack of documents or homelessness. In addition to criminalizing homelessness,<sup>13</sup> this may plausibly cover most people in an irregular situation and thus further increase the risk of detention being systematically applied in the EU. We reiterate the standards of the Working Group on Arbitrary Detention (WGAD): immigration detention should be an exceptional measure of last resort, preceded by an individualised assessment of each case, and imposed and maintained only when necessary and proportionate.<sup>14</sup>

The Commission's proposal extends the maximum permitted detention period from 18 months (6 + 12) to 24 months (12 + 12) in a given State (Art. 32(3)). Already, the 18-month detention period was considered "excessive" by ten UN Special Procedures mandate holders in their letter on the current Directive.<sup>15</sup> The proposed period of 24 months appears exceptionally long and unnecessary, and at variance with the principle that immigration detention should be as short as possible.<sup>16</sup> In addition, the proposed rules allow for detention without a maximum time limit in some circumstances, which risks amounting to indefinite, and thus arbitrary, detention. In cases of detention justified by threats to public policy, security, or national security, the Commission's proposal refrains from imposing any time limit (Art. 16(3)(d)). For its part, the Council allows for repeated six-month extensions of the detention period where there is a risk of absconding and where a reasonable prospect of removal arises from specific changes in circumstances (Article 32(3a)). Indefinite detention amounts to arbitrary detention and violates the right to liberty under article 9 of the ICCPR. As the WGAD recommended, a maximum detention period should be set by legislation.<sup>17</sup>

The Commission's proposal further weakens procedural safeguards. While under the current Directive, detention ordered by administrative authorities should be subject to a "speedy" judicial review, the proposal sets a limit of 15 days for this review (Art. 33(3)). We are concerned that this maximum time period will become a norm across EU countries. This time period is disproportionately long, especially for someone detained without facing any criminal charges.

Further, the proposal does not exempt children from detention. This violates international human rights standards regarding the detention of children in the context of migration. According to the WGAD, the deprivation of liberty of an asylum-seeking, refugee, stateless or migrant child, including unaccompanied or separated children, on the basis of their or their parents' migration status, should not be allowed.<sup>18</sup> As the joint general comment No. 4/23 of Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child clarifies, the possibility of detaining children as a measure of last resort, which may

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<sup>13</sup> A/HRC/56/Add.3.

<sup>14</sup> A/HRC/39/45, para. 12, see also A/HRC/58/50, para. 56-59 and 104.

<sup>15</sup> A/HRC/11/7/Add.1, para. 90.

<sup>16</sup> A/HRC/39/45, para. 14.

<sup>17</sup> A/HRC/39/45, para. 25.

<sup>18</sup> A/HRC/39/45, para. 11.

apply in other contexts such as juvenile criminal justice, is not applicable in immigration proceedings as it would conflict with the principle of the best interests of the child and the right to developments. Hence, child and family immigration detention should be prohibited by law and its abolishment ensured in policy and practice.<sup>19</sup> The Special Rapporteur on the human rights of migrants called on States to end child immigration detention and to include an explicit prohibition of this measure in legislation.<sup>20</sup>

In addition, other persons in situations of vulnerability should not be detained either. According to the WGAD, migrants in different situations of vulnerability or at risk, such as pregnant women, breastfeeding mothers, older persons, persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons, or survivors of trafficking, torture and/or other serious violent crimes, should not be subject to deprivation of liberty.<sup>21</sup>

### *Cooperation duties, penalties and restrictions*

We are concerned about the new set of obligations and penalties to be imposed on migrants, which risk violating the principle of proportionality, the right to an effective remedy, and due process, and may lead to the adoption of arbitrary measures.

The Commission's proposal introduces extensive cooperation requirements for migrants, which the Council further expands. In the Council's proposal, the obligation to cooperate (Art. 21) encompasses fifteen categories of obligations, including remaining available to authorities, providing extensive information, and complying with third-country entry requirements, including health-related conditions. This web of detailed obligations undermines legal clarity and proportionality. In practice, many of these obligations may be difficult or impossible for individuals to fulfil. The proposal fails to account for individuals who may be unable to comply due to age, mental, physical health, economic conditions (including being homeless), statelessness, trauma or other legitimate reasons (such as digital or literacy barriers). The Regulation would penalise non-compliance with a variety of measures, including restrictive measures (such as residence requirements, reporting obligations, or electronic monitoring), refusal of allowances, criminal sanctions (including imprisonment), or detention. We are concerned that the proposal does not provide for effective procedural safeguards to challenge a determination that they are not cooperating, or to ensure that they are not penalised for circumstances beyond their control. These measures risk being applied arbitrarily and disproportionately.

Aside from the cooperation duties, the Regulation would subject all persons in the return procedure to measures restricting freedom of movement, such as geographical restrictions (such as confinement to a designated area or residence at a specific address) and/or reporting duties (Art. 23). We are concerned that the proposal does not establish clear necessity and proportionality criteria for imposing these measures, raising concerns that they may be applied in an indiscriminate and disproportionate manner.

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<sup>19</sup> CMW/C/GC/4-CRC/C/GC/23, paras. 10-12.

<sup>20</sup> A/75/183, para. 86(a).

<sup>21</sup> A/HRC/39/45, para. 41.

### *Racial and religious profiling and stigmatization of migrants*

Our further concern relates to the risk of racial and religious profiling.<sup>22</sup> The Commission’s proposal requires States to put in place “efficient and proportionate measures to detect” migrants who are staying in an irregular situation in order to carry out the return procedure (Art. 6(1)). Although these measures are to be proportionate, we have doubts about how proportionality would be ensured in practice. Specifically, we have concerns that this provision does not contain sufficient safeguards to prevent discriminatory practices, including racial or religious profiling. For its part, the Council introduces “investigative measures” (Art. 23a), allowing authorities to search migrants, their homes and other relevant premises, and to seize their personal belongings, including electronic devices. While the proposal provides safeguards, such as necessity, proportionality, respect for fundamental rights and access to remedies, we are concerned about the broad discretion this provision leaves to States. In practice, it would permit police, without a judicial order, to raid homes and other premises that accommodate or support persons in an irregular situation, with significant implications for the right to respect for private and family life and home and the prohibition of discrimination. We refer you to General Comment No. 36 of the Committee on the Elimination of Racial Discrimination, which formulates recommendations on how to counter racial profiling.<sup>23</sup>

In addition, we are concerned that the proposed Regulation may, in part, have been motivated by stigmatizing migrants for certain homegrown social problems, wrongly suggesting that removing migrants would solve these problems. For example, the housing crisis that many European countries face is more a reflection of long-term failures to ensure sufficient supply of social or affordable housing for all persons in Europe, internal migration within EU countries, socio-demographic trends such as change of average household sizes; and much less a consequence of international migration to the EU.<sup>24</sup>

### *Access to socio-economic rights, including health care and housing*

We are further concerned that the proposed Regulation weakens access to social and economic rights, which are already weakly protected under the Return Directive. It would remove the possibility of refraining from issuing a return decision on the basis of compassionate, humanitarian or “other” grounds (see section below “Lack of alternatives to return”), thereby bringing more people into the return process. As not everyone can or should be removed, there will be a larger group of people subject to a return procedure but who cannot be removed (often referred to as non-deportable or non-returnable persons). They risk being left in a legal limbo (without legal status or documentation) with resulting limited access to basic socio-economic rights. We are concerned that they will be pushed into destitution and homelessness – conditions which conflict with dignity and safety and, additionally, become vulnerable to detention under the proposal (as the risk of absconding could be based on lack of residence or a reliable address, Art. 30). As the Committee on Economic, Social and Cultural Rights

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<sup>22</sup> The Committee on the Elimination of Racial Discrimination defines racial profiling as the practice of police and other law enforcement bodies relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity, see CERD/C/GC/36, para. 18.

<sup>23</sup> CERD/C/GC/36, paras. 37-69.

<sup>24</sup> See for example A/HRC/58/50 and A/HRC/55/53/Add.1

explained in a Statement, the essential minimum content of each right under the International Covenant on Economic, Social and Cultural Rights (ICESCR) should be secured to all people under the effective control of the State, without exception, and irrespective of the persons' nationality or legal status.<sup>25</sup>

The detection measures (see section above “Racial and religious profiling”) may lead to the imposition of a duty on service providers, such as healthcare providers, social workers, and teachers, to report migrants in an irregular situation. Such reporting duties undermine the rights to health, education, basic social protection, labour, and justice, as fear of detection, detention and deportation may discourage migrants from accessing these essential services. Such measures can also raise ethical dilemmas for professionals. Indeed, the Special Rapporteur on the right to education recommended that undocumented children have full access to education without fear of being reported to the authorities.<sup>26</sup> We recommend ensuring a clear separation between migration control and access to basic services (so-called firewalls), which is essential to ensure that everyone, regardless of migration status, can safely access justice, health care, education, social and labour protection, and housing, without fear of detection. This would give effect to commitments set out in Objective 15 of the Global Compact for Safe, Orderly and Regular Migration, including to ensure that cooperation between service providers and immigration authorities does not compromise safe access to services for migrants in an irregular situation (para. 31(b)).

The right to health has been significantly weakened in the Commission's proposal compared to the current Return Directive. First, the Commission's proposal removes the person's state of health from the considerations to take into account in the context of the return procedure (Art. 5). Second, the Commission's proposal eliminates the person's physical state or mental capacity from the reasons to postpone removal (Art. 14). This raises concerns that removal could proceed without adequate assessment of whether it would expose the person to a real risk of serious harm to life or physical integrity, including where medical treatment would be unavailable or inaccessible upon return. In this respect, the Committee on Economic, Social and Cultural Rights explained in its General Comment No. 14 that States may not deny access of every person, including undocumented migrants, to preventive, curative and palliative health services.<sup>27</sup> Further, three UN treaty bodies ruled that the lack of adequate healthcare in the country of removal for a person with a medical condition can trigger non-refoulement obligations (see section above “The principle of non-refoulement”).<sup>28</sup> Similarly, the Human Rights Committee has ruled that returning a person to a country in which that person would be exposed to homelessness and destitution may, in certain circumstances, amount to inhumane and degrading treatment, prohibited in article 7 of the ICCPR.<sup>29</sup>

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<sup>25</sup> E/C.12/2017/1, para. 9.

<sup>26</sup> A/76/158, para. 99.

<sup>27</sup> E/C.12/2000/4, paras. 12, 18-19, and 34.

<sup>28</sup> Committee on the Rights of Persons with Disabilities, *N.L. v. Sweden*, CRPD/C/23/D/60/2019, 28 August 2020, para. 7(8); Human Rights Committee, *A.H.G. v. Canada*, CCPR/C/113/D/2091/2011, 25 March 2015, para. 10(3)-(4); Committee on the Rights of the Child, *Z.S. and A.S. v. Switzerland*, CRC/C/89/D/74/2019, 10 February 2022, para. 7(6).

<sup>29</sup> Human Rights Committee, *Osman Jasim v Denmark*, CCPR/C/114/D/2360/2014, 22 July 2015, para. 3(1), 3(3), 5(3), 8(4) and 8(9)-8(10).

### *Persons in situations of vulnerability*

We wish to refer to the Global Compact for Safe, Orderly and Regular Migration, in particular to Objective 7, in which States committed to respond to the needs of migrants who face situations of vulnerability. These may arise from the circumstances of their travel or the conditions they face in their countries of origin, transit, and destination,<sup>30</sup> as well as regards the migrants' identity or conditions.<sup>31</sup> The vulnerability verification in the Commission's proposal (Art. 6(1)) appears to be lacking the necessary precision to ensure that States recognise, duly consider, and address, at all stages of return, any vulnerability affecting migrants. Vulnerability assessments should be conducted for every migrant, with their consent, as soon as possible, so that those in vulnerable situations can be identified promptly and referred to appropriate services and protection bodies.

We consider that this category should include inter alia children, pregnant or nursing women, older persons, persons with disabilities, lesbian, gay, bisexual, trans, and other gender-diverse (LGBT) persons, victims of contemporary forms of slavery, victims of trafficking, victims of rape, sexual, physical or psychological violence, trauma, torture and ill-treatment, and those fleeing conflicts.<sup>32</sup> We are concerned that, apart from some narrow exceptions, the proposed Regulation would not exempt from coercive measures, nor even require specific treatment, for migrants in situations of vulnerability in relation to such measures, such as detention (see section above "Expansion of detention"), forced removal, entry ban, restrictions on freedom of movement, cooperation obligations (see section above "Cooperation duties, penalties and restrictions"), or removal to "return hubs" (see section below "Externalization of return: return hubs").

### *Children*

Although the proposal retains a reference to the best interests of the child (Art. 18), we are concerned that it weakens safeguards for children, compared to the current Directive. The Council's proposal removes schooling from the explicit grounds for extending the period for voluntary departure (Art. 7(1c)). It also deletes the Commission's proposed exemption of families with children from removal to "return hubs" (Art. 17(4)), leaving only unaccompanied children excluded from this measure. Further, as discussed above, at variance with international standards, the proposal does not prohibit the detention of children (see section above "Expansion of detention"), nor at least does it limit the permissible maximum detention period.

We refer to the joint General Comment of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Rights of the Child, which the committees recommend that States guarantee child-sensitive procedures in all migration proceedings affecting the rights of children and/or those of their parents. Specifically, States should ensure that a specialized official or judge conducts the immigration proceedings, and that any interviews are

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<sup>30</sup> A/RES/73/195.

<sup>31</sup> OHCHR and Global Migration Group, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations.

<sup>32</sup> OTH 144/2023.

carried out in person by professionals trained in communicating with children.<sup>33</sup> According to the Special Rapporteur on the human rights of migrants, children should be returned only when the return has been determined to be in their best interests through an appropriate procedure before a competent institution that includes the proper representation of the child. As the European Court of Human Rights has recently ruled, this also includes their right to be heard in a relevant proceeding.<sup>34</sup> Families should never be separated unless separation is necessary to ensure the best interests of the child.<sup>35</sup>

### *Women and girls*

Formally neutral migration and return procedures may have disproportionately harmful effects on women and girls.<sup>36</sup> Women and girls are disproportionately exposed to sex- and gender-based violence, discrimination, exploitation and trafficking in migration contexts. We are concerned that the proposed Regulation fails to provide for a sex- and gender-responsive framework. While the Directive explicitly recognises that the category of “vulnerable persons” includes pregnant women, minors and victims of rape or other serious forms of sexual violence (Art. 3(9)), the proposed Regulation would erase it.

Return should not expose women and girls to a real risk of serious harm (see section above “The principle of non-refoulement”), including domestic violence, sexual violence, trafficking for purposes of sexual exploitation, forced marriage or other forms of persecution by State or non-State actors. Girls face distinct and heightened risks upon return, including sexual violence, exploitation, child marriage and other harmful practices, engaging States’ obligations under articles 19, 34 and 35 of the Convention on the Rights of the Child (CRC). We are concerned that the proposed Regulation fails to set out gender-responsive procedures, which is at variance with articles 1, 2 and 3 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As the Committee on the Elimination of Discrimination against Women affirmed in the general recommendation No. 35, gender-based violence against women constitutes a form of discrimination and requires from States that they practice due diligence,<sup>37</sup> including in migration and return contexts. Under the Council of Europe 2011 Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (C.E.T.S., No. 210), States are required to ensure that migration and return policies do not expose women and girls to violence, discrimination or victimization. We are concerned about insufficient provisions for identifying sex- and gender-based risks and ensuring access to remedies, in contravention of States’ due diligence obligations under the CEDAW and the CRC.

The Working Group on Discrimination against Women and Girls highlighted that women are deprived of their liberty mostly arbitrarily and in a discriminatory fashion, in violation of the law and human rights standards. Not only the causes but also the consequences of deprivation of liberty are gendered, and women and girls experience their confinement in specific ways and are often at risk of heightened

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<sup>33</sup> CMW/C/GC/4-CRC/C/GC/23, paras. 15 and 17.

<sup>34</sup> European Court of Human Rights, *M.P. and others v. Greece*, 2068/24, 9 September 2025, para. 102.

<sup>35</sup> A/HRC/38/41, para. 92.

<sup>36</sup> CERD/C/GC/38-CMW/C/GC/7, paras. 22-29.

<sup>37</sup> CEDAW/C/GC/35.

gender-based discrimination, stigma and violence. The Working Group found that “discrimination and stereotyping may also lead to the denial of the asylum claims of migrant women and thus increase their risk of migration-related detention or incarceration for immigration-related offences.”<sup>38</sup> Furthermore, “detrimental stereotypes also influence responses to migration. In States that are seeking to stem migration flows, there is a tendency to believe that because women are viewed as weak and in need of protection, subjecting them to migration detention will be viewed as more shocking and thus have a greater deterrent effect.”<sup>39</sup> The Working Group recommended that States re-evaluate and reform laws and practices that tend to disproportionately or differently target, police and criminalize any particular group of women, and create accountability mechanisms to prevent, mitigate and remedy the discriminatory application of the law. In the context of immigration detention, States should also integrate the standards set out in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) into their national systems. As the Committee on the Elimination of Discrimination against Women stressed in its General Recommendation No. 32, as a general rule, pregnant women and nursing mothers, who both have special needs, should not be detained. Where immigration detention is unavoidable, separate facilities and materials are required to meet the specific hygiene needs of women.<sup>40</sup>

The Working Group on Discrimination against Women and Girls further noted that reception structures and arrangements often lack the capacity to respond to the heightened need for sexual and reproductive health services of migrant women and girls, who carry the traumas of violence, persecution, conflict and poverty.<sup>41</sup> The Working Group recommended that States develop policies and commit additional resources to address the specific risks faced by migrant women and girls, and build participatory processes that are empowering, inclusive, accessible and non-discriminatory, with special attention given to women and girls who have been disproportionately affected by crises, including in disenfranchised and marginalized populations, such as migrant persons. We are concerned that the proposed Regulation is silent about the heightened need for sexual and reproductive health services among women subject to return processes.

Woman human rights defenders face particular risks in the context of return policies, as they are often victims of targeted reprisals, gender-based violence, and systemic discrimination for their activism. Such heightened risks make gender-sensitive return policies essential to prevent putting woman human rights defenders at risk. Lesbian, bisexual, trans, and queer women may also experience particular risks upon their return, an issue that asylum and migration processes often fail to account for due to a lack of comprehensive country of origin information.<sup>42</sup> We are concerned that the proposed Regulation would fail to address or mitigate these risks.

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<sup>38</sup> A/HRC/41/33, para. 26.

<sup>39</sup> A/HRC/41/33, para. 46.

<sup>40</sup> CEDAW/C/GC/32, para. 34.

<sup>41</sup> A/HRC/47/38.

<sup>42</sup> A/HRC/59/43, para. 65.

### *Lesbian, gay, bisexual, trans, and other gender-diverse (LGBT) persons*

The Independent Expert on protection against violence and discrimination based on sexual orientation gender identity has previously noted that the European Commission has adopted a particularly high standard for asylum claims filed by LGBT persons as people facing persecution as members of a particular social group. This was done by extending the focus on innate characteristics to the requirement of proof that asylum-seekers have a perceivable “distinct identity” within society in their country of origin. This is an almost impossible hurdle to overcome for people who have been forced to live discreetly due to criminalization and abuse, and who may continue to live discreetly even in their country of asylum.<sup>43</sup> We are concerned that without adequate pathways for stay (see section below “Lack of alternatives to return”), they are at risk of removal.

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has emphasized that LGBT persons face particular risks in detention. Abuse in detention practices reflects other temporary accommodations where LGBT persons seeking asylum are placed with the general population, often removed from urban centres, with limited oversight. Violence, particularly rape, has been reported in these detention centres and is attributed to both other detainees and staff. Immigration detention is a particularly grave issue for transgender and gender-diverse persons as most detention settings are segregated by gender. Many asylum systems assign accommodation based solely on legally documented gender markers instead of self-identified gender identities. This practice has severe implications, including abuse from other detainees or guards as well as during extended periods of solitary confinement, which has long been considered a form of torture, but can be presented as “protection”.<sup>44</sup> We are concerned that the proposed Regulation fails to address and mitigate these risks for LGBT migrants and asylum-seekers in the context of detention. For these reasons, we refer to the WGAD’s position that LGBT persons should not be placed in immigration detention (see section above “Expansion of detention”).

### *Victims of trafficking and persons at risk of trafficking*

We are further concerned about the lack of specific protection for victims of trafficking in persons. The Commission’s proposal for a Regulation, for instance, would remove the limitations that exist under the current Directive to the issuance of an entry ban to victims of trafficking in human beings (Art. 11). More broadly, the Special Rapporteur on trafficking in persons, especially women and children, has highlighted the complex nature of the harms of trafficking in persons and stressed that trafficking-related asylum claims are particularly unsuited to accelerated processing and may limit the likelihood of identification of victims. Trafficking-related protection claims and the experiences of diverse forms of trafficking in persons may not emerge during vulnerability verification processes or screening processes. This is due to several factors, including a lack of targeted, accessible information; a lack of access to legal representation and counselling; and the need for time and appropriate spaces to build relationships of trust, to recognise the trauma endured by victims, and to address the continuing risks of reprisals they may face. The proposed Regulation does not include

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<sup>43</sup> A/HRC/59/43, para. 62.

<sup>44</sup> A/HRC/59/43, paras. 52-53.

any reference to referral pathways and memorandums of understanding to provide assistance to victims of trafficking, and does not include any reference to the positive obligation on States to identify, assist and protect victims of trafficking and persons at risk of trafficking.

The Special Rapporteur on trafficking in persons, especially women and children has highlighted the obligation of non-refoulement, as it applies in the context of trafficking,<sup>45</sup> and as set out in article 14(1) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the UN Trafficking in Persons Protocol) and, within the Council of Europe legal framework, article 40 of the Council of Europe Convention on Action against Trafficking in Human Beings. The Special Rapporteur on trafficking in persons, especially women and children has highlighted the State's obligation to ensure that victims of trafficking are given an effective opportunity to claim asylum, and that they are not penalized for their mode of entry into the State.<sup>46</sup>

Further, the Commission's proposal does not include any reference to States' obligations to ensure that returns are made with due regard for the rights, safety, and dignity of that person, and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary (article 8(2) of the UN Trafficking in Persons Protocol and, within the Council of Europe legal framework, article 16(2) of the Council of Europe Convention on action against trafficking in human beings ). Measures designed to remove migrants who enter by irregular means, without taking measures to identify possible victims of trafficking and ensuring compliance with the principle of non-refoulement, breach the State's obligations to ensure identification and protection of victims of trafficking and persons at risk of trafficking.

The Special Rapporteur on trafficking in persons, especially women and children, has highlighted specific concerns in relation to arrangements to transfer migrants and asylum-seekers to third States (see section below "Externalization of return: return hubs"). Such practices may not comply with States' obligations to identify, assist and protect victims of trafficking or persons at risk of trafficking or to ensure effective protection against refoulement. The Special Rapporteur has also highlighted that such arrangements may breach obligations arising under international human rights law to investigate trafficking in persons without delay and to take operational measures to protect potential victims, where there are sufficient indicators available of circumstances which give rise to a credible suspicion of a real risk of trafficking. Such arrangements may breach the positive obligation on States to put in place an effective system to protect potential or confirmed victims of trafficking, if they are carried out in the absence of individualized and procedurally fair assessments of (a) the safety and dignity of removals or transfers to other States, and (b) the real risk of a breach of international human rights law in third States or of onward refoulement or re-trafficking.

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<sup>45</sup> A/HRC/53/28, para. 33-39.

<sup>46</sup> A/HRC/53/28, para. 40.

### *Externalization of return: return hubs*

The Commission's proposal for a Regulation establishes a legal basis in EU law for the externalisation of return by setting out so-called return hubs. While the current Return Directive allows states to remove migrants to a transit country, based on readmission agreements or arrangements, the proposal would allow Member States to remove migrants to any third country with which they have an agreement or arrangement for return (Art. 17), even in the absence of a genuine link between the individual and that country. We are concerned that such "return hubs" agreements or arrangements are not conditional upon prior human rights impact assessment and independent oversight. Further, the proposal does not provide for individual assessment of protection needs prior to the transfer. As the Special Rapporteur on the human rights of migrants highlighted, externalization measures, of which return hubs are an example, raise serious human rights concerns, in particular regarding deprivation of liberty condition of stay, access to remedies, and the risk of onward return or chain refoulement., as well as the absence of safeguards ensuring full respect for other international human rights obligations. States cannot evade their international obligations by outsourcing migration control. Depending on the degree of involvement, responsibility for violations may be attributed to the externalizing State, the third State, or both, including through aiding or assisting in internationally wrongful acts. To ensure that States uphold their obligations under the human rights treaties, the Special Rapporteur urged States to end arrangements that allow for readmission or expulsion to countries different from the country of nationality, which effectively shift responsibility for migrants to third States and, in practice, lead to violations of their human rights. Until such arrangements have been ended, the Special Rapporteur recommended that States abide at all times with, inter alia, the principle of non-refoulement, the prohibition of arbitrary detention and due process guarantees.<sup>47</sup>

### *Lack of alternatives to return*

We are concerned, finally, about the proposed Regulation's lack of recognition that not all migrants in an irregular situation can or should be removed. The proposal is premised on the assumption that removal should be the only option for people who find themselves in an irregular situation. Under the current Return Directive, States may grant an autonomous residence permit for humanitarian, compassionate or other reasons. In such cases, no return decision shall be issued, or an existing decision must be withdrawn or suspended for the duration of the authorisation (Art. 6(4)). The Commission's proposal significantly limits this possibility by no longer allowing States to refrain from issuing a return decision on such grounds. It restricts States' discretion to the withdrawal or suspension of an existing decision. The Council, for its part, removes this option entirely from the draft Regulation. These changes risk undermining access to national protection statuses or other residence permits available under domestic law, including on human rights, humanitarian or compassionate grounds.

We wish to remind the EU institutions that there are situations where removal is precluded under international law, including compliance with the principle of non-refoulement (see section above "The principle of non-refoulement"), the right to private and family life, the best interest of the child, and other circumstances rendering return

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<sup>47</sup> A/80/302, para. 20, 62, and 63.

unlawful or inappropriate, such as serious health conditions or when it would expose the concerned person to homelessness (see section above “Access to basic socio-economic rights, including health care and housing”). A removal that would expose the person to homelessness in the country or territory to which they are to be returned is a serious human rights violation, breaching not only the right to adequate housing (article 11) and the right to the highest attainable standard of health (article 12) enshrined in the ICESCR, but as well in some instances the right to life (article 6 of the ICCPR) by exposing the person to a life-threatening situation. It may also amount to inhuman or degrading treatment (article 7 of the ICCPR) when the removal would result in extreme poverty, lack of shelter or severe health deterioration.<sup>48</sup> This is particularly a concern, when return is effected to countries in which a significant part of the housing has been destroyed and remains uninhabitable. It may also be the case when a person is returned without having the necessary financial means or legal possibility to rent, acquire or otherwise access adequate housing in the country of return.

Regular pathways for stay are widely recognized as a viable alternative to return and a regular feature of migration governance, including to prevent and address situations of vulnerability in migration.<sup>49</sup> According to the Special Rapporteur on the human rights of migrants, when migrants in an irregular situation are long established in a host country, lack ties to their country of origin or would otherwise face violations of their human rights upon return, alternatives to forced returns, such as regularization, temporary or long-term options for entry and stay, are preferable. States should offer migrants in need of human rights protection, but who do not qualify for refugee status, temporary or long-term protection from return.<sup>50</sup>

### *Conclusion*

In view of the above observations, we urge the European Commission and the Council of the EU to address the issues raised in this letter in the upcoming negotiations on the Return Regulation, in order to bring it into line with relevant international human rights law and standards. We urge the European Parliament to amend the Commission’s proposal to ensure the respect of human rights norms and standards, including the principle of non-refoulement; prohibition of arbitrary detention, torture and ill-treatment, and racial discrimination; the due process and right to an effective remedy; and economic and social rights. Safeguards should be introduced to ensure the principle of proportionality is observed with regard to the priority of voluntary departure, restrictions on freedom of movement and the obligation to cooperate. We also urge the European Parliament and the Council of the European Union to include in the future Regulation specific protections guaranteeing the rights of children, women and girls, stateless persons, LGBT persons, victims of trafficking and other persons in a vulnerable situation. We wish to stress that addressing irregular migration ultimately relies on enhancing and increasing the availability and accessibility of safe pathways for regular migration.

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<sup>48</sup> See Human Rights Committee, *Osman Jasin v Denmark*, CCPR/C/114/D/2360/2014, 22 July 2015, paras. 3(1), 3(3), 5(3), 8(4) and 8(9)-8(10).

<sup>49</sup> CERD/C/GC/39-CMW/C/GC/8, para. 49; OHCHR, *Leveraging Regular Migration Pathways for Human Rights*, 2025, <https://www.ohchr.org/sites/default/files/documents/issues/migration/pathways/ohchr-leveraging-regular-migration-pathways.pdf>

<sup>50</sup> A/HRC/38/41, para. 90.

We would like to refer you to standards, based on international human rights norms and standards, which should guide any return policy, namely the [Global Compact for Safe, Orderly and Regular Migration](#), the United Nations [Principles and guidelines on the human rights protection of migrants in vulnerable situations](#), and the OHCHR's [Human rights in the context of return: Key legal standards and policy recommendations](#).

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Given that the legislative proposal is currently under negotiation, please indicate any concrete and immediate plans to address the questions and concerns raised in this letter with the aim of bringing the future Regulation in line with international human rights law, particularly with regard to the principle of non-refoulement, the prohibition of arbitrary detention, torture and ill-treatment, and racial discrimination, due process and the right to an effective remedy, and other human rights norms and standards referred to in the present communication.
2. Please provide information on how the principle of non-refoulement will be operationalised in practice. In a similar vein, provide information on how the Regulation will ensure that States conduct a non-refoulement risk assessment before issuing a return decision, that such decisions, once issued, can be challenged before an independent body in accordance with due process guarantees and the right to an effective remedy, and that such challenge has a suspensive effect on the execution of the decision.
3. Please specify any measures planned to amend the proposal to ensure that immigration detention is used as a measure of last resort only for the shortest period of time, subject to judicial authorisation and regular judicial review.
4. Please provide information on how it will be ensured that cooperation duties under Art. 21, penalties under Art. 22, restrictive measures under Art. 23, and detection measures comply with the principles of legality, proportionality, and necessity. Please explain how the Regulation will ensure that detection measures do not amount to racial profiling and respect “firewalls” between healthcare personnel, school authorities, and social services on the one hand, and authorities tasked with the enforcement of immigration rules on the other? How will the Regulation ensure that victims of rights violations can report them to the police without fear of detention?
5. Please explain how the Regulation will ensure that all migrants subject to return procedures have adequate access to the economic and social rights protected under the ICESCR, including health, education, and social protection. How will the right to health be specifically ensured?

6. Please specify how the migration cooperation with third countries will ensure respect for the human rights of migrants, including the principle of non-refoulement and the prohibition of arbitrary detention. How will it be ensured that individuals in vulnerable situations are identified and provided with the required assistance and support mechanisms?
7. Please provide information about the status and protection foreseen for persons who cannot or should not be removed, and what the necessary procedures for them to attain this status will be.
8. Please provide information on the measures taken or envisaged to duly consider, and address, at all stages of return, any vulnerability affecting migrants, including the specific vulnerabilities faced by, *inter alia*, children, pregnant or nursing women, older persons, persons with disabilities, LGBT persons, victims of contemporary forms of slavery, victims of trafficking, victims of rape, sexual, physical or psychological violence, trauma, torture and ill-treatment, and those fleeing conflicts.
9. What concrete measures will the EU adopt to ensure that all return procedures are preceded by individualised gender-responsive assessments of the risk of persecution or other serious harm for women and girls and that removal is prohibited where such risks are real and foreseeable, in line with EU law and international human rights standards? How will the EU guarantee effective procedural safeguards for women and girls in return proceedings, and ensure that the gendered impact of return measures is systematically monitored and addressed?
10. Please provide information on measures taken or to be taken towards ending immigration detention of children and their families. How will the Regulation ensure the respect of the best interests of the child in all aspects of the return procedure?

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from the European Union will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We look forward to receiving further information on the issues mentioned in this letter, and we stand ready to cooperate with you to enhance the protection of the human rights of all migrants, asylum seekers and refugees in the EU

Please accept, Excellency, the assurances of our highest consideration.

Gehad Madi  
Special Rapporteur on the human rights of migrants

Matthew Gillett  
Vice-Chair of the Working Group on Arbitrary Detention

Heba Hagrass  
Special Rapporteur on the rights of persons with disabilities

Farida Shaheed  
Special Rapporteur on the right to education

Michael Fakhri  
Special Rapporteur on the right to food

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

Balakrishnan Rajagopal  
Special Rapporteur on adequate housing as a component of the right to an adequate  
standard of living, and on the right to non-discrimination in this context

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Margaret Satterthwaite  
Special Rapporteur on the independence of judges and lawyers

Olivier De Schutter  
Special Rapporteur on extreme poverty and human rights

Ashwini K.P.  
Special Rapporteur on contemporary forms of racism, racial discrimination,  
xenophobia and related intolerance

Graeme Reid  
Independent Expert on protection against violence and discrimination based on sexual  
orientation and gender identity

Tomoya Obokata  
Special Rapporteur on contemporary forms of slavery, including its causes and  
consequences

Siobhán Mullally  
Special Rapporteur on trafficking in persons, especially women and children

Reem Alsalem  
Special Rapporteur on violence against women and girls, its causes and consequences

Claudia Flores  
Chair-Rapporteur of the Working Group on discrimination against women and girls