EUROPEAN CONFERENCE

FROM TAMPERE 20
TO TAMPERE 2.0

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Background Note:
Common European Asylum System

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Pre-Conference Version

DISCLAIMER

The draft of this note has been prepared by Prof. Dr. Lyra Jakulevičienė, Mykolas Romeris University. The present document is, however, the result of a process during which some changes have been made following a preparatory workshop and in liaison with the author. This means that the author might not agree with all of the suggestions proposed in this note. Final versions of all the background notes, which will take account of the input provided by the conference, will be published and widely disseminated. References to authors quoted have been reduced to a strict minimum contrary to academic rules due to a lack of space. More details will be provided in the published version of this note.

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Tampere Conclusions:

3. This freedom (to move) should not, however, be regarded as the exclusive preserve of the Union's own citizens. Its very existence acts as a draw to many others worldwide who cannot enjoy the freedom Union citizens take for granted. It would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory. This in turn requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes. These common policies must be based on principles which are both clear to our own citizens and also offer guarantees to those who seek protection in or access to the European Union.

4. The aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity.

13. The European Council reaffirms the importance the Union and Member States attach to absolute respect of the right to seek asylum. It has agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement.

14. This System should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection. To that end, the Council is urged to adopt, on the basis of Commission proposals, the necessary decisions according to the timetable set in the Treaty of Amsterdam and the Vienna Action Plan. The European Council stresses the importance of consulting UNHCR and other international organisations.

15. In the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union. The Commission is asked to prepare within one year a communication on this matter.

16. The European Council urges the Council to step up its efforts to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States. The European Council believes that consideration should be given to making some form of financial reserve available in situations of mass influx of refugees for temporary protection. The Commission is invited to explore the possibilities for this.

17. The European Council urges the Council to finalise promptly its work on the system for the identification of asylum seekers (Eurodac).

I. ASSESSMENT OF THE CURRENT SITUATION:

The outcomes of the Tampere Conclusions 20 years later combine the legislative and institutional reforms of the EU asylum policy as well as *ad hoc* policy initiatives. The asylum legislation has passed two generations of development in 2004-2005 and 2011-2013 with the objective of harmonising the Member States' (hereafter MSs) legislation and practices on qualification, procedures and reception in the form of directives, whereby the MSs retain to apply more favourable standards. It centralised the conditions for launching the temporary protection. The Dublin system for distribution of responsibility over asylum seekers among the MSs, established in 1990 under an international framework, was replaced in 2003 and updated in 2013 by EU regulations. The principle of mutual trust on which the Dublin system is based has been challenged by the European courts (both the ECtHR and the CJEU) and Dublin operation was suspended towards certain MSs (Greece in particular) due to serious deficiencies in their asylum or reception systems demonstrating the failure of the objectives of the Common European Asylum System (hereafter CEAS) instruments (reception conditions in particular).

While the Tampere Conclusions called for "open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity (para. 4), the EU paid insufficient attention to the human dignity of asylum seekers and refugees in particular in the hot spots established on the Greek islands where living conditions are in contradiction with the absolute prohibition of inhuman or degrading treatment (article 4 of the EU Charter on Fundamental Rights, hereafter the Charter). The CEAS has proved its limitations to protect asylum seekers in the context of raising number of people arriving in the EU, in particular having been tested in the crisis in 2015/16. The number of people arriving to the EU was not the problem, but rather a lack of solidarity between the MSs, a lack of appropriate institutional framework to provide asylum in the EU as well as a lack of values and fundamental rights approach in guiding the implementation of the asylum policy.

Among the *ad hoc* measures undertaken as part of response to the crisis were immediate and long-term initiatives aimed at stabilising the situation. Externally, cooperation with countries of origin and transit was strengthened, albeit some measures attracted criticism and were not without controversy (the EU-Turkey Statement and the cooperation with Libya). Internally, the Temporary Protection Directive that was meant for such type of situation has not been activated, but the EU implemented operational solutions, such as the hotspot approach and a temporary but mandatory relocation scheme, which resulted in the transfer of 34,712 persons from Italy and Greece to other MSs. Relocation measures that had to mitigate the outcomes of the crisis have not gained support from all the Member States as most have not accepted their allocated share of persons, with some opposing frontally the idea, so that finally it was not enough effective. These measures were later complemented with a more successful voluntary scheme on EU resettlement from third countries representing a progress for the EU that now appears among the main players in the area of resettlement.

At institutional level, the European Asylum Support Office (hereafter EASO) was set up in 2011 to enhance practical cooperation among MSs on asylum-related matters and for assisting them in implementing their obligations under CEAS. It has been providing unprecedented support to the MSs affected disproportionately by participating in the asylum procedure in Greece and Italy.

Notwithstanding these important achievements, a number of vital challenges remain unresolved, while attempts at making the CEAS more efficient, harmonised, and stable in the face of future migratory pressures have not been successful. The CEAS suffers in particular of a lack of common implementation in

practice rather than a deficit of new harmonised rules. The Commission issued the European Agenda on Migration in May 2015, which set out further steps towards a reform of the CEAS, and tabled proposals for the CEAS reform in 2016, suggesting to replace the current directives on qualification and asylum procedures with regulations, to recast the Dublin III regulation and the reception conditions directive, extend the scope of the Eurodac Regulation, and establish a permanent EU Resettlement framework.

Despite significant efforts and important progress at technical level with the new legislative proposals (provisional agreement on the main elements was reached in 2018), it has so far not been possible to find a balanced political compromise on the overall CEAS reform, in particular on the Dublin Regulation. This CEAS "crisis" could possibly jeopardize the entire European construct. The problems encountered by the CEAS and proposed solutions are viewed as demonstrating deeper gridlock of the system as a result of lacking compliance with the EU's fundamental values on which the EU is founded.

Among the main trends throughout the legislative initiatives of 2016 intended to improve the CEAS, the following can be identified:

- Firstly, an attempt for more harmonisation through leaving less discretion to the MSs (replacing directives with regulations; turning some optional clauses into mandatory ones by making a number of concepts obligatory, e.g. on safe third countries), although it could be doubted if the mere change of the form would lead to more practical convergence among the MSs. Focusing on the enforcement of existing rules could bring more progress to the implementation of the CEAS. In addition, replacement of optional rules for more prescriptive ones in case of refusal of protection might rise issues in respect of full compliance with the 1951 Geneva Convention and the Charter. At the same time, requiring the MSs' authorities to take into account EASO analysis and guidelines could bring more realistic changes towards convergence in decision making.
- Secondly, focus on the secondary movement of asylum seekers and beneficiaries of international protection but without addressing enough the root causes of such movements.
- Thirdly, a mechanism of responsibility sharing that would accommodate both the preferences of the MSs and of the applicants has not been elaborated despite the fact that sharing funds and resources is not only practically easier but also much more cost-efficient than trying to 'share' people.
- Fourthly, the proliferation of various national or transnational policy responses, involving just a few MSs (e.g. the joint vision paper of 2018 of Denmark and Austria to severely limit the right to apply for asylum in Europe; bilateral administrative agreements of Germany with Spain, Greece and Portugal on quick transfers bypassing the rules of the Dublin system, etc).

II. IDEAS AND SUGGESTIONS FOR THE FUTURE:

As part of the vital challenges that remain unresolved by the present state of the CEAS in view of making it efficient, fair, harmonised and resilient to future migratory pressures, are:

- The need to achieve a fair balance between the incentives and restrictions for asylum seekers as concerns the secondary movements. The present system is constructed on the basis of a punitive approach in mind and this trend is reinforced in the 2016 legislative package. At the same time there is a general lack of positive incentives both for asylum seekers, but also for MSs at all stages of the procedure and beyond it. The divergences in qualification for international protection

resulting in considerable recognition differences,[1] the limited levels of harmonisation of reception conditions and protection offered, have often led to secondary movements. Without addressing these issues, the punitive approach to secondary movements is not likely to bring the changes sought.

- A number of amendments introduced in the new package of legislation although aiming to improve the CEAS, in effect balance on the verge of compatibility with the Charter and the international refugee protection regime (e.g., expansion of the use of accelerated procedures despite possible substantive risk of inhuman and degrading treatment in the country of the first entry; possibility to reduce the requirements for protection in the context of mandatory application of the 'safe countries' concepts relying on undefined notion of "sufficient protection", detention for non-compliance with obligations, and others).
- Responsibility-sharing for asylum claims that would ensure fair distribution of asylum seekers among the MSs is only emerging. Despite the fundamental provision of article 80 of the Treaty on the Functioning of the European Union (hereafter TFEU) that envisages asylum as a regional public good requiring a collective responsibility, there is still no uniform concept of solidarity and fair sharing of responsibility throughout the Union. In view of adopting modalities for stepping up and institutionalising responsibility-sharing mechanisms at a global and regional level as envisaged in the Global Compact on Refugees, article 80 TFEU must be respected as the fundamental principle of the CEAS and be made much more concrete. Such responsibility-sharing would need to cover three situations: a) persons arriving *en masse* in crisis situations; b) persons rescued at sea; c) ordinary situations for examining applications of international protection.

A. Value Basis of the Overall Asylum Policy Reform:

The trends mentioned above demonstrate that the 2016 reform of the CEAS is largely guided by the punitive and restrictive considerations that question the basis on which it was initially founded, including the 1951 Geneva Convention and the right to asylum in article 18 of the Charter. What is needed most at this stage is not "better" legislative proposals but a discussion and agreement on fundamental policy principles that should guide and drive the policy reform and a better monitoring of the implementation of the current harmonised rules in practice by the MSs.

These observations raise the following questions:

- Which fundamental values are guiding the policy reform?
- How can these values be reconciled with the need for efficiency and effectiveness of the asylum policy?
- Should trans-national responses among several MSs be allowed within the CEAS?

Initial suggestions and ideas include:

1. Define the fundamental principles/values test for any asylum policy reform proposals and the trans-national cooperation between Member States in this area.

2. Establish a closer link between the EU asylum policy and the Global Compact on Refugees.

[1] For example, the trend of differences in recognition rates continued in 2018, with largest variations observed for Afghanistan (between 6 % and 98 %) and Iraq (between 8 % and 98 %) - EASO Latest asylum trends, 2018 overview, https://easo.europa.eu/asylum-trends-overview-2018, accessed on 06-06-2019.

B. EU-Resettlement Framework and Complementary Pathways:

Safe and legal ways to protection in the EU shall be complementary, but not substitute the CEAS. According to UNHCR, only less than 5 percent of refugees considered by UNHCR to be in need of resettlement were resettled in 2018, thus more progress is needed. The alternative pathways were also not able to meet today's demands, frequently lack protection standards and coordinating structures, and are not easily accessible for refugees. The proposal for a EU Resettlement Regulation envisages a mandatory resettlement scheme. However it links resettlement to foreign policy objectives of the MSs and third countries' cooperation on other migration-related matters. This does not necessarily ensure the focus on countries where there are the most pressing needs of the most vulnerable persons in need of international protection. In respect of complementary pathways (e.g., community or private sponsorship schemes) they should be designed and implemented in such a way as to include protection safeguards.

This raises the following questions:

- Should resettlement be tied to the cooperation of third countries on migration issues?
- How resettlement efforts could be prioritised and the main obstacles to substantive progress eliminated?

Initial suggestions and ideas include:

3. Link EU resettlement with the third countries where most of persons in need of protection are concentrated.

4. Link EU resettlement policy with UNHCR Three-Year Strategy (2019-2021) on Resettlement and Complementary Pathways.

5. Include community or private sponsorship programs into the EU legal framework.

C. Defining Protection-Related Exceptions to Mutual Trust Principle in the Dublin System:

Recent case law of the CJEU and the ECtHR has created protection-oriented exceptions to the principle of mutual trust on which the Dublin system is based, where MSs shall be prevented from transferring applicants to some MSs, including: (a) systemic deficiencies in the asylum systems of the receiving MSs[2]; and (b) a risk of extreme material poverty despite the stage of the asylum procedure[3]. It revealed the necessity to take into account not only the general situation for asylum seekers in the country identified as responsible, but also the particular situation of vulnerability of the applicants when assessing the risk of inhuman and degrading treatment that would prevent the transfer[4]. There is currently little guidance in EU law about the meaning of 'systematic deficiencies' or 'extreme material poverty'. Moreover, the proposal for a Dublin IV Regulation reduces the margin of discretion of the MSs (see, e.g. the elimination of cultural considerations in the humanitarian clause by article 19) while the value of discretionary clauses is precisely that it allows broadly MSs to guarantee that human rights of asylum seekers are respected when such need arises.

[2] CJEU, *N.S. and M.E.*, judgment of 21 December 2011.

[3] ECHR, *M.S.S. v. Greece and Belgium*, judgment of 21 January 2011; CJEU, *Jawo*, C-163/17, judgment of 19 March 2019; *and Ibrahim*, C-297/17, judgment of 19 March 2019.

[4] ECHR, *Tarakhel v. Switzerland*, judgment of 4 November 2014.

This raises the following questions:

- How protection-oriented exceptions should function in the Dublin procedures?
- What are the risks in reducing MSs discretion concerning Dublin transfers?
- How could the 'systematic deficiencies' and 'extreme material poverty' be linked to reception and asylum procedures' rules?

Initial suggestions and ideas include:

6. Link the Dublin exceptions to the concepts of 'adequate standard of living' to be defined in reception and qualification directives, and of adequacy of asylum procedures in the asylum procedures directive and define those concepts.

7. EASO to develop further guidance to ascertain the situations in which the transfers should not be carried out.

8. Organise in EU law the possibility that the transferring MS can in practice seek assurances from the receiving MS that conditions are adequate for the transfer to be carried out in individual situations and foresee a monitoring mechanism by EASO.

D. Addressing Secondary Movements of Asylum Seekers between Member States in a Positive Way:

In June 2018, the European Council considered that 'secondary movements of asylum seekers between MSs risk jeopardizing the integrity of the CEAS and the Schengen acquis'. The European Council so underlines the importance of this issue for Member States' trust in each other. Secondary movements should be distinguished depending if they concern asylum seekers and protected persons. The proposals for the new CEAS legislation extensively incorporate various aspects related to secondary movements, mostly on the basis of a punitive approach. For instance, according to the proposal for Asylum Procedures' Regulation, the accelerated procedure will become mandatory in case of non-compliance with the obligation to apply in the MS of first entry, or in case of a subsequent application (article 40).

However, the use of accelerated procedures only as a mean of punishment for secondary movement might not be compatible with the standards embodied by the Charter. In particular, there could be a justification for the secondary movement in specific cases, when there is a substantive risk of inhuman and degrading treatment in the country of first entry (see the recent CJEU judgments in *Jawo* and *Ibrahim* where the Court considered it immaterial for the purposes of applying article 4 of the Charter whether such a risk arises during or after the asylum procedure in the MS, thus risks in the first country might be not only for asylum seekers, but also for beneficiaries of protection). Furthermore, this punitive approach does not take into account the obstacles to the integration in the society after granting protection. The Dublin IV proposal provides for reducing material reception benefits in case of non-compliance with the obligation for asylum seekers to apply in the MS of first entry and to remain in this MS determined as responsible. The proposal for Qualification Regulation also introduces stricter rules for sanctioning secondary movements.

This raises the following questions:

- To which extent the issue of secondary movements of asylum seekers between the MSs is relevant and what are the risks for the EU policies to focus on it?
- Should there be differentiation between 'justified' and 'unjustified' secondary movements?
- What positive incentives could be introduced to reduce secondary movements?

Initial suggestions and ideas include:

9. Introduce 'justified secondary movements' in situations of family relations, cultural and linguistic considerations, dependency not covered by another criteria, particular grounds of vulnerability (children, elderly), or other considerations related to the protection of human rights. This could be incorporated, e.g. among exceptions to the Dublin criteria, reception conditions, calculation of the period under the long-term residence directive, determination of the type of asylum procedures and in the context of detention (risk of absconding).

10. Launch a study analysing the benefits of secondary movement both of asylum seekers, but also for beneficiaries of protection for the process of integration and include lessons learned into the asylum proposals as relevant.

E. Aligning Divergent Interpretations of International Protection Criteria (Subsidiary Protection):

Despite harmonisation of the main provisions on granting of international protection in the recast Qualification Directive and the developing jurisprudence of the CJEU, differences in interpretation of the grounds for international protection remain among the MSs, in particular, as concerns the application of article 15(c) of the Qualification Directive as a ground for subsidiary protection. There are differences in assessing the magnitude of the violence needed for a claimant to be at risk by solely being on the territory as well as different understanding relating to terminology, for example, in regard to the territory as well as in regard to "serious harm to a person" (in Germany this has been narrowly interpreted to mean physical integrity or danger to "life and limb" whereas the UK Courts have adopted a broader interpretation encompassing mental trauma as well). The first CJEU judgment on asylum case of *Elgafaji* in 2009 did not bring the solution, as the practice of applying the principles established by the CJEU diverges (for instance, the Netherlands grant subsidiary protection only if the high level of violence is present in the country, while some others apply the 'sliding scale' approach).

This raises the following questions:

- How could more harmonised application of the grounds for subsidiary protection at practical level be achieved across the MSs?
- Could more exhaustive set of rules on qualification ensure convergence of MSs' practices?

Initial suggestions and ideas include:

11. Incorporation of the 'sliding scale' assessment in the proposal for the Qualification Regulation by embedding two situations stemming from the Elgafaji judgment:

a) situations of intense violence where the mere presence of the applicant would place him/her in danger.

b) situation of less intense violence where the individual circumstances lead to the conclusion that the applicant cannot stay in the territory of the conflict.

12. The conditions under which the subsidiary protection shall be granted under Art. 15 (c) could be further harmonised as concerns the assessment of violence, nature of the harm, and the factors qualifying the individual risk).

F. Introducing the "European Refugee" Concept:

The MSs currently recognise negative asylum decisions through the Dublin system. However, positive decisions are not yet mutually recognized. Meanwhile, a number of beneficiaries of protection move to

other MSs for objective reasons: family, community, language proximity, etc. Mutual recognition of positive decisions among the MSs and de-linking the refugee's place of residence from the place of recognition as a refugee would provide better integration opportunities for the refugees. A refugee status valid throughout the EU is moreover required by article 78, §2, a) TFEU. Current proposal to amend the Long-Term Residence Directive foresees that where a beneficiary is found in a MS other than the one that granted the protection status, without a right to stay there, the period of legal stay preceding this situation shall not be taken into account when the 5-year period necessary for long-term residence status is calculated. This punitive approach will not contribute to integration, but rather create more serious problems alienating the refugees from the host societies where they are expected to integrate.

This raises the following questions:

- How could mutual recognition of positive judgments be achieved among the MSs?
- What would be the positive/negative implications of such recognition?

Initial suggestions and ideas include:

13. Launch a study on possible positive/negative impacts of mutual recognition of positive decisions.

14. Organise as requested by the Treaties freedom of movement for beneficiaries of international protection earlier than their entitlement to a long-term residence status in order to facilitate self-reliance, e.g. through job opportunities.

15. Create special EU funding allocations for MSs hosting disproportionate number of refugees recognised in another MS.

G. Ensuring the Standards on Safety of Asylum Seekers in Third States in line with Non-Refoulement Principle:

Even if one can understand the use of the concept of "safe country of origin" regarding countries for which the abolition of the visa requirement has led to an increase of the number of unfounded asylum applications, there is a risk with the use of safe countries to send back persons into life-threatening conditions in violation of the principle of non-refoulement when focusing on their travel route rather than their individual reasons to apply for protection. This risk will increase as the use of the concepts of 'first country of asylum', 'safe third country' and 'safe country of origin' will become mandatory with the new CEAS legislation (article 44 (1) of the proposal for Asylum Procedures Regulation, hereafter proposal for APD). The mandatory application of the 'safe countries' concepts would also result in a systematic shift of responsibility for the protection of people in need to the neighbouring countries of war regions and conflict zones. Furthermore, the introduction of the 'sufficient protection' concept without a definition might result in sending asylum seekers to situations incompatible with obligations under the non-refoulement (see article 44 of the proposal for APD regarding first country of asylum concept and article 45 (1e) regarding the safe third country concept). It remains therefore unclear what kind of protection status will be necessary for a third country to be considered as safe. Moreover, the fact that MSs can individually determine whether an asylum seeker enjoyed sufficient protection in a third country, through which he or she transited, even if this protection is not in line with the 1951 Geneva Convention, might lead to concerns.

This raises the following questions:

- Will the mandatory use of concepts of protection outside the EU not undermine harmonisation in the asylum procedures of the MSs?

- Can 'sufficient protection' in third countries guarantee the respect to the principle of non-refoulement and if so, in which circumstances?

Initial suggestions and ideas include:

16. Should mandatory application of 'safe countries' concept be introduced, include mandatory guidelines by EASO/EUAA to be followed in determining such countries, including a EASO/EUAA monitoring framework.

17. Define the concept of 'sufficient protection' in the proposed asylum instruments.

H. Enhancing the Rights of Vulnerable Applicants:

Rights of vulnerable applicants are not fully guaranteed by the current CEAS. In particular, the freedom from detention of unaccompanied minors, while international practice on this issue develops towards absolute prohibition of detention in such cases. Secondly, there is certain confusion of the notions of 'vulnerable persons' and 'persons with special needs,' and different lists of vulnerability under reception and asylum procedures' contexts, which needs to be clarified. This inconsistency results in ambiguity in the MSs who have not taken a consistent approach to the procedural and reception guarantees required by vulnerable groups under the EU law. The upcoming new CEAS legislation needs to clarify these notions and ensure the treatment of vulnerable persons in line with relevant standards. The proposals do not bring sufficient clarity by replacing vulnerability notion with additional categories, like 'specific reception needs', and providing the exhaustive list of categories in reception, but referring to individual circumstances in asylum procedures. Also, the proposal for a new Reception Conditions Directive (hereafter new RCD) no longer excludes vulnerable persons, including unaccompanied minors, from detention (article 11).

This raises the following questions:

- How rights of vulnerable applicants could be better mainstreamed in the new CEAS legislation and MS's practices?
- Should vulnerability/special needs be determined based on a list of categories or individual circumstances?

Initial suggestions and ideas include:

18. Ensure full exemption of vulnerable applicants (minors in particular) from the accelerated and border procedure, as well as from detention.

19. Clarify the relationship between determining vulnerability for procedures and for reception conditions.

I. Replacing Detention Measures with Alternative Means of Control over Asylum Seekers:

Detention of asylum seekers is a measure of last resort, as these persons are not criminals. Based on international and EU legal standards, detention has to be necessary, justified, proportionate and applied as a last resort measure (i.e. alternative measures shall be explored). International and EU jurisprudence confirms that alternatives to detention (hereafter ATDs) have to be part of the examination process to ensure that detention is used as last resort. Moreover, ATD prove to be more effective, cost-efficient and compatible with human rights standards than detention. The grounds for detention in the RCD include vague and legally undefined concepts as "the risk of absconding", which have a substantial role in deciding on detaining an asylum seeker. It is important to clarify this concept by incorporating the recent CJEU

jurisprudence[5]. The proposal for a new RCD introduces definitions of 'absconding' and 'risk of absconding' (article 2(10), i.e. an action by which an applicant in order to avoid asylum procedures does not remain available to the competent authorities. This definition is too abstract and subject to broad interpretation.

This raises the following questions:

- How to make alternatives to detention work in the EU?
- What could be the definition of the risk of absconding in the context of asylum detention?

Initial suggestions and ideas include:

20. Introduce examination of ATDs as a mandatory step before any decision on detention.

21. The definition of a risk of absconding could cover situations when: a) the applicant intentionally evades the reach of the national authorities; b) when it is not possible to establish the intent, but the applicant evades the reach of the national authorities despite being informed of the obligation not to abscond.

J. Normative Gap for Persons Fleeing due to Environmental or Climate Change Reasons:

While climate change issues dominate the political agenda of the world's states, it has relevance also for the refugee protection regimes. In the absence of international agreement on the protection of persons fleeing environmental disasters/climate change consequences, several states, including in the EU (e.g. Finland and Sweden) provide for certain forms of protection under national laws. However, there is clearly a protection gap.

This raises the following question:

- Should, and if so how, proposed CEAS instruments envisage possible implications of the climate change on the protection of refugees in the EU?

Initial suggestions and ideas include:

22. Launch a new study on the consequences and options of protection of environmental and climate refugees in the context of the EU.

K. Harmonisation of both Statuses of Protection:

Disparities existing in various MSs in terms of benefits granted along the protection status is among the factors impacting on secondary movements of protected persons (as recently noted in the case *Ibrahim* at the CJEU). Further, the proposal for qualification regulation increases the divergence of the two statuses with the determination of validity of the residence permits, obligatory status review and possibility to limit social assistance to core benefits for subsidiary protection beneficiaries.

This raises the following question:

- Should protection statuses (refugee and subsidiary protection) be fully unified in terms of rights and duration of residence permits?

[5] CJEU, C-163/17, Judgment (Grand Chamber) of 19 March 2019 *Abubacarr Jawo v Bundesrepublik Deutschland*.

Initial suggestions and ideas include:

23. Set standards of treatment as EU citizens for those rights that are not within the exclusive competence of the MSs.

24. In view of integration objectives, provide for the same duration of residence permits under both statuses: e.g. at least 3 years for refugee status as currently and 3 years, but with a possibility of review, in case of subsidiary protection.

F. Further Reflections:

- Should a mechanism for sharing asylum seekers rescued at sea be linked to the APR?
- Strengthening of a link between EU funding and integration: inclusion of integration as a priority in the new Multiannual Financial Framework; earmarking specific percentage of spending for integration within European Social Fund funding.
- Analyse potential implications of postponement of the conclusion of examination due to uncertain situation in the country of origin, which is expected to be temporary for up to 15 months (Art. 34 (5) of proposal for APR). Such an open clause could leave a too wide margin of interpretation to MSs, create legal uncertainty for asylum seekers and have a negative impact on integration.
- Clarify the application of articles 14(4) and (5) of the Qualification Directive in line with the recent CJEU judgment in M and X & X (case 77 and 78/17); move these provisions to Status Rights' part of the Directive, ensuring that MSs apply this article strictly as termination of "residence status" ("asylum" in the meaning of the Charter), rather than refugee status or subsidiary protection.