

## **UNHCR Observations on the draft proposal “Certain stricter conditions for family immigration and limited possibilities for residence permit due to humanitarian reasons”**

### **[Utkast till lagrådsremiss: Vissa skärpta villkor för anhöriginvandring och begränsade möjligheter till uppehållstillstånd av humanitära skäl]**

#### **I. Introduction**

1. The United Nations High Commissioner for Refugees (“UNHCR”) Representation for the Nordic and Baltic Countries (“RNB”) is grateful to the Government of Sweden for the invitation to provide observations on the legislative amendments proposed in the Draft referred to the Council on Legislation “Certain stricter conditions for family immigration and limited possibilities for residence permit due to humanitarian reasons” (*Vissa skärpta villkor för anhöriginvandring och begränsade möjligheter till uppehållstillstånd av humanitära skäl*) – hereafter the “Proposal”.<sup>1</sup>
2. UNHCR has a direct interest in law proposals in the field of asylum, as the agency entrusted by the UN General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees.<sup>2</sup> Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,<sup>3</sup> whereas the 1951 Convention relating to the Status of Refugees<sup>4</sup> and its 1967 Protocol relating to the Status of Refugees (hereafter collectively referred to as “1951 Convention”) oblige States to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR’s duty of supervising the application of the provisions of the 1951 Convention and 1967 Protocol (Article 35 of the 1951 Convention and Article II of the 1967 Protocol).<sup>5</sup>
3. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention. Such guidelines are included in the

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<sup>1</sup> Full Proposal (in Swedish): <https://regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/2023/02/vissa-skarpta-villkor-for-anhoriginvandring-och-begransade-mojligheter-till-uppehallstillstand-av-humanitara-skal/>.

<sup>2</sup> UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), <https://www.refworld.org/docid/3ae6b3628.html> (“the Statute”).

<sup>3</sup> Ibid, para. 8(a). According to para. 8(a) of the Statute, UNHCR is competent to supervise international conventions for the protection of refugees. The wording is open and flexible and does not restrict the scope of applicability of the UNHCR’s supervisory function to one or other specific international refugee convention. UNHCR is therefore competent qua its Statute to supervise all conventions relevant to refugee protection, UNHCR’s supervisory responsibility, October 2002, <http://www.refworld.org/docid/4fe405ef2.html>, pp. 7–8.

<sup>4</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189, <http://www.unhcr.org/refworld/docid/3be01b964.html>. According to Article 35(1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the Convention”.

<sup>5</sup> UNHCR’s supervisory responsibility has also been reflected in European Union (“EU”) law, including by way of general reference to the 1951 Convention in Article 78 (1) of the Treaty on the Functioning of the EU.

UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and subsequent Guidelines on International Protection (“UNHCR Handbook”).<sup>6</sup> UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.

## II. General Observations

4. UNHCR notes that the Proposal presents several restrictions on the possibility to obtain a residence permit in Sweden, *inter alia*, through restricting the right to family reunification. UNHCR notes with concern that the right to family reunification in Sweden has, in recent years, become severely restricted with numerous legal, practical and financial obstacles. These developments, including the current Proposal, present a reduced set of standards and safeguards as compared to the solid legal protection framework which Sweden had developed and administered over decades.<sup>7</sup>
5. The right to family life is enshrined in the Universal Declaration of Human Rights which refers to families as a ‘natural and fundamental group unit of society’, which is ‘entitled to protection by society and the State’.<sup>8</sup> This right becomes binding under international human rights law, as foreseen in the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child (“CRC”).<sup>9</sup> While there is no explicit provision on family reunification in the 1951 Convention, the Final Act of the UN Conference of Plenipotentiaries affirmed “that the unity of the family [...] is an essential right of the refugee” and recommended Governments to “take the necessary measures for the protection of the refugee’s family, especially with a view to ensuring that the unity of the family is maintained.”<sup>10</sup> UNHCR’s Executive Committee (“ExCom”) has further highlighted the “fundamental importance” of family reunification, emphasizing the need for reunification to take place “with the least possible delay”. ExCom has also called on countries of asylum to “apply liberal criteria in identifying those family members who can be admitted with view to promoting a comprehensive reunification of the family”.<sup>11</sup>

<sup>6</sup> UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/IP/4/ENG/REV. 4, <https://www.refworld.org/docid/5cb474b27.html>.

<sup>7</sup> UNHCR Recommendations to Sweden on strengthening refugee protection in Sweden, Europe and globally, September 2022, <https://www.unhcr.org/neu/85579-unhcr-recommendations-to-sweden-on-strengthening-refugee-protection.html>, (“UNHCR Recommendations to Sweden”), p. 2.

<sup>8</sup> Article 16(3), UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III): <https://www.refworld.org/docid/3ae6b3712c.html>.

<sup>9</sup> Article 23(1), UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 <https://www.refworld.org/docid/3ae6b3aa0.html>; Convention on the Rights of the Child (CRC), Convention on Migrant Workers, and International Covenant on Economic, Social and Cultural Rights (ICESCR), 9 UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <https://www.refworld.org/docid/3ae6b38f0.html>; UN General Assembly, International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families : resolution / adopted by the General Assembly, 18 December 1990, A/RES/45/158, <https://www.refworld.org/docid/3b00f2391c.html>; and UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, <https://www.refworld.org/docid/3ae6b36c0.html>.

<sup>10</sup> Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, A/CONF.2/108/Rev.1, [www.refworld.org/docid/40a8a7394.html](http://www.refworld.org/docid/40a8a7394.html).

<sup>11</sup> UNHCR, Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 (Conclusion No. 1 – 114), October 2017, HCR/IP/3/Eng/REV. 2017, <https://www.refworld.org/docid/5a2ead6b4.html>, including No. 9 (XXVIII) on Family Reunion, 1977; No.

6. UNHCR wishes to further note that the Court of Justice of the European Union (“CJEU”) has emphasized that the objective of the Council Directive 2003/86/EC (2003) on the Right to Family Reunification (“FRD”)<sup>12</sup> is to promote family reunification.<sup>13</sup> With regards to refugees specifically, it has held that “special attention should be paid to the situation of refugees, since they have been obliged to flee their country and cannot conceivably lead a normal family life there”.<sup>14</sup> This has also been recognized by the European Court of Human Rights (“ECtHR”), which has found that family unity is an essential right for refugees and they should benefit from a more favourable family reunification regime than other foreigners.<sup>15</sup> States thus have an obligation not only to refrain from interfering with individuals’ right to family life, but to facilitate access to it.<sup>16</sup> In addition, jurisprudence of the ECtHR requires States to give effect to the right to family life and family unity through flexible, prompt, and effective access to family reunification.<sup>17</sup>
7. In conjunction with earlier legislative amendments in the area of family reunification, UNHCR has consistently held that family reunification is vital for refugees to enjoy the fundamental right to family life. UNHCR reiterates that the right to family life and the principle of family unity are of particular importance in the refugee context as maintaining and facilitating family unity helps to ensure the physical care, protection, emotional well-being and self-reliance of refugees. A prolonged separation can have devastating consequences on the wellbeing of refugees and their families and as such the possibility of being reunited with one’s family is vital for integration.<sup>18</sup> Family reunification is also an important factor in reducing mental health issues among refugees. Research shows that there is a direct link between family reunification, mental health and successful integration.<sup>19</sup>

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24 (XXXII) on Family Reunification, 1981; No. 84 (XLVIII) on Refugee Children and Adolescents, 1997; No. 88 (L), 1999 on the Protection of the Refugee’s Family; No. 104 (LVI), 2005 on Local Integration; and No. 107 (LVIII), 2007 on Children at Risk.

<sup>12</sup> Council of the EU, Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification, 3 October 2003, OJ L. 251/12-251/18; 3.10.2003, 2003/86/EC, <https://www.refworld.org/docid/3f8bb4a10.html>.

<sup>13</sup> Chakroun v. Minister van Buitenlandse Zaken, C-578/08, Court of Justice of the EU, 4 March 2010, available at: <https://www.refworld.org/cases,ECJ,4b962e692.html>, para. 43.

<sup>14</sup> TB, C-519/18, 12 December 2019, <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c519/18>, paras. 49-50; K and B, C-380/17, 7 November 2018, <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c380/17> para. 53.

<sup>15</sup> Tanda-Muzinga c. France, Appl. no. 2260/10, ECtHR, 10 July 2014, [www.refworld.org/cases,ECHR,53be80094.html](http://www.refworld.org/cases,ECHR,53be80094.html), para. 75; Mugenzi c. France, Appl. no. 52701/09, ECtHR, 10 July 2014, [www.refworld.org/cases,ECHR,53be81784.html](http://www.refworld.org/cases,ECHR,53be81784.html), para. 54.

<sup>16</sup> Tuquabo-Tekle and Others v. the Netherlands, Appl. no. 60665/00, ECtHR, 1 December 2005, <https://www.refworld.org/cases,ECHR,43a29e674.html>, para. 42; Jeunesse v. the Netherlands, Appl. no. 12738/10, ECtHR, 3 October 2014, <https://www.refworld.org/cases,ECHR,584a96604.html>, para. 106 and note 13; UNHCR Statement on family reunification for beneficiaries of international protection issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the case of CR, GF, TY v. Landeshauptmann von Wien (C-560/20), 22 June 2021, <https://www.refworld.org/docid/60d20abe4.html> paras. 3.1.1. – 3.1.4.

<sup>17</sup> Mugenzi v. France, 10 July 2014, Appl. No. 52701/09, para. 52 and Tanda-Muzinga v. France, 10 July 2014, Appl. No. 2260/10, para. 73.

<sup>18</sup> UNHCR, Summary Conclusions on the Right to Family Life and Family Unity in the Context of Family Reunification of Refugees and Other Persons In Need Of International Protection, 4 December 2017, Expert Roundtable, [www.refworld.org/docid/5b18f5774.html](http://www.refworld.org/docid/5b18f5774.html), para. 1.

<sup>19</sup> UNHCR Recommendations to Sweden, p. 4.

8. The need to reunite with family members is also one of the key drivers for irregular and unsafe movement. UNHCR has also highlighted the importance of family reunification for women and girls to safely access protection and in reducing or removing the risk of undertaking dangerous journeys.

### III. Specific Observations

9. In the following sections, UNHCR will highlight specific observations on select elements of the Proposal, that is, a) Reasonable prospects of obtaining the right of permanent residence, b) Raised age limit to refuse residence permit due to family reunification, and c) Maintenance requirement.

#### **a. Reasonable prospects of obtaining the right of permanent residence**

10. According to section 4.1 of the Proposal, it will only be possible for a person with temporary residence permit as beneficiary of international protection to be a sponsor for family reunification if he or she has “reasonable prospects of obtaining the right of permanent residence” (“välgrundade utsikter att beviljas varaktigt uppehållstillstånd”). The Aliens Act currently provides that the sponsor must have “reasonable prospects of obtaining a residence permit for a longer time” (“välgrundade utsikter att beviljas uppehållstillstånd under en längre tid”).
11. The purpose of the Proposal is to align the Swedish provision fully with the wording of Article 3(1) of the FRD, according to which the Directive applies where the sponsor is holding a residence permit with a validity of one year or more and who has “reasonable prospects of obtaining the right of permanent residence”.<sup>20</sup>
12. Since 2016, the granting of a temporary residence permit has become the general rule in Sweden for both refugees and beneficiaries of subsidiary protection (“alternativt skyddsbehövande”). While noting the legislator’s intention to align the wording of the Aliens Act with the FRD, UNHCR suggests that the Proposal clarifies how the concept of reasonable prospects should be understood with regard to the two protection categories.
13. UNHCR wishes to recall that when the FRD was drafted, the intention of introducing the requirement of having “reasonable prospects of obtaining the right of permanent residence” was to exclude from the application of the Directive persons who stay only temporarily in the Member State, such as au pairs or exchange and placement students. The intention was not to exclude refugees as refugees will always be eligible for family reunification according to the FRD.<sup>21</sup>
14. UNHCR advocates for the inclusion of all persons in need of international protection into family reunification frameworks irrespective of the type of national protection or residence provided. Under Article 8 of the European Convention on Human Rights and Fundamental Freedoms (“ECHR”), everyone has the right to respect for their private and family life, irrespective of the type of residence provided. It is not the status of the applicant that is determinative, but whether there is an obstacle preventing the applicant

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<sup>20</sup> According to the official translation into Swedish of the FRD, the provision reads “har välgrundade utsikter att få ett varaktigt uppehållstillstånd”.

<sup>21</sup> UNHCR's Comments on the Amended Proposal of the European Commission for a Council Directive on the Right to Family Reunification (COM (2002) 225 final, 2 May 2002), 10 September 2002 <https://www.refworld.org/docid/3e4932de4.html>, paras. 5.1.-5.2.

from enjoying family life in his or her home country.<sup>22</sup> This is undisputedly the case for recognized refugees who are threatened with persecution if they return to their country of origin. The situation is comparable for beneficiaries of subsidiary protection since due to civil war or other conflicts, they cannot reasonably be expected to return to their country of origin. As beneficiaries of subsidiary protection therefore have similar protection needs and return prospects, there is no reason to expect their protection needs to be of shorter duration than of refugees.<sup>23</sup>

15. The principle of non-discrimination further requires that similarly situated individuals should enjoy the same rights and receive similar treatment.<sup>24</sup> This includes measures impacting upon individuals' right to family life and family unity, regardless of their immigration or other status. UNHCR has consistently underlined that distinctions between beneficiaries of international protection are often neither necessary nor objectively justified in terms of flight experience and protection needs.<sup>25</sup> UNHCR therefore recommends that the two categories of beneficiaries of international protection should be presumed to have reasonable prospects of obtaining the right of permanent residence and that this be clearly indicated in the Proposal or in the legislative text.<sup>26</sup>

#### **b. Raised age limit for refusal of residence permit due to family reunification**

16. Section 4.2 of the Proposal seeks to raise the age limit for the possibility to refuse family reunification for spouses or partners who are under 21 years of age, as opposed to the current limit of 18 years. The provision is facultative. In order to refuse a residence permit, an individual assessment must be conducted, including of the individual circumstances and family relationships, as well as the principle of the best interests of the child in cases concerning children. According to the Government, the age limit should be raised to maintain a restrictive migration policy and not have a more generous regulatory framework than international and EU law require.

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<sup>22</sup> Submission by the Office of the UNHCR in the case of M.A. v. Denmark (Application no. 6697/18) before the ECtHR, 21 January 2019, <https://www.refworld.org/docid/5c4591164.html>, para. 3.2.4.

<sup>23</sup> Submission by the Office of the UNHCR in the case of M.A. v. Denmark (Application no. 6697/18) before the ECtHR, 21 January 2019, <https://www.refworld.org/docid/5c4591164.html>, para. 3.3.4.

<sup>24</sup> The ECtHR has found that a difference of treatment is discriminatory for the purposes of Article 14 ECHR if it “has no objective and reasonable justification”, that is if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be realised”. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. For jurisprudence, see *Niedzwiecki v. Germany*, 58453/00, ECtHR, 25 October 2005, <http://www.refworld.org/docid/4406d6cc4.html>, and *Okpisz v. Germany*, 59140/00, ECtHR, 25 October 2005, <https://www.refworld.org/cases,ECHR,4406d7ea4.html>, *Biao v. Denmark* (Grand Chamber), ECtHR, 24 May 2016, <http://www.refworld.org/cases,ECHR,574473374.html>; *Hode and Abdi v. The United Kingdom*, ECtHR, 6 November 2012, <http://www.refworld.org/cases,ECHR,509b93792.html>, *M.A. v. Denmark*, 6697/18, ECtHR, 9 July 2021, <https://www.refworld.org/cases,ECHR,60ec0ae24.html>, and *M.T. and others v. Sweden*, 22105/18, 20 October 2022, <https://www.refworld.org/docid/6361454d4.html>.

<sup>25</sup> Submission by the Office of the UNHCR in the case of M.A. v. Denmark (Application no. 6697/18) before the ECtHR, 21 January 2019, <https://www.refworld.org/docid/5c4591164.html>, para. 3.3.3.

<sup>26</sup> UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/1P/4/ENG/REV. 4, <https://www.refworld.org/docid/5cb474b27.html>, para. 135. See also, UNHCR, Observations by the United Nations High Commissioner for Refugees Regional Representation for Northern Europe on the draft law proposal on restrictions of the possibility to obtain a residence permit in Sweden (“Begränsningar av möjligheten att få uppehållstillstånd i Sverige – utkast till lagrådsremiss”), 10 March 2016 <https://www.refworld.org/docid/56e27d7e4.html>.



17. As noted in the Proposal, the purpose of Articles 4(5) and 17 of the FRD is to prevent forced marriages and ensure better integration. UNHCR wishes to add that Articles 4(5) and 17 of the FRD do not offer a tool to States to restrict migration. While Articles 4(5) and 17 of the FRD give a margin of discretion to member states to require the sponsor and his or her spouse to be of a minimum age of 21 years in order to prevent forced marriages, they do not offer a tool to states to restrict migration, as Member States may only require a minimum age for the purpose of preventing forced marriages and not in any manner which would undermine the objective of the Directive and the effectiveness thereof”.<sup>27</sup> In line with the FRD, UNHCR recommends that the Proposal clarify that the objective of the proposed change is to safeguard against forced marriage and that the application of this provision is with this goal in mind.
18. UNHCR appreciates that the application of the provision is optional and requires an individual assessment. The minimum age requirement is only one of the factors that must be taken into account by the Member States when considering an application. The European Commission has advised that if the individual assessment of an application shows that “the justification for Article 4(5), i.e. ensuring better integration and preventing forced marriages, is not applicable, then [Member States] should consider making an exception thus allowing for family reunification in cases in which the minimum age requirement is not fulfilled. For instance, when it is clear from the individual assessment that there is no abuse, e.g. in the case of a common child”.<sup>28</sup>
19. UNHCR cautions against using the provision as a blanket refusal of family reunification for spouses and partners between 18 and 21 years. UNHCR encourages States to adopt an inclusive and culturally sensitive approach to the family.<sup>29</sup> UNHCR also recommends that the national age limit of majority is applied without discrimination to the profile of the person and that legal marriages above the limit of majority are recognized with no discrimination. As noted by the Advocate General of the CJEU, “the objective of restricting forced marriages, however legitimate and appropriate, must be counterbalanced by the right of genuinely married couples to exercise their right to family reunification which arises directly from the right to respect for their family life”.<sup>30</sup>

### **c. Maintenance requirement**

20. As expressed in its earlier law comments and recommendations,<sup>31</sup> UNHCR is concerned that the already onerous maintenance requirement in Sweden – which entails strict income and accommodation requirements if the application for family reunification is not submitted within three months from the date of granting of protections status - is

<sup>27</sup> European Commission, Communication from the Commission to the European Parliament and the Council of 2014 on guidance for application of Directive 2003/86/EC on the right to family reunification, COM(2014) 210 final, 3 April 2014, <http://www.refworld.org/docid/583d7d0b7.html>, p. 8.

<sup>28</sup> Ibid, p. 8.

<sup>29</sup> See, for instance, UNHCR ExCom, Conclusion No. 24 on Family Reunification, para. 5; UNHCR Resettlement Handbook, 2011, July 2011 <https://www.refworld.org/docid/4ecb973c2.html>, p. 190.

<sup>30</sup> Marjan Noorzia - Conclusions de l'avocat général, Affaire C-338/13, European Union: Court of Justice of the European Union, 30 April 2014 <https://www.refworld.org/cases.ECJ.5375eb1e4.html>. See also, Noorzia v. Bundesministerin für Inneres, C-338/13, CJEU, 17 July 2014 <http://www.refworld.org/docid/53ccd5634.html>.

<sup>31</sup> UNHCR, Recommendations to Sweden, Section 2.3; UNHCR, Observations on the proposed legislative amendments to the Swedish Aliens Act – Report by the Cross-party Committee of Inquiry on Migration [SOU 2020:54 – En långsiktigt hållbar migrationspolitik Betänkande av Kommittén om den framtida svenska migrationspolitiken], 7 December 2020, <https://www.refworld.org/docid/5fe9c7074.html>, (“UNHCR observations on the Report by the Cross-party Committee of Inquiry on Migration”) para. 30.

impossible for many beneficiaries of international protection to fulfil and does not sufficiently take into account the particular circumstances of persons who have been forced to flee.<sup>32</sup> In practice, UNHCR has observed that imposing financial requirements often forces the parents to choose to only apply for family reunification with some of their children, leaving the other children behind, a practice which raises serious concerns.<sup>33</sup> Rather than reuniting families, this has the effect of dividing families.

21. UNHCR further recalls the jurisprudence of the CJEU, according to which the maintenance requirement must not be used in a manner that would undermine the objective and effectiveness of the FRD. The granting of family reunification is the general rule, and the faculty of the maintenance requirement must therefore be interpreted strictly. The Directive “must be interpreted in the light of its general objective, which is to promote rather than prevent family reunification”.<sup>34</sup>
22. Furthermore, the UN Committee on the Rights of the Child recently urged Sweden to facilitate reunification of children with their families, including by abolishing the maintenance requirement and time limit of three months for applications submitted by a family member who has been granted a residence permit.<sup>35</sup>

#### *Beneficiaries of subsidiary protection*

23. According to section 4.3 of the Proposal, beneficiaries of subsidiary protection will no longer be exempted from maintenance requirements, even if the application for family reunification is submitted within three months from the date of granting of protection status. Exemptions will only apply when the family member is already in Sweden and the decision on his or her asylum application has been made in conjunction with the sponsor’s decision on asylum. As UNHCR understands this, exemptions may apply to applicants who have applied for asylum in Sweden and who do not qualify for refugee status or subsidiary protection, however, may qualify for family reunification instead.
24. Pursuant to Article 3(2)(c) of the FRD, beneficiaries of subsidiary protection are not included in the scope of the Directive. However, further to paragraphs 14–15 above, UNHCR considers that the humanitarian needs of individuals granted subsidiary protection are not different from those of refugees, and that differences in requirements

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<sup>32</sup> Submission by the Office of the UNHCR in the case of J. K. v. Switzerland (Appl. No. 15500/18) before the ECtHR, 28 May 2019, <https://www.refworld.org/docid/5dced8884.html>, para. 3.2.5.

<sup>33</sup> UNHCR, Access to Family Reunification for Beneficiaries of International Protection in Central Europe, December 2012, <https://www.refworld.org/docid/588b4f164.html>, p. 12. See also, Council of Europe: Parliamentary Assembly, Recommendation 1686 (2004) Human mobility and the right to family reunion (‘CoE PACE 2004 Recommendation on Human Mobility’), 23 November 2004, <https://www.refworld.org/docid/583ed1c77.html>.

<sup>34</sup> European Commission, Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, 3 April 2014, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014DC0210>, p. 12, which refers to case C-578/08, Chakroun, 4 March 2010, para 43; Cases C-356/11 and C-357/11, O. & S., 6 December 2012, para. 74. Marjan Noorzia - Conclusions de l’avocat général, Affaire C-338/13, European Union: Court of Justice of the European Union, 30 April 2014 <https://www.refworld.org/cases.ECJ,5375eb1e4.html>

<sup>35</sup> UN Committee on the Rights of the Child, Concluding observations on the combined sixth and seventh periodic reports of Sweden, 6 February 2023, [https://www.regeringen.se/globalassets/regeringen/dokument/socialdepartementet/barnets-rattigheter/crc\\_c\\_swe\\_co\\_6-7\\_51663\\_e-8.pdf](https://www.regeringen.se/globalassets/regeringen/dokument/socialdepartementet/barnets-rattigheter/crc_c_swe_co_6-7_51663_e-8.pdf). p. 13.

for family reunification are therefore not justified in terms of the individual's flight experience and protection needs.<sup>36</sup>

25. The European Commission also considers that the humanitarian protection needs of persons benefiting from subsidiary protection do not differ from those of refugees and encourages Member States to adopt rules that grant similar rights to refugees and beneficiaries of subsidiary protection.<sup>37</sup> Against this background and not to risk placing Swedish law below minimum international and regional standards, UNHCR would urge against a differentiation of the proposed nature.

#### *Resettled refugees*

26. Section 4.3 of the Proposal provides that the three-month cut-off date for resettled refugees to be exempted from the maintenance requirement will be changed from the date of entry in Sweden to the date of decision on the residence permit.
27. UNHCR is concerned about the proposed amendment as resettled refugees may have even greater difficulties to meet the three-month deadline than other refugees, as they have not even arrived in Sweden by the time the decision on their residence permit is taken.<sup>38</sup> In general, beneficiaries of international protection may have particular difficulties in submitting their applications for family reunification within three months of being granted protection in order to be exempted from the maintenance requirement. They may not know the whereabouts of their family members. Tracing of family members can be a lengthy process which exceeds three months in many cases and family members may be required to travel – sometimes across several countries – in order to reach an Embassy at which they can submit an application for family reunification. They may also face difficulties in providing the documentation required, as documents may have been lost or destroyed during flight, and family members are unable to approach the authorities of their country of origin for issuance of documents due to risks of persecution.
28. UNHCR has for these reasons called on all Member States not to apply the optional time limits for applications of family reunification as set out in Article 12(1) of the FRD to refugees.<sup>39</sup> UNHCR recommends Sweden to allow for more flexibility with regard to the time limit and consideration for individual circumstances when assessing applications from individuals who were not able to submit within the time limit. For resettled refugees, UNHCR recommends Sweden to refrain from the proposal to move the three-month cut-off date for resettled refugees to be exempted from the maintenance requirement from the date of entry to the date of decision of the residence permit.

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<sup>36</sup> See, for instance, UNHCR Recommendations to Sweden, Section 2.4.

<sup>37</sup> European Commission, Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, 3 April 2014 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014DC0210>, pp. 24-25.

<sup>38</sup> UNHCR observations on the Report by the Cross-party Committee of Inquiry on Migration, paras. 32-33.

<sup>39</sup> UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC), February 2012 <http://www.refworld.org/docid/4f55e1cf2.html>, p. 6.



#### **IV. Concluding recommendations:**

29. Based on the above, UNHCR recommends the Swedish Government to:

1. Indicate clearly in the Proposal or in the law that refugees and beneficiaries of subsidiary protection should be presumed to have reasonable prospects of obtaining the right of permanent residence;
2. Ensure that the age limit in Chapter 5:17a in the Aliens Act is not used as a blanket refusal of family reunification for spouses and partners between 18 and 21 years, and adopt an inclusive and culturally sensitive approach to the definition of family;
3. Maintain the possibility for beneficiaries of subsidiary protection to be exempted from maintenance requirements if the application for family reunification has been submitted within three months from the date of granting of protections status;
4. Refrain from the proposal to move the three-month cut-off date for resettled refugees to be exempted from the maintenance requirement from the date of arrival to the date of decision of the residence permit.

30. UNHCR stands ready to discuss these recommendations with the Swedish authorities.

**UNHCR Representation for the Nordic and Baltic Countries**  
**28 March 2023**



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

**UNHCR Representation for the Nordic and Baltic Countries**

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28 March 2023

Notre/Our code: 033/RNB/2023

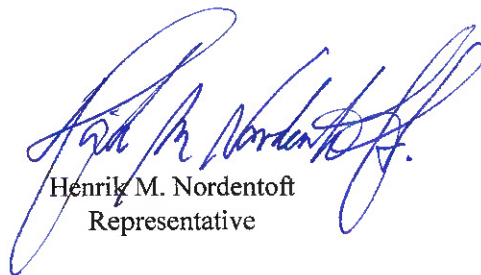
**RE: UNHCR Observations on the draft proposal “Certain stricter conditions for family immigration and limited possibilities for residence permit due to humanitarian reasons” Utkast till lagrådsremiss: Vissa skärpta villkor för anhöriginvandring och begränsade möjligheter till uppehållstillstånd av humanitära skäl**

Dear Sir/Madam,

The UNHCR Representation for the Nordic and Baltic Countries is pleased to submit to the Ministry of Justice of Sweden its observations on the draft proposal “Certain stricter conditions for family immigration and limited possibilities for residence permit due to humanitarian reasons”.

UNHCR appreciates the constructive dialogue with the Swedish Government, and we thank you for your consideration of this important matter. We remain at your disposal for any clarification required.

Yours sincerely,



Henrik M. Nordentoft  
Representative