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AWO Bundesverband e.V.

Statement of the AWO Federal Association

on the draft bill of the Federal Ministry of the Interior and for Home Affairs

Draft law to adapt national law to the reform of the Common European Asylum System
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GEAS Adaptation Act

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Contents

I. Summarized assessment

The AWO Bundesverband would like to thank you for the opportunity to comment.
The present draft law contains the biggest change to German asylum legislation since the asylum compromise in 1993. The reform of the Common European Asylum System (CEAS) adopted in June 2024, which will be in force from summer 2026, has been repeatedly criticized by civil society organizations as a significant tightening of European asylum law that endangers the protection of refugees in the EU. As already called for in a joint civil society statement[1] from July 2024, the national implementation of the reform must ensure that human rights are respected in the best possible way and that constitutional standards in Germany are upheld to the greatest extent possible. In our view, the current draft bill does not make sufficient use of the existing scope for improvement in terms of human rights.
The AWO Bundesverband e.V., together with other civil society organizations, had already demanded an appropriate participation period of at least two weeks in advance. A participation period of just over 5 working days does not do justice to the importance and scope of the reform

The current draft bill - just like the European legal texts - massively encroaches on the right to asylum, civil liberties, access to effective legal remedies and guarantees of protection under international law for particularly vulnerable groups of people. The options are often not used in the interests of those seeking protection, only the minimum requirements are implemented and important guarantees are not transferred.

II. The draft law / project in detail

1. Human rights monitoring

Re No. 19: Monitoring mechanism[2]

Regulation:

Article 43(4) of the Asylum Regulation provides for the establishment of a mechanism to monitor compliance with fundamental rights in connection with the border procedure as part of the mandatory asylum border procedure, which corresponds to the criteria set out in Article 10 of the Screening Regulation. The Federal Government would like to establish the procedure for monitoring the asylum border procedure in accordance with the regulations in good time with the close involvement of the National Agency for the Prevention of Torture and the German Institute for Human Rights

[1] https://awo.org/artikel/reform-des-gemeinsamen-europaeischen-asylsystems/
[2] Monitoring mechanism: Monitors compliance with Union and international law, including the EU Charter of Fundamental Rights, in particular with regard to access to the asylum procedure, the principle of non-refoulement, the best interests of the child and the relevant provisions on detention, including the relevant provisions on detention in national law, and ensures that substantiated allegations of breaches of fundamental rights in the context of the asylum border procedure are effectively and promptly investigated, that investigations into such allegations are triggered where necessary and that the progress of such investigations is monitored. It covers all activities of the Member States in implementing the Asylum Regulation.

and guarantees that the independent monitoring mechanism can exercise all competences and powers arising from Article 43(4) of the Asylum Regulation in conjunction with Article 10 of the Screening Regulation to monitor compliance with fundamental rights throughout the asylum border procedure in full independence and comprehensively.

AWO position:

The AWO welcomes the Federal Government's commitment to treating the monitoring mechanism as an important issue. However, it recommends that this mechanism be enshrined in federal law in order to ensure that it is independent and provided with sufficient financial resources. Only with such a legal basis can the monitoring mechanism work effectively.

As called for in the civil society priority paper on the implementation of the GEAS reform in Germany[3] there is also a need for an annual report to the Bundestag. The authority of the monitoring mechanism to make recommendations to the Member States, as set out in Art. 10 para. 2 subpara. 3 of the Screening Regulation, should be specified in such a way that the monitoring body submits a report on its activities, findings and recommendations to the German Bundestag at least once a year. The Federal Government should comment on this in order to ensure that the recommendations are actually discussed seriously and taken up.

In addition, the priorities paper calls for the establishment of a nationwide consultative forum. According to Art. 10 para. 2 subpara. 4 Screening Regulation, close cooperation between the national monitoring bodies and relevant non-governmental organizations, the national data protection authorities and the European Data Protection Supervisor should be ensured. Such a consultative forum at national level would enable a direct exchange between technically competent stakeholders. The positive experiences with the deportation observers and the accompanying "airport forums" could serve as a model. This would allow problems arising in the area of fundamental rights protection to be addressed, discussed and ideally resolved immediately.

2. Vulnerable groups[4]

a. Re No. 51c.: § 44 Para. 2 AsylG-E Creation and maintenance of reception facilities

[3] https://awo.org/artikel/reform-des-gemeinsamen-europaeischen-asylsystems/

[4] Particularly vulnerable groups such as minors, people with disabilities, people who are persecuted because of their sexual orientation or gender identity (LGBTI+), survivors of severe violence or torture and victims of human trafficking have a right to special support so that the asylum procedure is fair for them and the reception conditions are appropriate.

Regulation:

According to the new version, the federal states are to take appropriate measures to take into account the special needs of foreigners when accommodating them. According to the previous regulation, the federal states are to ensure the protection of women and vulnerable persons.

AWO position:

The regulation serves to implement Art. 24 of the Reception Directive. Requirements from the Directive must be explicitly transposed into national law, as the Directive is not directly applicable, unlike the new regulations. The AWO welcomes the implementation of Art. 24 of the Reception Directive. For the first time, the consideration of special needs during admission is standardized by law.
However, the AWO recommends not deleting the previous half-sentence on the protection of women. As the protection against violence is a particular need in reception, the AWO believes that this is covered by the new regulation. For better clarification, however, it is suggested that the protection of women should continue to be explicitly anchored in Section 44 AsylG-E.

b. Re No. 53: Section 46 AsylG-E Determination of the responsible reception facility

Regulation:

§ Section 46 (2) AsylG-E stipulates that any special needs of asylum seekers are already taken into account when the decision on distribution is made. § Section 46 (3) AsylG-E stipulates that the reception facility arranging the reception must notify the central distribution point of any special needs insofar as special needs were identified during the reception.

AWO position:

The draft bill specifies in Section 46 AsylG-E that special needs should be identified at an early stage. It is positive that these needs are already taken into account during the reception and distribution of refugees. However, special needs can only be adequately addressed if the corresponding vulnerabilities are identified. Without a system for the initial identification of vulnerabilities in the screening process, the AWO warns that these cannot be taken into account in the distribution process. In addition to security, identity and health checks, the screening procedure also includes a vulnerability check in accordance with Art. 12 para. 3 Screening Regulation. Experience with the implementation of the previous Asylum Reception Directive highlights the need for clear legal regulation. In addition, newly arriving refugees who have already been screened in another Member State (Art. 7 para. 3, Art. 25 para. 1 Reception Directive) should also be included in the process. It should be ensured that, in addition to the examination of reception needs, special procedural guarantees are also determined in accordance with the Reception Regulation (Art. 20 para. 1 sentence 2 Reception Regulation) in order to initiate new or additional identification measures if necessary.

In addition, data protection is of great importance. Information about special needs should be treated with caution and deleted if necessary.

c. Re No. 55: Section 49 AsylG-E Discharge from the reception center

Regulation:

As a rule, a person will not be released from the reception center before the hearing in accordance with § 25 has taken place.

AWO position:

If special needs under the Reception Directive cannot be met, it must be possible to be released from initial reception, see Art. 25 para. 2, p. 2 and 20 Reception Directive. Since the Directive is not directly applicable, unlike the Asylum Regulation, to which persons seeking protection in border procedures can refer directly, the Reception Directive must be implemented here, so the possibility of discharge must be inserted here if the reception facility cannot meet the special needs.

d. Re no. 28a. cc.: Section 71 (3) no. 9 Residence Act-E - Responsibility

Regulation:

According to Section 71 para. 3 no. 9 AsylG-E, authorities entrusted with the police control of cross-border traffic should be responsible for carrying out the processes provided for in the Screening Regulation if a person is apprehended as part of border police duties. According to Art. 8 Para. 4 of the Screening Regulation, this includes, among other things, preliminary health checks, security checks, identity checks and vulnerability checks. Health checks are removed from the scope of duties and carried out by medical personnel.

AWO position:

The responsibility for carrying out the vulnerability assessment as part of the screening procedure, a procedural step prior to the asylum procedure, can be transferred by the Member States to specific examining authorities in accordance with Art. 8 para. 9 subpara. 2 of the Screening Regulation. In doing so, they must ensure that the staff of these authorities have appropriate expertise and are trained accordingly. Where appropriate, national child protection authorities and national authorities responsible for the investigation and identification of victims of human trafficking may be included in the screening process. According to the draft bill, only the border authority is to take on this task. However, the AWO strongly advises against federal police officers carrying out the vulnerability check. Just as the health check is carried out by trained personnel, this should also apply to the vulnerability check. In order to meet the requirements of the Screening Ordinance, the AWO suggests that

suitable specialist staff are called in. If this is not possible due to the short deadline in the screening procedure (3 or 7 days), the examinations must be carried out by trained employees of the BAMF, where the expertise lies.

e. Re No. 28 c Section 71 (4a) AufenthG - Screening in Germany

Regulation:

If persons seeking protection are not found at the external borders but within the country, the state police authorities are responsible for carrying out checks in accordance with Art. 5 para. 3 and Art. 7 para. 1 of the Screening Regulation.

AWO position:

In this case too, the preliminary vulnerability assessment should not be carried out by the state police. Instead, the AWO recommends calling in suitable specialist personnel and, if this is not available, appointing the BAMF as the competent authority for this task.

f. Data protection

Regulation:

There are no regulations on this in the draft bill.

AWO position:

A regulation must be put in place and should include the following: Every identification measure relating to vulnerabilities must be recorded in written documentation and handed over to the person concerned (Art. 17 para. 3 subpara. 3 Screening Regulation, see also Art. 25 para. 2 sentence 1 b) of the Reception Directive). The needs identified are transmitted to the competent authorities subject to informed consent and in compliance with data protection in accordance with the principles of proportionality and data minimization (Art. 18 para. 1 subpara. 2 of the Screening Regulation, Art. 20 para. 1 sentence 3 of the Reception Regulation). This requires a clear legal stipulation that these authorities include all bodies responsible for granting admission and procedural requirements.

3. Fair and thorough asylum procedures

a. Re no. 24c.: Section 22a Taking over an applicant or a person who has been granted international protection

Regulation:

According to the new solidarity mechanism pursuant to Art. 56 para. 2 letter a) of the AMR, contributing Member States may take over applicants for international protection and beneficiaries of international protection. In implementation of Article

68(4) of Regulation (EU) No 2024/1351, the receiving Member State automatically recognizes the international protection status granted by the beneficiary Member State.

AWO position:

If a person enjoying international protection does not report immediately to the aforementioned reception center, the consequence of § 22 para. 3 AsylG-E could occur, i.e. withdrawal of the application or a waiver. The AWO suggests amending this consequence.

b. Re No. 28 and No. 29: Section 26a Safe third countries within the meaning of Article 16a (2) of the Basic Law and Section 27 Safe third countries within the meaning of Regulation (EU) No. 2024/1348

Regulation:

The insertion of Section 26a AsylG-E serves to adapt to Art. 64 Asylum Regulation. The determination of safe third countries for international protection may differ from the determination of safe third countries for the right to asylum, which is why a separate regulation is required. The draft bill separates safe third countries within the meaning of Art. 16a para. 2 of the Basic Law and safe third countries for the purposes of international protection. According to the draft bill, the Federal Government can determine safe third countries in accordance with Art. 64 Asylum Regulation by statutory order without the approval of the Bundesrat in accordance with Section 27 AsylG-E.

AWO position:

According to Art. 64 Asylum Regulation, Member States may maintain or enact legislation that allows them to designate safe third countries at national level in addition to the safe third countries designated at Union level. As this is an optional provision and not a target or actual provision, the draft bill no longer has to retain the current regulation and could delete it, and above all it does not have to introduce Section 27-E AsylG-E. The concept of safe third countries would then be purely at EU level. Deleting both provisions would therefore serve to harmonize the common asylum system under European law.
The distinction between third countries according to asylum under Article 16a of the Basic Law and international protection should not be made. The already complicated system is thus no longer comprehensible. So far, safe third countries within the meaning of Art. 16a para. 2 GG are Norway and Switzerland in addition to the EU member states. The concept of safe third countries[5] has the following effects

[5] Art. 59 Asylum Regulation Concept of a safe third country: With the application of the Asylum Procedure Regulation, a third country can be considered safe if there is no threat to the life and freedom of non-citizens on grounds of race, religion, nationality, membership of a particular social group or political opinion. There is no actual risk of suffering serious harm within the meaning of Art. 15 of the Qualification Regulation. He/she is not threatened with refoulement and deportation in the third country to a country where he/she would be subjected to torture and cruel, inhuman or degrading treatment, and there is the possibility of applying for and receiving effective protection in accordance with Art. 57 Asylum Regulation. The third country itself does not have to have signed the Refugee Convention. Furthermore, the concept of a safe third country may only be applied if there is a connection between the applicant and the third country in question that would make it reasonable for the applicant to go to that country.

Admissibility decisions in the asylum procedure (Section 29 AsylG / Section 29 AsylG-E). The concept of safe third countries is very difficult to implement in practice and generally fails due to the lack of safe third countries willing to accept asylum seekers. Access to fair asylum procedures is severely delayed or even completely restricted. The misery on the Greek islands is a prime example of how the concept does not work. Based on these experiences and the findings of the experts at the expert hearing on the externalization of asylum procedures held by the Federal Ministry of the Interior in June 2024, the AWO expects an expansion of the list of safe third countries to result in significantly more people seeking protection without a substantive asylum examination and overcrowded return facilities. Precisely because the concept is so difficult to implement in practice and severely interferes with human rights, the AWO finds it incomprehensible that safe third countries can be determined in future by means of a statutory order issued by the Federal Government to the exclusion of the Bundesrat and Bundestag. The classification of a country as a safe third country must be subject to parliamentary control and must not be determined solely by the executive.
The AWO rejects the introduction of a different practice and the extension of the concept of safe third countries to other countries outside the EU (Norway and Switzerland). The AWO has already strongly criticized this plan on several occasions. The AWO calls for the standard to be deleted.

c. Re Nos. 32 and 33: Section 29a AsylG-E Safe countries of origin within the meaning of Article 16a (3) of the Basic Law and Section 29b Safe countries of origin within the meaning of Regulation (EU) No. 2024/1348

Regulation:

The insertion of Section 29b AsylG-E serves to adapt to Art. 64 Asylum Regulation. The designation of safe countries of origin for international protection may deviate from the designation of safe countries of origin for the right to asylum in accordance with Art. 16a of the Basic Law, which is why a separate regulation is required. According to the draft bill, the Federal Government can designate safe countries of origin in accordance with Art. 64 Asylum Regulation by statutory order without the approval of the Bundesrat in accordance with Section 29b AsylG-E.

AWO position:

The AWO firmly rejects the concept of a safe country of origin. The AWO is of the opinion that the presumption of safety no longer guarantees an unbiased and careful examination of individual cases. The consequences of an obviously unfounded rejection are drastic. Administrative and judicial procedures are accelerated and legal protection is severely restricted. Those affected are obliged to remain in shared accommodation until they leave the country and are prohibited from working. This different treatment of refugees on the basis of their country of origin is clearly contrary to the agreement of the Geneva Refugee Convention (Article 3 Refugee Convention).
Article 16a (3) of our Basic Law states that safe countries of origin can only be determined by law with the involvement of the Bundesrat. In addition, the Federal Constitutional Court has established strict criteria for the requirements for determining a "safe country of origin" in

established case law. Why the

It is not apparent that the classification as a safe country of origin for international protection is to be handled differently, nor is this clear from the explanatory memorandum to the draft bill. The AWO calls for the standard to be deleted. Due to the optional provision in Art. 64 Asylum Regulation, a national regulation is not necessary. The AWO rejects the determination of a "safe country of origin" by means of an ordinance without the involvement of the Bundesrat and without a vote in the Bundestag. A separation of safe countries of origin according to asylum and international protection is also not comprehensible here.

d. Re No. 34: Section 30 AsylG-E Manifestly unfounded asylum applications

Regulation:

According to Art. 39 para. 3 of the Asylum Regulation, asylum applications are rejected as unfounded if the applicant does not meet the requirements for protection status in accordance with the Qualification Regulation. According to para. 4, the Member State may determine in national law to reject an asylum application as manifestly unfounded if, after completion of the examination, one of the circumstances listed in Art. 42 para. 1 or 3 of the Asylum Regulation applies.

AWO position:

Article 39(4) of the Asylum Regulation (Asylum Regulation) allows Member States to reject an asylum application as manifestly unfounded. However, the Member States can also decide not to use this option. The present draft bill makes use of all available options. The criteria for a rejection as manifestly unfounded originate from Article 42 (1) and (3) of the Asylum Regulation, which also defines the regulations for accelerated procedures. Newly added are cases in which persons who have entered the territory of a Member State lawfully or unlawfully have failed to submit an asylum application as early as possible. In addition, applications from persons whose recognition rate in Europe is 20% or less can be rejected as manifestly unfounded. However, a reason for rejection does not apply to persons who violate an entry and residence ban (Section 30 (1) No. 9 AsylG). The AWO strongly opposes the extension of these regulations, particularly for persons with a recognition rate of 20% or lower. This would shorten legal protection for many people seeking protection and burden lawyers and courts. The shortened legal protection with shorter appeal periods and without suspensive effect also affects underage applicants, which could potentially endanger the welfare of children. The AWO is therefore calling for these cases to be removed from the regulation.

4. Asylum procedure advice

a. No. 11 § 12b Free legal information

Regulation:

According to the new provision of Section 12b (1) AsylG-E, an asylum applicant will be provided with free legal information in accordance with Article 16 of the Asylum Regulation and Article 21 of the AMM Regulation upon request in the asylum procedure and in the procedure for determining the EU Member State responsible for carrying out the asylum procedure. The regulation stipulates that the Federal Office for Migration and Refugees (BAMF) will in future be the authority that provides free legal information in the administrative procedure in these cases.

BAGFW position:

The provisions set out in Section 12b (1) AsylG-E are not necessary. The requirements of the EU regulations are already met by the Asylum Act (AsylG-E) in Section 12a in accordance with the coalition agreement. promoted federal program independent asylum procedure counseling, which is funded in accordance with the coalition agreement. The possibility of non-governmental organizations providing free legal information and advice is explicitly provided for in Art. 19 para. 1 of the EU Asylum Regulation. In terms of content, the advice in the federal program includes information on the procedure and may include legal services in accordance with the Legal Services Act. The advice funded under the federal program is independent of the authorities, open-ended, free of charge, individual and voluntary and extends over the entire asylum procedure until its incontestable conclusion. It is provided by experienced providers who have proven their reliability, the proper and conscientious implementation of the counseling as well as quality assurance and development procedures. Various studies have demonstrated the additional value of such independent legal information and advice for the fairness, quality and efficiency of asylum procedures.
If Section 12b (1) AsylG-E is retained, Section 12b (1) AsylG-E should at least stipulate that free legal advice in accordance with Article 16 Asylum Regulation and Article 21 Asylum Procedures Regulation is also provided by the advice centers funded under the federal program for independent asylum procedure advice in accordance with Section 12a AsylG-E. Otherwise, according to the explanatory memorandum to the bill, free legal advice would be provided exclusively by the BAMF. The legal restriction in Section 12b (1) AsylG-E in the draft bill would, on the one hand, violate the principle of subsidiarity. Secondly, it would not be possible to realize the advantages of an authority-independent and individual legal information for the fairness, quality and efficiency of asylum procedures. The provision in Section 12b (1) AsylG-E provided for in the draft bill should therefore not be included.

b. Re No. 11: Section 12c-E - Restriction of access to closed areas, detention facilities and border crossing points

Regulation:

Section 12c-E is newly introduced and stipulates that access for persons and organizations authorized to provide legal information and advisory services to detention facilities

and at facilities at border crossing points (Art. 30 para. 3 Asylum Ordinance) may be restricted if this is necessary to ensure public safety and order.

AWO position:

According to Art. 30 para. 3 no. 2 of the Asylum Regulation, Member States may restrict access to the aforementioned facilities. Here, the German legislator is making use of its regulatory option. It should not have restricted access. The AWO considers the restriction to be disproportionate and therefore calls for the deletion of this provision. Furthermore, it is not clear whether the national legal concept of public safety and order can be applied in the context of the implementation of European law.

c. Re No. 39: Section 33 AsylG-E Inspection of files and access to sources of information

Regulation:

§ Section 33 AsylG-E makes use of the option to restrict access to files by the legal advisor in accordance with Art. 18 para. 1 Asylum Regulation. Access to files is excluded for all information and sources whose disclosure would endanger national security, the security of the organizations or persons from which the information originates or the security of the persons to whom the information relates, or if the investigative interests of the Federal Office in the context of the examination of applications in individual cases or in general or the international relations of the Federal Republic of Germany or another Member State of the European Union would be impaired or if the information or sources are classified.

AWO position:

Art. 18 para. 2 sentence 1 Asylum Regulation is optional. Right of defense must be respected. If legal advisors are denied access to information in accordance with Section 33 sentence 1, they must nevertheless be granted access to certain information or sources in court proceedings in accordance with Art. 18 para. 2 subpara. 1, lit. b and subpara. 2 Asylum Regulation, provided they have undergone a security check.

d. Re No. 8: Section 15a (5) Residence Act (draft) Review in the federal territory

Regulation:

§ Section 15a (5) Residence Act-E restricts access to facilities in the screening procedure for persons who provide legal information and advice if this is necessary for reasons of security and public order.

AWO position:

Art. 8 para. 6 sentence 2 Screening Regulation grants Member States the option to make use of the provision. The AWO suggests not making use of this option and granting access to counselors and persons offering legal information. In

At this stage of the procedure, those seeking protection receive an enormous amount of information and the course is set for the further procedure. The AWO believes that restricting access here is dangerous. Especially if the police authorities also take over the vulnerability assessment, as planned.

e. Re no. 22: Section 60a (6) no. 3 Residence Act - draft Temporary suspension of deportation (tolerated stay)

Regulation:

If the asylum application is withdrawn by the BAMF after a free consultation in accordance with Section 12b AsylG-E, the person is not prohibited from working.

AWO position:

At first glance, this regulation is not part of the implementation of the GEAS reform. The Residence Act already contained this provision in earlier times and was not actually applied. The AWO therefore suggests that the legal consequence should also be made possible in the case of free legal advice from civil society advice centers in accordance with Section 12a AsylG. This should also apply in particular if Section 12b AsylG-E is repealed or the civil society advice centers are not included in Section 12b AsylG-E.

5. Legal protection

a. Re No. 19: Section 18a-E AsylG-E Asylum procedure at the border

Regulation:

§ Section 18a AsylG-E regulates asylum procedures at the border (former airport procedures). Paragraph 1 specifies the times within which the border procedure should be completed. The Federal Office should make a decision after a maximum of eight weeks. The Federal Office may extend this period to 12 weeks. According to paragraph 4, the application for interim legal protection must be submitted to the competent administrative court within one week. If the information on legal remedies is incorrect, the deadline is extended to three months. It is customary to extend the deadline by one year if the information on the legal remedy is missing or incorrect.[6] The court must make a decision within two weeks of receiving the application. In the event of a negative decision by the court, there is no time limit for voluntary departure. Art. 4 para.
Section 5 of the Border Return Regulation grants a maximum period of 15 days for the voluntary return of persons in border procedures, but only upon application. After this period has expired, asylum seekers must generally be allowed to enter German territory. If the BAMF rejects the asylum application, entry is refused. The person then goes through the return border procedure.

[6] The shortening of the time limit for bringing an action to three months can also be found in other places. The AWO rejects the shortening of the deadline in principle, also in other places

AWO position:

One of the most serious tightening of the CEAS reform is the introduction of mandatory border procedures. These procedures apply to people who conceal their identity, pose a threat to national security or come from a country of origin with a recognition rate of 20% or less across Europe. During the border procedure, the persons are not permitted to enter the federal territory and the fiction of non-entry applies. In order to enforce this fiction, the persons concerned are placed in detention or detention-like facilities at the border. The asylum border procedure is designed as an accelerated procedure, whereby access to counselors and services may be restricted. Germany must create capacity for 374 places for this.
The AWO has criticized the concept of mandatory border procedures from the outset. The draft bill does not yet contain any regulations or specific requirements as to who must be included in the border procedure. The Asylum Regulation (AsylVO) only defines the mandatory cases for the asylum border procedure, but also allows all those seeking protection who fall under the conditions specified in Article 43 (1) AsylVO to enter the border procedure. The AWO warns that people could be accommodated in border procedures until capacities are exhausted. It is therefore essential to refrain from doing so and border procedures should only be ordered in cases that are actually mandatory.
According to the Asylum Regulation, voluntary departure is only granted upon application and may not exceed 15 days. A corresponding application must be submitted with the asylum application (new Section 38 (6) AsylG). The AWO sees no comprehensible reason why the application for voluntary departure must be submitted at the same time as the asylum application.

b. Re no. 41: Section 34a (2) AsylG-E threat of deportation

Regulation:

Applications for interim legal protection in accordance with Section 80 (5) VwGO must be submitted within one week of notification.

AWO position:

The draft bill thus retains the old legal situation and therefore the minimum period. According to Art. 43 Para. 2 AMMVO, Member States may provide for a time limit of at least one week but no more than three weeks. The time limit for filing an application for interim relief is also currently one week. These deadlines are already too short to consult a lawyer or legal advisor and to submit a well-founded statement of grounds. If there is insufficient access to legal advisors or lawyers in the area, legal protection may be limited. The AWO would therefore welcome it if you did not choose the minimum time limit.

c. Re No. 45 and No. 46: Section 38 AsylG-E Departure deadline

Regulation:

§ Section 38 AsylG-E regulates the period for voluntary departure. Periods of between one week and three months are granted. No voluntary departure period is granted if the asylum seeker poses a threat to public safety and order, the asylum application was abusive or there is a risk of absconding. If the asylum seeker is in the asylum border procedure, he or she will be granted a period for voluntary departure if he or she has applied for voluntary departure when applying for asylum. The application for voluntary departure is then examined at the same time as the asylum application.

AWO position:

The AWO suggests that the application for the period for voluntary departure can be submitted at a later date. The AWO considers the coincidence of the application with the asylum application to be extremely unfortunate. So far, the AWO has not seen any requirements from the Return Border Regulation that prescribe this procedure.

d. Re No. 76: Section 72 (3) AsylG-E Expiry

Regulation:

§ Section 72 AsylG regulates the reasons when recognition as a person entitled to asylum and the granting of international protection expire. According to paragraph 3, it is possible to apply for confirmation of expiry. The confirmation cannot be contested.

AWO position:

Art. 67 para. 1 subpara. 2 AVVO contains the option to stipulate that there is no right of appeal. The AWO suggests not making use of this option.

e. Re no. 80: Section 74 AsylG-E time limit for filing an action, rejection of late submissions, hearing by the rejected judge

Regulation:

The provision that the time limit for lodging an appeal is shortened to three months in the event of missing or incorrect information deviates from Section 58 (2) of the Administrative Court Code (VwGO). The reason for this is as follows: "The newly inserted last sentence on the time limit for filing an appeal in the event of omitted or incorrect information serves the purpose of tightening up the time limits in asylum court proceedings. Three months seems appropriate for these cases."

AWO position:

The AWO considers this argument to be problematic. If a mistake has been made in the administrative procedure, the people affected will be given less time to find out about their rights and claim them just so that the court proceedings can be completed more quickly.

6. Detention of persons seeking protection[7]

a. Re No. 70: Section 68 Restriction of freedom of movement

Regulation:

The draft bill stipulates that freedom of movement can be restricted to the place of detention. Such an order is permissible if this would be necessary for reasons of public safety and order or if there is a risk of absconding. There is no exhaustive list of when there is a risk to public safety and order or a risk of absconding. These restrictions apply in particular to persons in the Dublin procedure and to those who have been returned as part of this procedure. There is a rebuttable presumption of a risk of absconding in the event of repeated or significant breaches of obligations to cooperate and for persons in accelerated proceedings.
The order is issued in writing by the competent state authority, which also includes information on legal remedies; a prior hearing is not required. In addition, affected persons can only leave the place of accommodation with the permission of the authority, which can only be granted in individual cases for compelling reasons. In addition, the authority may impose a reporting obligation and benefits may be made dependent on the person staying at the relevant location.

AWO position:

Member States have the option of restricting freedom of movement. However, the implementation of Article 9 of the Reception Directive is not mandatory and Germany can refrain from doing so. In addition, some provisions of the Directive are not implemented. For example, there is no obligation to register if this would affect the rights of applicants under the Directive. Leaving the place of accommodation may also be permitted in order to attend appointments with authorities and courts. The persons concerned must also be informed of the consequences of violating the obligations imposed on them. As a breach of the freedom of movement can be sanctioned with reductions in benefits and even imprisonment in accordance with Section 69 AsylG-E, the lack of a provision on information is highly questionable. Furthermore, the directive stipulates that the order must be reviewed by a judicial authority after two months.
The restriction of freedom of movement to the place of placement represents a significant encroachment. The AWO believes that the fact that this can be ordered without a hearing is incompatible with the principle of the right to be heard.
Minor children have the right to school education and should have the same access to education as German nationals in accordance with Article 16(1) of the Reception Directive. However, the AWO does not see how this right can be claimed under the conditions of restricted freedom of movement.

[7] See also § 18a para. 1 AsylG-E: § 18a para. 1 AsylG-E refers to Art. 43-54 AVVO - there is no restriction to the cases in Art. 45;

The AWO considers the psychological and physical burden on people seeking protection when their freedom of movement is restricted to the place of accommodation to be unacceptable and therefore calls for this standard to be deleted. Alternatively, the group of persons must be regulated conclusively.

b. Re No. 70: Section 69 AsylG-E Detention pending asylum proceedings

Regulation:

A person seeking protection may be detained by court order during the asylum procedure in order to clarify their identity, to secure evidence, if they violate the movement restriction or if they are in the asylum border procedure. If the person applies for asylum while they are in the return procedure or if detention is necessary for reasons of security or public order. Detention pending asylum proceedings should only be permissible if there is no more lenient measure. The possibility of providing security in accordance with Section 116a of the Code of Criminal Procedure is mentioned as a milder means. There is no restriction on the group of persons, so that children can also be detained. Detention for asylum proceedings can be ordered by the competent state authorities or the Federal Office. The authority responsible for the detention application can temporarily detain persons without a prior order.

AWO position:

Art. 10 of the Reception Directive is implemented here. The AWO welcomes the fact that there is the possibility of a milder measure, but further milder measures should be provided for.
As part of the screening procedure and the asylum border procedure, the fiction of non-entry applies. In order to maintain the fiction of non-entry, asylum seekers are not allowed to leave their assigned location according to the Asylum Procedure Ordinance. The provisions of the asylum regulations remain vague with regard to the manner of detention in the border procedure and how this is implemented. Art. 54 para. 1 Asylum Regulation stipulates that persons undergoing border procedures must stay at a specific location within the territory, generally near the external border or in the transit zones. The regulation does not contain a specific detention offense. Only Art. 54 para. 2 Asylum Regulation stipulates that the best interests of the child must be examined and that the minor and his/her family must be accommodated according to their needs. However, a more concrete definition is necessary, as this could put persons in the asylum procedure in a worse position than persons in detention. It should therefore be legally standardized how accommodation is equipped in the asylum border procedure.

According to the previous view, detention in the airport procedure is not considered detention, as the persons can leave the country again at any time. Whether the previous case law of the Federal Constitutional Court on asylum procedures at airports is still applicable to the new regulations on detention as part of the border procedure and the return border procedure cannot be clarified in the short term. In this regard, the AWO states

concerns, as these procedures take significantly longer and detention is more intensive. Therefore, persons in border procedures should not be covered by Section 69 AsylG-E across the board.

Overall, due to the lack of a set of standards similar to the Prison Act, there is a lack of basic regulations, particularly on the details of the prison system. There are no regulations on responsibilities, the establishment, organization, administration and equipment of prisons, or on the care, employment and leisure activities of prisoners. Access to counselors and legal representatives is also not clearly regulated. There are also no regulations on contact with the outside world, such as visiting rights, correspondence and telephone communication. As a result, detainees in return border facilities are worse off in many of these areas than those on remand or in prison, even though they are merely not voluntarily complying with their obligation to leave the country.

c. Re No. 70 § 70 AsylG-E Enforcement of detention pending asylum proceedings

Regulation:

Detention in accordance with Section 69 AsylG-E should generally be carried out in special detention facilities. If special detention facilities are not available or if the asylum seeker poses a significant risk, detention can also be carried out in other detention facilities. Persons seeking protection who are detained should be housed separately from prisoners. Access to detention facilities may be restricted for persons providing legal information or advice.

AWO position:

The detention of asylum seekers must not have a punitive character. Separate accommodation is therefore required. Asylum seekers have applied for asylum and have not committed a crime. The AWO therefore firmly rejects the detention of asylum seekers in prisons. This applies all the more to children and particularly vulnerable persons.

d. Re No.: 71 Section 70a AsylG-E Detention of foreigners with special needs

Regulation:

When detaining a person seeking protection, any visible characteristics, statements or behavior that indicate that the person seeking protection has special reception needs must be taken into account. If detention would seriously endanger physical or mental health, the person seeking protection must not be detained. Minors are generally not detained unless detention is in the best interests of the child. This is the case if the parent or primary caregiver is in custody. In the case of unaccompanied minors, detention is in the best interests of the child if detention protects the minor.

AWO position:

The detention of persons seeking protection with special needs is excluded if their health is seriously at risk. The AWO welcomes the legal provision, as a medical and psychological examination prior to detention is necessary to assess potential health risks. However, the AWO recommends deleting "seriously" because people seeking protection feel that they are under state control and the state should not put them at risk, and certainly not seriously. Children should never be detained, as this is contrary to the best interests of the child. It must not be assumed that if the parents are in detention, it is in the best interests of the child to be detained as well. The AWO is firmly opposed to the detention of children. Furthermore, minors have the right to education (Art. 13 para. 2 UA 6). This must be standardized in the grounds for exclusion. Mothers and pregnant women during maternity protection periods may not be detained either. This should also be explicitly standardized as a ground for exclusion.

e. Re No. 71 Section 70b AsylG-E Detention in return proceedings at the border

Regulation:

In the return procedure at the border, rejected asylum seekers are not subject to the provisions of Art. 5 para.
3 RückführungsVO in accordance with the provisions of Art. 104 para. 2 sentence 1 of the German Basic Law. These are persons whose application for international protection has been rejected at the border as part of the asylum procedure in accordance with the Asylum Procedure Code. The detention applies for the duration of the procedure in the transit area. According to the explanatory memorandum to the law, this is not a deprivation of liberty, as people can leave the country again at any time.

AWO position:

Whether the previous case law of the Federal Constitutional Court on asylum procedures at airports is still applicable to the new regulations on detention as part of the border procedure and the return border procedure cannot be clarified in the short term. The AWO expresses concerns in this regard, as these procedures take significantly longer and the detention is more intensive.

Nevertheless, due to the lack of a set of norms similar to the Prison Act, there is a lack of basic regulations, particularly on the details of the prison system. There are no regulations on responsibilities, the establishment, organization, administration and equipment of prisons, or on the care, employment and leisure activities of prisoners. Access to counselors and legal representatives is also not clearly regulated. There are also no regulations on contact with the outside world, such as visiting rights, correspondence and telephone communication. As a result, those affected in the return border facilities are worse off in many of these areas.

as pre-trial detainees or prisoners, although they are merely not voluntarily complying with their obligation to leave the country.

f. Re No. Section 13 (2) AufenthG: Border crossing / Section 14b Residence Act - draft version Check at the internal border

Regulation:

The fiction of non-entry during screening also applies in the case of internal border controls. This means that a person who is found during reintroduced border controls is treated legally as if they had not yet entered the federal territory.
The explanatory memorandum to the law states: "The provision serves to implement Article 7(1) sentence 2 of Regulation 2024/1356 for cases in which a foreign national is detected at an internal border. His or her availability to the screening authority must be ensured by the provisions that apply to persons who are detected within the country - usually by detention."

AWO position:

This regulation contradicts the provisions of the CEAS reform, as internal borders do not constitute external EU borders. The AWO is shocked by this interpretation and demands the deletion of the corresponding regulation without replacement.

7. Providing people seeking protection with dignity

a. Re No. 3 c.: Section 1a (5) No. 6a AsylbLG Restriction of entitlement

Regulation:

Where duly justified and proportionate, persons entitled to benefits will receive reduced benefits if they grossly or repeatedly violate the regulations of the accommodation center or behave violently or threaten people in the accommodation center.

AWO position:

According to Art. 23 para. 2 lit. e, Reception Directive, Member States may reduce benefits if the aforementioned reasons exist. However, benefits can never be reduced below the minimum subsistence level. Member States do not have to implement this regulation and Germany should not do so either. The AWO is of the opinion that benefits according to § 1a AsylbLG are not sufficient to cover the minimum subsistence level. Furthermore, sanctions under national law always presuppose violations of the duty to cooperate in the administrative procedure. Violations of house rules or violent and threatening behavior towards other people in accommodation are not obligations to cooperate in the administrative procedure and should be punished under criminal law or in other appropriate ways, but not by a sanction.

possible future reduction of social benefits. This regulation should therefore not be transposed into national law.

g. Benefit cuts in the Dublin procedure under the new security package.

Regulation:

The adopted security package provides for the complete exclusion of persons in the Dublin procedure from benefits after two weeks.

AWO position:

The exclusion of benefits could also violate Art. 21 UA 1 sentence 2 of the Reception Directive, as this also does not provide for a complete exclusion of benefits. It states that the standard of living must be ensured in accordance with Union law, including the Charter and international obligations. The AWO therefore calls for persons in the Dublin procedure not to be excluded from receiving benefits.

h. No. 4: Section 2 (2a) AsylbLG - Benefits in special cases

Regulation:

In the case of accommodation in accordance with § 68 AsylG, benefits are to be provided as benefits in kind.

AWO position:

The justification argues that the principle of benefits in kind should be applied in order to prevent people from leaving their assigned place of residence and absconding. From the AWO's point of view, however, this argument is not convincing. In addition, the application of the principle of benefits in kind with this justification gives the impression of a sanction, which should be rejected.

i. § 6 AsylbIG Other benefits

Regulation:

The draft bill does not make any adjustments to Section 6 AsylbLG as part of the GEAS implementation.

AWO position:

According to Art. 22 para. 1 of the Reception Directive, states are obliged to ensure that applicants receive the necessary medical care, regardless of their place of residence, in accordance with the AMM Regulation. This care must be of an appropriate quality and include at least emergency care, the necessary treatment of serious illnesses and mental disorders as well as healthcare in the area of sexual and reproductive health.

The AWO emphasizes that a legal entitlement to the granting of identified special needs must be clearly and bindingly anchored (Art. 25 para. 2 sentence 2 Reception Directive). In order to guarantee needs-based accommodation and healthcare, a legal regulation is required that clearly defines which services are granted depending on individual needs and who is responsible for the costs. This includes appropriate psychological care for survivors of violence or torture (Art. 22, 28 Reception Directive), participation and care services for people with disabilities (Art. 19 para. 2 Reception Directive in conjunction with Art. 26 of the Charter of Fundamental Rights) and the legal guarantee that the costs of necessary language and cultural mediation will be covered.
The AWO has long criticized the inadequate implementation of Art. 19 para. 2 of the previous Reception Directive, which has led to considerable hardship for particularly vulnerable persons. These deficits must now be urgently rectified in order to meet the protection needs of these groups of people.

8. Family asylum

a. Re No. 27 Section 26 Family asylum and international protection for family members

Regulation:

Family asylum and international protection for family members is deleted. The deletion is intended to align with Article 23 of the Qualification Regulation and Article 34 (2) of the Asylum Regulation. According to the speaker's draft, § 26 AsylG does not fit into the new system, according to which an individual examination of the entitlement to international protection must be carried out for each asylum applicant. If the granting of international protection is rejected, the scope of application of Article 23 of the Qualification Regulation is opened. According to this, the asylum applicant can receive a residence permit derived from the family member.

AWO position:

In principle, it is positive if the protection status as well as the residence title exists independently for each asylum applicant and is not derived from the family member if the latter has an independent claim to protection. The new regulation could improve the situation of dependent family members in the asylum procedure. However, the current § 26 AsylG does not prevent an individual protection assessment. As Art. 23 Recognition Regulation provides for a residence title derived from the family member, the dependency continues to exist in these cases. According to Art. 23 para. 3 Recognition Regulation, no one may receive international protection who is not entitled to protection themselves. The protection status within the family will therefore diverge if a member does not have their own protection claim. Consequential rights also diverge within the family, such as family reunification, requirements for a settlement permit and the entitlement to carry the Geneva refugee passport. The AWO assumes that this will lead to considerable uncertainty within the family. The AWO is certain that beneficiaries of international protection will face serious problems if they have to apply to the embassies of the country of origin.

country of persecution to apply for passports for minor children. Whether § 26 AsylG runs counter to the new system cannot be conclusively assessed with this short deadline. We therefore ask that the necessity of the deletion be re-examined. If the deletion is retained, a humane approach should be found to the passport problem that is now arising.