



## Churches' Commission for Migrants in Europe

Commission des Eglises auprès des Migrants en Europe

Kommission der Kirchen für Migranten in Europa

### **Comments on the European Commission's Proposal for a Council Directive concerning the status of third country nationals who are long-term residents (COM(2001)127 final)**

The above-named organisations represent Christian churches throughout Europe, Roman Catholic, Orthodox, Protestant, Anglican and Quaker, as well as church agencies particularly concerned with migrants and refugees.

Churches and church agencies are involved in a variety of programmes aiming at the integration of migrants in our communities and societies. Against the background of this experience, as well as out of a deep commitment to the dignity of the human person, we should like to make the following comments.

#### **General remarks**

1. We welcome the European Commission's proposal as it is based on the objective of allowing real integration of third country nationals into our societies. The draft directive provides for far-reaching equal treatment of third country nationals with EU citizens. It thus reduces the possibilities for discrimination and exclusion. It enhances the respect of fundamental rights in line with the Charter of Fundamental Rights of the European Union. Once implemented, it will make the legal situation of foreigners more transparent and give them legal certainty, thus encouraging them to fully participate in the society they live in. In providing for mechanisms for third-country nationals to equally benefit from free movement within the territory of the EU, this proposal serves also as a tool to reduce the feeling of being "second class residents" among many migrants.
2. In a time when migratory movements will be a constant phenomenon in our society, it will be important that Member States establish this legal certainty and non-discriminatory approach as soon as possible, faithful to their commitments at the European Council in Tampere 1999 to ensure fair treatment of third country nationals who reside legally on the territory of its Member States by granting them rights and obligations "as near as possible to those enjoyed by EU citizens"<sup>1</sup>.
3. We particularly welcome that special attention has been given to **legal certainty for family members**, as provided for by **Art. 18**. In this context, we would like to re-emphasise that it is crucially important that the European Commission's current

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<sup>1</sup> Cf. European Council of Tampere, Presidency Conclusions, N°s 18 and 21.

approach in its proposed directive on family reunification<sup>2</sup> be maintained when it is adopted by the Council of Ministers<sup>3</sup>.

## Specific Comments

4. With regard to the question of who qualifies as a long-term resident, we share the opinion of the Commission that the **duration of stay should be the predominant criterion (Art. 5)**. Such provisions are foreseen in the majority of Member States. Legal certainty for a person or a family to have a right to stay is beneficial to their efforts towards integration. It allows people to invest their creativity more fully, e.g. in developing self-employed activities or daring to look for other opportunities where their skills would be better placed. The attitude of persons in relation to their environment changes when they are no longer subject to the decisions of others (i.e. the aliens authorities of the country of residence), and when they can understand themselves as actors.

## Chapter I: General provisions

We are concerned about a certain number of derogations from the scope of the directive.

5. While we do not disagree that persons residing on the basis of **temporary protection** should be excluded, we feel that **Art. 3 (2) (a)** could now be deleted, as the recently adopted Council directive fixes the maximum time for temporary protection to a total of three years<sup>4</sup>.
6. **Art. 3 (2) b)**: Although we are aware that Member States have not yet harmonised their legislation regarding **subsidiary protection**, we insist that the logic of this directive requires to **include them within its scope**. This is common and good practice in the majority of Member States<sup>5</sup>. The duration of legal residence being the main criterion for the granting of the status of long-term resident, according to Art. 5, we cannot see any reason why people under a subsidiary protection regime should not enjoy the same legal certainty after they have been legal residents for the given period. To refuse the status of long-term resident could prove detrimental to further integration, because these persons would never attain certainty of where they belong.
7. For the same reason, we object to the derogations in **Art. 3 (2) (b)** and **(2) (c)**. We are of course aware of the dilemma raised by the uncertainty of status of persons whose

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<sup>2</sup> Amended Proposal for a Council Directive on the right to family reunification, COM (2000) 624 final.

<sup>3</sup> See our Position on the European Commission's Proposal for a Council Directive on the right to family reunification [COM (1999) 638 final] of 20 March 2000, updated on 22 November 2000 with regard to the amended proposal COM (2000) 624 final.

<sup>4</sup> Council Directive 2001/55/ EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, O.J. L 212 of 7 August 2001.

<sup>5</sup> Moreover, this provision would totally contradict Art. 22 of the proposed Council Directive laying down minimum standards for the qualification and status of third country nationals and stateless persons as refugees, in accordance with the 1951 Convention relating to the status of refugees and the 1967 protocol, or as persons who otherwise need international protection (COM (2001) 510 provisional version), which stipulates that Member States shall grant beneficiaries of subsidiary protection long term-residence status on the same terms as those applicable to refugees. With a view to the European Commission's aim to simplify legislation, it would be preferable to remain consistent at this point.

asylum claims are not yet finally determined. But after five years of legal residence, it is unreasonable – and regrettable – if a final decision has not been taken. In addition, the proposed harmonisation of asylum procedures ought to lead to an acceleration of asylum examinations. The number of cases to which this derogation applies should thus be insignificant. However, the legal status matters a lot to the individual person involved who has spent five years in integrating into his/her new home country.

## Chapter II: Long-term resident status in a Member State

8. **Art. 5 (1)**: We regard **five years** of legal residence as an adequate requirement, which should however not be exceeded.
9. **Art. 5 (3)**: We particularly appreciate that certain **periods of absence from the territory** shall not interrupt the period of legal and continuous residence referred to in par. 1. As we outlined in our Comments on a Community Immigration Policy<sup>6</sup>, being able to travel back and forth between their country of origin and residence can prove beneficial to migrants themselves as well as to their country of residence, as such travels can contribute to strengthen the links between these countries. We also underline the importance of personal circumstances being taken into account.
10. While we agree that a certain number of **material conditions** must be met as provided for by **Art. 6**, we are concerned by the specification in **Art. 6 (1) (b)**. We do agree that the normal health insurance is required. However, the terminology "covering all risks" may be problematic. Such comprehensive insurance is not available to everyone and everywhere, and increasingly, all risks can only be insured against with additional private insurance schemes. This might lead in some situations to discrimination, which we believe is not intended. In order to avoid any misunderstanding, we would propose the terminology "*sickness insurance as required by EU citizens*", or "*obligatory health insurance*".
11. We very much welcome and underline that these criteria are **not applied to refugees** nor to **third-country nationals born in the territory** of a Member State (**Art. 6 (2)**), as especially the latter constitutes a great step forward in the context of integration of and non-discrimination against migrants in our society.
12. Equally, for reasons already outlined above (par. 8), we are pleased about the option for Member States to extend the allowed **period of absence from their territory** for more than two years under certain conditions which are linked to the individual migrant's personal situation (**Art. 10 (1) (a)**).
13. We very much welcome the conditions for **equal treatment** as provided for by **Art. 12**, as this constitutes a major step forward to the establishment of an area of Freedom, Security and Justice in which every legal inhabitant is treated on an equal footing. We are especially pleased about the inclusion of study grants in the list of areas where equal treatment is to be guaranteed.
14. We would, however, voice one single but important concern about the total exclusion of the **exercise of public authority, Art. 12 (1) (a)**. Although it is understandable that

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<sup>6</sup> See our Contribution to the debate on the Communication by the Commission on a Community Immigration Policy, (COM (2000) 757 final), 28 May 2001, p. 3, 4.

any decision about an involvement in the exercise of public authority is left to the discretion of the individual Member State, we cannot understand its total exclusion. In several Member States, it has proved worthwhile to involve migrants e.g. in local police service or public education, especially in urban areas of mixed populations. Member States should be entitled to follow and expand this good practice.

15. With regard to **Art. 12**, we should like to make some additional remarks on **political participation**. Some Member States already provide third country nationals with the right to participate in local elections. The Council of Europe has recommended fostering the participation of foreigners in the political life of European societies<sup>7</sup>. As participation in local and European elections is already assured for nationals of Member States, we encourage Member States to grant the same right at least to long-term resident third country nationals. This would be in line with the Tampere conclusions to approximate their legal status as far as possible to that of nationals of Member States.

16. Finally, in the context of **protection against expulsion** as provided for by **Art. 13**, we should like to underline the importance of its **par. 4** to **avoid a double penalty**. In our view, it is of utmost importance for a coherent integration policy that national penal law be the exclusive tool for penalising criminal offences – the same as for national citizens. The expulsion of a third country national who has acquired long-term resident status should – if ever – be the absolutely last resort.

We sincerely hope that this proposal by the Commission will find the support it deserves and be adopted quickly. This would mark a concrete step in the follow-up to the Tampere summit of 1999 and the establishment of an Area of Freedom, Security and Justice. An added value will be that third country nationals can feel that they are really part of Europe and respected as equal human beings, which is vital also in shaping both a European immigration policy and coherent European social policies.

**Brussels, 22 October 2001**

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<sup>7</sup> European Convention on Participation of Foreigners in Local Public Life, Chapter C, art. 6. While this is not the immediate competence of the EU, we believe that the Council of Europe's Convention should be considered a basis by Member States when designing a common policy.