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Press Statement

Brussels, 4 March 2003

THE NEW EU DIRECTIVE ON FAMILY REUNIFICATION:

RIGHT FOR FAMILIES TO LIVE TOGETHER OR RIGHT FOR EU MEMBER STATES TO DEROGATE FROM HUMAN RIGHTS?

On 27 February 2003, the EU Justice and Home Affairs (JHA) Council agreed on the Directive on the Right to Family Reunification for third-country nationals.

Christian organisations active in the fields of migration and asylum deeply regret this decision that was taken despite the fact that Christian and other non-governmental organisations had voiced concern that the legal text remains clearly beneath core human rights standards.

In the conclusions of Tampere, the European Union set the goal to go for equal rights of citizens and third-country nationals as far as possible. With the right to family life being a cornerstone for integration of migrants, there were high expectations with regard to this Directive. *"Unfortunately"*, says Denis Viénot, President of Caritas Europa, *"the final result is very disappointing. The Directive that intended to set out the rights to family reunification for foreigners residing in the European Union, in fact provides a multitude of possibilities for Member States to restrict this right. The Directive, therefore, gives the narrowest conceivable definition of family in the European Union."*

The Directive allows Member States to "derogate" from the right to family reunification of children above the age of 12 by requesting integration tests. One Member State may even limit the right to apply for reunification for children below the age of 15.

Christian organisations regard the possibility for Member States to derogate from the principle of the right of children to live with their parents in the case of children aged over 12 years as a breach of international standards - the right of minors to be united with their family is also provided in the International Convention on the Rights of the Child, and international law must take precedence over national legislation and considerations of migration control.

The Directive allowing Member States to foresee long waiting periods will severely challenge family ties. The Directive allows a term for deciding on the application of nine or, in exceptional cases, more months and it introduces a waiting period of two or even three years.

It is against legal traditions in the EU to have waiting periods before being able to live with one's family and it is clear that the decision on an application should be made as quickly as possible.

The Directive allows the withdrawal and subsequent expulsion of admitted family members if the family income is no longer deemed to be sufficient.

Christian organisations deeply regret that material conditions are put forward for the renewal of residence permits for family members. The European Convention on Human Rights as well as the International Convention on the Rights of the Child regard it as an obligation of the state to safeguard and protect family especially with regard to children. Respect for family unity is found in most European Union Member States' constitutions as well.

The Directive offers the individuals nothing more concrete but a "right to mount a legal challenge". This may leave family members whose application has been rejected without an effective remedy.

"This very weak, almost void, guarantee", says Prof. Pieter Boeles from Leiden University in the Netherlands, *"is not only less than the level of legal protection required by Articles 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) but also far beneath the level required by Article 47 of the Charter of Fundamental Rights of the European Union". Our organizations hold the position that a right is only substantial if the person enjoying it has the opportunity to lodge an appeal, which needs to be decided on by a competent authority and which has a suspensive effect.*

Looking at all these provisions together, it is very doubtful if the Directive meets the standards requested by international Human Rights instruments, particularly those set by Article 8 ECHR. These instruments do neither allow the exclusion from reunification of children above 12 years nor do they allow extremely long waiting periods. In any case, observing human rights contains the obligation to offer an effective remedy to those affected.

Furthermore, the exclusion of persons enjoying a subsidiary form of protection from the scope of the Directive is regrettable, as these persons deserve a particular kind of protection. We share the views repeatedly expressed by UNHCR that the humanitarian needs of persons enjoying complementary forms of protection do not differ from those of Convention refugees.

The Directive as agreed by the Council of Ministers reflects only the lowest common denominator within the European Union leaving very wide discretion to the Member States. We are convinced that the wide discretion left to the Member States in the application of this Directive will not serve a harmonized approach and understanding of family reunification as a right and obligation.

The EU Directive on the Right to Family Reunification for third-country nationals allows EU Member States to prevent third-country nationals legally residing in their territories from reuniting with their families either for a considerable period or even permanently. Nor does it oblige Member States to offer them an effective remedy. By adopting this Directive, EU Member States fall short of their responsibility to implement international human rights standards in the process of harmonising European Union legislation. This responsibility is even greater considering the leading role of the European Union in the framework of an enlarged Union. The Directive gives a wrong signal to the acceding countries as well as to all European countries.

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