Caritas EUROPA

Churches' Commission for Migrants in Europe
Commission des Eglises auprès des Migrants en Europe
Kommission der Kirchen für Migranten in Europa

COMECE
Commission of the Bishops' Conferences of the EC

ICMC Dedicated to Migration & Refugee Service
International Catholic Migration Commission

JRS
Jesuit Refugee Service-Europe

Quaker Council for European Affairs

Churches and Christian Organisations in Europe on Migration and Asylum

Compiled by Heike Vierling-Ihrig and Doris Peschke, CCME

updated March 2004

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Introduction

Churches and Christian organisations throughout Europe share the biblical traditions that migration and welcoming strangers, particularly vulnerable persons in need are not new phenomena. They are deeply committed to the dignity of the human individual. While representing churches of different denominations, as well as church-related services, Christian organisations specialised on migration and refugee work cooperate on the European level, particularly with regard to the European Union's legislative development in these fields.

This publication will give an overview of the positions taken by Christian organisations in Europe on the legislative development of the European Union in the fields of migration and asylum. It will give a brief introduction into the various organisations in the first part, the issues and aims of the different organisations, what they are doing, who they are - their historical background and structure - and where to contact them.

A "Synopsis of European Commission – Initiatives and Work programme and Christian comments and work programme" gives a short and topical summary about the work in the European Commission, the state of play in the Council's decision making, and the comments of the Christian organisations. It will be updated from time to time.

The complete texts of the various comments by Christian Organisations follow. It gives an impression of the complex and continuous work in the field of migration and asylum. This list of comments will also grow in the future and will be updated from time to time. This is the reason why no page numbering is done, but the numbering is following the topical points 1, 2 and 3 with sub-points indicating the issue. This will allow replacement of pages or chapters without duplicating the whole publication.

This compilation is meant to serve as orientation and as tool for advocacy work of Christian organisations in Europe. We hope it will be of use for organisations working on migration and refugees in their policy and advocacy work.

Special thanks are expressed to Dr. Heike Vierling-Ihrig, who compiled the information and texts.

Brussels, October 2002

Part 1

Christian Organisations in Europe working on migration and refugees

1.1. Churches' Commission for Migrants in Europe - CCME

Migration comprises an integral part of Europe's history and an important dimension of its current reality. European citizens continue to emigrate from or move within Europe, while migrants and refugees from other parts of the world arrive to build new lives in a European home. Although there are challenges associated with the settlement of newcomers and longer-term residents in Europe, such individuals widely contribute to Europe's economic well being and serve to further enrich its divers cultures.

Europe's tradition of protecting human rights, integrating migrants and refugees and cherishing cultural diversity, however, is currently under strain. By vocation, churches are well positioned to promote mutual understanding and acceptance between various communities and to play an active part in the building of a just society of cultural, racial and religious diversity.

The Treaty of Amsterdam, which came into force in 1999, has conferred considerable powers on the European institutions to act on immigration and related issues of integration of immigrants and ethnic minorities. Furthermore, the European institutions have been given the competence to take measures against discrimination on grounds of racial or ethnic origin and religion. This development demands an even closer cooperation of churches not only in the member states of the European Union but also in the countries in Central and Eastern Europe of which some are expected to become EU members in the not too far future.
Founded in 1964, the Churches' Commission for Migrants in Europe (CCME) is an organisation of churches and ecumenical councils from Austria, Belgium, Czech Republic, Finland, France, Germany, Greece, Italy, Netherlands, Norway, Romania, Switzerland, Spain, Sweden, the United Kingdom and Ireland. There are contacts with the Ecumenical Patriarchate (Brussels/Istanbul) and with church partners in Denmark, Hungary, Poland, Serbia, Slovakia, and Russia.

The General Assembly of CCME decided in October 1999 in Järvenpää/Finland in cooperation with the Conference of European Churches and the World Council of Churches to expand its mandate to cover the whole area of migration and integration, refugees and asylum, and racism and xenophobia. The General Assembly welcomed four new members from the above listed countries.

CCME is part of a wider ecumenical network of the World Council of Churches and the Conference of European Churches.

CCME holds official observer status with the Council of Europe (Strasbourg) and observes the Migration Committee of the Council of Ministers. CCME also maintains regular contacts with the European Commission and the European Parliament. This enables CCME to monitor European policy-making in the migration, integration and asylum spheres and to present the concerns of the churches to the relevant institutions.

CCME promotes the adoption and implementation of international standards such as the European Social Charter, the European Convention on the Protection of the legal Status of Migrant Workers, and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their families. CCME has also made specific proposals for the adoption of a European immigration policy and for equal treatment of European citizens and third-country nationals.

Mandate of CCME:

> The Commission co-operates with its members, member churches and associated organisations of the World Council of Churches (in Europe) as well as of the Conference of European Churches and other ecumenical or church bodies working in the same field. It contacts and co-operates with the authorities, international organisations, trade unions, employers' associations and associations of migrants, refugees and minority ethnic people.
>
> The Commission co-ordinates parallel efforts and initiatives undertaken by churches and other bodies in this field, and formulates common European ecumenical positions on these issues.
>
> It promotes awareness-raising on issues of racism and xenophobia within the churches and in society; it conducts studies on the situation of migrants, refugees and minority ethnic people at local, national and international levels.
>
> The Commission represents its members as appropriate in international organisations and organisations such as the European Union, the Council of Europe and the Organisation for Security and Cooperation in Europe, and at meetings and conferences on relevant issues.
>
> It organises consultations encouraging cooperation between members and non-member churches and between churches and other bodies; it identifies, in consultation with churches involved, projects and programmes including training and capacity building, and assisting churches to implement them or to carry them out themselves.
>
> The Commission facilitates and encourages the distribution and exchange of information and experience; the sharing of resources, and ensuring the co-ordination of funding in this field.

CCME's General Assembly meets every three years to review and further develop CCME's programme of action. Between the General Assemblies the Executive Committee functions as the governing body. It is mandated to establish working groups to cover the main areas of the CCME work programme.

Members of the CCME Executive Committee:

Moderator:	Dr. Annemarie Dupré, Italy
Vice-Moderators:	Dr. Ralf Geisler, Germany
	Ms. Pat White, United Kingdom
Treasurer:	Dr. Goos Minderman, The Netherlands
Members:	Ms. Marja-Liisa Laihia, Finland
	Dr. Antonios K. Papantoniou, Greece
	Prof. Dr. Benz Hans-Rudolf Schär, Switzerland

Representative of the World Council of Churches:
Mr. Dragan Makojevic, Serbia

Representative of the Conference of European Churches:
Mr. Cristian Popescu, Czech Republic

Secretariat:

General Secretary	Ms. Doris Peschke
Project Secretary	Dr. Torsten Moritz
Assistant	Mr. Emmanuel Kabalisa

Address:

CCME – Churches' Commission for Migrants in Europe
Ecumenical Centre
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Tel. +32 (0)2 234.68.00, Fax: +32 (0)2 231.14.13
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Website: http://www.cec-kek.org/English/ccmenews.htm

1.2. Caritas Europa

Caritas Internationalis is a network of 154 national Catholic relief, development and social work organisations in 198 countries and territories all over the world. The network is a confederation of autonomous members. In addition to international structures, Caritas Internationalis also comprises regional structures. Caritas Europa is one of the seven regions of Caritas Internationalis. In November 1997 the Executive Committee of Caritas Internationalis approved a strategic plan for the international structures of the confederation.

Caritas Europa is currently composed of *national Caritas member organizations from 44 European countries*. Caritas Europa is a confederation and thus respects the autonomy of the members. At the same time, it places great importance on cooperation and co-ordination within the European region and with the six other regions of Caritas Internationalis in order to work most effectively in the interest of the socially disadvantaged and their concerns.

Caritas Europa member organisations provide a broad range of services for people in need. Main activities of Caritas organisations all over Europe compose of taking care and assistance for socially excluded persons such as the elderly, handicapped, foreigners and other groups; of running qualified counselling services; of professional formation of staff; of international cooperation through development aid and emergency action.

Most member organisations are active in the field of asylum and immigration. The main aim of Caritas' work in this field is to offer realistic solutions to people, who for what ever reason, are in need of assistance due to being resident in a country other than their home country.

Caritas' programmes include projects for the reception of asylum seekers, providing legal and social counselling services, facilitating integration processes for refugees and permanent residents as well as arranging resettlement and voluntary return programmes.

Filling the lack of adequate governmental assistance Caritas stresses the states' responsibility of ensuring a dignified treatment of asylum seekers, refugees and other migrants, one of the most vulnerable groups in Europe's societies. On the basis of our very hands-on experience Caritas is involved in policy and advocacy work aiming at changing respective structural weaknesses.

Mandate of the Migration Commission

The Migration Commission (MC) is in charge of shaping migration related policies of Caritas Europa and of coordinating the activities of its members in this regard. The mandate covers action at supranational level whether it is multilateral cooperation between national Caritas organisations or relations and cooperation with third parties in particular concerning positions vis-à-vis political institutions such as the EU.

The MC is directly accountable to the Executive Board. Its annual work plan is an integral part of the overall work plan of Caritas Europa as is an annual evaluation of its performance. The mandate is given by the Executive Board and can be reviewed as and when need arises.

Specific tasks

To identify issues and areas on which member organisations shall concentrate when co-operating with each other.

To facilitate and co-ordinate this cooperation through establishing guidelines and creating mechanisms of implementation.

To propose priorities and strategies for common action at the European level in the areas of research, training and capacity building, policy advocacy and institutional relations.

To investigate the evolution of EU policies in relevant fields and to propose and organise appropriate action.

To liase with the other Caritas Europa working structures in particular in the areas of Social Policy, Capacity Building and Communications.

To establish strategies for cooperation with other European organisations and networks.

To organise an annual Migration Forum.

To establish, monitor, evaluate and discontinue sub-groups as and when need arises.

To prepare an annual work plan, to present and discuss it with the Executive Board and to continuously report on progress.

Members of the Migration Commission

Mrs. Martina Liebsch (Caritas Germany; Chairperson)
Fr. Alexandre Pietrzyk (Federal Caritas of Russia; Executive Board)
Mrs Margaret-Ann Fisken (Catholic Bishops' Conference of England and Wales)
Mr Jean Haffner (Secours Catholique)
Mrs Barbara Walther (Caritas Switzerland)
Mr Georges Joseph (Caritas Sweden)
Mr Tsveta Georgieva (Caritas Bulgaria)

Desk Officer

Mr. Peter Verhaeghe

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website: www.caritas.org

1.3. Commission of the Bishops' Conferences of the European Community – Working group on Migration (COMECE)

The Commission of Bishops' Conferences of the European Community (COMECE) is made up of Bishops delegated by the fourteen Bishops' Conferences of the EU: Austria, Belgium, England & Wales, France, Ireland, Italy, Germany, Greece, Luxembourg, the Netherlands, Portugal, Scandinavia, Scotland and Spain. The Apostolic Nuncio to the European Union participates in plenary meetings. The representatives of the Bishops' Conferences of the Czech Republic, Hungary, Malta, Poland, Slovakia and Switzerland have associate status.

Structure

COMECE holds two plenary meetings each year, which set out the main lines of its work. A seminal issue of the European integration process provides the core theme of each meeting.

The Executive Committee consists of the President, two Vice-Presidents and the Secretary General. The Secretariat in Brussels, under the direction of the Secretary General, ensures the continuity of COMECE's work. A small team monitors and analyses developments in European policy. The Secretariat reports to the Executive Committee and Plenary Meeting.

Objectives

The aims of COMECE are:

To monitor the political process of the European Union in all areas of interest for the Church. This is pursued through regular contact with those responsible for policy, with members of the European Parliament, and with senior European civil servants, with the aim of communicating to them the view of the Bishops' Conferences on the future of Europe, to offer them the collaboration and the service of the Church, and also to respond to their questions and problems.

To communicate to the European authorities the concerns and opinions of the Catholic Bishops in their own field of interest related to the construction of a united Europe.

To inform and raise awareness among the Bishops and the Church community about questions of special common interest dealt with by the different institutions of the EU, and to organise information visits for Church-linked groups.

To help the Bishops reflect upon the challenges posed by the construction of a united Europe, and to foster the collegiality of the Bishops' Conferences in developing pastoral aims and actions to deal with social problems of significance throughout the EU.

Historical background

COMECE was founded with the approval of the Holy See on 3 March 1980. It was preceded by the European Catholic Pastoral Information Service (1976-1980). Throughout the 1970s discussions on the creation of an instrument of liaison between the Bishops' Conferences and European Community finally led, in 1979, before the first direct elections to the European Parliament, to the decision to establish COMECE.

Work

Publications:

In order to inform the Church community of European developments, COMECE publishes:

- The monthly review Europe Infos (with OCIPE) in English, French, German, Polish and Spanish, with articles on current European issues, as well as special issues with more detailed analysis on a particular theme;
- Declarations, statements and comments on current themes of importance in EU policy and legislation;
- Circular letters to the Bishops' Conferences;
- Acta of colloquia, seminars and conferences on European themes.

Commissions and Working Groups:

The COMECE secretariat is assisted by a number of commissions, working groups and other structures made up of experts from the national Bishops' Conferences and Catholic organisations working in the relevant field:

- Commission on Social Affairs
- Commission on Legal Affairs
- Migration Platform
- Working Group on Information Society, Communications and Media Policy
- Working Group on Islam in Europe
- Reflection Group on Bio-ethics
- Information Network on European Foreign and Security Policy
- Ad-hoc Group on Global Governance
- Ad-hoc Group on the European Convention

Conferences, Seminars, Evening lectures:

COMECE organises occasional large conferences on major issues of current interest. Information sessions and seminars enable the promotion of contacts between Church bodies and people from the European Institutions. COMECE also holds evenings of debate on the role and contribution of the Church to society in the Member States.

Cooperation:

Alongside its cooperation with the Apostolic Nunciature and CCEE, COMECE has close contact with similar institutions of the other Churches, and the representations of Church organisations based in Brussels which work in the fields of, for example, social work, education, development cooperation.

COMECE Working Group on Migration

The COMECE Working Group on Migration brings together experts from several Bishops' Conferences as well as Brussels-based Catholic organisations working for migrants and refugees. In comparison to other working groups of COMECE, mainly composed of experts from Bishops' conferences, it takes the shape of a platform.

At the meetings (up to four times a year), current EU legislative proposals are discussed and analysed from a Christian perspective. Representatives from the European Institutions (Commission, Council, Parliament) are invited for dialogue. Statements on particular issues are produced in cooperation with other Christian agencies such as the Churches' Commission for Migrants in Europe (CCME) and the Quaker Council for European Affairs (QCEA).

At their spring 2001 plenary assembly, the Bishops of COMECE adopted a Declaration with regard to a Common Asylum and Immigration Policy of the European Union.

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1.4. International Catholic Migration Commission (ICMC)

Who we are

The International Catholic Migration Commission is dedicated to preventing forced migration, and serves uprooted people where they exist. It responds to the immediate needs of refugees, internally displaced persons and migrants. ICMC has a special concern for the most neglected and vulnerable among uprooted people, whose needs can often be missed during emergency relief work. ICMC also works for durable solutions:

Return	ICMC helps people return to their homes and communities wherever possible,
Reintegration	Once back home, people need to reconstruct all that goes to make up individual lives and communities: houses, jobs, relationships and trust. ICMC provides material, social and psychological help to enable the integration process to take place.
Resettlement	ICMC assists uprooted people to resettle in a third country when return home is impossible.

ICMC's principle for intervention is to help one person or family at a time. This approach maintains dignity, individuality and cultural identity.

Uprooted people are those forced to leave their homes and neighbourhoods. 'Forced migrants' is another way to describe uprooted people. People are uprooted because of war, violence, natural disaster and poverty. Sometimes uprooted people flee to other countries; at other times they are 'internally displaced' and become refugees within their own country.

ICMC is made up of 95 members and affiliate members from 82 countries. It has field offices in more than 25 countries on all continents: Afghanistan, Albania, Belgium, Bosnia-Herzegovina, Colombia, Croatia, Democratic Republic of Congo, East Timor, Eritrea, Gabon, India, Indonesia, Jordan, Kosovo, Lebanon, Macedonia, Montenegro, Pakistan, Sri Lanka, Thailand, Togo, Turkey, USA, Yugoslovia/Serbia and Zimbabwe.

What we do

ICMC works with millions of uprooted people each year, regardless of creed, nationality or ethnic origin.

ICMC provides:

protection to the most vulnerable refugees (elderly, widowed, mentally and physically disabled).

microcredit loans to refugees, primarily women and internally displaced people. The loans create jobs and directly assist dependent family members in places like Bosnia and Kosovo. People are then able to become economically self-sufficient.

service social support to frightened, traumatized and worried women, men and children.

a new life to refugees who cannot return home, through resettlement in the USA and other countries.

grants to partner organizations for the support and development of services to forced migrants.

History

ICMC began in 1951. After the Second World War, Western Europe faced the challenge of caring for two million refugees. By 1949, in Eastern Europe thousands more were forced to flee their homes. The Catholic Church, alarmed and moved by the continuing flow of refugees, realized that a coordinated effort was needed on the part of Catholic organizations to respond to the needs of these forced migrants. In 1951, German, Italian, and American laity and clergy, as well as Secretary of State, Archbishop Montini (the future Pope Paul VI), and Cardinal Joseph Frings of Germany, initiated the creation of the International Catholic Migration Commission. The following year, Pope Pius XII, in his Apostolic Constitution, Exsul Familia, focused the attention of Catholics on the needs of migrants and refugees, and formally introduced ICMC to the world.

Advocacy

ICMC advocates on behalf of uprooted people at international and national levels. Through its members and secretariat, ICMC maintains contacts with UN agencies, other inter-governmental bodies and national governments in order to influence policy and funding decisions that affect uprooted people.

Finance

ICMC's work is funded by contributions from government and intergovernmental agencies, including the United Nations and European Union, as well as NGOs (non-governmental organizations) and private partners. ICMC's current annual budget is just over US$ 20 million.

Supporting ICMC

2001 marked the 50th anniversary of ICMC. Funding patterns are changing and a 50th anniversary endowment fund has been set up to meet this challenge and provide a secure financial base for the future. Your contribution to the endowment fund or to our programs will enable ICMC to continue its essential, life-saving work among refugees and other forcibly uprooted people.

Address:

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1.5. Jesuit Refugee Service Europe (JRS-Europe)

JRS worldwide

The Jesuit Refugee Service is an international Catholic organisation.
Its mission is

to accompany,
serve and
plead the cause

of refugees and forcibly displaced people. The JRS was set up by the Society of Jesus in 1980 and now is at work in over 50 countries.

JRS draws the world's attention to the plight of a specific group of refugees, whose cause has moved out of the international spotlight. They live forgotten lives on the margins of our world. They are numbered in millions. JRS works with all refugees but has a particular concern at present for the "forgotten" refugees worldwide. There are over 20 million refugees worldwide. A further 25 million people are displaced within their own countries.

'Refugees are among the most vulnerable today. They have left their homes, their families and they bring with them few possessions. Perhaps all they have left is their dignity as human beings. We must respect this dignity, safeguard it and work to enhance it.'

The JRS in Europe

In Europe, JRS works in over 15 countries. Activities include:

visiting asylum seekers in detention,

giving legal advice,

counselling those traumatised,

serving as chaplains,

providing food and shelter.

Policy Project

JRS Europe

studies emerging EU law on asylum,

advocates for just asylum policies based on the dignity of the person

brings the concerns of JRS workers in developing countries to the attention of the decision makers in the EU.

Media Project

In Europe, suspicion of asylum seekers and migrants is on the rise. It can be combated if people understand the plight of refugees.

JRS-Europe issues regular news releases about refugees and asylum issues and articles for journals and magazines and takes part in discussions on radio and television.

Address:

JRS-Europe – Jesuit Refugee Service Europe
8, Chaussée d'Haecht
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Tel. 0032 (0)2 250.32.20, Fax: 0032 (0)2 250.32.29
e-mail: europe@jrs.net
website: www.jesref.org

1.6. Conference of European Justice and Peace Commissions

The European Justice and Peace Commissions form an international network. Their objective is to exchange information and to maintain contacts with Church organizations in Europe and at the global level as well as with public institutions.
There are permanent contacts with the Pontifical Council for Justice and Peace, with the European Bishops' Conference CCE and with the Secretariat of the Bishops' Conferences at the European Union – COMECE.

The presidency is elected by the currently 26 Member Commissions for a term of 3 years; from November 2002 on, it is held by the Swiss Justice and Peace Commission.

The Conference of European Justice and Peace Commissions was granted consultative status with the Council of Europe in 2001. The Swiss Justice and Peace Commission is representing the Conference of European Justice and Peace Commissions before the Council of Europe.

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1.7. Quaker Council for European Affairs (QCEA)

A Vision

The Quaker Council for European Affairs (QCEA) was founded in 1979 to promote the values of the Religious Society of Friends (Quakers) in the European context. Our purpose is to express a Quaker vision in matters of peace, human rights, and the right sharing of world resources.

We see the potential for Europe to become a peaceful, compassionate, open and just society, using its moral influence to encourage other countries and peoples towards the same goals. We look forward to Europe becoming a community of peoples which acts towards individuals and other communities as we would have others act towards us. That is why human rights are central to all our work.

We start from the principle of respect for everyone, including those with whom we most strongly disagree. We therefore try to ensure that the means we use to achieve our ends are in harmony with those ends, and also show them. The way is part of the destination.

The aim of QCEA

To make the Quaker voice heard by policy makers in Europe and so to promote understanding and reconciliation;

To explore ways towards true security in Europe through dialogue with politicians and officials, and by providing a centre for organisations active in the peace movement;

To challenge injustice, oppression and complacency in the structures of European society;

To stimulate awareness on topics where Friends traditionally have a contribution to make. The focus is on peace and disarmament, human rights and social issues, and right sharing of world resources;

To bring together the concerns of Quakers throughout Europe, and to provide information to ensure that those concerns are soundly based;

To act as a centre for networks of Quakers and others sympathetic to Quaker ideals.

What does QCEA do?

We publish reports and studies on themes of European and Quaker interest. These are read by politicians and decision makers. Some have been translated into different language.

We publish a newsletter, Around Europe, which serves both to let those in positions of influence know what we are thinking, and to give other readers information they might not easily find about things that are happening in Europe. It is sent ten times a year to addresses in every part of the world.

We cooperate with other non-governmental and church organisations which share some of our ideals, so that we can help each other in our efforts to bring about change. Among these are the European Bureau for Conscientious Objection, the European Peace Building Liaison Office, the European Anti-Poverty Network, the European Social Platform and the European Network against Racism, as well as the Christian agencies and organisations.

We keep closely in touch with Members of the European Parliament, and with the activities of the Council of Europe. We participate in seminars and conferences when these help to advance our aims. We participate in and organise our own seminars and conferences on topics of interest to our Quaker constituency.

Each year there are two Quaker study tours, one for 18-25 year-olds and one open to all, to learn more about what is happening in Europe. We can also arrange study visits for other groups on request.

We offer advice to Quakers and other enquirers who need to approach European institutions.

Address:

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Part 2

Synopsis of European Commission Work Programme and Christian Comments

EC inititatives	State of play European Parliament	State of play Council	"Christian Comments" already published
ASYLUM			
COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT "Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum". /*COM(2000)755 Final of 22.11.2000	EP resolution on 03.10.2001 rapp.: Robert EVANS		Comments presented on 28.05.2001
COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT On the common asylum policy, introducing an open coordination method First report by the Commission on the application of Communication. /*COM(2001)710 final of 28.11.2001			
COUNCIL DIRECTIVE 2001/55/EC 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		Formal adoption on 20.07. 2001 O.J. L 212/ 07.08.2001/ p.12	Joint information letter on 26.09.2000 to nat'l members
COUNCIL REGULATION 2003/343/EC establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. – "Dublin II"	EP opinion on 09.04.2002 rapp.: Luìs MARINHO.	Formal adoption on 18.02.2003 OJ L50/ 25.02.2003/ p.1	Oral consultations at EC and joint letter on working document on 30.06.2000

Proposal for a COUNCIL DIRECTIVE on minimum standards on procedures in Member States for granting and withdrawing refugee status.COM(2000)578 final of 20.9.2000, Amended proposal: COM(2002)0326 of 18/06/2002	EP opinion on 20.09.2001 rapp.: Graham R. WATSON	Discussions on 15.10.2002	Caritas Europa "Fair Treatment for Asylum seekers", Feb. 2001 Joint comments presented on 18.05.2001 Comments on amended prop May 2003
Proposal for a COUNCIL DIRECTIVE on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection. /*COM(2001)510 final 12.09.2001	EP opinion on 22.10.2002 rapp. Jean Lambert	Discussions on 27.02.2003	Oral consultation Joint comments presented on 25.06.2002
COUNCIL DIRECTIVE 2003/9/EC on minimum standards for conditions for the reception of asylum-seekers.	EP opinion on 25.04.2002 rapp.: Jorge MOLLAR	Formal adoption on 27.01.2003 OJ L31/ 06.02.2003/ p. 18	Joint comments presented on 01.10.2001
COMMISSION WORKING DOCUMENT The relationship between safeguarding internal security and complying with international protection obligations and instruments. /*COM(2001)743 final of 05.12.2001			CCME letter to EC of 17.05.2002
Communication from the Commission to the Council and the European Parliament on the common asylum policy and the Agenda for protection (Second Commission report on the implementation of Communication COM(2000)755 final of 22 November 2000), COM(2003)152 final of 26.03.2003			
IMMIGRATION			
Communication from the Commission to the Council and the European Parliament on a Community immigration policy. /*COM(2000)757 Final of 22.11.2000	EP resolution on 3.10.2001 rapp.: Hubert PIRKER		Joint comments presented on 28.5.2001
Communication from the Commission to the Council and the European Parliament on an open method of coordination for the community immigration policy. *COM(2001)387 final 11.07.2001			

Amended proposal for a COUNCIL DIRECTIVE on the right to family reunification. /* COM/2002/0225 final of 02/05/2002	Vote in committee on 19.03.2003 rapp.: CERDEIRA MORTERERO Carmen	Council agreement on 28.02.2003	Joint comments presented on 20.03.2000, 22.11.2000 and 17.12.2002 Joint press release on 04.03.2003
COUNCIL FRAMEWORK DECISION 2002/629/JHA on combating trafficking in human beings	EP opinion on 12.06.2001 rapp.: Eva KLAMT	Formal adoption on 19.07.2002 OJ L203/ 01.08.2002/ p. 1	Contribution to the EC/ IOM STOP Conference, 18.-20.09.2002
Proposal for a COUNCIL DIRECTIVE on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities. /* COM/2002/0071 final of 11.02.2002	EP opinion on 05.12.2002 rapp.: Patsy SÖRENSEN	Discussion on 15.10.2002	Joint comments presented on 3 June 2002
COUNCIL DECISION 2002/463/EC adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO).	EP opinion on 09.04.2002 rapp.: Arie M.OOSTLANDER	Formal adoption on 13.06.2002 OJ L 161/ 19.06.2002/ p. 11	
Council Directive supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (2001/51/EC) - Carrier sanctions		Formal adoption on 28.6.2001 OJ L187/10.07.2001/ p.45	Contribution to the round table on carrier sanctions, November 2001, Caritas Europa/CCME
Proposal for a council directive concerning the status of third country nationals who are long term residents. /*COM(2001)127 final of 13.3.2001	EP opinion on 05.02.2002 rapp.: Sarah LUDFORD	Discussion on 15.10.2002	Oral consultation, joint comments presented on 22.10.2001
Proposal for a COUNCIL DIRECTIVE on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities. /*COM(2001) 0386 final of 11.7.2001)	EP opinion on 12.02.2003 rapp.: Anna TERRÓN I CUSÍ		Conversation with the author in WG meeting on 28.5.2001
COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT on a common policy on illegal immigration. /*COM(2001)672 final 15.11.2001	Awaiting consultation in plenary rapp.: Hartmut NASSAUER	Adoption of action plan proposal on 28.02.2002 (ST 6621/1/02 REV 1)	Joint comments presented in May 2002 - including comments on Council action plan
Green paper on a community return policy on illegal residents /* COM/2002/0175 final of 10.04.2002	same as above	Council conclusions: 15.10.2002	Joint contribution to Hearing on 16.07.2002, CCME/COMECE

Communication from the Commission to the Council and the European Parliament on a community return policy on illegal residents, COM/2002/0564 final of 14.10.2002	same as above		
Proposal for a COUNCIL DIRECTIVE on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training and voluntary services COM (2002) 548 final of 7.10.2002	Awaiting vote in committee for 23.04.03 rapp.: Martine ROURE		Oral consultation on 14.02.2002, Comments May 2003
COMMUNICATION on "Integrating Migration Issues in the European Union's Relations with Third Countries", COM (2002) 703 final of 3.12.2002	Awaiting consultation of EP	Discussions on 10.12.2002	Joint letter by NGOs active in the field of development and migration on 2.4.2003
COMMUNICATION on "Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours", COM (2003) 104 final of 11.3.2003	First Committee discussion 28.04.2003, rapp. Pasqualina NAPOLETANO	General Affairs Council conclusions expected for 19.5.2003	

Part 3

Comments by Churches and Christian Organisations on Migration and Asylum

3.1.1. Position on the Amended EU Commission Proposal for a Council Directive on the right to family reunification [COM (2002) 225 final]

Our organisations represent Churches throughout Europe and Christian agencies particularly concerned with migrants and refugees. In March 2000 and November 2000 respectively, we contributed comments to the debate on the original Commission proposal on family reunion of December 1999 as well as on the amended version of October 2000. We have followed the debate around family reunification and intervened on several occasions at European and national levels, because we are convinced that family life is essential to societies, and that the right to family life is a cornerstone for integration of migrants.

I. General Comments

1. As we have underlined on various occasions, for Christian churches, safeguarding family is a priority: it constitutes a universally recognised human right of the family to protection by society and the state (Universal Declaration of Human Rights, Art. 16.3). The protection of the family is equally stipulated by the European Convention on Human Rights and spelled out in the jurisprudence of the European Court of Human Rights. It cannot be limited to citizens of a country; but must apply to all residents. Protection for children's right to live with their families is also contained in the Convention on the Rights of the Child (1989).
2. We had thus welcomed the European Commission's[1] proposals particularly as a contribution to a European immigration policy. We had underlined that family reunion is not only an integral part of a coherent immigration policy, but important to foster a coherent social policy throughout the European Union. With regard to the 2. amended version now proposed by the Commission, we have to express our great regret that the ambitious and necessary project of an EU-wide harmonisation of the right to family reunification has been downgraded to a less cohesive approach of identifying minimum standards at a low level with wide discretion for Member States. We recognise that it has been impossible to reach agreement in the Council of Justice and Home Affairs Ministers of the EU and that this proposal is therefore based on compromise reached in the Council negotiations. We are concerned that certain provisions have been changed in a way which raises serious concern about the full respect of the Human Rights standards referred to above.
3. We had supported some material conditions like requirements in housing and subsistence provided in the original proposal because they were related to a

[1] Proposal for a Council Directive on the right to family reunification [COM (1999) 638 final] and [COM (2000) 624 final] respectively

wider definition of family. The present proposal has a very narrow definition of the family. While we understand that no common definition beyond this could be agreed, we cannot understand that for this limited group material conditions are put forward in the same way. The European Convention on Human Rights as well as the International Convention on the Rights of the Child regards it as an obligation of the state to safeguard and protect family. This is found in most European Union Member States' constitutions as well. It is against all legal traditions in the European Union to have waiting periods for minor children before being able to live with their family. [2]

4. The exclusion of persons enjoying a subsidiary form of protection from the scope of the directive (Art. 3 No. 2 (c)) is regrettable, as these persons deserve a particular kind of protection. We share the views expressed by UNHCR in September 2002 that the humanitarian needs of persons enjoying subsidiary forms of protection do not differ from those of Convention refugees. Therefore, there is no reason to exclude this category from the right to live with their family. We had hoped that the Commission and the Council would provide for at least equivalent standards for family reunification, but there is no provision with this regard in the proposal for a directive for the qualification and status as refugees or as persons who otherwise need international protection.[3]

5. We are convinced that the wide discretion left to Member States in the application of this directive will not serve a harmonised approach and understanding of family reunification as a right and obligation. We would like to express our support for any future attempts to reach a higher level of coherence, which we regard as extremely necessary. However, if the directive was adopted in summer 2003as planned, it would be transposed into national legislation by 2005 and a review would start at the earliest by 2007.

6. In providing for families to live together, solidarity among family members is facilitated. While this is important emotionally as well as socially, it is also beneficial economically. All these aspects are important facets of integration. We deeply regret that certain provisions have been changed in the Commission proposal leading to a potential danger to the integrity of families.

II. Comments on certain provisions:

1. Children

1.1. The right of children to live with their parents is particularly foreseen in this proposal. Given the various situations in the Member States, we had

[2] e.g. Sen c/Netherlands, No. 31465/96, Judgement of the European Court for Human Rights 21 December 2001

[3] COM (2001) 510 final

particularly welcomed the clarification that considers as minors the children who have not reached the particular Member State's age of majority. We are now most concerned about the possibility for a Member State to derogate from this principle in the case of children aged over 12 years (Art 4 No 1 (c)). 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. Only one Member State has a legal provision to derogate from this principle at this point in time and has ratified the Convention on the Rights of the Child with this reservation. All other Member States have ratified it without reservations. Therefore, this provision for derogation would have to be clearly referred to the one State, not allowing others to follow this example.[4] We regard this derogation as a breach of international standards.[5] We appreciate that this is named as a priority for the future review.

1.2. We appreciate that the present proposal now allows for admission of children under shared custody of parents (Art. 4 No. 1 (c)), at least as optional with the agreement of the other parent.

1.3. Although we agree to the principles set out in Art. 4 No. 4, there may be a contradiction to Art. 4 No. 1 (c): It ought to be the privileged right of the parents to decide whether the child should live with either of them. From practical experience, we would say that this applies to a very small number of persons; therefore we feel it could be termed more generously without fear of uncontrollable influx. There should remain no difference in legal status between children of the uniting person, regardless of their parents being married, unmarried, divorced or in a polygamous situation. We consider it crucial to give opportunity to the minor to provide his or her opinion.

1.4. If the age of the child is a predominant criterion for family reunification, as set out in Art. 4 Nor. 1 (c), and as the duration for procedures are longer than originally foreseen, clear formulations are necessary for cases where the children may reach majority age during the waiting period until a decision is taken. In our opinion, the age of the child at the time of the application for family reunification should determine the eligibility. This is of particular importance if the derogation clause is applied.

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[4] Research by JRS Germany proves that one reason for illegal immigration is the legitimate interest to create a family unit.

[5] See the Judgement of the European Court for Human Rights of 21 December 2001, Sen c/ Netherlands (No. 31465/96). The Human Rights Court regards the provisions by the Netherlands to prohibit reunification as a contravention of Art. 8 of the European Convention on Human Rights.

1.5. While we are aware, that the concept of extended family is not so common in European countries, we would wish to point to the fact, that in many countries children are – often as a result of AIDS or civil war – raised by persons not belonging to their own family, but considered to be part of the family they live in. While the proposed directive would provide for adopted children, the above-mentioned category is not included. We feel that some provision should be made for such cases, e.g. in case of no other family link.

2. Family

2.1. While remaining optional, we appreciate that the formulation in (Art. 4 No. 2 (a) and (b) for other family members has improved and is no longer depending on full dependency but rather the lack of family support in the country of origin. However, it is still not in line with the interpretation of family by the European Court of Human Rights[6]. As this remains optional for Member States and is depending on the proof by the uniting person that he/she has sufficient means to take care of his or her relatives, we wish to argue that this conditionality is not at all necessary. Such practices of family solidarity should not be prevented but rather promoted.

2.2. The same principle should apply to unmarried children who have reached the majority age and who are dependent on their parents, regardless of the reason for this. Art. 4 No. 2 (b) should therefore not be limited to the reason of the child's state of health, which would be in coherence with the existing legislation concerning the family reunification of EU nationals.

2.3. We regret that the directive in its current form is unclear about the right to found a family: the old Art. 2 (e) included under family reunification the right to *form a family community* and is now omitted. We had pointed out that even in the previous proposal the rights of the fiancé(e) were not explicitly mentioned. We do not regard it as sufficient to leave the situation of fiancée solely to the legislation of the Member State. Without providing for the founding of the family, any legal text on family reunification would be incomplete and incoherent. It would even fall short of the general aims of the directive. In order to prevent misuse, a trial period could be foreseen for these cases.

2.4. Given present debates about marriages of third country nationals in some Member States, we would recommend that Art. 4 No. 5 be formulated more clearly "to require a minimum age below majority". In the present form it could be understood also as a possibility to require any age (such

[6] See: Frowein/Peukert, EMRK-Kommentar, 1996, p. 422

as 24 years). It is stated clearly in the explanatory memorandum that this refers to an age of marriage below majority age, but the Article could be interpreted differently.

3. Refugees

3.1. We appreciate that the special needs for family reunification for refugees are recognised. We are however concerned that Member States may confine the application to refugees whose family relationships predate their refugee status. This stipulation does not recognise families who may have married in a refugee camp or during an asylum procedure. We wish to remind the Commission and the Council that as refugees are sometimes for years in determination procedures, relationships starting during this period need to be considered as important as predated relationships. We cannot understand that refugee children born in a refugee camp should not be entitled to family life. This could be a violation of the right to found a family. It certainly is against humanitarian principles.

3.2. The exclusion from the scope of the directive of persons enjoying a subsidiary form of protection (Art. 3 No. 2 (c) and Chapter V) is regrettable, as these persons deserve a particular kind of protection. We trust that the Council will maintain standards proposed by the Commission to accommodate special protection needs in the frame of rules on family reunification that will be part of the harmonised concept regarding the admission and residence of persons in need of subsidiary protection. However, in the current proposal this is not contained. We would urge that family reunification is included also for persons granted a residence on the ground of subsidiary form of protection.

3.3. The humanitarian value of accommodating other family members as provided in Art. 10 No. 2 has been proved during the Kosovo crisis. In addition to the action undertaken by Member States many refugees have been welcomed and taken care of by family members already residing in one of the EU Member States.

3.4. The protection of unaccompanied minors as provided for by Art. 10 No. 3 reflects the particular attention these children deserve which is also outlined in the UN Convention on children's rights. This provision should be maintained and complemented by a provision to the effect that the reunification of these minors with their families should be treated as a matter of urgency and, to this effect, the tracing of the family should be undertaken as soon as possible.

4. Residence permit

4.1. The changes in Art. 15 No. 1 are logical. We support the stipulations of Art. 15 to grant an autonomous residence permit for a spouse and adult children.

4.2. Art. 15 (3) is an important tool to deal with injustices arising from certain situations. As it refers to extreme hardships, we support that no minimum period is mentioned and hope that Member States will apply this provision generously. We would appreciate if at least in the explanatory memorandum, this could again be explained through examples like divorce following violent or degrading treatment by the spouse. In such cases, we would urge member states to provide for generous application of this clause.

5. Equal Treatment

5.1. We had supported the previous stipulation that family members should have access to employment, education and training in the same way as citizens of the Union. We do not follow the argument that equal treatment within a family unit is more important than that of equal treatment within society. In fact, we fear that even more persons could be excluded from society and thus this stipulation could lead to disintegration rather than integration. We cannot see any good reason to exclude families from gaining self-sufficiency and access to education and training.

6. Conditions and Procedures

6.1. We regard these conditions which are now applicable to the core family, as extremely difficult. These conditions place material conditions on a right which means that the poor among the third country nationals may no longer be able to exercise it. While the conditions in previous proposals could be understood with a wider family definition and the fear of more influx, to maintain or even restrict conditions for the core family could result in depriving particularly the poor from fundamental human rights. This could be seen as a breach of Article 14 of the European Convention on Human Rights, if the right to live in family unity is depending on the available property or the status[7]. The universally recognised rights of the family should be a priority over Member States' budgetary concerns.

6.2. We regret that in Article 13 the former provision in Art. 11 to grant visa to family members free of charges has been omitted. With regard to Art. 13 (2), we would ask for more clarification with regard to children

[7] It certainly contravenes Art. 9 of the International Covenant on Economic, Social and Cultural Rights.

reaching the age of majority during such a period. They should not lose their right to stay with their family, if their residence permit has been issued for only one year.

6.3. We are aware that the conditions outlined in Art. 7 are a very difficult sphere due to the very different present regulations in Member States. However, we would urge that these conditions should be valid and proven at the time of application. If a person cannot meet them at a later stage of the procedure, this should not be to the disadvantage of the family.

6.4. We regret the changes made in Art. 7, 1 (a), which in the criteria of accommodation to be proved reintroduce the concept of "normal accommodation", thus making them once again difficult to measure. The European Parliament's formulation in this respect has been more objective. We would also still recommend that Art. 7, 1 (b) is complemented by the obligation to provide access to affordable insurance schemes.

6.5. As long as sufficient means are a prerequisite to family reunification (see above, point 2.1.) we cannot see any good reason for a waiting period of now even up to three years in which persons are deprived of their right to family life. A waiting period of two years (derogation even three years) with an additional administrative procedure of up to one year could lead to a waiting period of 3-4 years which can cause serious damage to family life. From social experience, separation often leads to estrangement and break-up of families. In order to secure the values of family communities, we regard it as of utmost importance to let the family unite as quickly as possible. Particularly for minor children such a long period is intolerable.

6.6. While we have no objections to the exclusion from family reunification based on grounds of national security and public order (Art. 6) given the entire context of the current proposal, we consider that reasons of health should not be invoked to deny the right to family reunification. We also wish to underline that the public order and domestic security reasons eventually given for a rejection would have to be specified. In any case, the principle of proportionality is of utmost importance in this context.

6.7. With regard to Art. 16 No. 1 (a), a time limit should be introduced. If a person entitled to family reunification, having reunited with the family after three years becomes unemployed after one year, he or she has in most cases been working and paying social security for four years. If he or she is entitled to unemployment benefits not sufficient to sustain the family, the family should still have a right to stay and not be sent back.

6.8. In our opinion, Member States may undertake specific checks as stipulated in Art. 16 No 4 only in case of well founded suspicion. A legal clarification along this line would assure the protection of the universally recognised respect for privacy and family life (Art. 8 (1) European Convention of Human Rights). While the wording for the cases of fraud is acceptable, we are concerned of the checks in the case of stipulation Art. 16 No 1 (b) and (c).

6.9. We consider the right of appeal as provided for in Art. 18 of great importance. However, this right would be incomplete – and also meaningless - without the explicit statement of a suspensive effect for this appeal.

We once again would like to underline that as "minimum standard for the right to family reunification" the directive should not exclude more generous regulations existing in most Member States. Therefore, the standstill clause constitutes an essential element of this directive.

In conclusion we wish to recall that the Council of Europe's Committee of Minister adopted Recommendation Rec(2002)4 on the legal status of persons admitted for family reunification. This recommendation provides important guidelines for the rights and status granted to family members. We would like to urge the European Parliament and the Council of Justice and Home Affairs Ministers to negotiate this directive with an understanding of fostering family life of third country nationals.

December 2002

3.1.2. "For I was a stranger and you welcomed me" (Mt 25:35) Contribution to the debate on the Communication by the Commission on a Community Immigration Policy (COM (2000) 757 final)

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

From our biblical and Church traditions, migration and welcoming of strangers are not new phenomena. As Christian organisations, we are deeply committed to the dignity of the human individual. We therefore welcome the opportunity to comment on the EU Commission's Communication on a Community Immigration Policy, COM (2000) 757 final.

This paper focuses on (1) the need for a policy shift and a welcoming society, as well as (2) additional considerations regarding effective cooperation with countries of origin, the context of enlargement and irregular migration. Specific comments (3) are made on the immigration policy framework, on the common approach regarding admission, equal rights and free movement, on enhanced integration policy and the need for information and monitoring. A last chapter (4) draws conclusions containing practical proposals.

1. A necessary policy shift: from preventing migration to active immigration

We sincerely welcome the Communication's new approach, which constitutes in fact a policy shift towards a pro-active immigration policy. The Communication clearly recognises the need for a change in the overall conception of migration. Migratory movements have become a permanent global phenomenon. They are closely related to the EU's relationship to the countries of origin, for example to development co-operation, world trade policy, arms exports and military policy where the Union bears a strong responsibility.

In comparison to previous attempts to launch a similar discussion, both the political scene and public opinion have become more open to the subject. The concept of zero immigration, as an underlying principle of policies existing during the last decades, has been misleading. Moreover, the adaptation of other policy areas to the logic of this underlying principle has produced lamentable effects in areas such as irregular immigration, trafficking and smuggling in human beings etc. In our view, a thorough review of all related policy areas seems necessary.

Global migration will continue to be a reality which no Member State can face alone. The reasons are manifold. Oppression, war and internal conflicts force people to leave their homes; poverty and drought, environmental disasters cause people to seek a secure place; a lack of trade and job opportunities lead many to look for a better place to make their living. In some ways, global migration is an

expression of inequality which ought to be addressed also in view of establishing just relationships.

We wish to reiterate the Churches' recognition of migration as a twofold right, to leave one's country and to look for better conditions of life in another country. We are aware that an "open door policy" is not conceivable and, certainly, migration (policy) will not solve the challenges of global imbalance. The exercise of such a right needs to be seen in the context of the global common good and justice. In this context, however, it is important to prevent unilateral decisions that are harmful to the weakest.

A Welcoming Society

The Communication rightly emphasises a welcoming society as an essential element of a pro-active immigration policy. By being able to welcome – and integrate – foreign cultures and traditions, Europe can show that it is faithful to its history of permanent exchange between people of different origin. In a world which is coming closer together, a European continent which would not be able to welcome migrants from outside its own continent would entirely deny its own history.

We wish to recall that European colonialism – as an important part of its history – can be seen as a root cause of still existing economic, political and cultural domination in various areas throughout the world. For centuries, Europeans have migrated to all parts of the globe, often without any ambition to integrate into existing societies. We recall this history, because it is against this background that many people from other regions in the world meet Europeans. It is important to be aware of this history also when we talk about integration of foreigners into our European societies.

At the same time we notice that people in European societies are concerned about their security. As one of the consequences, xenophobia and racism have been rising throughout Europe. This can certainly be dangerous to the societies, but we are also convinced that comprehensive social and integration policies are able to counter these phenomena. In this context, media play an important role. They bear a responsibility to avoid distorted images and to provide comprehensive information on migration[8].

However, as the Commission rightly states, the governments of Member States need to work openly and actively on these measures. If third country nationals are accorded equal rights and enabled to participate also in policy development, particularly on local level, joint efforts of European and immigrant persons will be far easier. Integration is not a one-way road: it is a task of citizens as well as migrants.

[8] See also our Comments on the Commission's Communication Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, p. 2. A clear distinction between migration and asylum is of particular importance.

We would like to recall that important work in these fields has already been accomplished on various international levels which ought to be taken into account like the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights, ratified by all EU Member States. More recently these rights have been integrated and consolidated into the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

The following more detailed remarks may contain several repetitions, which underline the complexity and the inter-relatedness of the different aspects of migration.

2. Additional considerations towards a comprehensive immigration policy

2.1. Effective co-operation

In the context of a partnership with the countries of origin, which we strongly welcome as a principle, several questions arise in relation to the current practice of these partnerships.

Within a comprehensive approach to the phenomenon of migration, the development of the local situation in the countries of origin is of particular importance. The contribution of migrants' remittances to the development of their country of origin should not be underestimated, as the examples of the Philippines and Mexico have shown during the last decades[9]. This economic contribution of migrants is, however, not complemented by legal guarantees for their rights and social standards by the host or by the countries of origin.

Joint debates and action by both the Councils of Justice and Home Affairs and of Development Co-operation Ministers as started in the year 2000 would therefore be an essential element of this future policy. Within these debates, it should be taken into account that both policy areas have until now been guided by entirely different approaches: global development is a middle or long term perspective while the protection of borders and public order (Home Affairs) can be seen as a rather short term policy. Development policy considers the needs in other countries, while home affairs naturally focus on domestic concerns.

Another aspect is to regard migrants and migrants' organisations as actors of immigration and also as a link to their country of origin. The choice whether they regard their life in an EU country as permanent or short-term should be left open to migrants themselves. This determination requires that third country nationals be granted rights accordingly to facilitate such a decision.

[9] Data on the importance of remittances as export earning factor for these countries are regularly available in the annual Global Development Finance, Vol. II of the World Bank, Washington.

Currently migrants often hesitate to travel back and forth between their country of origin and residence, because such travels might endanger their residence status. Another aspect is the lack of recognition of already acquired pension rights in other countries.

It would be of great value for future integration, if comprehensive information as well as preparations for the country of destination, language courses etc., were already offered in the countries of origin.

The EU Council's High Level Working Group on Asylum and Migration has touched on some of these issues in its analysis of some countries of origin. However, the implementation of measures in co-operation with the countries of origin is not yet living up to the expectations.

Of particular concern is the elaboration of repatriation clauses, currently a condition to all bilateral EU treaties. Although we recognise that repatriation would remain one of the elements of a comprehensive immigration and asylum policy, we recall that any repatriation policy should be based preferentially on the concept of voluntary return. In any case, the human dignity of the person who needs to be returned must always be respected and preserved. Special attention needs to be given to victims of trafficking, especially in the case of sexual or workforce exploitation (slavery). Priority must be given to their protection needs before and when repatriation is considered.

2.2. Enlargement

It is surprising that in the context of a Community Immigration Policy for the coming years, thus a middle term view, the issue of "internal" migration (between present EU Member States and candidate countries who will be part of the Union) has not been addressed in a more comprehensive way. Taking into account the current debate on restrictions to free movement for citizens of new Member States, we believe the EU should apply the same principles as for previous enlargements. Access to the labour market and the free movement of persons are among the fundamental freedoms of the EC treaty. They should be facilitated as early as possible. For public opinion in the candidate countries, this is an extremely important aspect of integration in the European Union. In the current political debate the possible East-West migration within the enlarged Union is often exaggerated. Perspectives for economical development as well as potential gains are not sufficiently taken into account. People's fears should be taken seriously. A transparent information strategy should be put in place. Scientific studies like the Final Report "The Impact of Eastern Enlargement on Employment and Wages in the EU Member States", carried out on behalf of the

European Commission[10], may not have been adequately communicated or are not yet recognised sufficiently.

Another aspect is the dramatic demographic decline in most Central and Eastern European countries[11]. While demography is a central element of the immigration debate in the present EU Member States, there is no sufficient recognition of these developments in the enlarged Union.

Whenever the future immigration policy gets into effect, many countries of Central and Eastern Europe will be members of the Union. Presently, these countries are supposed to adopt the EU acquis, suggesting a rather repressive approach to immigration, while the demographic situation may require increased immigration into these countries as well. At the same time, there is little experience with migration phenomena, which is especially delicate in countries which are in the process of reaffirming their national identity. These aspects make it urgent to include Central and Eastern Europe in the debate from the beginning. Our common immigration policy for the future should be discussed and decided by all present and future EU members. We consider such a broad debate as essential for public opinion in East and West.

2.3. Irregular migration

As many immigrants in search for a better life currently either have to enter the EU irregularly or to resort to the asylum channel, the first step to achieve a coherent and more pro-active immigration policy is the opening of legal channels for immigration. Due to the current lack of sufficient legal possibilities to immigrate, society is facing the increasing problem of irregular migration and critical employment situations. New forms of slavery can be observed. This does not only include the exploitation of women as prostitutes, but also of domestic workers or of workers on construction sites. Paradoxically, these appalling circumstances could logically be seen as the living proof that the clandestine labour market is actually able to absorb the influx of these migrants.[12]

There are reasons to believe that with the opening of immigration possibilities less people would be forced to choose these ways as their last means to enter the EU. In this, unfortunately, they are exploited by and unwittingly supporting the

[10] Final Report of the European Integration Consortium (DIW, CEPR, FIEF, IAS, IGIER), "The Impact of Eastern Enlargement on Employment and Wages in the EU Member States", carried out on behalf of the Employment and Social Affairs Directorate General of the European Commission, Berlin and Milano, 2000.

[11] Recent demographic developments in Europe, Council of Europe, Strasbourg, December 2000.

[12] We are aware that the complex challenges of the clandestine labour market require solutions beyond migration policy, involving inter alia social, labour and tax policies based on consultation with the social partners.

work of traffickers. However, it should be remembered in this context that even refugees often have to resort to smugglers or traffickers to escape persecution and reach a safe place[13].

A comprehensive view of a Community Immigration Policy needs to take into consideration that thousands of migrants are living in irregular situations throughout the Union. The Communication recalls several Member States' efforts for regularisation. Still, many immigrants live among us without basic social rights or even without any rights at all. The recognition of the need for legal channels consequently implies to recognise the presence of migrants who already live on the territory and have arrived here without complying with legal entry obligations. Current policies show a broad variety of approaches, ranging from different regularisation procedures to (occasional) case-by-case considerations. Member States should be encouraged to give account and analysis of their respective situation. An exchange of best practice as well as consequences of these policies might help to find appropriate solutions.
Evidently, criminal organisations gaining from trafficking need to be fought. However, the protection of individual victims, and often also of their family in the country of origin, has to be considered carefully.

A person who exercises his or her right to search for better living conditions by legitimate means should not be considered as a criminal simply for doing so. Regardless of their legal status, their fundamental rights such as education and health-care need to be honoured, which they should be able to demand without fear of being penalised. Current provisions in some Member States where every person can have access to legal proceedings regardless of the status should be regarded as best practice.

Organisations providing assistance in these fields to irregular migrants should not be penalised. We believe that it would be of great benefit to the immigration debate if the skills and qualifications also of irregular migrants were considered.

3. Specific Comments

Regarding several specific subjects addressed in the Communication, we would like to give the following comments.

3.1. Framework for a EU immigration policy

The Commission's Communication rightly re-emphasises the priorities of the Union's Migration policy as defined by the Tampere European Council in October 1999.

[13] See our Comments on the Commission's Communication Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, p 5, 2.3.

It is important to stress that all four main strands of a European migration policy underlined at Tampere are equally essential to a coherent immigration policy: (1) partnership with the countries of origin, (2) a common European asylum regime, (3) fair treatment and increased integration of nationals of third countries who reside legally on Union territory, and (4) better management of migratory flows. Instead of focusing solely on better protection against irregular immigration, this last point especially should now be interpreted in broader terms of a comprehensive immigration policy. Moreover, effective links between the different policy areas should be improved.

A future immigration policy of the European Union should take as a starting point Europe's heritage as an area of exchange and mutual enrichment, recalling the historical benefits of migrants in European societies. A European Union that promotes the freedom of movement and residence inside its borders as one of its guiding principles should not appear as a fortress to the outside world.

Any framework for an EU Immigration Policy must without any doubt include family reunification and the admission of refugees, asylum seekers, and others whose protection needs are recognised. We strongly support the European Commission's approach in this respect.

Family reunification and admission of persons in need of international protection should not be regarded as a burden, but a necessary consequence of the European Union's respect for human rights as well as Member States' international obligations.

We believe that the benefits particularly of family reunification have not yet been adequately assessed and communicated. Not only should family members get work permits as soon as possible, but their qualifications and skills – especially women's, as they usually have less opportunities – should be recognised and developed. Easier access to employment would also be beneficial to a large number of refugees.

3.2. Common European Approach regarding admission criteria, recognition of equal rights and free movement

It is obvious that an Area of Freedom, Security and Justice without internal borders needs a common definition for admission into its territory. We recognise that there are considerable differences concerning Member States' capabilities to deal with migrants and refugees. While these differences need to be taken into account in the context of a Common Policy, they should not justify different standards with regard to visa regulations and admission criteria.

Secondly, we think that a key element to effectively establish such an Area of Justice is certainly a commonly defined minimum set of migrants' rights. The guiding principles of such a policy should be based on the concepts of equal treatment and transparency for both migrants and the society.

It should include freedom of movement as well as establishing the principle of equal treatment also for long-term resident migrants. It should further include a set of rights as outlined in the United Nations' International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. Naturally, the European Social Charter as well as the Charter of Fundamental Rights of the European Union form the basis to define migrants' rights. A set of rights for long-term residents granted by one Member State should be recognised by the others without discrimination.

Administrative conditions should be as simple as possible. For example, we cannot see any reason why a long-term residence permit should not systematically be connected to a work permit. Furthermore, we advocate that all third country nationals who are granted a residence permit be entitled to a work permit to be able to make their living, so that they are not forced to live in dependence on social benefits[14], or are not pushed into criminal activities to meet their basic needs. We are convinced that this would be important to the migrants, as unemployment has severe psychological consequences on an individual, but also to the perception of immigrants by the society at large.

3.3. Enhanced integration policy

In order to maintain Europe's tradition as a welcoming society, the priority is to combat racism and xenophobia. In this context, already existing programs need strong support by public opinion. An underlying problem is the perception of migrant workers as temporary residents. As the Communication rightly states, the *"Gastarbeiter"* idea of migrants who leave the society after "they have done their job" has proved an illusion. Furthermore, it has been detrimental to integration. Public affirmation – by some politicians – that migrants will only stay for a certain period of time will not lead to the shift in public opinion which is bitterly needed. An immigration policy cannot be implemented without strong political determination and impetus. The political debate must make a resolute commitment in favour of promoting pluralist societies and fighting the root causes of racism and xenophobia. This implies the open commitment to a durable stay for migrants and, particularly when they have stayed already for five years or more, accepting them as long-term residents. Such a long-term permit should be open also to refugees after some years of residence in a safe country.
Secondly, an important aspect of an area of freedom, security and justice implies equal rights for all who live in it. An effective integration policy should not only start "as soon as possible after admission"[15], but ideally with the individual

[14] We are aware that this applies only to some Member States, while it is an established principle in others.

[15] Communication on a Community Immigration Policy – COM (2000) 757 final – Point 3.5. p. 20.

migrant's admission to the EU. Preparatory information and action in the country of origin (see above) will not only contribute to better partnership, but also constitute an element of enhanced integration efforts. Granting migrants a wide range of rights from the beginning of their stay should also give them the freedom of choice whether or not to enjoy these rights. On the one hand, this would strengthen their position as actors of migration. On the other hand, this can foster a sense of belonging on the part of the immigrants who would feel themselves not as an economic burden but as contributing members of the wider society whose presence is recognised and needed[16].

We support the idea of a "civic citizenship" as mentioned by the European Commission, as the enjoyment of the same range of rights would contribute to better integration into society. Such a newly defined concept of citizenship should be independent of the nationality and be based on the recognition of social, cultural and economic rights of each individual resident. It would facilitate participation for migrants and allow them to perceive the Europe they live in as a community of contributors[17], involving rights as well as obligations towards society. As developed above, this citizenship would include the right to free movement at the latest when the status of long term resident is acquired. Taking into consideration that free movement is not even exercised broadly by EU citizens, competition within the EU's labour market might profit from increased flexibility.

As stated above, we hope that the interpretation of the non-discrimination legislation will cover third-country nationals as widely as possible.

Thirdly, we re-emphasise the importance of family links for integration. As we have expressed before[18], we share the European Commission's view that family reunification is an extremely important aspect of integration policies. In providing for families to live together, solidarity among family members, thus within a basic element of society, is facilitated and trained. While this is important emotionally as well as socially, it is also beneficial economically. All these aspects are important facets of integration. We would also like to underline that family reunion is not only an integral part of a coherent immigration policy, but important to foster a coherent social policy throughout the European Union.

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[16] Jan Niessen, The management and managers of immigration, Migration Policy Group, December 2000, p.25.

[17] The Council of Europe has recommended participation in local elections as a possibilitiy to foster participation., 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.

[18] See our Joint Position on the Amended EU Commission Proposal for a Council Directive on the right to family reunification [COM (2000) 624 final], Brussels, 22 November 2000.

Last but not least, the Communication rightly states that integration is a two-way process involving adaptation on the part of both the immigrant and the host society. Mutual respect for each other's values and traditions is an important and necessary aspect of this process. Furthermore, tolerance and respect for diversity are part of the cultural, humanist and religious heritage of Europe. These fundamental values should therefore be upheld by all who live here. A measure of the effectiveness of intercultural dialogue is how migrants are welcomed by the receiving society and how well they become integrated into their new environment.

At the same time, we need to be aware that mobility and communication can facilitate two things, (1) the maintenance of migrants' cultural identity and (2) the adoption of multiple identities by migrants and Europeans. With growing mobility and cultural exchange Europeans adopt attitudes, styles, philosophies or traditions from all over the world. It is only natural that cultural practices brought along by immigrants should be respected and accepted, as long as they do not contravene fundamental rights.

In all matters, it is important to remember the principle that immigrants must always be treated with the respect due to the dignity of every human person. They should not be regarded as filling the needs of our continent, but as individuals with personal projects and choices. To prepare for the debate about a future policy of the European Union, it should be reiterated that the benefits of immigration are not limited to the economy. Europe is by nature a pluralist society, rich in its variety of cultural and social traditions, and this diversity has contributed to its success.

3.4. Information, research and monitoring

While we fully agree with the need for more information about migration flows as indicated by the Commission, we think that the information chapter should involve at least three different aspects:

3.4.1. We affirm the need of a concise evaluation of harmonised and comparable statistics concerning all existing forms of immigration. This should include estimations of clandestine immigrants and those who have had their situation regularised. The statistics should also reflect the qualifications of immigrants and refugees, which were rarely taken into account in the past. Such an evaluation could play an important role for public perception.

3.4.2. Statistical information is not enough. The creation of a welcoming society where integration should take place in two ways cannot be achieved without clear and transparent information about the challenges of migration. This information, together with a coherent communication strategy, is necessary in EU Member States as well as in the current candidates countries. It is needed in order to create a welcoming society, in which integration is a two-way process between immigrants and the

local society. We would suggest that publicity on the history of migration from and to Europe is provided as a tool to change the negative images.

3.4.3. Information about immigration is not only needed in the European Union but also in the emigration countries. A European strategy might include information centres in the countries of origin. These centres should provide information about the possibilities of legal immigration and offer practical help – a "balance between risks and hopes". Ideally, they could even offer orientation courses to provide a decent preparation for the future immigrant. Such an introduction to language, culture, and the social situation in the country of destination could be organised and funded in co-operation with potential employers. The involvement of trade unions in such activities would seem another important element.

4. Conclusions

4.1. It seems most urgent to provide the public in European societies with thorough information about migration, from the positive contributions of migrants to societies – not just to the labour market – their traditions and habits to statistics and reliable data. Policy makers bear responsibility to avoid distortion in media portrayal of migrants especially in the amalgamation between immigration and criminal activities. Transparency and information will help to counteract people's fears, which are often fears of the unknown. The Churches commit themselves to engage fully in the debate, to the promotion of solidarity, of integration and mutual respect. In this context, a courageous political commitment is needed, which must be exercised with great care, starting from the language used.

4.2. In order to support the interdisciplinary approach as proposed by the European Commission, radical coherence between the different policy areas should be pursued. As a permanent and increasing phenomenon in our societies, the issue of migration needs to reconcile the long term approach which is needed for global development with the short term approach, which has predominated Justice and Home Affairs for too long. Europe's responsibility in the world calls for the development of countries rather than a brain drain, in order to achieve a fair share of benefits and burdens in a global economy. If Europe is now searching for the well-educated and trained persons from the South to meet its needs, as well as for migrants to do unskilled or low-skilled labour, the obligation to facilitate exchange with the countries of origin, including improved and cheaper channels for remittances are vital.

4.3. The chances of migrants in the society they live in are at the same time chances for this society. These chances depend on the rights that migrants enjoy and which are an essential element of their integration. We call for a broad set of uniform rights, as laid down in the United Nations' International Convention on the Protection of the Rights of all

Migrant Workers and Members of their Families, which migrant workers and their families should enjoy in all Member States. This will broaden their perspectives as well as their readiness to integrate into the host society, which will more easily become one of their own. As the European Commission rightly stated, integration is a twofold process. This needs to be taken into account by both migrants and the welcoming society, which will be the constituting elements in the process of shaping a multicultural society.

4.4. Migration is a global challenge. It should not only be addressed jointly by the Member States of the European Union, but also at higher levels of international co-operation. As a first step to more regional co-operation, the EU activities should involve co-ordination and exchange with – as well as support for – the work the Council of Europe has already done in this area.

We would especially support the idea of setting up a European Monitoring Centre for Migration, as proposed by the Parliamentary Assembly of the Council of Europe[19], competent for monitoring regular and irregular migration as well as advising on legal immigration and integration policies.

4.5. In the context of labour migration, we propose to concentrate at a European level the competence to provide information on labour needs between Member States and to coordinate their Immigration Policy. Under a potentially extended EURES network, information about labour market needs could be provided to Member States *and* to third countries. Furthermore, the responsibility for the co-ordination of national quota, the collection of information from national offices and the exploration of employment possibilities in the Member States could be added to this competence.

For many in the churches, practical and pastoral work with migrants is a daily, often challenging, experience. They always strive to respect and affirm the human dignity of every individual.

Christian churches and organisations will be closely monitoring developments in the debate on a Community Immigration Policy in a spirit of constructive dialogue. We are committed to participate fully in the elaboration of a humane, transparent and coherent immigration policy in keeping with the EU commitment to develop and maintain the Union as an area of freedom, security and justice.

Brussels, May 2001

[19] Council of Europe Parliamentary Assembly Recommendation 1449/2000, Clandestine migration from the South of the Mediterranean into Europe.

3.1.3. 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"[20].
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 approach in its proposed directive on family

[20] Cf. European Council of Tampere, Presidency Conclusions, N°s 18 and 21.

reunification[21] be maintained when it is adopted by the Council of Ministers[22].

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[23].

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[24]. The duration

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21 Amended Proposal for a Council Directive on the right to family reunification, COM (2000) 624 final.

22 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.

23 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.

24 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

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 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[25], 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

Commission's aim to simplify legislation, it would be preferable to remain consistent at this point.

[25] 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.

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 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[26]. 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

[26] 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.

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

3.1.4. Joint Comments on the Proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purpose of studies, vocational training or voluntary service (COM (2002) 548 final)

Our organisations represent Churches throughout Europe and Christian agencies particularly concerned with migrants and refugees. As Christian organisations, we are deeply committed to the dignity of the human individual and the concept of global solidarity. Through their world-wide-community churches have over centuries been active in the cross-border exchange of persons for non-remunerated activities, such as studies, social assistance, peace building and mediation missions or intercultural exchange.

We thus very much welcome the intention of the European Commission to complement the proposals for directives on immigration, which were tabled earlier (namely those on entry and residence of third-country nationals for the purposes of paid employment and self-employed economic activity [COM (2001) 0386)], for family reunification [COM (1999) 638, COM (2000) 624 final and COM (2002) 225 final] as well on the status of third country nationals who are long term residents [COM (2001) 127 final)] with a directive covering those persons who are by definition entering and residing in EU territory for a non-remunerated activity and on a temporary basis.

In this context we would strongly recommend to adopt a directive, which acknowledges the diverse realities of persons coming to the EU for the various purposes of non-remunerated activities. We welcome that earlier comments have been taken into account to explicitly recognise voluntary service as a reason for entry and residence in the EU. It is important that main areas of non-remunerated activities such as study, vocational training or voluntary service are mentioned, but we would appreciate if other forms of non-remunerated activities could be recognised in both title and scope of the directive as well. From a churches' perspective, clergy sent for exchange, mission or diaconal purposes, or personnel exchange as seconded staff e.g. for social assistance or reconciliation work come to mind. This could also apply to researchers, teachers and trainers. In addition, specific medical or health treatment may well be a reason for applying for entry and a temporary residence permit, and, if the scope of this directive does not provide for this, there may be a need to think of an additional instrument at some stage to provide for such needs.

We agree with the European Commission' s assessment that these non-remunerated activities are mutually enriching, beneficial for the quality and vitality of Europe's training and educational systems, providing direct assistance and solidarity for persons in need in an EU Member State. They directly or indirectly create a huge benefit for the EU and its Member States. It is also important to underline that education “to the full development of the human personality” which “shall promote understanding, tolerance and friendship

among all nations, racial or religious groups" is a universally recognised human right (Universal Declaration of Human Rights, Article 26). With regard to volunteering we would like to recall the broad recognition of the importance of volunteering for civic participation, economic and social development and society at large - as for example expressed in resolution 56/38 of the 76th plenary meeting of the General Assembly of the United Nations (5th December 2001).

In this light we would generally plea for provisions which are comprehensive and as far-reaching as possible in enabling entry and residence of third-country nationals for temporary non-remunerated d activities.

We therefore put forward the following comments for the considerations of the European Commission, the Council of the European Union and the European Parliament.

Conditions of entry

We in general welcome that the draft directive gives importance to the fact that the institutions, through which a placement of a third country national is arranged, should be accredited or in other ways show that they are bona fide organisations. Such provisions will help to avoid the abuse of placement schemes for illicit activities.

In view of this, it however would seem logical that the concrete prerequisites and preconditions for entry and residence of third country nationals would be more or less the same for all categories of temporary, non-remunerated activities. It is not understandable why for example the possibility to take up work or the prerequisite regarding knowledge of language or even history of the host country differs between students, trainees and volunteers.

Concerning the security aspect, which is mentioned in article 5.1.c), we would strongly support the idea that a person is not regarded as a threat to public order, public security or public health unless proved otherwise. We regard it as unacceptable to ask for documentary evidence that a person does not constitute a threat for public policy, security or health. On the contrary, we hold the opinion that only where documentary prove substantiates that a person may be a threat to public policy, public security or public health, admission should be denied.

We highly appreciate the programmes financed from the EU budget (such as Socrates, Leonardo, EVS), which allocate grants to - among others - third country nationals in order to allow them to undertake their studies or vocational training in an EU Member State or engage in a voluntary activity. In the context of article 5.2., concerning the issue of visa/residence permits we would however wish to underline that EU programmes are not the only schemes enabling the residence of third country nationals in the EU for the purposes of study, vocational training, volunteering or other non-remunerated activities. We would therefore welcome if the considerations expressed in Art. 5.2. and the

explanatory memorandum that Member States must issue residence permits and visa "in good time for the holder to be able to take part in the activities" would not only extend to community programmes but to any programme of international exchange, if the criteria for entry set out in the following articles are met.

Regarding Article 6 b) we are concerned that the need to provide evidence of having sufficient resources will mean that following higher education programmes is, with a few exceptions, limited to third country nationals with a wealthy background. We would suggest that the need to prove in advance that the material conditions applies only to the initial period (including a lump sum needed to guarantee return travel costs) – especially in view of Article 18 allowing students to take up work. We would appreciate if proof of 60 % of the total subsistence costs could be regarded as meeting the criteria to be set out in article 6. If deemed necessary, the provision of Article 11 to renew the residence permit could be designed to give sufficient basis of withdrawing a residence permit if the holder does not manage to meet the material conditions for his or her residence and studies.

In the spirit of academic freedom, we would suggest to leave it to the establishment of higher or professional education if it considers any specific language skills necessary in order to be admitted and thus qualify for a visa/residence permit (art. 6.1.c on language skills).

Art. 7 b): Given the complexity of educational and professional education systems, we are convinced that the establishments of higher or professional education in the Member State concerned (by the new application for residence permit) are best equipped to determine if the course s/he wishes to follow complements the one he or she has completed.

Regarding 8 d) we welcome the fact that an exchange organisation is supposed to take responsibility for the pupil. We however would like to see clarified that in particular cases subsistence, health-care and return cost might be covered from other sources than those of the exchange organisation – e.g. from parents or relatives. Concerning 8 e) it is unclear to us why accommodation can only be provided by a family. Other forms of accommodation such as accommodation in dormitories with pupils from the host country might in fact be a rather usual form of accommodation for a pupils' exchange.

Regarding Article 9 b) we are concerned that the need to provide evidence of having sufficient resources will mean that becoming an unremunerated trainee is with a few exceptions limited to third country nationals with a wealthy background. We would suggest that the need to prove in advance that the materials conditions are met applies only to the initial period (including a lump sum needed to guarantee return travel costs) – especially in view of Article 18 allowing unremunerated trainees to take up work. We would appreciate if proof

of 60 % of the total subsistence costs could be regarded as meeting the criteria to be set out in article 6.

Regarding Art. 9 c) we would in the spirit of entrepreneurial freedom suggest to leave it to the establishment of vocational training or enterprise in question to determine if it considers any specific language skills necessary in order to accept a person as an unremunerated trainee and thus qualify for a visa/residence permit. In fact, in some Member States specific training institutes are available for third country nationals offering courses in other languages.

In view of Article 10 on specific conditions for volunteers we would like to underline that volunteering is a broad phenomenon, which is neither limited to a certain age group nor the EU's EVS programme. We can thus not understand why it should be necessary to determine a maximum age for a volunteer. In a number of Member States, and given the demographic development throughout Europe, senior expert services are extremely involved in volunteer services of all sorts of social, professional and cultural activities. It would be appropriate to increase the possibilities of aged persons and pensioners to participate in volunteers' programmes, therefore we strongly urge not to introduce an age limit.

Regarding 10 b) we welcome the fact that an organisation running a voluntary service scheme is supposed to take a comprehensive responsibility for the volunteer. We however would like to see clarified that in a number of cases, subsistence, health-care and return cost might be covered from other sources than those of the exchange organisation – e.g. from a sending organisation or from a group of individuals (a system used by the peace volunteer organisation EIRENE). This is the case for a number of reconciliation placements facilitated by churches, some of which have been running successfully for several decades.
In addition we have to express our surprise concerning provision 10 d) requesting a "basic introduction to the language, history and political and social structures" of the host Member State. From our experience, we are convinced that getting to know language, history, culture and political structures of the host country is at the very heart of the volunteering experience. The learning experience will be successful through the process of non-formal education (assisted by appropriate supervision, see 10 b) rather than through a formal introduction. Thus a formal introduction should not be a prerequisite for a residence permit.

Concerning the provision for a student' s residence permit (outlined in 11 d) that a renewal of a permit may be refused or the residence permit withdrawn if the student does not make acceptable progress in his/her studies, we would strongly recommend to apply a generous understanding of what is an "acceptable progress". Factors such as a general cultural shock, or difficulties to adapt to a different system of higher education might severely disturb the learning success

of a student, who is not a native to the specific EU Member State, especially in the initial phase of taking up his/her studies.

We cannot see any logic in the provision in Article 12 and 14 that residence permits for participants in a pupil exchange and volunteer scheme are non renewable and shall not extend the duration of one year. While most pupils' exchange and volunteering schemes, including those financed by the EU, do indeed not exceed one year, a number of well-established and recognised programmes extending to EU member or candidate countries (e.g. pupils exchange between the US and Europe, volunteering with Aktion Sühnezeichen or the US Peace Corps) do last a longer time. In fact, some Member States have a legal provision that recognised volunteers' service abroad is only recognised and eligible for funding if it lasts at least for three years. In order to safeguard the principle of reciprocity, the same should apply for personnel exchange programmes. Therefore we wish to urge that this time limit is dropped or at least an extension is made possible.

As we have outlined above the possibility to study in the EU should not be limited to the small number of third country citizens with a wealthy background or those enjoying a scholarship. Indeed for many third country nationals studying in the EU will provide a chance for upward mobility in their country and development potential for their home country. In line with Article 18 we also think that the need for a student to work in order to finance her/his study might have repercussions on the progress s/he makes in his studies. We would in view of social considerations however be extremely careful if it comes to either refusing an authorisation to work or even revoke the residence permit/refuse its prolongation on the grounds of insufficient progress in studies. Many students, also nationals, have to take up jobs to sustain themselves. Still they are able to complete their studies, sometimes taking a bit longer, but gaining work experience at the same time. While we do not regard this as an ideal situation, we would however not wish to exclude third country nationals from similar chances and experience. This requires that their progress in studies is measured against their personal situation. We would therefore urge for flexibility and no strict rule about the maximum of working hours.

Concerning the procedural provisions for the issue of visas we welcome the procedural guarantees and transparency foreseen in article 20 and 23 as well as the provision of article 22 that fees for handling an application shall not exceed the actual administrative costs. We would also encourage to issue visas and residence permits free of charge for volunteers.

While we generally welcome fast track-procedures for the issue of visa as foreseen in article 21 we would appreciate if all visas for third country nationals be examined and handled in the most timely manner.

In conclusion, we would like to congratulate the European Commission for these steps into the right direction concerning entry and residence of third-country nationals for non-remunerated activities. As we strongly recognise the value of these activities for EU Member States, the persons participating in such an activity and their countries of origin, we would however recommend a review of some provisions as mentioned above.

Brussels, May 2003

3.2.1. Joint comments on the Amended Commission Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, COM (2002) 326 final/2

Introduction

As Christian-based organisations, we welcome the effort to harmonise asylum procedures across the European Union Member States and see it as an integral part of creating a Common European Asylum System. A fair, transparent and efficient procedure is an essential element in providing for refugees the international protection that they are dependent on and entitled to.

As a preliminary remark and before speaking about the procedures themselves, we must again raise our deep concerns about the way access to the territory and therefore to asylum procedures is becoming increasingly restricted. Persons in need of protection risk serious injury or death owing to the difficulty of obtaining legal entry, in particular to EU territory. Having the best and most generous asylum system is of little use if barriers and obstacles are placed in the path of asylum seekers fleeing persecution. The current regime of visas (including the imposition of visas requirements on countries in turmoil), carrier liabilities and interdiction makes it almost impossible for asylum seekers to legally seek asylum in the EU. Denial of entry can block any access to a fair refugee status determination procedure.

It has been a feature of recent years that problems have been caused by differing interpretations by several EU Member States of the term 'refugee' as per the 1951 Refugee Convention. It would seem sensible to reach agreement about this, before agreeing on asylum procedures especially because it impacts on such concepts as 'safe third country', 'safe country of origins' and 'manifestly unfounded' claims.

Executive Summary

With respect to asylum procedures, our experience drives us to be profoundly concerned particularly as regards the following main areas[27]:

- There is a real risk of refugees being deported after the first decision due to the lack of general suspensive effect in normal appeal procedures. We are very much concerned by the fact that persons could be removed in cases where the first decision is based on grounds of national security and public order (Article 39 para 4).

[27] Compare: "Caritas Europa comments on the Commission proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (2000) 578 final", May 2001

- There is even a much higher risk of refugees being deported in the accelerated procedure. In several cases Member States may provide an exception from waiting for a decision of the court of law on an application for suspensive effect (Article 40 para 3).
- As a general rule asylum seekers should not be put in detention. Asylum applicants should only be detained as a very last resort in exceptional cases when non-custodial measures have proven on individual grounds not to achieve the lawful and legitimate purpose.
- We are seriously concerned that the safe third country notion as chosen in the proposal puts an unfair burden of proof on the asylum seeker.
- We are deeply concerned that too many applications are referred to accelerated procedures that, which is an additional point of concern, can last up to 6 months.
- There is insufficient cognisance shown of the role of UNHCR and NGOs in the text.

We point out one crucial minimum requirement regarding the decision-making procedures to be that "decisions are taken by authorities qualified in the field of asylum and refugee matters" and that personnel responsible for examination of applications receives appropriate training (Art 7 (1c)).

Finally, we are concerned that there is too much room in the Directive for "derogation" and "discretion" allowed to Member States to apply uniform procedures, and the use of concepts such as accelerated procedures, 'safe third country', and 'country of origin' claims. See for example: Art 39, Para 4 and Art 40, Para 3 (re: suspensive effect); Art 20 (re: procedural guarantees to the withdrawal or cancellation of refugee status).

Background observations

In Europe undue length of asylum determination procedures is a real concern. This is especially so since States are more and more restricting the movement and curtailing the rights of asylum seekers during the determination process. Coupled with this we have a concern about poor quality of asylum procedures. We believe that current flaws in the procedures are a significant factor why persons in need of protection fail to get recognition. We believe that the following concerns and recommendations are essential[28]:

- The information provided on asylum procedures is inadequate almost everywhere. Although in some countries thorough written information is provided, experience shows that asylum seekers rarely understand the

[28] Compare: "Fair treatment of asylum seekers - Caritas Europa Position Paper on key standards for the reception of asylum seekers and for asylum procedures", February 2001

essential points. The information provided is formulated in overly technical language, or in difficult legal terminology.

- Legal counselling services are also inadequate almost everywhere. Generally, even in countries where there is government support for legal counselling services, only some asylum seekers benefit to a sufficient degree. Broadly there is a lack of high-quality, free legal aid from lawyers trained in human rights law.
- Refugees face and suffer from a long and uncertain wait because of the length of determination procedures. Both governmental and non-governmental agencies agree on the need to shorten asylum procedures.
- Decision-makers must be fully trained and competent to deal sympathetically with asylum-seekers of different educational, cultural and social backgrounds, and able to understand the psychological complexities that may be involved, for example in dealing with traumatized persons.
- Decision-makers must have adequate time and resources to make good decisions, in particular access to high quality and up-to-date country of origin information. There is a need for transparency as regards the information on which asylum decisions are made; asylum-seekers and their representatives must have access to this data. UNHCR and non-governmental organisations have a role to play in gathering and evaluating this information.
- Proper interpretation services are vital, as is access to high-quality state-funded legal counselling and representation; in order to safeguard the rule of law, governments are obliged to enable persons under their jurisdiction to enjoy their rights.

As regards the draft Directive we welcome the reference that the Commission makes to the Council Conclusions of 7 December 2001, revised 18 December 2001, which underline the need for provisions “ensuring that applicants for asylum receive substantial guarantees with regard to the decision-making process and that decisions are of optimum quality”[29]. We agree entirely with the view of the Commission "asylum procedures should not be so long and drawn out that persons in need of international protection have to go through a long period of uncertainty before their cases are decided."[30].

In general our view of this draft Directive is that it portrays an anxiety on the part of Member States to protect themselves from false asylum claims, but it does not provide adequate protection for genuine refugees to protect themselves against poor decision-making by Member States.

[29] Preamble, pt. 6

[30] Preamble, pt. 10

Although there is a clear need to harmonize the application of concepts and practices in EU Member States we have serious doubts with regard to some provisions in the proposal concerning 'accelerated procedures, 'manifestly unfounded claims' and the 'safe third country' notion. We would like to warn against the danger of reducing this proposal to the lowest common denominator that will defeat the purpose of harmonisation and of the search for best practice.

SPECIFIC COMMENTS

Chapter 1: Scope and definitions

We point out that under international refugee law (Art 1(a) of the 1951 Refugee Convention) refugee status is not granted but recognised (see for example Para 28 of the Handbook on Procedures and Criteria for Determining Refugee status).

As set out in previous comments put forward by the signing organisations, we recommend strongly to make the standards for asylum procedures also applicable for procedures designed to determine the need for complementary forms of protection. We would like to see one single procedure being designed within which both, the refugee status as well as the complementary protection would be determined.

Chapter II: Basic principles and guarantees

Article 5: Access to the procedure: Access to the territory and therefore to the procedure is one central weakness of the current asylum system. The first stage in this is border procedures. These have to be transparent and accountable. We therefore recommend that a specific provision be included which mandates ongoing evaluation of border procedures by an independent agency, such as for example UNHCR. In addition, the Directive should be more specific about continuous training of border personnel and suggest areas where training is needed such as human rights, international protection and intercultural competence.

Article 5(4): Consistent with support by the European Union for principles of family unification, Member States should provide by law derivative asylum status for family members of the principle applicant. If the family members are accompanying the principle applicant in the Member State, they should be included in the application – if they so desire – and be granted derivative asylum status. If they are not physically in the Member State, a procedure should be created by the Member State permitting them to join the principle applicant -- should he or she be granted asylum-- and enter the Member State as refugees.

Article 6: Right to stay pending the examination of the application: We are very concerned that the right to stay pending the examination of the application only refers to the decision of the "determining authority" competent for taking

the decision at first instance. Our organizations hold the position that a right is only substantial if the person enjoying it

a. has the opportunity to lodge an appeal,
b. which needs to be decided on by a competent authority and
c. which has a suspensive effect.

This means the right to stay needs to be guaranteed also during the review or appeal procedure as will be pointed out in more detail in our comments on Articles 39 and 40.

Article 7: Right to individual decisions: we welcome the provision that decisions on asylum should be taken on an individual basis on the objective circumstances of that person. However, our concern remains, regarding the apparent building up elsewhere in these proposals of the principles of "safe third countries" or "safe countries of origin" (Art's. 27, 28 30, 31 and Annexes 1 and 2).

Efforts to train the personnel who decide asylum cases are appreciated. However, in most countries the level of competence in the administrative body that makes the first determination is not acceptable. In many countries a significant problem is inadequate understanding of the skills required. One crucial minimum requirement regarding the decision-making procedures is that "decisions are taken by authorities qualified in the field of asylum and refugee matters" and that personnel responsible for examination of applications receive appropriate training (Art 7 (1c)).

However, we feel that current flaws in the procedures are a significant factor why persons in need of protection fail to get recognition. This is why we would welcome a harmonized high-level profile of decision-makers in asylum cases throughout Europe. In particular: Decision-makers must be fully trained and culturally competent to deal with asylum-seekers of different educational, cultural and social backgrounds, and able to understand the psychological complexities that may be involved, for example in dealing with traumatized persons. Regular training and access to information should be provided. Research and documentation centres should be created, to compile country of origin information and asylum-related jurisprudence. Where additional expertise is necessary, asylum authorities should be able to consult expert opinion. We, further on, recommend pooling the information available on international level that should be much more cost efficient.

Article 9: Guarantees for applicants for asylum: we are concerned that Article 9 (1c) stipulates only that asylum seekers "must not be denied the opportunity to communicate with the UNHCR or with any other organisation working on behalf of the UNHCR". This is far too weak. Relationships with UNHCR and NGOs need to be encouraged and proactively promoted.

We fail to grasp the reason why "if a legal adviser or other counsellor is legally representing the applicant, Member States may choose to notify the decision to him instead of to the applicant for asylum". This seems unnecessarily confusing. Surely it would be better to notify the legal representative in any case; in some countries it would even be mandatory to proceed in this way according to the procedural rules in place for administrative law. Optimally, the decision could, in addition, also be sent to the asylum seeker.

Article 10: Persons invited to a personal interview: In para. 2b the determining authority is allowed to be the sole judge of the fitness for interview of the applicant. Procedural safeguards are needed here and a medical or psychological certificate should be mandatory.

Where the personal interview is omitted and in cases where the applicant is offered the opportunity to make comments, the assistance of a legal adviser or other counselor is a positive point, but should not be discretionary.

Article 10(2)(c): Failure to obtain a competent interpreter should not be the basis to forego a personal interview. This prejudices certain categories of persons speaking certain languages where it is difficult to obtain interpreters.

Article 11: Requirements for a personal interview: As regards para. 2b our view is that the personal interview should take place in the language preferred by the applicant. Only if interpretation services are unavailable should it be conducted in another language "which [the asylum seeker] may reasonably be supposed to understand".

Our experience on the ground shows that protocols and guidelines for interpreters are urgently needed and we urge some reference to this.

Gender is an important issue in generating trust. Article 11 (2 a) should include a reference to gender. As a rule, female asylum seekers should have female interviewers and interpreters and male asylum seekers should have male interviewers and interpreters. A woman, for example, would find it very hard to talk about rape in the presence of a male interviewer or interpreter.

Article 12: Status of the transcript of a personal interview in the procedure: In para. 3 we urge a rewording from "Member States *may* request the applicant's approval on the contents of the transcript" to "Member States *shall* …"

In the case of an applicant's refusal to approve the contents of the transcript of his/her personal interview and if the determining authority decides to proceed, safeguards are needed such as the possibility of making personal explanatory comments in addition to the personal interview. The provision of assistance from a legal adviser or other counselor should be obligatory.

Article 13: Right to legal assistance and representation: It is a positive point that the draft Directive envisages that asylum seekers will have the right to legal assistance. However, this right needs to be more strongly proposed. In para 1, instead of allowing applicants for asylum the opportunity to consult, Member

States should undertake to facilitate and promote the access of applicants to legal advice.

Article 13 (2) only provides for a right to free legal assistance at the appeal stage - this is inadequate. Good decision-making can only be ensured through properly presented cases and this requires legal assistance at all stages of the process and in all types of case. Legal assistance should be compulsorily made available to all persons who intend to lodge an asylum claim, wherever the place from which they wish to introduce the request (also at international zones or in transit zones of airports).

We agree that the availability of free legal assistance should be conditional on lack of sufficient resources on the part of the asylum seeker (Para 2 a). However, we do not agree with the addition of the phrase "and insofar as such assistance is necessary to ensure their effective access to justice", as we believe this adds a subjective dimension which cannot be easily evaluated.

While it may be necessary to restrict free legal assistance to a designated group of legal advisers or other counsellors care should be taken to ensure that there is a sufficient number of these and that they are adequately trained and supervised by an independent agency and by the UNHCR.

Article 14: Rights of legal adviser or counsellor: We strongly urge that any legal adviser or counsellor assisting or representing an asylum applicant should have unrestricted access to otherwise restricted areas. We do not believe that either the security of the area or the need to ensure an efficient examination of the application can justify limitations of this right.

Article 15: Guarantees for unaccompanied minors: we welcome the safeguard of the appointment of a representative for unaccompanied minors, but feel this should be "forthwith" or "immediately" rather than "as soon as possible" (Art15 (1a).

In article 15 (3) that refers to medical examination to determine age, we point out that such examinations can be in error by about two years. The principle 'in dubio pro minoritate' should be followed in these cases. Also, the representative or tutor of the minor should be informed about the examinations, so that he/she can follow the result/conclusions and have the possibility to question them during the procedure.

Article 16: Establishing the Facts in the Procedure: Article 16(2) refers to the applicant's responsibility to provide information on travel routes in order for the application to be considered complete (to include all relevant facts). Often times, applicants for asylum are either helped to enter a country illegally by family members or friends or they pay smugglers. In the first case, they may be reluctant for reasons of loyalty to provide information on "travel routes." In the second case, they may be afraid to do so. Therefore, the phrase "where reasonable" should be included in this section.

Article 17: Detention pending a decision by the determining authority: Our organisations believe as a general rule that asylum seekers should not be put in detention. Asylum applicants should only be detained as a very last resort.

We welcome the proposal (Art 17 (1) that excludes the detention of asylum seekers "for the sole reason that his application for asylum needs to be examined". We welcome that there is foreseen an initial judicial review and subsequent regular reviews – this is a real procedural safeguard against arbitrary or unnecessarily prolonged detention. But we would emphasise that this review should be mandatory in all cases (Art 17 (1) and Art 17 (2)) on Member States, not merely "as a possibility" as provided in the proposal. The review of the decision, including the review the lawfulness of the detention, should be mandatory at the latest every two weeks.

According to Art 5 ECHR everyone has the right of a review of detention by a judge. We propose establishing the principle that any decision on detention should be issued by a judge as well.

We are opposed to detention of asylum applicants in order to achieve a more efficient processing of the claim (Article 17 para. 1) or for a quick decision to be made (Article 17 para. 2) – we believe that there are many other means for achieving such efficiencies. We observe that detention is not a mean to make a decision more effective but, on the contrary, to minimise the quality of the decision as persons are intimidated by the detention and have less possibilities to access counselling during the procedure.

In addition, clear criteria and a maximum time frame should be set out for exceptional detention of asylum seekers. We would like to point out that any grounds for detention should be harmonised with EXCOMM Conclusion 44 (XXXVIII). Any EU legal basis regarding detention should comply with international law and standards. In addition, procedural safeguards are needed, in the case of detention for the purpose of verifying the identity, to review whether the authority did and does everything to come as quickly as possible to conclusions as regards the identity. We would wish to recommend that personnel involved in the interviews about identity of asylum seekers are better trained, that a real effort is made to create an atmosphere that reflects authentic respect for the asylum seeker – which at the moment often is not the case, but suspicion palpable and incomprehension striking – and that legal counsellors are involved in these interviews whom the asylum seeker can trust.

Article 18: Detention after agreement to take charge under Council regulation …: We are very concerned by the provision in Article 18 that Member States may detain for a period up to one month an asylum seeker after another Member State has already agreed to take responsibility for the processing of his/her claim. This is an unnecessarily long time frame. A maximum of 3 days should be sufficient to arrange the transfer. This would also save costs.

Article 19: Procedure in case of withdrawal of the application: we are concerned at the opportunity for Member States to reject the application subsequent to its withdrawal by the asylum seeker. Often decisions to withdraw a claim are based on poor advice, pressure of circumstances and other reasons. We believe that a rejection could unnecessarily complicate the procedure – a genuine applicant could even end up without any substantial hearing of his/her case. This Article should provide that any decision for withdrawal of an application must be done without prejudice to the applicant, if he or she chooses to present an application for asylum in the future.

Article 20: Procedure in case of implicit withdrawal or abandonment of the application: We are deeply concerned at the possibility to interpret many scenarios as an "implicit withdrawal" of the asylum application in Article 20. Communication between asylum authority and asylum seeker can often be difficult, for reasons as varied as a lack of fixed residence, lack of adequate financial means to present oneself at the administrative body, negative influence or pressure from smugglers or traffickers. This interpretation could lead to rejection of the application (see Article 19), consequent difficulties in lodging a renewed application (see Article 40) and subsequent removal after a decision in the accelerated procedure, despite a real risk in the country of origin.

Where it is reasonable to believe an application has been abandoned, any decision by a Member State withdrawing the application should be taken without prejudice to the applicant to pursue the claim in the future. In the case of implicit withdrawal or abandonment, a Member State should not be permitted to make a decision based on the merits of the case at that point. Cases should simply be administratively closed.

Article 21: The role of UNHCR: We support the thrust of this article and we urge that NGOs should also be included in it. The UNHCR´s role should be recognized in a more significant way than is currently envisioned under this article. Member States should be required to respond to the UNHCR´s comments and criticisms of the application of asylum procedures. Additionally, the UNHCR should be permitted to accompany patrols currently in the Mediterranean as part of Operation Ulysses. Potentially hundreds of persons seeking entry from the South in "pateras" have asylum claims. However, under current procedures in the Operation, "pateras" are returned without inquiry.

Article 22: Data Protection: This provision should be edited to state that disclosure of information regarding individual applications for asylum to authorities in the country of origin should only be done with the consent of the applicant.

Chapter III: Procedures at first instance

Article 24: Time limits for an accelerated procedure: We are deeply concerned that accelerated procedures can last up to 6 months. Our view is that

even normal procedures should be conducted within such a time limit. In general, we do not think that a separate procedure for the cases mentioned (i.e. fast-track/accelerated) contribute to a "simple and quick" system. They simply add unnecessary hurdles and layers of complexity. A single procedure where good quality decisions are made on all facts of an individual's case at the first stage would ensure a smooth and rapid appeals process, including a fair and efficient system.

Article 27 and 28: Designation of countries as safe third countries:

We are seriously concerned that the safe third country notion as chosen in the proposal puts the burden of proof unjustly on the asylum seeker. It should be emphasised again that all cases should be examined and decided on the individual's own circumstances, regardless of the fact that readmission agreements exists. We believe that there are no safe countries in any blanket sense. It is totally unacceptable for our organisations that the Directive allows to "retain or introduce legislation that allows the designation by law or regulation of safe third countries".

We also believe that the right of appeal against 'safe third country' removals has to be suspensive - the right to appeal from another country is ineffective, a token right that is virtually impossible to exercise. This is particularly important in the context of the observation above (i.e. refugee definition) that agreements on procedures and referrals should come after basic agreements about who is or is not a refugee otherwise there is the clear risk of *refoulement.*

We welcome the suggestion that referral to a 'safe third county' should reflect the applicant's needs and links. We believe that the provision in Article 28 (1b) should be strengthened to say that referral should only take place where there are guarantees of re-admittance, not simply "grounds for considering that the applicant will be readmitted."

Equally, the onus should be on the sending State to show that that country is safe for that individual and confirm that they will be admitted to an asylum process that will assess their claim without danger of *refoulement*. We believe that the *non-refoulement* obligation is best met by Member States by the provision of a full and satisfactory asylum procedure at first instance, where all asylum claims are thoroughly examined by a competent authority.

Finally, in the case where the applicant has family ties with someone legally resident in the country that is considering applying the safe third country clause, or in the case that there are other social or cultural links connecting him to this country, or for vulnerable persons (such as unaccompanied minors or traumatized persons) the safe third country notion should not be applied.

Article 30 and 31: Safe countries of origin: We believe that there are no safe countries in any blanket sense. It is not acceptable for our organisations that the Directive allows States to "retain or introduce legislation that allows the

designation by law or regulation of safe countries of origin". We are seriously concerned that the safe country of origin notion as chosen in the proposal puts the burden of proof on the asylum seeker. It should be emphasised again that all cases should be examined and decided on the individual's own circumstances. This is of serious concern as it is clearly contrary to the basic requirement to consider each individual case on its own merits and there is a wealth of documentation from previous experiences of "lists" of supposedly safe countries that are, in reality, far from safe for some individuals. The right to asylum is an inalienable and basic human right enshrined in Article 14 of Universal Declaration of Human Rights and this is not dependent on nationality or country of origin. To restrict access to a fair, just and efficient process on the basis of such blanket definitions is inherently unsafe and contrary to international law.

Article 32: Other cases under the accelerated procedure: We are concerned about the criteria suggested for identifying these cases. In particular with regard to Article 32 (a) it has to be stated that applicants commonly have no, or false documentation. This should not being used against them in relation to their asylum claim unless it can be clearly shown that documents were destroyed in order to deliberately mislead authorities concerning their identity. Since legal entry is very limited for asylum seekers, the use of false documents often is result of the "non-arrival"-policy implemented by Member States.

As to Art 32 (b): To require explanations to have serious reasons for considering they have acted in bad faith seems an extremely subjective and discriminatory basis on which to implement accelerated procedure. This seems to be a vicious circle: first access to the territory on legal grounds of asylum seekers is made practically impossible; this drives them into the hands of traffickers and smugglers who usually advise them to destroy documents and perhaps to present a fictionalised versions of their histories. Finally, the asylum seeker's claim will be looked upon with suspicion from the outside and the claim will fall under the conditions for accelerated procedure.

We also point out that there is evidence that a sizeable minority of those who could claim asylum is often afraid to do so owing to the negative publicity about border policies of member States. Should these then be penalised and viewed with suspicion when at last they do present a claim?

Article 35: Cases of border procedures: we welcome that the Directive foresees that some guarantees of the normal procedure should also be applied in the border procedure. However, we urge that the procedure at borders should comply with

- Art 8 (1) which obliges Member States to ensure that decisions on applications for asylum are giving in writing
- Art 9 setting out guarantees for applicants for asylum
- Art 10 and 11 regarding personal interviews

- Art 12 on the status of the transcript of a personal interview
- Art 13 (2) ensuring access to legal assistance.

The enormously wide discretion given to member States in para 3 is contrary to the Directive's goal of harmonising asylum procedures. The borders are one of the most sensitive elements in fair and efficient asylum procedures. Leaving the design of these procedures solely to the Member States means falling at the first hurdle. The border procedures as laid out in the proposal are impractical and offer no safeguards

We are deeply concerned by para 2 saying that "this procedure may also be applicable for applicants for asylum arriving in airport and port transit zones. We do not see any reason for treating asylum seekers differently depending on whether they arrive at the land border or at an airport or port. We urge to make this procedure obligatory at all borders.

Article 37: Withdrawal or annulment of refugee status - procedural rules: We are deeply concerned that para 2 allows Member States to derogate from Articles 9 to 12 "when it is technically impossible for the competent authority to comply with the provisions of those Articles". In fact this is undermining the whole range of guarantees foreseen for the procedures although the very sensitive act of withdrawing or annulling the refugee status requires specific safeguards. Member States should be expected to live up to the guarantees that they themselves consider as crucial.

Chapter IV: Appeals procedures

Article 39: Review and appeal proceedings against decisions taken under the regular procedure: There is a real risk of refugees being deported after the first decision due to the lack of a general suspensive effect in normal appeal procedures. We are very much concerned by the fact that persons could be removed in cases where the first decision is based on grounds of national security and public order (Article 39 para 4).

We are also concerned about the necessity to apply for suspensive effect if Member States derogate from the general suspensive effect (in maintaining present legislation – Article 39 para 2). We point out that asking a court to rule on the granting of suspensive effect is lower standard than providing for a general suspensive effect and it is additional procedural burden.

Article 40: Review and appeal proceedings against decisions taken in the accelerated procedure: we very much regret that the proposal of the original draft Directive as regards the three tier system of decision-making, reviewing and Appellate Courts was dropped in the amendment.

In the accelerated procedure there is an even higher risk of refugees being deported since in several cases Member States may be exempt from waiting for a decision of the court of law on an application for suspensive effect (Art 40 para

3). These cases include inadmissible applications, renewed application without new facts, subsequent applications, and national security.

We are particularly concerned about Art 40 para 3 d because of the potentially wide and unjustified interpretation of the grounds of national security. Accelerated procedures need higher procedural safeguards than normal procedures – the Directive does not live up to this requirement. Accelerated procedures may turn out to be automatic removal.

Any deportation carried out before the final decision puts in question the value of the review procedure and causes serious risk of refoulement. In this regard this provision may violate Art 33 of the Geneva Convention and Art 3 and 13 ECHR. We urge of the view that the suspensive effect to appeals should be in all cases, without discrimination.

Article 41: Time limits and scope of the examination in review or appeal: this provision is not clear enough when stating in para 1 a that "these time limits may be shorter for giving notice of appeal and requests for review in respect of decisions taken under the accelerated procedure". We promote including concrete time limits. This would make sure that remedies are designed in a way to be used effectively.

As to para 2 allowing Member States to lay down the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his review or appeal together with the rules on the procedure to be followed in these cases, we refer to our comments made above under Articles 19 and 20 that should be applied here as well.

Conclusion

Additionally, our organisations recommend the European Union should establish an independent quality assessment of asylum procedures and asylum decisions in Member States. This would ask for defining criteria and agree on indicators.

Our organisations would like to reiterate that since all EU Member States are parties to the 1951 Geneva Convention, the UN Convention against Torture and the European Convention on Human Rights, their respect for human rights obligations is not a matter of choice, but of duty.

Brussels, 12 May 2003

3.2.2. Fair Treatment for Asylum Seekers

Caritas Europa position paper on key standards for the reception of asylum seekers and for asylum procedures, supported by C.E.A.R. - Spanish Commission for Refugee Assistance, *European Network Against Racism (ENAR), La Commission Justice et Paix, International Catholic Migration Commission (ICMC), Jesuit Refugee Service Europe (JRS-Europe), Quaker Council for European Affairs (QCEA), Pax Christi International*

1. Summary

The situation of asylum seekers looking for protection in Europe has changed in recent years. Assuming that reception conditions[31] were a pull-factor, many EU States have changed their legal framework on reception and the related practice. The misuse of reception conditions as a key method of deterrence has led organisations that assist refugees to fear that standards are being harmonised on the basis of the lowest common denominator. At the same time, Central and Eastern European countries, previously transit countries but now becoming countries of destination, have started to set up structures to respond to the needs of asylum seekers.

Europe's weak standards for reception of asylum seekers, as well as the undue length and poor quality of asylum procedures, are the object of continuing criticism. Replies to a questionnaire sent to all 48 Caritas Europa member organisations reveal the following main areas of concern:

A. Persons in need of protection risk serious injury or death owing to the difficulty of obtaining legal entry, in particular to EU territory. Often, legal provisions and the manner of their implementation make it impossible to calculate the risk to a specific person of being refused entry into the territory. In addition, denial of legal entry often blocks access to a fair refugee status determination procedure.

B. In most European countries accommodation is not guaranteed to all asylum seekers, and is often in poor condition. Many governments aim to deter people from seeking protection and from reaching their territory by deliberately limiting human rights and disregarding human dignity. Caritas organisations in various countries are attempting to fill the resulting gap in governmental assistance.

C. The information provided on asylum procedures is inadequate almost everywhere. Although in some countries thorough written information is provided, experience shows that asylum seekers rarely understand the

[31] The definition of reception used by Caritas in elaborating this position is a very broad one. It includes reception in its narrow sense, as well as reception-related aspects of asylum procedure.

essential points. The information provided is formulated in overly technical language, or in difficult legal terminology. Legal counselling services are also inadequate almost everywhere. Generally, even in countries where there is government support for legal counselling services, only some asylum seekers benefit to a sufficient degree. Broadly there is a lack of high-quality, free legal aid from lawyers trained in human rights law.

D. Although efforts to train the personnel who decide asylum cases are appreciated, in most countries this has not led to an acceptable level of competence in the administrative body that makes the first determination. In many countries a significant problem is inadequate understanding of the skills required. Refugees facing a long and uncertain wait suffer from the length of determination procedures. Governmental and non-governmental agencies agree on the need to shorten asylum procedures.

The assessment above shows a wide range of severe weaknesses: there is a broad need for improvement.

Caritas Europa

- Promotes a policy of permitting legal entry to persons seeking protection at borders.
- Is convinced that there is only one possible basis for formulating future minimum standards for reception conditions: today's best practice. Asylum seekers are to be welcomed and their dignity respected.
- Promotes state action to safeguard the rule of law. The state must offer asylum seekers high-quality

  information,

  legal counselling and

  legal representation.
- Promotes substantial investment in increasing the quality of asylum procedures.

Governments fear that changing any one of these parameters would make asylum procedures more vulnerable to abuse. The counter-strategy would be to take a set of necessary measures at the same time, thus addressing the main weaknesses of European asylum systems as a whole. This would demand a great deal of time, money and effort.

Of course, it is possible that – in the short term – the number of people misusing the asylum procedure would increase. This and other negative impacts on the states' objective of immigration control can only be resisted or avoided if the standards demanded here are implemented together with measures to reduce substantially the duration of asylum procedures and – to a lesser degree – in

coherence with provisions on subsidiary and temporary protection. All this must be accompanied by a transparent immigration policy.

This could result in a clear distinction between asylum seekers and other migrants; markedly shorter and much improved procedures; greater probability of achieving the "correct result" in determining the need for protection; and – mainly through shorter procedures – a decrease in the attractiveness of asylum to persons not in need of international protection. The result of fair, quick and thorough procedures, combined with other measures such as the right to work for asylum seekers, could also bring a marked decrease in the total cost of reception and determination procedures.

The creation of a Common European Asylum system as envisaged in the Tampere Conclusions would justify such investment in the improvement of procedures.

2. Asylum seekers' legal access to a territory

(The Gordian knot of immigration control and international protection)

The legal framework of most European countries formally (or in theory) allows persons presenting themselves at the border who claim to be in need of protection and who fulfil specific requirements to enter their territory legally; in practice, however, even this limited access is often denied. The laws of Central and Eastern European countries, in particular, demand that asylum seekers lodge their claims at the border; otherwise there are time limits for presenting well-founded reasons why they were unable to do so.

However, there are major hurdles to overcome before an asylum seeker can reach the target country's border. Under the European Union's non-arrival policy, asylum seekers are prevented from gaining access mainly by visa requirements for citizens of refugee-producing countries and by carrier sanctions.

If an asylum seeker does succeed in reaching the border, other hurdles appear. In most states (mainly those in the European Union) additional legal criteria must be met before entry is permitted, for example, fear of persecution by the state from which the person is seeking entry, no safety in a third country, etc. The safe third country notion, although a legitimate legal provision, can become a means of deterrence[32] if understood and applied in an abstract way. In most states' practice, the application of this clause focuses on whether or not the

[32] The safe third country concept is a way of shifting the burden, when implemented by simply citing a list of safe third countries without opening substantial proceedings for each individual case.

person was safe before entry rather than on whether or not he/she will be safe upon return.

Finally, the implementation of the legal provisions hinders persons presenting themselves at the EU outer borders from gaining access to the territory. Although this argument cannot be proved with figures, the reality is clear: Only a very small proportion of asylum seekers choose the "legal path" – meaning application for asylum at an international airport upon arrival.

To conclude: legal provisions and implementation make it impossible to calculate the specific person's risk of being refused entry into a country. And often, the denial of legal entry blocks access to a fair refugee determination procedure. *"Such policies may ultimately result in exposing persons to risk of persecution, by means of blocking their flight either in the country of origin or in unsafe transit countries from which they may be forcibly returned to the home country."*[33]

Given the ways in which persons seeking protection are hindered from legally entering a territory, one can only conclude that the fight against illegal immigration has priority over the EU Member States' asylum policy. The *"logic seems to be that in order to prevent the asylum system from turning into a 'back door' to permanent immigration, it should rather be closed in the first place"* [34].

The message as the persons affected understand it can be put clearly as follows:

¾ It seems to be more risky to present oneself at the border

than to expose oneself to traffickers.

Tens or even hundreds of thousands of people[35] already put their fate in the hands of smugglers/traffickers in an attempt to escape their home country and seek protection in Europe.[36]

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[33] See Jens Vedstet-Hansen, "Europe's response to the arrival of asylum seekers: refugee protection and immigration control", May 1999, page 10.

[34] Jens Vedstet-Hansen, page 17: *"One of the main reasons posited for reinforcing immigration control by means of non-admission policies is that, due to official halts on immigration, the asylum system is the only channel for non-citizens into industrialized states, and therefore becomes abused."*

[35] Compare John Morrison, "The trafficking and smuggling of refugees: the end game in European asylum policy?" July 2000, page 25.

[36] States acknowledged that their policy drives persons on to the "illegal" track. In 1997, UNHCR and the Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC) assumed that a certain proportion of asylum seekers have been "diverted from the open channel of asylum to the closed channel of clandestine immigration"; and "difficulties faced both by economic migrants and refugees to reach the industrialized world in a legal manner have fostered the emergence of a huge underground industry involving the illegal movement of people across borders" – quoted according to Jens Vedstet-Hansen (see footnote above).

Many of these people are refugees. They are forced to flee because of persecution, of a real risk of being tortured or because they are in danger of grave inhuman treatment. It has to be noted *"that Europe's most smuggled and trafficked nationalities, such as Iraqis and Afghans, also happen to have a very high rate of recognition as refugees under Europe's own asylum procedures. It [is estimated that] between one-third and two-thirds of the most trafficked nationalities are eventually recognised"*[37].

The current EU policy of preventing refugees from claiming protection at the border is distinctly inhuman in its consequences.

Migration policy fails to distinguish between persons according to their need for protection. Moreover, this policy is one of the factors leading to the destruction of documents and loss of evidence about individuals' immigration history, which makes it impossible to return them to the correct country when an application is rejected.

State practice ultimately contradicts its own interests and policy objectives in border control, public order and establishing the personal identity of asylum seekers.

It goes without saying that trafficking in human beings is a business of the worst type, shamelessly exploiting people in need and disregarding human dignity. According to the European Commissioner Antonio Vitorino, nearly every day border police find the bodies of people who died attempting to enter the EU[38]. Traffickers convert other humans' hardship into their profit. This is to be condemned.

Standards for a future European policy on permitting legal entry to persons seeking protection at the border

Persons addressing themselves to border guards and asking for asylum are to be allowed entry to the territory of a state and their asylum application is to be forwarded to the competent authority.

An asylum application should be examined in the country where it is first lodged. In countries where there is a safe third country rule, it is only to be applied when the third country in question guarantees access to a fair refugee determination procedure and there is no risk of *refoulement*[39].

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[37] Quotation from the press release on the presentation of the report "The trafficking and smuggling of refugees: the end game in European asylum policy?" by John Morrison with the assistance of Beth Crosland; July 2000.

[38] Interview with Commissioner Vitorino "Europa braucht eine gemeinsame Asylpolitik"; Süddeutsche Zeitung, 6 July 2000, page 6.

[39] Refoulement means to return an asylum seeker to the country of origin, or another country where he or she may be in danger. The standard requested in this paragraph can also be found in ECRE guidelines on fair and efficient procedures for determining refugee status, September 1999.

No asylum claim can be refused because of delay. In fixing reasonable time limits for applying for asylum, countries should consider asylum seekers' language difficulties, their access to information and legal advice and also the special circumstances of asylum seekers who suffer acute physical and mental illness (for example, torture victims).

Countries should provide for extra-territorial asylum at their embassies and missions, and in certain situations for "in country" processing of asylum applications.

Carrier sanctions should be removed for countries where there are grave human rights violations, war or civil war, as should visa restrictions for the nationals of those countries.

Visa restrictions should not be used to prevent asylum seekers from accessing the territory of a state.

3. Conditions of reception of asylum seekers

(Considering reception conditions as a pull-factor limits human rights and leads to disregard for human dignity)

The term "conditions of reception" is used in this section to refer to accommodation, social assistance, access to health care, access to the labour market, access to education, special provisions for minors and contact with the local population.

Some governments consider high standards of reception an important pull-factor influencing the asylum seeker's choice of target country. Some of these countries limit the support offered or even remove all access to help. The persons affected are condemned to live a bitter life in difficult conditions; some lack even a bed, food, hygiene facilities and medical treatment.

For various reasons, most asylum seekers are unable to support themselves. Having spent their last resources on fleeing, they are usually needy. In Europe standards of accommodation and social assistance vary greatly. Some countries provide asylum seekers with social care comparable to that available to their own citizens in need; some reduce this "normal" allowance; others set limits on how long asylum seekers can receive public care. Some governments provide basic help only to a proportion of all asylum seekers – selection depends on additional criteria such as the ability to prove identity by presenting valid documents or belonging to specific countries of origin. Some countries exclude assistance if another country might be held responsible for considering the asylum application.

Therefore in Europe, at least some asylum seekers are completely cut off from any kind of state assistance. Persons affected are denied government help to cover basic needs such as a place to sleep, food and hygiene facilities.

Asylum seekers' access to health care differs widely from one country to another. Some governments ensure that asylum seekers can benefit from health insurance. In other countries only limited medical treatment is available to asylum seekers. Some asylum applicants are excluded, formally or in fact, from any treatment except in case of emergency. Some asylum seekers – although needy – do not have access to medical treatment free of charge. The persons affected obtain the necessary treatment only by appealing to doctors' Hippocratic oath.

Only very few governments make an effort to ensure that asylum seekers who need psychological help receive adequate treatment. In most countries only private institutions provide the necessary psychological back-up, which makes access yet more difficult.

The legal frameworks of several countries formally allow asylum seekers to seek employment, either from the moment the claim is lodged or after a specific period of time. In fact, only a few applicants gain access to the labour market. In some countries asylum seekers do not have the right to seek employment. Finally, most applicants stay dependent on assistance virtually throughout the procedure.

The inability to find any kind of occupation while awaiting a decision on their status brings great suffering to many asylum seekers. It causes desperation and a loss of prospects. No country seems to have established adequate programmes aimed at alleviating this sense of worthlessness.

With regard to access to education, most countries allow minors among asylum seekers to receive primary education. Some governments also provide for secondary education; others would have to undertake considerable efforts to facilitate satisfactory educational standards.

Some countries have developed a set of measures to treat minors according to their special needs; other countries make no special provision to meet the needs of young asylum seekers. Only in a few countries do unaccompanied children benefit from adequate assistance, for example, legal representation by a guardian, adequate accommodation, etc.

In some countries asylum seekers do not receive any language training.

Only very few countries have developed ways to facilitate contact of asylum seekers with the local population. Efforts to increase understanding of the particular situation of persons seeking protection in these countries have included socio-cultural activities held in reception centres; and provision of information to the local community to promote a positive attitude and to help asylum seekers join clubs and associations. Most countries have not developed such activities.

Often the families of asylum seekers are spread around various countries. The existing legal framework does not allow reunification of these families while their

application for asylum is pending. According to these countries' laws, only persons granted refugee status have the right to family reunification.

International organisations and non-governmental organisations, including many Caritas organisations, often find themselves compensating for the unacceptable consequences of this lack of governmental assistance to safeguard the survival and welfare of asylum seekers. It is clear that these organisations are carrying a heavy burden caused by seriously inhuman policies.

In conclusion, these governments aim to deter people who are seeking protection from gaining access to their territory by consciously limiting human rights and by doing so in disregard of human dignity.

Excluding asylum seekers from adequate social assistance is a breach of international legal obligations. The intolerable situation these asylum seekers find themselves in has considerable impact on the fairness of asylum procedures. Moreover, some of the persons affected are refugees according to the 1951 Geneva Convention.

Asylum seekers are often represented to the public in the context of abuse of the system by persons leaving home for economic reasons and in the context of illegal immigration. Some members of the public develop the idea that asylum seekers are criminals.

Standards for the reception of asylum seekers

In formulating future minimum standards for reception, the basis should be today's best practice. The rights enjoyed by asylum seekers should be clearly defined and reception conditions must not be left to the discretion of officials. These rights should remain in effect throughout the procedure until a final decision is taken.

The standards established for asylum seekers should also apply to persons requesting other forms of protection.

Asylum seekers should enjoy the right to free movement. Detention should be allowed only under the conditions mentioned in Article 5 of the European Convention on Human Rights. The minimum requirements of detention centres are that they should be "open detention centres" with provision for social contact facilities. Detention is not punishment for a crime. It needs a system of regular monitoring to give opportunity to persons held in detention to complain about their situation.

Asylum seekers must be provided with documents giving proof of their status.

Every asylum seeker unable to meet the cost of living should be given accommodation, social assistance and access to full medical care. In countries where a social assistance system exists, asylum seekers should enjoy the same benefits as other residents do.

Governments should provide for special assistance to persons who need it. They should ensure that women provide legal and social counselling to female asylum seekers; interviewers and interpreters should be women, wherever possible. Special treatment should be made available for asylum seekers suffering from trauma and other psychological problems.

Asylum seeker families spread around various countries should be reunified and their cases treated as a unit.

In general, asylum seekers should be able to live an autonomous life as soon as possible. To ensure this autonomy, asylum seekers should have access to the labour market – without a waiting period or with no more than 6 months of waiting.

With regard to young asylum seekers, the status of minor or adult should be determined in the same way and on the same basis as it is for citizens. Schooling should not finish at the end of the compulsory period, but on completion of an education leading to a career.

Psychosocial support, especially in the first period after arrival, basic language and occupational training should be provided for asylum seekers. Support should be provided to self-help groups within the refugee community.

More attention should be paid to the cultural and spiritual needs of asylum seekers. It must be realised that asylum seekers can have a very positive impact on our societies.

Mass media must assess critically their representation of asylum seekers to the public. Instead of linking them to criminality, they should stress that these people are guests and have suffered human rights abuses. Governments should facilitate contacts between asylum seekers and the local population, with a view to increasing public awareness and understanding of asylum seekers' situation.

In the experience of Caritas, NGOs play an important role in the reception of asylum seekers. Since they are in direct contact with the persons concerned, they are able to function as a monitoring and dialogue partner of government. NGOs can also act as an implementing partner funded by government to run reception facilities and provide other reception-related services.

All uprooted persons enjoy the right to humane and dignified treatment. A large proportion of asylum seekers need protection; many are refugees according to the Geneva Convention; some need protection according to human rights standards; and others need protection because of humanitarian concerns. Therefore, for as long as there is no final decision on an asylum claim according to international obligations, the person concerned must be treated as a refugee in a way that respects his/her dignity.

4. Access to high quality information and to legal counselling free of charge

(States lack awareness of the action needed to safeguard the rule of law)

Asylum seekers generally do not speak the reception country's language, they are not familiar with the legal system of the country they live in and they do not know their rights and duties. They are unable to represent themselves adequately and are therefore in danger of failing to obtain the rights to which they are entitled. Asylum seekers depend on competent assistance.

All countries where Caritas organisations are active provide information about the asylum procedure to asylum seekers. The quality of information provided differs widely. In some countries information leaflets are offered; in others, brochures or information packages.

Some countries provide the information only in the country's own language, others in the languages of the main countries of origin. Some governments have established independent refugee counselling services, provided free of charge and located at asylum offices which are accessible throughout the procedure.
Although in some countries thorough written information is provided, experience shows that asylum seekers often do not understand the essential points. The information is formulated in overly technical language or mainly in legal terminology.

In many countries asylum seekers lack awareness of their own legal position. Often applicants do not know the current status of the proceedings affecting them and what information they must contribute at specific stages in the procedure. They do not understand sufficiently the procedural steps and decisions taken. In consequence, they are often unable to take sound decisions on their legal status and well-being.

Most countries provide for legal assistance free of charge to their own citizens who are unable to defend their rights before the authorities (owing to the importance or legal complexity of the issue being decided) or who cannot afford a professional legal representative. Although these regulations may also be applied to non-citizens, they are generally limited to procedures before the courts. Most asylum seekers defending their rights before administrative bodies are not represented, although the complexity of the legal questions and the language barrier would demand this.

A few countries have established independent legal services specialising in asylum procedures. These services are provided free of charge as a kind of legal accompaniment through the administrative procedure that applicants can access when lodging the claim and at any other stage of the process. On the other hand, some governments declare explicitly that they are not willing to

provide or support legal counselling services. These governments consider legal representation of asylum seekers to be against the interests of the state.

In these countries international organisations such as the UNHCR and non-governmental organisations provide competent legal counselling services – compensating in part for the failure of governments. Caritas organisations in many countries are performing this function.

Generally, even in the countries where there is governmental support for legal counselling services, only some asylum seekers benefit to a sufficient degree.

Finally, it must be stressed that it is a leading principle of democratic systems that governments should safeguard the rule of law. This means that governments are obliged to enable persons under their jurisdiction to enjoy their rights.

Standards on access to high quality information and to legal counselling free of charge

The asylum seeker should be free to use his/her own language to lodge the application or he/she should be assisted by an interpreter to fill in the application for asylum.

The asylum seeker should have the opportunity to communicate with a member of the UNHCR or other organisations working on his/her behalf throughout the procedure.

Asylum seekers have the right to receive information. Information should be freely available in the asylum seeker's mother tongue. This includes information on asylum procedure, on the possibility to appeal and on the legal services available.

Every asylum seeker should have access to information services funded by governmental sources. There must be sufficient personnel to ensure that these services are accessible at any stage of the procedure.

A future policy on access to quality information must ensure personal interactive communication between asylum seekers and a counsellor. It will be the task of the latter to ensure that the asylum seeker fully understands the information provided, taking into account *inter alia* different levels of education, different cultural background, etc.

Governments should provide access to legal counselling and adequate and competent translation, both free of charge and accessible to every asylum seeker. Legal counselling must be operated by an independent agency. There is a need for specific training for lawyers representing asylum seekers.

Each asylum seeker should have a right to the re-evaluation of a rejection of his/her asylum claim by a lawyer. If there are grounds for appeal, the asylum seeker should have a right to legal support for this.

Decisions on applications for asylum are written in the language of the decision-maker, because it is very important for it to be written in precise terms. It must be ensured that these decisions are translated – at least orally and preferably in writing – into a language the asylum seeker understands. Appropriate training for interpreters should be provided.

There is a need for intercultural training for all persons giving social and legal counselling to asylum seekers.

5. Improving asylum procedures and making them shorter

(Length and poor quality are the main weaknesses)

Concrete and measurable figures on the average duration of asylum procedures are not available. However, it can be stated that the length of procedures varies from case to case – from several days to many years. Generally speaking, procedures in Central and Eastern European countries seem to be shorter than those in Western Europe. But procedures in nearly every country can be considered unduly prolonged.

Admissibility procedures and accelerated procedures were intended to make the application process shorter. Instead, these measures, especially those seeking to determine the state responsible for considering an asylum application, have prolonged it. Governments and organisations representing refugees' interests have criticised the application of the Dublin Convention for prolonging applications by several months.

In some countries, the application of the safe third country concept alone results in procedures that last more than a year. In other countries – and this is the worst-case scenario – the concept results in deadlock, with no country examining the asylum seeker's presentation on its merits.

With regard to the "normal procedure", the main reason for unacceptable length is – from a Caritas point of view – to be found in the quality of the administrative procedure. In many countries, it is particularly the administrative bodies that first deal with asylum requests that are inadequately designed and equipped to meet the need of a fast procedure of high quality.

The asylum authorities' staff are often underqualified. Generally, decision-makers at this level are rarely able to grasp the different educational, cultural or social backgrounds of asylum seekers and therefore they cannot sufficiently understand the complexity of the issue they are dealing with.

Thus the first interview with the asylum seeker – which is the main source of information for proceeding further and the most important basis for the first decision – is often conducted in an uncomfortable atmosphere. This does not give asylum seekers confidence in the procedure and in many cases prevents them from making an adequate presentation.

Government representatives as well as non-governmental organisations have noted that often, insufficient effort is taken to research the background of an individual asylum seeker's presentation. Instead of attempting verification by studying the available country of origin information and requesting expert opinions, decisions are often based on guesswork. This unsatisfactory situation is caused by lack of ready access to relevant documentation, as well as by time pressure on decision makers.

Finally it must be stated that decisions, especially those of the first administrative bodies to consider a claim, frequently fail to meet the criteria of a proper juridical argument. This is often due to the inadequate education and qualifications of the decision makers.

Consequently, considerable time is often lost in this part of the asylum procedure, without establishing sufficient basis for a substantial review by a higher body or court as to whether the facts of the case were examined correctly.[40]

It must be acknowledged that in recent years some countries have made efforts to train the personnel dealing with asylum applications, with a view to improving the quality of procedures and decisions. However, although these efforts are appreciated, they have not led to an acceptable level of competence among the decision-makers. In many countries, a significant problem is an inadequate understanding of the skills and resources required. It must be stressed that these critical remarks are not made with the intention of blaming decision-makers for personal failure – we are well aware that some of them do their best and also become emotionally involved in cases.

Some analysts claim that the costs of care and maintenance of refugees and asylum-seekers in the reception system account for more than 90% of total state costs, while less than 10% of total state costs are spent on processing asylum applications. The latter amount includes the cost of returning rejected asylum-seekers.

It is the aim of governments and non-governmental organisations to reduce the duration of asylum procedures while retaining safeguards to ensure the correct identification of persons in genuine need of protection. Refugees facing a long, uncertain wait, suffer from the length of determination procedures. Shorter procedures are less attractive to people who do not need protection.

From a Caritas point of view, the greatest contribution to the achievement of a higher standard of asylum procedures would be a European-wide initiative to increase the number of decision-makers, to improve the qualifications of staff, to reconsider management requirements, to intensify training and to increase substantially the funds for information technology and external expertise, etc.

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[40] This position does not include any comments on European states' interpretation of the 1951 Geneva Convention for refugees.

These measures would strengthen existing safeguards and also shorten the procedures.

Standards to shorten and improve procedures

All European States should share minimum standards on asylum procedures.

Only one single procedure should be started when a person claims to be in need of protection. The purpose of this procedure is to examine asylum requests, to consider subsidiary forms of protection, to safeguard the principle of non-*refoulement* and to order expulsion.

An asylum application should be examined in the country where the application is lodged. This would reduce administrative efforts, prevent duplication of procedures (by deciding on both state responsibility and merit) and would thus be less expensive. It would also make allowances for the various reasons a refugee might have for seeking refuge in a specific country. This system should be extended to enable states other than the one where the application was lodged to "opt in" for reasons of existing family ties or cultural relations, on the basis of the principle of double voluntary action[41].

An independent actor should take the decision in the body of first instance. This could be achieved by introducing a double decision system – the authority makes a decision and an independent actor, such as the UNHCR or a non-governmental organisation, also makes a decision. If the decisions are identical, the procedure could be shortened.

Administrative bodies dealing with asylum claims should be developed to become highly qualified to meet the requirements of complex asylum procedures. Their capacity in terms of time and quality of decisions should be increased, and in particular the required qualifications of staff must be newly defined: asylum decision-makers should have extensive skills in dealing with persons of the different cultural backgrounds involved; they should also have high competence in communication. The new salaries of the staff must be defined according to the professional skills required. Regular training and access to information technology should be provided. Research and documentation centres should be created, to compile country of origin information and asylum-related jurisprudence. Where additional expertise is necessary, asylum authorities should be able to consult expert opinion.

Asylum procedures should be conducted free from any discrimination. It is necessary to establish confidence and trust in asylum procedures.

[41] This principle allows for reallocation of asylum seekers only if both the government affected and the asylum seeker concerned agree to it.

Caritas Europa argues for a substantial investment in improving the quality of asylum procedures.

In this connection, research is needed to determine whether investing two or three times the amount spent on asylum procedures today to improve their quality would lead to a tremendous decrease in the costs of social care and maintenance, etc., of asylum seekers. The hypothesis to be examined is: investing in a high quality procedure will shorten its duration, safeguard the rule of law, decrease the costs of reception and deter persons who do not need protection from abusing the asylum process.

6. Background

It is generally accepted that the creation of an area of "freedom, security and justice" must include the creation of a Common European Asylum System. With the aim of creating a fair and efficient asylum procedure as part of such a system, the EU Commission has been elaborating a proposal for a Council directive[42] on the "Definition of common minimum conditions for reception of asylum seekers (with a particular attention to the situation of children)".

After the French Delegation presented a discussion paper on reception conditions in October 2000, the Council of the European Union agreed on conditions for the reception of asylum seekers[43]. These Council conclusions provide guidelines for the future Community instrument on reception conditions, focusing particularly on its scope, on information, stay, residence, financial and material assistance, work, health care, family unity, schooling of minors, vulnerable individuals and coordination with non-governmental organizations.

In July 2000 the UNHCR presented the findings of a recent study on reception conditions for asylum seekers in the 15 Member States of the European Union and recommended reception standards for asylum seekers in the European Union.[44] The UNHCR pointed out that *"asylum seekers are entitled to benefit from the protection afforded by various universal and regional human rights instruments, as well as applicable refugee law standards, all of which provide the basic framework for standards and norms of treatment in the area of reception.*[45] *It is essential that states ensure that the*

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[42] The European Commission "Scoreboard to review progress on the creation of an area of 'freedom, security and justice' in the European Union" originally foresaw the adoption of this directive in April 2001.

[43] JHA Council 30 Nov/1 Dec 2000.

[44] UNHCR: Reception Standards for asylum seekers in the European Union, Geneva, July 2000.

[45] See in particular the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of

fundamental rights and basic needs of asylum seekers are met during the asylum procedure, and in particular that special efforts are made to reduce the length of the procedures."

Throughout Europe, Caritas – and other non-governmental organisations – have become increasingly involved in reception-related services, sometimes in co-operation with the authorities and to some extent filling basic gaps in governmental assistance. By providing material assistance, running reception facilities and counselling services, Caritas has gained large-scale grass-root experience in this area of work.

Against this background Caritas Europa has decided to make reception a priority issue in its migration and asylum work. The aim is to define standards from a Caritas point of view. This position will be used as a guideline within Caritas, for the taking of positions at national level as well as for lobbying at the international level.

7. Caritas Europa: Assistance to persons in need

Caritas Europa, as one of the seven regions within Caritas Internationalis, is currently composed of 48 national member organisations from 44 European countries. Caritas Europa member organisations provide a broad range of services for people in need and people endangered by social exclusion such as the elderly, the handicapped, unemployed families, foreigners and other groups. Services include offering care and assistance, the running of qualified counselling services, professional education of staff, etc.

Caritas Europa has identified and is committed to work on four major spheres of urgent activity:

- Ö The great social differences between the individual European nations and the process of European unification;
- Ö The growing poverty and social inequality within individual countries and the future shaping of social policies;
- Ö Migration and asylum issues;
- Ö The growing gap between rich industrialised nations and the poor countries of the "Third World", the accelerated process of impoverishment in many of these countries, and a development policy which combats the causes of impoverishment.

In addressing these issues Caritas Europa is motivated by the Gospel and by Catholic social teaching. In particular:

We are led by fundamental Gospel convictions that it is the duty of all Christians to give food and drink to the hungry and thirsty, to give shelter to strangers and the homeless, to clothe the naked and to visit the sick and prisoners (cf. Mt 25, 31-46). We also believe, as the Gospel

Discrimination against Women, the Convention on the Rights of the Child and the European Convention on Human Rights.

impresses upon us, that we encounter God in every one of these "least of my brothers and sisters". This means that the truthfulness and credibility of our Christian existence will be seen and measured by our practice of justice and mercy. It is especially for this reason that the insights of the 1971 Bishops' Synod "On Justice in the World" provide us with decisive guidance: "For us the commitment to justice and participation in reshaping the world are fundamental elements of proclaiming the Gospel, the Church's mission to redeem humankind and to liberate it from all forms of oppression".[46]

Most Caritas Europa member organisations are active on asylum and immigration. The main aim of Caritas' work in this field is to offer realistic solutions to people who, for whatever reason, need assistance because they are resident in a country other than their home country. Caritas' programmes include projects for the reception of asylum seekers, provision of legal and social counselling services, facilitation of processes for integration of refugees and permanent residents as well as resettlement and voluntary return programmes. While filling the gaps in governmental assistance, Caritas stresses states' responsibility to ensure dignified treatment of asylum seekers, refugees and other migrants, one of the most vulnerable groups in Europe's societies. On the basis of our direct practical experience, Caritas conducts policy and advocacy work with the aim of changing structural weaknesses.

February 2001

[46] Shaping Europe's future: The Caritas Europa Strategy, January 1999.

3.2.3. "For I was a stranger and you welcomed me" (Mt 25:35) Comments on the Communication by the Commission Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum (Com (2000) 755 final)

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

As Christian organisations, it is part of our tradition to care for the oppressed and to uphold the dignity of the human individual. We therefore welcome this opportunity, at the invitation of the European Commission, to comment on its Communication on asylum, and to take part in this vital debate on the future of asylum in Europe.

General remarks

As regards the general tenor of the Communication, we very much welcome the Commission's analysis of the situation. We believe that this Communication is an important step towards harmonisation of asylum policy. It is vital to have an overarching vision of a European asylum system in order to address all the relevant aspects in a coherent manner, including: the entry of asylum seekers onto the territory, reception conditions, the asylum procedure itself and the interpretation of the refugee definition, the content of refugee status, temporary protection in situations of mass influx, complementary and humanitarian protection, and solidarity mechanisms. It is crucial that all future measures reflect current best practice. We believe that the Commission is entirely correct to treat asylum and migration as separate although related issues; our comments on the Commission's Communication on a Community Immigration Policy COM (2000) 757 are available separately. This is a valuable opportunity to address some of the main flaws in the current national asylum systems, in particular: the problem of access to the territory, reception conditions that amount to a *de facto* barrier to seeking asylum in some Member States, and national discrepancies in recognition rates and statuses granted, which raise serious concerns about protection gaps.

The European Council has already underlined its commitment to the "full and inclusive" interpretation of the Geneva Convention on the Status of Refugees 1951[47]; besides this fundamental obligation to protect refugees, EU states also have relevant commitments under other human rights instruments including the European Convention on Human Rights and Fundamental Freedoms, the EU Charter on Fundamental Rights, the UN Convention against Torture, the

[47] Presidency Conclusions of the Tampere European Council, October 1999, paragraph 13.

Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

Finally, we are increasingly concerned at some of the terms used about refugees and asylum seekers in the media and in public debate, and about the way in which refugees and asylum seekers are often unjustly labelled, with a consequent negative effect on public opinion. Certain sectors of the media have shown an over-readiness to link refugees and asylum-seekers to criminality, to use headlines that can mislead by exaggerating the number of refugees and asylum seekers, and to present the issue entirely from a negative perspective. We believe that it is important to encourage the media to draw up some principles of best practice in this area We also urge politicians and all involved in public discourse to make a resolute commitment to give leadership in and to promote the use of accurate and sensitive terminology in the debate on asylum. All of us, but especially the Member States of the European Union and their leaders, have a responsibility to increase public awareness on the issue, emphasising that refugees are fleeing human rights abuses and are entitled to protection.

Commentary on the text

(Note: The numbering of each point matches the numbering of the corresponding point in the Commission Communication e.g. Section 1.1 of our paper should be read as a commentary on Section 1.1 of the Communication. As we have not commented on every point, there are occasional "jumps" in our text, as for example where Section 4.1 is followed by 5.3).

1.1. We welcome the Commission's recognition that certain national policies have had the serious consequence of "deterr[ing] certain refugees from seeking asylum". It is unacceptable that refugees be hindered in seeking protection because they cannot get access to the territory in order to claim asylum, because they are deterred by fear of detention or the denial of basic social benefits, or because their claim is rejected as a result of flawed decision-making procedures[48]. An asylum system should be based not on deterrence, but on prompt and fair decision-making.

We have particular concerns about admissibility procedures at airports and borders. It is our experience that during such procedures individuals have been deprived of their liberty without adequate legal basis, and are often held in very unsatisfactory conditions. The circumstances in which these

[48] "A range of factors, including distrust of state asylum determination procedures, reluctance to be detained, and fears about return, lead some refugees to choose life as a migrant with irregular status. The numbers of those in this position are, moreover, probably boosted by the way that restrictive measures force legitimate refugees into illegal activities to enter the state in the first place, dragging them into an underworld that has its own entanglements and fetters". Gibney, *Outside the Protection of the Law: The Situation of Irregular Migrants in Europe*, RSC Working Paper No.6, study commissioned by the Jesuit Refugee Service Europe, December 2000, p.42

procedures take place, especially the lack of time and of outside scrutiny, and the difficulties in getting access to independent legal advice in a language the individual understands, increase the risk of *refoulement*.[49]

1.2 We are encouraged by the Commission's recognition of the need for "absolute respect for the specificity of humanitarian admission against the legitimate objectives of preventing and combating illegal immigration". An asylum system is only of value if those in need of protection can have access to it. This point is discussed in more detail in 2.3 below.

Much secondary migration by asylum-seekers within the EU is undoubtedly compelled by the need to find an adequate degree of protection, not least because Member States have varying interpretations of the 1951 Convention. Rather than returning asylum-seekers to the country of first entry, a more logical way of tackling the issue is to ensure that an equal and satisfactory degree of protection is available across the EU. While the Commission indicates in section 2.5. that an alternative system of State responsibility for asylum claims based on where the claim was made can be envisaged once the common procedure and uniform status is in place, we believe it is even more imperative to operate such a system now, while the common procedure and uniform status are still lacking. Otherwise, asylum-seekers face a protection lottery.

We support the Communication's call for rapid high-quality decision-making. We feel that current flaws in the procedures are a significant factor why persons in need of protection fail to get recognition. In particular:

- Decision-makers must be fully trained and competent to deal sympathetically with asylum-seekers of different educational, cultural and social backgrounds, and able to understand the psychological complexities that may be involved, for example in dealing with traumatized persons.
- Decision-makers must have adequate time and resources to make good decisions, in particular access to high quality and up-to-date country of origin information. There is a need for transparency as regards the information on which asylum decisions are made; asylum-seekers and their representatives must have access to this data. UNHCR and non-government organisations have a role to play in gathering and evaluating this information. We recommend the establishment of a centralized EU independent documentation centre for this purpose.

[49] "At all airports visited, access to asylum procedure is guaranteed […] although in certain cases, the so-called "fast" or "accelerated" procedure makes it *to a large extent illusory*. This is particularly dangerous when appeal has no suspensive effect like at the airport in Stockholm." Gross, *Arrival of Asylum Seekers at European Airports*, Report by the Council of Europe Committee on Migration, Refugees and Demography, Doc 8671, 8th June 2000. Emphasis added.

- Asylum-seekers whose claims are rejected must have access to an independent appellate body, with authority to review both factual and legal findings and the authority to hold a full re-hearing.
- Proper interpretation services are vital, as is access to high-quality state-funded legal counselling and representation; in order to safeguard the rule of law, governments are obliged to enable persons under their jurisdiction to enjoy their rights.
- The EU must mainstream gender into asylum policies at all levels and recognise the specific forms of gender persecution as legitimate grounds for granting asylum in all Member States. Women asylum-seekers should have access to female interviewers, interpreters and counsellors.

1.1. We agree that it is not appropriate to "organise the recognition of Geneva-Convention refugee status or subsidiary protection by means of individual positive or negative decisions taken by a Community body". However, harmonization requires effective judicial control by the European Court of Justice; this seems an appropriate time to review the restrictions in Article 68 (*ex* Article 73p) of the EC Treaty with regard to access to preliminary rulings on the interpretation of EC acts based on Title IV. In our view, the general jurisdiction of the Court of Justice to give preliminary rulings laid down in Article 234 (*ex* Article 177) should apply: lower tribunals should have a discretion to submit an issue to the Court of Justice, whereas courts and tribunals of final appeal should be obliged to bring relevant matters before the Court of Justice. Otherwise, "[t]he fact that judicial control at the EC level is [...] contingent upon discretionary decisions at the level of national courts is likely to weaken the effective implementation of harmonization measures under Title IV".[50]

2. We agree that the goal of harmonisation necessitates restricting the flexibility given to Member States. However it is vital that no state will be obliged to lower its current standards in order to align itself with the harmonised standards; for instance, those states that do not impose time limits for lodging an asylum application should not be required to impose such a restriction on the basis that other states follow this practice. Indeed, states should be positively encouraged to operate higher standards than the harmonised minimum; otherwise, common minimum standards quickly become common maximum ones.

   We support the option presented by the Commission of abandoning safe country of origin policies. We believe that failing to examine asylum applications on their merits leads to a very real risk that persons in need of protection are not identified. It is unrealistic to expect asylum seekers to

[50] Alston, "The EU and Human Rights" (1999), OUP p. 373.

rebut the presumption that they are safe in their home countries, particularly where they are expected to do so in a very short time frame, perhaps while being detained (see below 4.1).

Safe third country policies must be exercised with great caution, if at all. No-one must be sent back to a third country without the opportunity to refute the assumption of safety, and without official guarantees that he/she will be admitted to an adequate refugee determination procedure and adequate reception conditions; asylum-seekers must be guaranteed that they do not face the risk of chain deportations ending in *refoulement*.

2.2. We support the creation of a single procedure for the determination of protection needs. Such a system is already in place in several member States and, as stated above, harmonisation must be directed at best practice. We strongly agree with the position of UNHCR:

> "The circumstances that force people to flee their country are complex and, often, of a composite nature. Many times, those fleeing a country affected by war or conflict can also validly claim to fear persecution on 1951 Convention grounds. The identification of the person's protection needs cannot, therefore, be made in a compartmentalised fashion. The case must be examined in its totality, and this can be better achieved if the claim is considered in a single procedure. Furthermore, UNHCR believes that a single asylum procedure will help to increase speed and reduce the costs of decision-making in asylum matters."[51]

Under such a system the application should first be examined in accordance with the 1951 Convention; should these criteria not be met any other protection grounds fall to be considered, followed by any other humanitarian reasons. We envisage this as a hierarchical system; any applicant refused a particular status is entitled to appeal this refusal without losing any lesser status already granted. We believe that it would be more efficient to consider within this procedure all relevant elements including other obstacles to the removal from the territory.

2.3 It is essential that people seeking protection have access to the territory in order to apply for asylum. As noted above in 1.2, we very much welcome the Commission's recognition that measures to combat irregular migration should take into account protection needs. This is a particular concern in relation to visa policies and anti-trafficking/smuggling measures, which must be framed in such a way as to be sensitive to the question of access. One aspect of this is that all measures taken to prevent irregular migration

[51] UNHCR preliminary observations, January 2001. Emphasis included.

should contain a "savings clause", specifying that nothing in the measure shall affect the protection of refugees and asylum-seekers under international law.

Visa requirements should not be introduced for nationalities normally exempt on the basis of a mass influx of asylum-seekers of that origin; on the contrary, such a situation would tend to indicate that there are real protection needs in that country, and if anything access should be facilitated rather than inhibited.

Carrier sanctions, which effectively prevent individuals having access to the territory regardless of the merits of their potential asylum claim, should be abandoned.

We believe that ultimately the most effective way to counteract human trafficking and smuggling is to reduce the demand by creating legal possibilities for access to member States' territory. We welcome the signal sent by the European Union in signing the protocols to the UN Convention on trans-national organised crime, including the principle of non-penalisation of victims. We particularly urge that those who facilitate unauthorised entry and/or residence out of humanitarian motives should be exempted from punishment.

2.3.2 We welcome the Commission's suggestion of expanding resettlement programmes. As by far the majority of refugees remain outside the EU, in some of the world's poorest regions, it is an important act of solidarity and responsibility sharing to offer the possibility of resettlement. As the Commission itself underlines, however, this option must not in any way prejudice the proper treatment of individual requests by spontaneously-arriving asylum-seekers.

2.4 We support the Commission's proposal that all applicants for protection would benefit from the same reception standards. Harmonisation of living conditions must reflect current best practice in member States. The rights enjoyed by asylum-seekers should be clearly defined and reception conditions must not be left to the discretion of officials. Asylum-seekers must not be deprived of their original rights as they progress through the different stages of the asylum procedure. We note that the right to work is an important step towards integration.

2.5 We believe that an asylum application should be examined in a country where the application is lodged. As the Commission itself has noted, the Dublin Convention is not an efficient mechanism for allocating responsibility[52]. Examining the asylum claim where it is made is the most

[52] Commission Staff Working Paper, "Revisiting the Dublin Convention" SEC (2000) 522

appropriate solution with regard to the objective of shortening the duration of asylum procedures. We believe that this will reduce administrative procedures and will thus be less expensive. It also provides for the various reasons a refugee is seeking refuge in a specific country. This system should be extended to enable other Member States than the one where the application was lodged to "opt in" for reasons of existing family strings or cultural relations on the basis of the double voluntariness principle.

2.6 We note that voluntary return for both refugees and rejected asylum-seekers is more likely to succeed when the individual has had access to training and work experience during the time spent in the host country.

We believe that a useful means of promoting voluntary return for refugees is to encourage "go and see" visits and to offer reintegration assistance above and beyond financial aid.

3.1 With regard to the common interpretation of refugee status, we share UNHCR's position that "persecution" in Article 1 of the 1951 Convention does not exclude persecution by non-state actors, an interpretation also shared by the vast majority of member States. We believe that this is an indispensable part of the "full and inclusive interpretation" of the 1951 Convention to which all member States committed themselves in Tampere.

3.2 We believe that a single status for Convention refugees and other persons under protection is both easier to administer and fairer for those concerned. If, however, it is decided to have several statuses with varying rights, it is vital that each status confers sufficient rights to enable a dignified existence.

3.3 We welcome the rights set out in this section as basic components of a single protected status or of each status where there is more than one. It should be noted that where a single status is created, the rights granted must not be less than those specified for refugees in the 1951 Convention. In addition, it is important that the anti-discrimination package be implemented in such a way as to avoid any discrimination on the basis of nationality.

3.4 We agree with the Commission's general approach to integration as expressed in this article. We recommend that the EU adhere to the guidelines on integration set down by UNHCR. We would also stress that integration should begin before a final determination is reached. This is particularly important where procedures are of long duration. Once granted protection, individuals should have simplified and accelerated access to citizenship.

Having regard to the necessity of "taking advantage of the talents that refugees have to offer, including their professional skills", we urge the creation of a coherent system for the swift recognition of refugees' professional qualifications, accompanied by any assistance necessary to top

up an individual's skills to be ready for the labour market. As noted above in 2.6, this approach is also likely to make a later return to the country of origin more viable, as the individual is able to return with more skills and hence should be better able to provide for himself/herself and in many cases perhaps also provide a valuable contribution to a recovering society.

4.1 In relation to the proposed Council decisions identifying the groups or situations where there are or are no special risks, we emphasize that no-one should be rejected without having had a full examination of the individual circumstances of his or her case. In this context, we are extremely concerned about certain proposals to categorize all countries as high, medium and low risk, and make asylum decisions accordingly. We believe that this crude categorisation takes little or no account of very complex national or regional situations, and the speed at which those situations can change. As noted in 2.1 above, we believe that asylum claims should be examined individually and on their merits. We support the proposal for a database and translation facility for exchanging relevant information and we stress the need for the independence and transparency of this resource (see 1.2 above).

5.3 We very much welcome the involvement of civil society as "actors and vectors of asylum values in Europe". We are ready to take part in the preparatory work necessary for the creation of a harmonised European asylum system, such as the various studies set out in this Communication, and to play an active role in the future system itself. We encourage the Commission to establish a formal mechanism for consultation with civil society in the development of future legislation. Many non-government organisations and faith communities have substantial experience on the ground with asylum-seekers and refugees, and can offer a valuable perspective on the debate.

Brussels, May 2001

3.2.4. Joint comments on the Commission Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States (COM (2001) 181 final)

Executive summary

Reception conditions for asylum-seekers currently vary widely across Member-States[1]. From our experience as refugee-supporting agencies, the conditions in many cases are so inadequate that they amount to a very real stumbling block to the pursuit of an asylum claim. Some governments´ misuse of reception conditions as a key method of deterrence had led organisations that assist refugees to fear that standards are being harmonised on the basis of the lowest common denominator. Although acknowledging the urgent need of harmonising reception conditions across the Union, our indicator for measuring any attempt towards harmonisation is whether in practice it results in "dignified" living conditions. We welcome the fact that the proposed directive clearly states its adherence to this crucial goal.

Certain aspects of this proposal are very much to be welcomed, in particular the fact that:

asylum-seekers with specific needs receive special attention

asylum applicants receive a document certifying their status (Art 6) and benefit from comprehensive information about their rights and duties (Art 5)

it is recognised that the general attitude of public opinion towards applicants for asylum plays a major role in quality of life of applicants.

We are, however, concerned about certain provisions.

It is a matter of profound concern that material reception conditions may be reduced or withdrawn as punishment for "negative behaviour" as set out in Article 22. While we appreciate that Member States may need to sanction criminal behaviour, we strongly believe that the normal national law provisions provide the appropriate mechanism. We consider it highly disproportionate to impose destitution as a penalty. Nobody should be deprived of basic assistance. Member States should always act in consistence with their human rights obligations.

Although we appreciate the principle that asylum seekers shall be given opportunity to earn their living at the latest after a six-month waiting period, we are deeply concerned that Member States should have the opportunity to opt out

[1] See UNHCR study: "Reception Standards for Asylum Seekers in the European Union", July 2000 and Legal and Social Conditions for Asylum Seekers and Refugees in Western European Countries, May 2000.

of further assistance to asylum seekers three months later. Material reception conditions can be withdrawn or reduced when the asylum-seeker and accompanying family members have an income that will support a dignified life-style, not at the end of an arbitrary time period.

We are also very concerned that the proposal allows Member States to reduce or withdraw assistance where asylum applicants stay with relatives or friends. While such a reduction might be appropriate in some cases, it might also create severe hardship in others. We urge that any decision to reduce or withdraw the material aid on the grounds that the applicant is staying with friends or relatives be taken individually.

General remarks

We appreciate that the Commission undertook the challenging attempt to reformulate reception conditions from first principles, taking into consideration an assessment of experience of Member States and other Civil Society actors.

We take the opportunity to thank the European Commission that churches and non-governmental organisations were given the opportunity to provide constructive remarks in the process of consultation on the basis of a discussion paper prior to the finalisation of this proposal. While welcoming the process of consultation with civil society actors on the specific Directive, we would like to recommend developing a formal procedure of consultations like those existing in some Member States and to use this procedure in the preparation of all proposals for legal instruments[2].

Embedding the discussion on reception conditions in a broader but related context, we would like to stress the importance of legal access to the territory for asylum-seekers, State-sponsored provision of legal counselling and representation, and an increase in the quality of asylum procedures.[3]

The following comments are based on our conviction that all asylum seekers have the right to humane and dignified treatment. A large proportion of asylum seekers need protection, many are refugees according to the Geneva Convention; some need protection according to other human rights standards; and still others need protection because of humanitarian concerns. Therefore, for as long as there is no final decision on an asylum claim according to international obligations, the person concerned must be treated as a presumptive refugee and in a way that respects his/her dignity.

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[2] This issue was recently taken up by the European Commission in its White Paper on European Governance (COM (2001) 428 of 25 July 2001).

[3] See Caritas Europa position paper "Fair treatment for asylum seekers", February 2001 and this joint comments´ authors´ comments on the Communication by the Commission towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, May 2001.

Comments on the Articles

Chapter 1: Subject Matter Definitions and Scope

Article 2: Definitions & Article 3: Scope

Article 2(b), 3(1) The limitation of the scope of this Directive to asylum applicants who are third country nationals is reasonable on the basis that EU nationals applying for asylum in Member States other than their own[4] are still entitled to benefit from their rights as EU citizens which would include equal treatment.

Article 2 (d) (i) This provision defines as a family member the unmarried partner in a stable relationship only where the legislation of the relevant Member State treats unmarried couples in the same way as married couples. Since, however, equal treatment of married and unmarried couples is often based on jurisprudence or common practice rather than on legislation *per se* we recommend replacing the word "*legislation*" by "*legislation, jurisprudence or practice*".

Article 3 (1) We welcome the fact that this Directive applies to border procedures.

Article 3 (1,2,3) The Directive invites Member States to apply these reception conditions to applicants for forms of protection other than the Geneva Convention. We urge the Commission to make this provision a mandatory rather than a discretionary one, on the basis that a two-tier reception system is more complicated to administer and is not logically justified. Given that some states apply a single procedure and status for all forms of protection, and that there is a genuine possibility that such a system could at a future date apply to the whole Union[5], it would be unreasonable to differentiate between the different forms of protection in this context. Furthermore granting different rights to applicants for various forms of protection might lead to pressure on the person seeking complementary protection to apply for asylum. We support the position of UNHCR that:

[4] Member States may opt out of the so-called Spanish protocol (Protocol No. 29 to the Treaty of Amsterdam), as Belgium has done.

[5] See discussion in Commission's Communication on asylum, November 2000.

> *"The question of what basic rights and benefits asylum-seekers deserve in order to live in dignity while they are awaiting the determination of their protection claims should be based on their needs rather than on the grounds on which their claims are based."*[6]

The goal of avoiding secondary movements within the Union is an argument against leaving the application of reception standards to Member States´ discretion. At the same time, we are aware that the Amsterdam Treaty only provides a weak legal basis for including applicants for complementary forms of protection into this Directive.

Chapter II: General Provisions on Reception Conditions

Article 5: Information & Article 6: Documentation

Articles 5,6 — We very much welcome the provisions on information and documentation.

Article 5 (2) — This provision obliges Member States to inform each adult accompanying family member of the right to make a separate application for asylum. From our point of view there is no logical reason for this limitation as minors are also entitled to apply for asylum. From practical experience we know individual cases from regions such as Kosovo, Bosnia or Rwanda where the children within a family had the strongest or even the only protection needs under the Geneva Convention. We urge that this provision´s obligation to provide information be extended to include non-adult members of the family who are old enough to understand the implications.

Article 7: Freedom of movement

Article 7 (1,3,4) — The proposal in Art 7 (1) leaves it to Member States whether they grant applicants freedom of movement within the territory or in a specific area only. In the absence of compelling reasons to the contrary, their right to free movement within the State must not be curtailed. We strongly urge that asylum-seekers and their accompanying family members should have free movement throughout the territory of the Member State in which they apply for

[6] UNHCR Comments on the European Commission Proposal for a Council Directive laying down Minimum Standards on the Reception of Applicants for Asylum in Member States, July 2001.

asylum. Member States are obliged to fully guarantee free movement within the host country under Art 12 International Covenant on Civil and Political Rights (ICCPR) and Art 2,3 of the Protocol 4 to the European Convention on Human Rights and Fundamental Freedoms (ECHR). Against this background we recommend the deletion of the words "or in a specific area of it under the conditions set out in this Article" from Art 7 (1) and the related paragraphs 3-5.

Article 7 (2)

We believe as a general rule that asylum seekers should not be detained. Asylum applicants should only be detained as a last resort in exceptional cases when non-custodial measures have proven on individual grounds not to achieve the lawful and legitimate purpose.[7]

Neither the proposed Directive on asylum procedures nor the proposed Directive on reception set out conditions of detention and the procedural guarantees applying in cases of detention. We support UNHCR´s view[8] that under Article 63 of the Amsterdam Treaty, it is most appropriate to incorporate these provisions in the Directive on reception conditions, and we urge that they be based on the UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers.[9]

In particular, we urge that asylum seekers should not be held with convicted prisoners or those on remand.

Article 9: Families

Article 9

We welcome the recognition of the importance of family unity.

Article 11: Medical screening

Article 11

Being aware that medical personnel must observe confidentiality on individuals´ medical history, we consider that it would nevertheless be helpful if there was a provision added that expressively stated that the results of medical screening shall be confidential. To avoid

[7] For more details, see Caritas Europa Migration Commission comments on the proposal for a Directive on minimum standards on procedures in member States for granting and withdrawing refugee status; May 2001.

[8] See Footnote 5.

[9] UNHCR Guidelines February 1999.

misunderstandings, asylum-seekers and their accompanying family members should be informed that this rule of confidentiality applies, and that the results of screening will not prejudice their application for protection.

Article 12: Schooling and education of minors

Article 12 (1) This provision specifies that minors shall be younger than the age of legal majority in the relevant Member State. We note that in article 2 (i) unaccompanied minors are defined as persons below the age of eighteen. There is a potential inconsistency between these two definitions. For the sake of consistency we recommend the same definition of the age of majority be used throughout the Directive.

Article 13: Employment

Articles 13 (1) We welcome the provision that Member States shall not forbid access to the labour market for more than six months. At the same time the proposal leaves it open to Member States to lay down the conditions for the access to the labour market. According to the Explanatory Memorandum this means that Member States "can decide the kind of work asylum applicants may apply for, the amount of time per month or per year they are allowed to work, the skills they should have, etc.". This interpretation in practice enables Member States to block access by asylum seekers to the labour market – and constitutes a hidden opt-out-clause. We would like to see a much stronger commitment to offering asylum seekers the opportunity to earn their own living and become self-sufficient.

Article 13 (3) This proposal allows Member-States to restrict access to the labour market as a penalty for "negative behaviour" by applicants. We have serious reservations about the appropriateness of this punishment; see below our comments on article 22.

Article 14: Vocational Training

Article 14 We welcome the proposal's provision that Member States may not forbid access to vocational training to asylum applicants and their accompanying family members for longer than six months.

Since language skills are crucial for succeeding in seeking for job opportunities, the Directive should invite Member

States to offer language training as soon as possible after the procedure is started.

We urge the creation of a coherent system for the swift recognition of asylum-seekers´ professional qualifications, accompanied by any assistance necessary to align an individual's skills to the needs of the EU labour market. This approach is also likely to make a later return to the country of origin more viable, as the individual is able to return with more skills and hence should be better able to provide a valuable contribution to a recovering society.[10]

Our comments in relation to Article 22 also apply to Article 14 (3).

Chapter III: Material Reception Conditions

Article 15: General Rules

Article 15 (1)

We observe a lacuna in the provision of material aid: assistance may end upon the notification of a negative first instance decision (Article 15.1 (a)) and resume upon lodging of an appeal (Article 15.1 (b)): during these two stages several days or weeks may elapse, during which the asylum seeker is putting together the elements of his or her appeal. It is unacceptable to submit the asylum applicant and accompanying family members to the risk of destitution and homelessness during this process. We urge that material aid be provided after notification of any negative decision preceding the final determination until the deadline for lodging an appeal has elapsed.

Article 15.1 (b) apparently limits material reception conditions during the appeal procedures to situations where the appeal has suspensive effect. Where an appeal does not have a suspensive effect[11] but the applicant has not been removed from the territory he/she should still be entitled to benefit from material reception conditions.

Article 15 (2)

We welcome that the proposal obliges Member States to ensure that material reception conditions to be adequate for

[10] See this joint comments´ authors´ comments on the Communication by the Commission towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, May 2001.

[11] Here we would like to reaffirm our insistence that it is essential for appeals in asylum cases to have suspensive effect.

the health and the well being of applicants as well as the protection of their human rights. We recommend that this standard be defined according to objective criteria applicable to all Member States (see comments on Article 17).

Article 15 (3) The Commission proposes that material reception conditions may be provided in kind, or in form of financial allowances or of vouchers. Experience has shown that providing material reception conditions in the form of vouchers or assistance in kind has not in fact created dignified living conditions for asylum seekers and their accompanying family members. A system that limits where asylum-seekers can shop and what they can buy, and that makes their status readily apparent to the public has been shown to stigmatise, impoverish and create substantial hardship for asylum-seekers. Therefore we are opposed to any voucher or non-cash system. Material reception conditions should always be provided in the form of financial allowances; there is no evidence to show that such a system creates a pull-effect.

Article 15 (4) The proposal allows Member States to reduce or withdraw material reception conditions three months after applicants have been allowed access to the labour market. The Commission intends to oblige Member States – as far as the applicants are not financially independent – only to grant a food allowance and access to basic health care. Since some of the Member States could decide to limit reception conditions to a very low level by applying this provision, we have serious concerns about this pot-out clause. Material reception conditions should be withdrawn or reduced when the asylum-seeker and accompanying family members are truly financially independent, not at the end of an arbitrary time period.

If this provision is retained, it is crucial that "basic social care" is defined in terms that ensure that the system does not create a real risk of hardship for those who are not financially independent after this time limit, a category likely to include the most vulnerable of refugees, including those who may be unable to work due to ill-health or the necessity of caring for family members.

Article 16: Housing

Article 16

We are concerned that asylum applicants in receipt of a "grant of a financial allowance or vouchers sufficient to enable applicants to find independent housing" under Article 16.1 (d) are apparently excluded from the guaranteed access to emergency health and psychological care and to health care that cannot be postponed under Article 16.2 (a). Given the general guarantee of health-care in Article 20, we do not believe that this lacuna was intended, however, for the sake of certainty, we would like to see an explicit statement that the guarantee of access to health-care under Article 16.2 (a) also applies to persons housed under the terms of Article 16.1 (d).

While welcoming the guarantees laid down in this section, we urge the inclusion of a guarantee of respect for the cultural and spiritual needs of applicants and their families.

We recommend that large-scale accommodation centres be avoided on the basis that they are more likely to institutionalise occupants and hamper integration.

We are deeply concerned about insensitive dispersal policies that distance asylum seekers from the support of their communities and from essential services, including expert legal advice. Furthermore, experience has shown that exposing asylum seekers to communities that are ill prepared for their arrival can led to serious tensions.

We recommend the Directive require Member States to ensure asylum seekers are housed in a safe and supportive environment.

Article 17: Total amount of allowances or vouchers

Article 17

Although we welcome that the proposal makes the attempt of defining the level of material assistance by reference to the poverty line, we would be very much in favour of including a definition of poverty either into the provisions or at least in the Explanatory memorandum. We recall that as defined on the EUROSTAT equivalence scale, the threshold level below which one would be threatened by poverty lies at 60 % of the average per capita income.

We are deeply concerned that the proposal allows Member States to reduce or withdraw assistance where asylum applicants stay with relatives or friends. While such a reduction might be appropriate in some cases, it might also create severe hardship in others. The relatives and friends

of asylum applicants should not be penalised for offering hospitality to applicants. Such a measure is also likely to prove counterproductive in increasing the likelihood that asylum applicants will have recourse to places in reception centres. There may also be more absenteeism from reception centres, as asylum seekers nominally accommodated in such centres stay with the relatives and friends with whom they would otherwise have chosen to live. We believe that the possibility of staying with friends and relatives can be of benefit to individual applicants and to Member States, and it should not be hindered. We agree to the principle that as far as applicants are self-sufficient they do not need to receive any material support. We urge that any decision to reduce or withdraw the material aid on the grounds that the applicant is staying with friends of relatives be taken individually. In addition to establishing an independent office that can hear complaints, we urge that any decision in this regard shall be taken objectively, impartially and with reasons given, and that applicants should have the right to appeal such a decision, as set out in Articles 19 and 21

Chapter IV: Health and Psychological Care

Article 20: Health and Psychological care during regular procedures & Article 21: Health and psychological care during other procedures

Article 20

As noted above in our comments on Article 15 (1), we are concerned that there is a gap between loss of the upon notification of a negative decision and resumption of the care upon lodging of an appeal: during these two stages several days or weeks may elapse, during which the asylum-seeker should not be deprived of health and psychological care. We urge that this entitlement should remain valid after notification of any negative decision preceding the final determination until the deadline for lodging an appeal has elapsed.

Articles 20 (2), 21 (2)

We feel it necessary to underline that this is not an exhaustive list of persons who may have special needs. In particular, we are concerned about the omission of traumatised persons and persons who have experience torture and other forms of violence, which may not be gender-related.

Chapter V: Reduction or Withdrawal of Reception Conditions

Article 22: Reduction or withdrawal of reception conditions following negative behaviour

Article 22

This article provides for a reduction or withdrawal of reception support in the case of applicants for asylum who manifest "negative behaviour". We regard it as a serious breach of human rights to inflict destitution and homelessness on an asylum applicant and accompanying family members as a punitive measure. A Member State national who commits a criminal offence is not at risk of losing social assistance, a sanction which is hugely disproportionate to the alleged offences envisaged in the Article. An applicant who has concealed financial resources could be required to make financial restitution of the amount by which he is deemed to have unduly benefited; an applicant who has behaved in a violent or threatening manner may be punishable under national criminal law. An applicant who prevents a minor from attending school may require the intervention of an appropriately-trained social worker. While we appreciate that Member States may need to sanction criminal behaviour, we strongly believe that the national criminal law provisions provide the appropriate mechanism.

It is important that asylum-seekers are informed as to what will be deemed to constitute "negative behaviour" and what the potential sanctions are.

Chapter VI: Provisions for Persons with Special Needs

Article 23: General principle

Article 23

While we welcome the provision for people with special needs, we feel that there is potential for confusion, given that the category is defined differently in Articles 20 and 21. We recommend that the definition in Article 23 should be used throughout the Directive. It should be made clear that the list is not exhaustive; the principle of individual evaluation is an important one. Other individuals, such as those recently bereaved, may also have special needs.

Article 24: Minors & Article 25: Unaccompanied minors

Article 24,25

We welcome the provisions relating to minors and unaccompanied minors.

Chapter VII: Actions to Improve the Efficiency of the Reception System

Article 29: Local communities

Article 29

We welcome the reference to measures to promote harmonious relationships with local communities. While this is very important for communities where accommodation centres are located, we recall that many asylum-seekers and refugees do not live in accommodation centres, and we urge Member States to take measures to promote harmonious relationships between local communities and asylum-seekers throughout their territory, wherever asylum-seekers may be located.

We are concerned at some of the terms used about refugees and asylum seekers in the media and in public debate, which has a negative effect on public opinion. We recommend that Member States encourage the national media to draw up some principles of best practice in this area. We also urge Member States to make a resolute commitment to give leadership in and to promote the use of accurate and sensitive terminology in the debate on asylum.

As well as combating negative attitudes, we underline that asylum seekers and refugees can make a positive contribution to our societies, and this benefit should be reflected in public discourse.

Article 30: Guidance, monitoring and control system

Article 30

We welcome that Member States are required to provide for the guidance, monitoring and control of the level of reception conditions.

Concluding remarks

Echoing the position of UNHCR, we are convinced that:

> *"An adequate standard of reception enables asylum-seekers to present their asylum claims properly and sufficiently, to co-operate with the asylum authorities throughout the procedure and, more generally, to build trust and confidence in the asylum process. In turn, fair and expeditious procedures that quickly and properly identify who is in*

> *need of international protection and who is not help reduce the financial costs attached to the implementation of reception schemes".*[12]

As organisations representing Christian churches throughout Europe, Roman Catholic, Orthodox, Protestant, Quaker and Anglican, as well as church agencies particularly concerned with migrants and refugees, it is part of our tradition to care for the oppressed and to uphold the dignity of the human individual. Against this background, and given that reception conditions are such a crucial part of the asylum system as a whole, we take this opportunity to contribute our comments.

Brussels, September 2001

[12] See footnote 5.

3.2.5. Joint comments on the Commission Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless as refugees, or as persons who otherwise need international protection (COM (2001) 510 final)

Introduction

As Christian-based organisations, we welcome the efforts made by the European Commission to provide the European Asylum Policy with its cornerstone: the qualification of refugee and subsidiary protection. It is especially important nowadays, when indifference and animosity against displaced people is being perceived increasingly within the European Union.

We reaffirm our commitment with a conception of asylum based on human dignity and the rights inherent to that dignity; we also consider that those values constitute a fundamental part of the common heritage of the peoples and countries conforming the European Union.

In spite of the principle of solidarity that should guide the State behaviour concerning displaced people, certain countries are showing a restrictive policy based on the reduction of the number of total entries rather than to favour a comprehensive solution for the root causes of the migratory movements and to provide effective protection for fundamental rights. We consider that a fair asylum policy should not be based on ephemeral perspectives of exclusion, but on the individual need of a person looking for protection.

On the other hand, having in mind the differentiation made by the proposal of the Commission and the different international agreements and treaties, we nevertheless stress the need for protection of certain human group, as the victims of armed conflicts, natural disasters or wrong economic policy. All these groups fled involuntarily their countries due to peremptory reasons and should be taken into account. We hope that the principles established in this proposal will be contemplated as the first step towards a new perspective about people in need of protection.

Summary

We appreciate the improvements made by the proposal especially with respect to:

- The consideration of the Geneva Convention as a general basis and reference for the proposal;
- the application of the principle of non-refoulement to persons under subsidiary protection;
- the inclusion of non-State actors as sources of harm and persecution;
- the expressed will to protect unaccompanied minors;

the support of successful integration of refugees into the society.

Nevertheless, we express our concerns about the narrowness of the definition and qualification of subsidiary protection: on the one hand, persons covered by the subsidiary protection status might deserve the refugee status. A clearer connexion with the Geneva Convention should be established, through the consideration of the subsidiary protection only when no connection to a Convention ground is possible. The principle of non-refoulement should be granted to persons enjoying subsidiary protection without restrictions.

On the other hand, we are also worried about the narrowness of the concept of family. We consider that the concept of family should be extended in order to cover the different realities related to the various models of family.

Concerning *de facto* authorities and international organisations and effective protection, their lack of capacity to provide that protection as a general rule has been shown both empirically and theoretically: they do not enjoy the prerequisites of sovereignty or they are not subject to international obligations.

With respect to the differentiation of rights between persons enjoying refugee status and those under subsidiary protection, we find the differences related to residence permits and access to labour market as not reasonable. A differentiation based on time is not a solid argument for the clear identification of both statuses, above all if we take into account that the access to labour market and the residence permit are key issues for the normalisation of the life of a displaced person and the beginning of integration in the receiving society.

Comments on the Articles

Article 2: Definitions

Article 2. c) Although we recognise that a EU citizen is unlikely to be covered by the Geneva Convention, the wording of this article, defining a refugee as a "third country national", does not take into consideration the situation of the person in need of protection, who might be a European Union citizen. Therefore, we urge for the consideration of individual situations rather than geographical concepts.

Article 2. j) We are deeply concerned about the limitations of the definition of family provided by this article. We consider that the concept of family depends on the various socio-cultural backgrounds of that family outside and inside the European Union. Therefore, we urge the inclusion of an extended family definition:

-On the one hand, the definition provided by this article does not cover collaterals (sisters, brothers), which could be the only family applicants might have, or even considered at the same

level as direct line relatives. We urge the inclusion of this category into the family definition.

-On the other hand, taking into account that the rigidity of legislation is unable in certain cases to cover the different realities related to the various core families, we consider that this provision should include a more flexible definition based not only in the legislation of the Member States, but also on jurisprudence or common practice. Therefore, we recommend replacing the word *"legislation"* by *"legislation, jurisprudence or practice"*.

-Thirdly, this article does not include the children of the applicant's spouse or stable partner. We urge the inclusion of this category. At the same time, we consider that minors should have a permanent right to join their parents, regardless of the degree of dependence.

Nevertheless, if the groups mentioned above are not taken directly into consideration, we urge the formal recognition of the right to ask for the inclusion of a member of the family.

Article 5: The elements of international protection

Article 5. 2 We subscribe the UNHCR approach[53] concerning the qualification for subsidiary protection, whose wording may lead to confusion with the refugee definition itself. We accept that, for the sake of differentiation, the core concept for the qualification subsidiary protection lies on a "fear of suffering serious and unjustified harm", as differentiated from the refugee concept related to a "fear of being persecuted". Nevertheless, the expression "availment of protection" is linked specifically to the concept of "well-founded fear of persecution"; the qualification for subsidiary protection should stress the fact of the inability or unwillingness to return to the country of origin.

On the other hand, from our perspective we stress the need for broader grounds for the definition and qualification of subsidiary protection, based on the existence of persons who are obliged to flee their country of origin or residence, and the lack of protection of these persons.

Article 8: International protection needs arising sur place

Article 8. 2 The content of this article is aimed to provide an exception clause where the fear of persecution or suffering serious

[53] UNHCR's Observations on the Commission Proposal, number 19 (November 2001)

unjustified harm are based on activities engaged in by the applicant for the sole purpose of creating the conditions for making an application for international protection. We consider that the main question to be assessed in an application for international protection lies on whether or not the "fear for being persecuted" or "of suffering a serious and unjustified harm" has been established, and it is part of such an assessment to take into account all relevant facts concerning an individual case. There is no need for this exception clause, and consequently we urge the deletion of art. 8. 2.

Article 9: Sources of harm and protection

Article 9.1 We welcome the formal inclusion of non-State actors as sources of harm and persecution.

Article 9.3 This provision specifies that State protection can be provided by international organisations and stable quasi-State authorities controlling a defined territory. Nevertheless, de facto authorities and international organisations should not be considered able to provide effective protection, as a number of examples provided by contemporary history have shown. State legitimacy to provide protection is based on two main points: they are subject to international obligations and hold the State sovereign power. States are the only international actors entitled to provide effective protection, since international organisations and quasi-State authorities lack one of those legitimacy prerequisites. We urge the deletion of this provision.

Article 10: Internal protection

Article 10. 2 We are seriously concerned about the possibility that the concept of internal protection may be used as a basis for avoiding the recognition of the status of refugee. Therefore, we consider that there is a need for the inclusion of certain additional provisions related to the stability of the conditions supporting the alternative of internal protection in a specific territory. Those protection conditions should be effectively provided by a State, and well established enough to indicate a long-lasting situation.

Article 12: The reasons for persecution

Article 12 We welcome the development of the reasons for persecution contained in the Geneva Convention, as a broad guideline for the definition of nexus or connections to a Convention reason for persecution.

Article 14: Exclusion from refugee status

Article 14.1 (a) See art. 9.3.

Article 15: The grounds of subsidiary protection

Article 15 As stated in art. 5.2, we are concerned about the narrowness of the definition and qualification of subsidiary protection, and worried about the possibility that persons covered by the subsidiary protection status under this article deserve in fact the refugee status as stated in the Geneva Convention. We urge for the inclusion of the death penalty as one of the qualifications for "serious and unjustified harm". At the same time, we recommend the specific mention of the application of this article only when no connection to a Convention ground or reason (race, religion, nationality, etc.) has been established.

Article 16: Cessation of subsidiary protection status

Article 16.1 We are deeply concerned that the wording of this provision could lead to a weak system of subsidiary protection based on short-term schemes. We consider that the subsidiary protection status should not preclude integration in the host country. Therefore, we urge the inclusion of a guarantee for the stability of the complementary protection status in similar terms than those provided for the cessation of the refugee status, including a list of specific reasons for cessation.

Article 19: Protection from *refoulement* and expulsion

Article 19 We welcome the application of the principle of non-refoulement to be extended to persons enjoying subsidiary protection. Nevertheless, the mention of "international obligations" as an implicit limitation of the principle, and the Commentary of the Commission, leads to the differentiation between three categories: refugees, people under the protection of the European Convention of Human Rights (victims of torture or inhuman or degrading treatment or punishment), and the rest (to whom Member States "are required" not to expel). For the sake of clarification, we urge the deletion of the second part of the article.

Article 21: residence permits

Article 21 We consider there is no reason for the differentiation of the duration of the residence permits granted to refugees and to persons enjoying subsidiary protection (five and one year respectively), once their respective status has been determined: the duration of the residence permits granted to persons under

complementary protection should be the same than those granted to refugees (five years).

Article 24: Access to employment

Article 24 Although we welcome that the proposal establishes a deadline for the access to the labour market to persons enjoying subsidiary protection, we consider that there is no valid reason for the differentiation with respect to the beneficiaries of the refugee status. The beneficiaries of subsidiary protection should have access to the labour market, employment-related education opportunities and vocational training immediately after their status has been granted.

Art. 28: Unaccompanied minors

Art. 28 We welcome the provisions related to the protection of unaccompanied minors. The interest of the minor and the need for additional support are to be underlined as very positive principles.

Art. 31: Access to integration facilities

Art. 31 We consider positively integration activities based on facilitating access to the labour market and to the education system, and also the efforts to eradicate all forms of discrimination. The promotion of an independent life for displaced persons should be the cornerstone of a fair asylum policy.

Art. 32: Voluntary return

Art. 32 We welcome the voluntary return schemes back to countries of origin. A real return policy must take into account the circumstances of the countries of origin and should provide financial support for reintegration of returnees.

Brussels, June 2002

3.2.6 Joint comments on the EC Communication to the Council and the European Parliament towards more accessible, equitable and managed asylum systems (COM(2003) 315 final)

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

As Christian organisations, it is part of our tradition to care for the oppressed and to uphold the dignity of the human individual. We take this opportunity to comment on the European Commission's Communication towards more accessible, equitable and managed asylum systems, and to take part in this vital debate on the future of asylum in Europe.

The European Council, after noting the letter from the UK on new approaches to international protection, invited the Commission to explore further the ideas put forward by the UK, in particular with UNHCR. In its Communication the Commission recalls the relevant global and EU legal and policy framework, presents the analysis of the UK paper and UNHCR's and non-governmental organisations' views, establishes basic premises of any new approach to the international protection regime and formulates policy objectives and approaches. Our organisations share the analysis that there is a crisis in the international protection of refugees, as offered in the recent proposal by the UK and in the UNHCR views. However, we feel that their proposals do not respond adequately to the multi-dimensional crises of the protection system. Particularly the proposals of setting up closed processing centres, be it within or outside the EU borders, pose several ethical and legal questions[54]. In its essence, the UK proposal deploys two concepts, "Regional Protection Zones" and "Transit Processing Centres", and represents a deterrent for unwanted migration, including that of protection seekers. This proposal constitutes an effort to avoid the States responsibilities under the Refugee Convention and human rights treaties, most fundamentally to protect refugees from return to an unsafe place and to uphold the human right to seek and enjoy asylum. The institution of this policy may make UK and any other Governments involved, as well as international organisations contracted to implement the policy, complicit for harms experienced by asylum seekers, refugees and other migrants transferred to and held in processing centres. Finally, the institution of processing centres in countries with serious human rights abuse promise to undermine the norms of "effective protection" under international and domestic law. In the long run, the

[54] Gregor Noll, Visions of the Exceptional: Legal and Theoretical Issue Raised by Transit Processing Centres and Protections Zones, European Journal of Migration and Law, Vol. 5, Issue 3, 2003

UK proposal could represent a serious challenge to the institution asylum as we know it. Furthermore, they also seem unworkable.

Our organisations wish to base our comments solely on the Commission Communication.

Executive summary

While welcoming any initiative to overcome the challenges posed by the crisis in international protection, our organisations supports the ten basic premises, especially the assertions that any new initiative should "fully respect international legal obligation of Member States" and the fact that the new approach should be complementary to the Common European Asylum System. We also support the fair burden-sharing system within the EU and with host third countries. Nevertheless our organisations have several serious concerns as regards the proposals set out by the European Commission in its recent Communication. Our main points of concern:

- The proposal of closed processing centres risk to compromise Member States' obligations under refugee und international human rights law
- The Communication does not provide any clear definition what to be understood as fair burden sharing
- The Communication does not put forward any proposal how to improve the quality and speed of asylum procedures in EU Member States
- The proposal of a new separate procedure to examine certain categories of applications lodged at the border of the EU is complicated, putting potential protection needs at risk and deems inefficient.

As to setting up a complementary mechanism for examining certain categories of applications lodged in or at the border of the EU, we share ECRE's view that such a mechanism is unnecessary and a diversion from the Commission's purported aim to improve national asylum procedures and to establish a single asylum system. The proposal for "closed processing centres" at particular locations is legally and practically questionable risking seriously compromising Member States' obligations under refugee and international human rights.

Our experience indicates that the restrictive asylum policies applied in many EU Member States will not reduce irregular migration. On the contrary, we are convinced that these restrictions drive many people, who will nevertheless enter the territories, to live in an irregular situation, a result that surely is neither in the interest of the host societies nor of any actual immigration policies.

The underlying analysis

In our work with persons in need of international protection around the world, our organisations have experienced that the global refugee protection does not work satisfyingly. Although international instruments are in place the implementation does not live up to the standards envisaged by these instruments. Most of the world's refugees are not allowed to live a life of dignity like other persons in the country of residence.

We are concerned that the response by European countries to this protection crises has been mainly focusing on restrictive measures, such as visa requirements, sanctions on carriers, pre-boarding documentation checks at the airports, readmission agreements with the transit countries as well as interdiction and mandatory detention of asylum seekers. We feel a lack of political willingness to establish a fair, efficient and high quality common asylum system. We welcome the Communication's acknowledgement that the current asylum system requires those fleeing persecution to enter the EU irregularly, using smugglers whereas the majority of refugees, including probably the most vulnerable ones, stay in poorly resourced refugee camps in the region of origin. We must again raise our deep concerns about the way access to the territory and therefore to asylum procedures is becoming increasingly restricted. Persons in need of protection risk serious injury or death owing to the difficulty of obtaining legal entry, in particular to EU territory. Having the best and most generous asylum system is of little use if barriers and obstacles are placed in the path of asylum seekers fleeing persecution. Denial of entry can block any access to a fair refugee status determination procedure.

We are in principle in favour of proposals that alleviate the impact of immigration measures on refugees by enabling them to travel legally to the EU to access protection and durable solutions. In this context, the Commission's proposals on exploring the possibility of an EU legislative framework on resettlement and the setting up of Protected Entry Procedures are to be welcomed.

We further share the view in the Communication that, on a global level, the support for refugees is badly distributed. It seems right to analyse the support provided to an individual refugee against the background of the world's refugee population and the support provided. By now there is a lack of a comprehensive definition of fair global responsibility sharing. Feeling that in asylum procedures in European Union Member States partly money is badly spent in terms of output for input, we would also see need for an analysis of related costs.

We do not share the Commission's notion that the majority of asylum seekers in the EU do not meet the criteria for refugee or subsidiary protection status. Though acknowledging the mixed flows in the asylum system, looking to statistics only does not provide the full picture. According to our experience, some of the persons in need of international protection are not recognised as

refugees due to the restrictive interpretation of the definition of refugees and, more particularly, by flaws in the asylum procedures[55].

We regard the lack of legal opportunities for immigration to the EU Member States and the demand of the grey labour market being some of the main reasons for the mixed flows.

In addition, we wish to recall that no administrative procedure is designed for positive outcome only. When our organisations' services deny legal support to asylum seekers, these decisions are based on judging the claim as not matching with all the criteria set out in the Geneva Convention. They are not to be considered as abusive, but should be seen as a "normal" and necessary phenomenon of any administrative procedure: applicants consider themselves being in a position to enjoy specific rights, but the procedure concludes that they do not. Speaking in a practical example: a person might feel that the discrimination suffered in his/her country of origin is no longer bearable and consequently seek asylum while the asylum authority might conclude that the discrimination does not amount to persecution and therefore fails to fulfil some criteria of the refugee definition.

We are missing in the Communication's analysis any reference to the change in public perception of asylum seekers in Europe due to the use of negative terms regarding refugees and asylum seekers in the media and in public debate. We are concerned about the way in which refugees and asylum seekers are often unjustly labelled, with a consequent negative effect on public opinion. Certain sectors of the media have shown an over-readiness to link refugees and asylum-seekers to criminality, to use headlines that can mislead by exaggerating the number of refugees and asylum seekers, and to present the issue entirely from a negative perspective. We feel that neither the many positive examples of individuals in our societies who on a personal level help those who are in need of protection after their arrival in European countries nor existing positive opinions as regards asylum are adequately reflected in the media.

We support the 10 basic premises of the Commission Communication. Especially we welcome the assertions that any new approach should 'need to fully respect international legal obligations of Member States', be complimentary to the Common European Asylum System and be in line with the UNHCR's Agenda for Protection. We stress even more the importance of establishing protected entry procedures. In this context we would wish for a clarification that

[55] It has to be noted *"that Europe's most smuggled and trafficked nationalities, such as Iraqis and Afghans, also happen to have a very high rate of recognition as refugees under Europe's own asylum procedures. It [is estimated that] between one-third and two-thirds of the most trafficked nationalities are eventually recognised"*; quotation from the press release on the presentation of the report "The trafficking and smuggling of refugees: the end game in European asylum policy?" by John Morrison with the assistance of Beth Crosland; July 2000.

these procedures were seen as complementary to processing claims of spontaneously arriving asylum seekers.

Regional protection

Most of the world's refugees are staying in the region of their origin. Most of them are living in very poor conditions, often deprived of basic human rights. Living in temporary shelters they too often lack adequate sanitation and water. The adults have neither employment nor other occupation and formal education services for children are often missing. All of them find themselves with nowhere to go. This weighs even harder since reality shows that, unfortunately, protection often is not limited to several weeks or months, but lasts for years, sometimes even decades.

We support efforts by EU Member States to develop protection capacities in these regions through a range of actions such as institutional capacity building, infrastructure and policies of reception and integration. This should be done with sensitivity for the needs of the local society and economy. However, we have to note that the present efforts are not sufficient in order to meet the extraordinary needs for protection, e.g. in Africa and the Middle East. We also commit ourselves to work towards these goals. In this context a much stronger commitment by governments will be needed to provide adequate resources to UNHCR for its activities.

We welcome that the Commission in its Communication thinks about what constitutes "effective protection". We think that this does not only include the protection against non-refoulement and provision of the basic human rights, but to allow the person to live a dignified live as close as possible to the normal life of the citizens in the country of residence. This should at least include freedom of movement, access to the labour market, participation in social and cultural life[56].

While we agree to the need of strengthening regional protection, we want to contradict the Commission's assumption that this measure would have significant impact on preventing or managing irregular immigration to Europe. This is a different problem and we think that it would only be solvable by acknowledging and counteracting its main cause, nothing less than the existing and ever growing gap between poor and rich countries. In this light the other reasons, like the lacking legal channels for immigration, seem easily to be dealt with.

In this context we want to warn decision-makers not to see the strengthening of regional protection as a tool to solving other problems such as the impossibility of returning rejected asylum seekers.

[56] 1951 UN Refugee Convention and 1967 Protocol

Resettlement

We support setting up a EU-wide resettlement scheme and welcome the Commission proposals to study its feasibility and to explore the viability of providing for a EU legislative framework that could establish the goals and the selection criteria. However, we want to stress that all these efforts only make sense if there is a serious commitment to apply this regime to a considerable number of persons.

We would agree with the concerns by ECRE[57] that "the obvious inherent flow in the Commission's present proposal is that the annual target might not be met if national contributions are left to the discretion of Member States".

We would propose to fix the minimum number of refugees to be resettled in reference to the total number of inhabitants of EU Member States. The distribution to the individual Member States must be fixed as well and could be made dependent on criteria such as the population, the GNP or the economy growth rate of each individual Member State.

It is important that UNHCR and non-governmental agencies play a crucial role in developing and implementing the process towards deciding the numbers of person to be resettled.

EU Regional Task Force

While we understand the need for exploring the viability of setting up a EU Regional Task Force that would be in charge of providing and disseminating information, assisting local authorities in processing refugee determination, in resettlement and protected entry procedures, we would urge to include UNHCR and non-governmental organisations in this regional presence. From our experience potential migrants perceive government counselling often as tentatively preventive and even deteriorating while NGO advise is perceived being closer to the interest of the migrant him/herself.

Burden and responsibility sharing within the EU as well as with regions of origin

We agree that there is a need for sharing responsibility for international protection on a global level. Although we see the need for investing in regional protection capacities, we also have the impression that the proposal is driven by the European Union's own interests, be it in keeping refugees in the region or facilitating easy return etc. In this sense the Commission proposal put forward in its Communication does not go far enough.

[57] Comments of the European Council on Refugees and Exiles on the Communication from the Commission to the Council and the European Parliament towards a more accessible, equitable and managed international protection regime; CO4/06/2003/ext.AS; 18 June 2003

We regret very much that by now there was no concrete proposal tabled by any international actor for a fair global responsibility-sharing model, neither in terms of financial contributions nor in terms of capacities. As the Commission acknowledged in a previous Communication the major impact of migratory flows, both voluntary and forced, is found in the countries of the South, many of which are developing countries. The vast majority of refugees, 85 % of the total of 13 million refugees, are hosted outside the EU countries – with 9 million refugees living in developing countries.

We feel that it would be high on time to work towards a definition of fair distribution. This could go alongside some considerations in a previous Communication when the Commission stated that in Africa the ratio "refugee population per 1000 inhabitants divided by GDP per capita" is more than 25 times higher than in Europe.[58] This could indicate some relevant elements in a model of fair global distribution of responsibility.

We welcome that the Commission proposal foresees to participate in UNHCR-steered comprehensive plans of action for specific caseload in protracted refugee situation. However, we feel that also this is not enough. UNHCR faces severe under-funding and we are convinced that it would need a strong effort by governments to make the agency's services durable and efficient.

Streamlined, efficient and enforceable asylum decision making and return procedures

While we share the view that an improvement of the quality of decisions is needed – when elaborating this point in its basic premises, the Communication speaks about "frontloading" – we very much regret that in its proposals in chapter 6 this need is not at all reflected.

In most countries the level of competence in the administrative body that makes the first determination is not acceptable. In many countries a significant problem is inadequate understanding of the skills required. We feel that current flaws in the procedures are a significant factor why persons in need of protection fail to get recognition. This is why we would welcome a harmonized high-level profile of decision-makers in asylum cases throughout Europe. In particular: Decision-makers must be fully trained and culturally competent to deal with asylum-seekers of different educational, cultural and social backgrounds, and able to understand the psychological complexities that may be involved, for example in dealing with traumatized persons. Regular training and access to information should be provided. Where additional expertise is necessary, asylum authorities should be able to consult expert opinion.

[58] Communication from the Commission to the Council and the European Parliament integrating migration issues in the European Union's relations with third countries; COM(2002) 703 final; 3 December 2002.

From our organisations' point of view, the greatest contribution to the achievement of a higher standard of asylum procedures would be a European-wide initiative to increase the number of decision-makers, to improve the qualifications of staff, to reconsider management requirements, to intensify training and to increase substantially the funds for information technology and external expertise, etc. These measures would strengthen existing safeguards and also shorten the procedures.

In addition, there is need for legal counselling free of charge for all asylum seekers. Governments need to show that they have the rights and interests of the asylum seekers at their very heart. This includes as well increasing investment in the best possible training for asylum lawyers.

Additionally, our organisations recommend the European Union should establish an independent quality assessment of asylum procedures and asylum decisions in Member States. This would ask for defining criteria and agree on indicators.

In other words, our organisations argue for a substantial investment in improving the quality of asylum procedures.

Some analysts claim that the costs of care and maintenance of refugees and asylum-seekers in the reception system account for 70-90% of total state asylum costs, while less than 10-30% are spent on processing asylum applications.

In this connection, research is needed to determine whether investing two or three times the amount spent on asylum procedures today to improve their quality would lead to a significant decrease in the costs of social care and maintenance, etc., of asylum seekers. The hypothesis to be examined is: investing in a high quality procedure will shorten its duration, safeguard the rule of law, decrease the costs of reception and deter persons who do not need protection from abusing the asylum process. All this is said even without taking into account the enormous costs of Member States' border management and return policies.

Finally, we would wish to put in question the concept of having two separate procedures, an accelerated one and a "normal" one. At the one hand, as we experienced in many cases, the development of acceleration was not balanced by an adequate standard of procedural safeguards. This clearly hinders several individual refugees from their case being ever seriously considered in-depth. On the other hand a well-equipped asylum authority, having enough and well-trained decision-makers and access to expert-opinions, should be able to take very quickly the decisions in simply-to-be-decided cases.

We want to stress that any form of collective expulsion is in contradiction to Art 4 of the 4th protocol to the European Convention on Human Rights and, therefore, absolutely unacceptable. We want to emphasise that cooperation between EU Member States and countries of first asylum may not lead to

collective expulsions. Returning asylum seekers to another country needs always to be in accordance with the human rights guaranteed in international law.

Link to development

We would welcome if the EU supported positive elements on the development-migration nexus particularly for finding durable solutions for refugee protection including local integration and developing comprehensive approaches to addressing protracted refugee situations.

Economic globalisation has led to further marginalisation of those countries that are unable to compete effectively in the global marketplace. In the absence of fair and just rules, globalisation has limited the space for developing countries to control their own development, as the free market-oriented system makes no provision for compensating the weak. The gap between rich and poor is widening and the EU's policies and programmes have so far not changed this trend.

We agree that root causes for forced migration need to be fought, however, we think that the actual concept of fighting the root causes of migration is over-simplistic and does not address the complexities inter alia of protracted refugee situations. There are development potentials in migration, like remittances of migrants or development, trade through engaging migrants or foster the involvement of migrants in bilateral or multilateral trade and development, but only few proposals for action to improve and expand this potential. We underline the necessity of continued research in order to develop concrete actions to promote the positive aspects of migration particularly in the link to development.

The countries generating migration are to a great extent not the world's least developed countries. Whilst many countries in Sub-Saharan Africa are among the most important recipients of development funds, and range among the poorest both in UNDP and World Bank statistics, they are not found among the highest migrant generating countries.

Finally, we are concerned that in the discussion of linking migration, protection and development there is put too much focus on return policies and border control. We fear the extension of the impact of the fight against irregular migration beyond overshadowing the international protection regime to also taking hostage of the development sector.

Conclusions

Our organisations would like to reiterate that since all EU Member States are parties to the 1951 Geneva Convention, the UN Convention against Torture and the European Convention on Human Rights, their respect for human rights obligations is not a matter of choice, but of duty.

Brussels, October 2003

3.3.1. Comments on the Communication from the Commission to the Council and the European Parliament On a Common Policy on Illegal Immigration (COM (2001) 671 final of 22 November 2001 and on the Proposal for a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union as adopted on 28th February Presented by the Presidency to the Council of the European Union (Document ST 6621/1/02 REV 1)

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

As Christian organisations, we are deeply committed to the dignity of the human individual. Many of the churches' services for migrants and refugees in Europe are facing the problems of persons in irregular situations. It is against this background that we feel the responsibility and take the liberty to comment on the European Commission's communication on a common policy on illegal immigration as well as on the Action Plan proposed by the Spanish Presidency.

General Remarks

In May 2001, our organisations issued a comment on the communication on a European immigration policy, in which we stated that "a comprehensive view of a Community Immigration Policy needs to take into consideration that thousands of migrants are living in irregular situations throughout the Union."[59] We therefore appreciate that this issue is now taken up and we would wish to underline the Commission's statement in the communication that "illegal immigration is multifaceted in terms of the individuals concerned and the patterns of their illegal entry and residence." We share the concern about increased smuggling and trafficking, as these phenomena leave hundreds of persons in dependence on criminal organisations, result in countless deaths at European coasts and borders and lead to new forms of slavery in Europe. We hope that in future instruments to counter these phenomena, the distinction between trafficking and smuggling will be made according to the Palermo Protocols to the UN Convention against Transnational Organised Crime of December 2000. Victims of trafficking need legally guaranteed protection, we thus appreciate the Commission's proposal for a short-term permit for victims of trafficking and smuggling [COM (2002) 71 final of 11.02.02] as a step in this direction and are very disappointed that the Council is less specific about the temporary right of residence for victims. In addition to protection of the victims,

[59] "For I was a stranger and you welcomed me" (Mt 25:35), Contribution to the debate on the Communication by the Commission on a Community Immigration Policy, (COM (2000) 757 final), 28 May 2001

some protection schemes for their family members in the country of origin will have to be developed as well, if victims shall be liberated from the traffickers. We would in this context therefore sincerely encourage that more comprehensive approaches to protection of victims, such as in place in the USA, would be explored.

However, we also recognise that the increase in smuggling and trafficking has taken place parallel to tightening of immigration possibilities and stricter border controls. It should be remembered in this context that even refugees often have to resort to smugglers or traffickers to escape persecution and reach a safe place[60]. There are reasons to believe that with an opening of immigration possibilities less people would be forced to choose these ways as their last means to enter the EU. We therefore wish to stress, that a common immigration policy as outlined in the Commission's communication on a European immigration policy and further agreement on the proposed directives on entry and residence for the purpose of employment and self-employed activity as well as for entry and residence for the purpose of study, training and voluntary services, an open coordination mechanism for a European immigration policy are of prime importance. We wish to reiterate that there are good reasons to believe that an opening of immigration channels would result in less illegal immigration. We thus very much welcome the recommendation of both Commission and Council that "member states should explore rapid access to protection so that refugees do not need to resort to illegal immigration or people smugglers".

The Commission's communication analyses the problem of illegal immigration with the "actors in the chain approach". While we agree generally with this analysis, we feel that the conclusions and recommendations do not meet this analysis sufficiently. We would like to recall our appreciation for a similar analysis in the High Level Working Group on Migration and Asylum, where the concrete implementation also lacks the required comprehensive approach. While we agree that illegal immigration constitutes an offence, we wish to underline that crossing the border illegally should not be regarded and treated as a crime. Similarly we would hope that in the fight against trafficking and smuggling more efforts would be directed against criminal networks rather than against individuals, particularly refugees. For fear of persecution from their government, refugees often cannot obtain a passport or approach embassies for visas and do not have an alternative than to resort to smuggling networks.

Regularisation

We regard the total exclusion of regularisation procedures when the communication states that "Illegal entry or residence should not lead to the

[60] See our Comments on the Commission's Communication Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, p 5, 2.3.

desired stable form of residence" as unrealistic and not helpful. Moreover, with this statement, the Commission risks interference in Member States' competencies insofar as some Member States have successfully undertaken regularisation procedures of different kind. Most of the known regularisation procedures, e.g. in Italy, Spain, Belgium and Greece were aimed at solving an already existing problem that persons did not have rights due to their illegal entry, but had nevertheless been living in the country for a longer period. We understand that it is a difficult balance which needs to be drawn and in this context support attempts to strike up such a balance – e.g. in the Opinion of the Economic and Social Committee on the previous Commission Communication on a Community immigration policy (CES 938/2001 IT/PM/nm).

However, most offences and crimes have a limitation period. We believe that this principle has a sound basis and should be valid for illegal entry and residence as well. It is difficult to understand that some crimes can only be punished for a certain period, but illegal entry or residence should remain a lifelong burden, even if a person has successfully integrated and been working in a country for several years and has more family and other personal ties in this society than in the country of origin. We would therefore recommend some further analysis of positive and negative consequences of regularisation procedures, as well as a thorough analysis to which extent regularisation procedures constitute a pull factor[61].

Monitoring

We appreciate that the Commission intends to increase monitoring capacities with regard to irregular migration. However, we are concerned that the monitoring is limited too much to the issue of illegal border crossings, while one can assume that irregular migration is far broader. The common visa system is certainly an important tool, but this requires transparency as well as efficiency. As long as some embassies of EU member states appear to grant visa less generously than others, appear to grant or reject visa more on a discretionary basis than based on meeting the requirements, or openly discriminate against certain nationalities or social groups, current problems will persist. In addition, visa requirements ought to be defined in a way that people can actually meet them and enable people to travel and visit friends and family in European countries. If financial guarantees are requested which cannot be met with an ordinary income, they are understood as a barrier which hinders normal exchange and forces people to circumvent existing regulations.

[61] The study "Regularisations of illegal immigrants in the European Union", undertaken by the Academic network for legal studies on immigration and asylum laws in Europe (Odysseus Network) under the supervision of Philippe De Bruycker, Brussels 2000, gives an overview over the Member States' different regularisation procedures but does not provide further analysis in this sense.

Some figures would be available through humanitarian and charity organisations. However, cooperation in the field of monitoring and making available data requires anonymity as well as the guarantee not to be charged for facilitating illegal residence.

We assume that the previous regularisation procedures, including the creation of short-term work permits in Germany and Spain, have provided the best data. We would therefore advocate a European Monitoring mechanism for migration – including irregular migration – as the best instrument for monitoring. The Commission – as well as the Council of Europe's Parliamentary Assembly – have proposed a European Migration Observatory, and we believe the creation of such an instrument can be helpful.

Border Controls

The control of the outside borders of the Schengen Convention states, and in the future hopefully all EU member states as well as airports are crucial for the future migration policy. The Commission proposes to look into common border controls as an instrument of sharing the burden, which is even more essential when a number of EU member states essentially do not have extensive outside borders to be controlled. We consider the development of a European border control with common standards and curriculum as an important aspect of establishing an area of freedom, security and justice in Europe. The proposed placing of immigration liaison officers may also be a first step. We are in this context however very concerned about the exact role of liaison officer´ s operating in various third countries. We believe it will be very difficult for these officers to determine ad hoc if a person seeking to reach the union´ s territory has a legitimate claim and should thus be granted the right to reach the territory of a member state. We also believe that a potential cooperation of these officers with local authorities of countries of origin poses a serious concern in those countries of origin, where Human rights do not enjoy the same level of protection as in the Union.

As border controls are always also points of international encounters, we would like to advocate the establishment of European, international border guard units composed of different European nationalities in the units. We in this context very much welcome the Commissions statement that “a clear distinction between immigration and respectively border control issues and police co-operation must be drawn” (Commission Communication 4.4.1) and would like to express our astonishment that this claim is not upheld in the proposal by the Presidency to the Council. We would also express our expectation that in the curriculum development for European immigration officers, existing best practice will be incorporated as e.g. the intercultural training provided by church services to border police at Frankfurt am Main airport in Germany. As the Commission clearly states, the policy needs to comply with international obligations and human rights. A thorough human rights and

refugee/humanitarian training is therefore indispensable and should include also anti-discrimination training, with special reference to the gender dimension of trafficking and smuggling.

Without some corruption, illegal border crossing would not be possible to the extent it is currently taking place. We are surprised that this issue is hardly expressed in the instruments to fight trafficking and smuggling in human beings. We are convinced that this is important to be addressed as this is part of the criminal organisations' networking.

Irregular migrants in economy and society

The majority of irregular migrants are neither criminals nor eager to benefit from the social system. Instead, they look for employment and work under unprotected conditions, many in rural and agricultural sectors, providing domestic cleaning and care services, as well as employing their skills on building and constructions sites, in restaurant and hotel services etc. The society and the economy of the EU member states benefit, but of course they also face the negative side, that no taxes and social contributions are paid. We share the view expressed in the Commission's communication that employers need to be held responsible in these cases. We are thus very surprised that this aspect is neglected in the proposal to the Council. We would also hope that persons who have been exploited due to their irregular situation could be better equipped to claim compensation. While in principle this is already possible, in practice this is hardly achieved as irregular migrants are repatriated or deported as quickly as possible. In many countries of origin, however, it is not at all easy or even possible to lay charges. And due to the illegal entry or residence they will not be granted a visa to participate in a court case as a plaintiff or witness. We believe that these procedures need to be made far easier in order to achieve a real liability of those who profit most from irregular migrants' work. In general we would also encourage further exploration how schemes of issuing temporary work permits to migrants can help or indeed already did help to both reduce illegal migration and meet the demands of the economy in EU member states.

Return measures

We recognise the need for a joint approach regarding return measures as a part of a comprehensive approach to illegal immigration. We thus welcome the opening of the debate by the Commission's Green Book on a Community return policy, on which we shall comment in the near future. For us it is important to already now express our support for the principle of the priority of voluntary return over forced return, as stated in the Commission's communication but omitted in the Council's plan.

Regarding another guiding principle in this field we would equally like to support the Commission's statement that "before the negotiation of any readmission agreement the political and human rights situation in the country of origin or

transit should be taken into account" and would like to express our concern that this part was omitted in the Council´ s decision.

Conclusion

In conclusion, we wish to reiterate our view that migration in general should not be treated as a phenomenon which needs to be prevented. We had welcomed the approach to immigration as it had been expressed by the Tampere Council in October 1999 and stated in the Commission's Communication on Immigration and many statements by Commissioner Antonio Vitorino. We share his view that migration is a fact which one can manage and influence with the right instruments, but not prevent as such. We are concerned that it seems far easier to reach agreement in the Council on common control mechanisms than on common migration and asylum policies. Thus the careful and necessary balance in the comprehensive approach is lost. We thus welcome the Council's suggestions for a timely evaluation of the action plan but would in line with the Commission's Conclusions highly appreciate the involvement of Churches and other organisations in Civil Society in this evaluation. The Churches and church agencies would be most happy to assist in this context.

We wish to reiterate the Churches' recognition of migration as a twofold right, to leave one's country and to look for better conditions of life in another country. We are aware that an entirely "open door policy" is not conceivable and, certainly, migration (policy) will not solve the challenges of global imbalance. Nevertheless, the exercise of such a right needs to be seen in the context of the global common good and justice, and not only in the context of control and limitation measures.

Brussels, May 2002

3.3.2. Comments on the Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities (COM (2002) 71 final)

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

We appreciate the European Commission's initiative to come forward with a Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities. This Proposal corresponds to recommendations issued by different international organisations on the fight against trafficking in human beings.[62]

We share the main concerns of the European Commission, i.e. the increase in illegal immigration, in its two most odious forms, namely the exploitation of foreign nationals in the form of trafficking in human beings and the growth of networks of smugglers acting for non-humanitarian reasons.

We realise that the proposed Directive introduces a residence permit and is not concerned with protection of either witnesses or victims, as this is neither its aim nor its legal basis; we would nevertheless like to bring up a number of concerns. We refer to a letter that was sent to Mr. De Brouwer on January 21st, 2002, following a discussion paper on the topic.

Article 2: Definitions

Paragraph d: "measure to enforce an expulsion order" means any measure taken by a Member State to enforce the decision of an administrative and (add) *judicial* authority ordering the expulsion of a third-country national.

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[62] Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, G.A. res. 55/25, annex II U.N. GAOR Supp. (n° 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

- Integration of the human rights of women and the gender perspective violence against women, report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights Resolution 1997/44, Economic and Social Council, E/CN.4/2000/68.

- Council of Europe, Parliamentary Assembly Recommendation 1545 (2002), 21.01.2002.

Article 3: Scope

There is no objective basis to limit the scope of this Directive to adults only. As rightly mentioned in the commentaries, the victims of trafficking in human beings are very often minors. They should also be covered by the scope of this Directive. But it is up to the Member States to grant other types of residence permits to minors, insofar as they guarantee a more favourable treatment (Article 6).

Article 4: Safeguard

We would like to add that this Directive shall be without prejudice to the granting of residence permits on humanitarian grounds to victims who do not or who cannot cooperate with the authorities. [63]

Article 5: Non-discrimination

Member States shall apply this Directive without discrimination on the grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinion, membership of a national minority, wealth, birth, disability, age or sexual orientation and (add) *nationality.*

Article 7: Information given to the victims

We appreciate the involvement of Non-Governmental Organisations in the information to be provided to victims. The information should be provided in a language understood by the victim.[64]

Article 8: Reflection period

As far as the reflection period is concerned, a 30-day duration seems appropriate in some cases, but may have to be longer in other cases. We urge the inclusion of a so-called "hardship" clause of three months for traumatised victims, for whom a 30 day-delay will not be sufficient.

We insist that the requirement for the victim to have severed links with the authors of the offences be interpreted in a flexible way. [65]

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[63] According to the European Parliament 2000 Resolution (Sec.21), Member States should introduce temporary residence permits regardless of whether or not the victims wish to testify, as well as special permanent residence permits on humanitarian grounds. Approved NGOs assisting victims of trafficking should be authorized to give their opinion on whether or not residence permits should be issued.

[64] "Trafficking in human beings for the purpose of sexual exploitation". Recommendation n° R. (2000) 11, adopted by the Committee of Ministers of the Council of Europe on 19 May 2000 and Explanatory Memorandum: explanatory memorandum, paragraph 27.

Article 9: Assistance and care

We appreciate that Member States shall attend to the special needs of the most vulnerable, but would like to add "with special attention to the most traumatized". Moreover, specialized centres should deal with the special needs of the most vulnerable. Physical protection and physical security of the victims should be assured at all times.

The article stipulates that Member States shall ensure that victims have access to suitable accommodation, emergency medical and psychological treatment and medical care that cannot be postponed, and to the necessary support in the form of social welfare and means of subsistence if they do not have sufficient resources. We urge the Member States to put adequate financial means at the disposal of social service centres that are providing these services.

Article 10: Issue and renewal of the residence permit

Article 10.1 stipulates that the authority must decide on three elements:

- first, whether the presence of the victim is useful;
- second, whether the victim has shown a clear intention to cooperate;
- third, the victim must have severed all links with the smugglers and traffickers.

We have four main concerns regarding this article 10.1:

- We fear that the definition of usefulness of the presence of the victim will restrict his or her safeguards. We subscribe to the opinion of the Social and Economic Committee on this topic.[66]
- that a decision will be taken by the authority responsible for the investigation or prosecution *only,* apparently without any consultation with other organisations, such as Non-Governmental Organisations. By their work in the field, NGOs can offer a valuable contribution in an independent body, set up for this purpose. We share the opinion of the Social and Economic Committee, which believes that provision should be made for a social association providing assistance to a victim to assist him or her to enter into cooperation with the authorities.[67]

[65] Preliminary draft opinion of the Section for Employment, Social Affairs and Citizenship of the Economic and Social Committee, SOC/104 paragraph 3.2.

[66] Preliminary draft opinion of the Section for Employment, Social Affairs and Citizenship of the Economic and Social Committee, SOC/104 paragraph 3.3.2.

[67] Preliminary draft opinion of the Section for Employment, Social Affairs and Citizenship of the Economic and Social Committee, SOC/104 paragraph 2.7.

- it is necessary to establish clear and objective criteria as to what is considered "useful presence" and "clear intention to cooperate". On what grounds will the authorities decide whether or not the presence of the victim is useful?
- it should be up to the witnesses to choose whether they prefer female officials in charge of the investigation.

10.3 As a strong incentive towards cooperation with the authorities, a renewed permit after the initial 30 days should be no less than 6 months, and a possibility for a longer term permit should be foreseen.

Here again, particularly for traumatised victims, a longer term permit may prove essential, as it will be difficult to overcome the trauma, which is necessary to be able to testify against their traffickers.

10.4 With regard to family members, we refer to the Council Regulation of 23.11.1995 on the protection of witnesses in the framework of the fight against organised international crime, stipulating that protection offered to victims must also be extended, if necessary, to the parents, children and other close relatives of witnesses. Although we are aware that this topic falls outside the scope of this Directive, we feel that there is a need, not only to protect family members present in the European Union Member States, but also to protect family members of victims, who have remained in the home country and for whom protection from traffickers' possible revenge actions seems highly advisable.

Article 12: work, training and education

We appreciate that Member States shall authorise the holders of a short-term residence permit to have access to the labour market, vocational training and education, thereby avoiding that they are being retrafficked. However, we think that family members of holders of a short-term residence permit should have access to the labour market, vocational training and education as well .

Article 13: medical and psychological care

Medical and psychological care should be assured by specialized service centres.

Article 14: victims who are minors

In view of the special situation of minors, we agree that it is up to each Member State to take due account of the best interests of the child when applying the provisions of this Directive.

In case minors should be excluded from this directive, they should be given the opportunity to benefit from a residence permit on humanitarian grounds.

Article 15: rehabilitation programmes for victims

If a victim has to be returned to his/her country of origin, this return should take place with his/her full consent. We welcome Commissioner Vitorino's proposal to launch a debate on the need for a common policy for the return of illegal residents (Green Paper). The signatory organisations will contribute in writing to this debate. We do hope that the development of a common return policy will be compatible with the need for protection under international and European law in the evolving common European asylum system.

Article 16: non-renewal

Victims should be offered the perspective of a permanent stay when the prosecution of the criminal network has been shown to be either successful or not successful.

A victim who has testified against his/her traffickers and has to return at the end of the judicial investigation might face retaliation once back in the home country, and should therefore be offered a permanent stay whether the prosecution has been successful[68] or not.

The Parliamentary Assembly of the Council of Europe[69] provides a recommendation stipulating that residence permits of a permanent nature are granted to victims of trafficking for those who are willing to testify in court and need protection, and of a temporary but renewable nature for all others on humanitarian grounds.

Article 17: withdrawal

We refer to article 10: what exactly is believed to be fraudulent or wrongful complaint by the judicial authority?

What are the reasons relating to the protection of public order and national security?

Article 3 of the ECHR establishes the non-refoulement principle.[70]

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[68] Article 3 of the ECHR obliges states not to expel trafficked persons if there is evidence that upon return to their home country their life might be endangered by violent acts by the traffickers.

[69] Council of Europe, Parliamentary Assembly Recommendation 1545 (2002), 21.01.2002.

[70] In the case Ahmed v. Austria e.g. the European Court of Human Rights held that state parties to the Convention are obliged not to expel an alien, "where substantial ground have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. This obligation is valid irrespective of the person's conduct, "however undesirable or dangerous" the activities of the individual in question are".

Article 19: exchange of information

We believe that Non-Governmental Organisations can participate in the assessment of effectiveness of rehabilitation programmes.

Apart from the number of short-term residence permits issued, the proceedings initiated and their outcome, we think it is recommendable to have information on the countries where victims come from as well, in order to have a comprehensive overview of the phenomenon.

To conclude, we insist on the development of a Community policy that tackles the root causes of trafficking. Accession countries, both in their capacity as future members of the European Union and as countries of origin and/or transit should be involved from the very beginning in the shaping of this Proposal for a Council Directive. Root causes of trafficking should also be addressed in non-EU countries. We insist on a fair development cooperation policy whereby the fight against poverty and the promotion of human rights are crucial.

As far as funding is concerned, we plead for appropriate funding for organisations that are involved at the grass root level in anti-trafficking activities and for a quick and efficient decision-taking process as to the release of funds.

Brussels, 3 June 2002

3.3.3. The Case against Carriers' Liabilities

Contribution to the Round Table on Carriers' Liability related to Illegal Immigration, Brussels, 30 November 2001, organised by IRU, IATA, ECSA and UIC

As Christian organisations we hold the fundamental belief that those who are threatened with persecution should be offered sanctuary. We welcome attempts by the European Union to create a common system that will "[a]bsolutely respect the right to seek asylum … [and] ensure that nobody will be sent to a country where he faces the renewed risk of persecution"[71]. As the Member States confirmed at the Tampere Summit in October 1999: "It would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory." The European Commission has acknowledged the need to "tak[e] account of protection needs in legitimate measures to combat illegal immigration": the best possible asylum system is of limited value if those individuals who are in need of protection are unable to access the territory in order to avail of it.

Refugees and Documents

1. It has always been recognised that refugees often cannot acquire the full documentation normally required to enter another country, and the 1951 Geneva Convention makes explicit provision for this scenario.[72] Those fleeing persecution may be refused passports and/or exit visas by the authorities; indeed, where those authorities are themselves responsible for the persecution feared, it often is too dangerous to approach them. Other refugees come from collapsed states, where there are no central authorities to issue documents. Even where a refugee has a passport, he or she has a further hurdle to overcome in attempting to acquire a visa from the country of destination.
2. While Christian organisations acknowledge the state's right to control who enters the territory, the effect of carrier sanctions is to deny access to the state territory to all people with inadequate documentation, regardless of the fact that they may be refugees. There are no figures available how many refugees were effectively denied travel opportunities due to a lack of documentation. However, it is known that quite a large number of refugees, whose need for international protection was recognized by granting them asylum or complementary protection, had entered Europe without sufficient

[71] Communication from the Commission to the Council and the Parliament: "Towards a common asylum procedure and a uniform status, valid throughout the Union for persons granted asylum", November 2000, Section 1.2.

[72] Convention on the Status of Refugees 1951, in particular Articles 31 and 33.

documentation and by handing themselves over to smuggling or even trafficking networks[73].

3. In European history, e.g. when persons had to flee from persecution during the Nazi regime in Germany, we do have similar stories. If we take note of individual biographies of exiles[74], there are stories that they had to purchase a passport, that they even divorced and married a national of another, safe country and paid for this. Many of these exiles would not have been able to prove that they personally were already threatened, but if they had stayed on, they would have risked their lives. A look at this history is important, as it was also against this background that the International Declaration of Human Rights, the European Convention on Human Rights and the Refugee Convention were agreed upon as humanitarian principles. Against this background also, a number of countries had explicit and favourable asylum laws enshrined in their constitutions.

4. As organisations dealing on a very practical level with refugees arriving in European countries after being trafficked or smuggled, we would like to give a concrete face to how people travel today:[75]

> An Afghan woman: The country of origin is Afghanistan; she belongs to an ethnic minority and was threatened several times by the Taliban to stop working as a doctor because she is a woman. She travelled from Afghanistan – Turkmenistan – Russia – transiting through other countries to Austria. After applying for asylum in Austria in August 1999, she was recognised as a refugee according to the Geneva Convention in June 2001. The travelling/smuggling costs amounted to 4.500 USD.
>
> A man from Ukraine was imprisoned for having reported criminal activity by senior Ukrainian officials to investigators. He fled with a false passport via Poland into EU territory and applied for asylum in a second EU Member State[76] in April 1999 where he was recognised as a refugee in February 2001. The travel and smuggling costs amounted to 2.500 USD.
>
> A Turkish teacher was suspected for affiliation with the Kurdish Workers Party (PKK). He escaped from Istanbul via Italy to Switzerland, where he applied for asylum in April 1994 and recognised

[73] Morrison for UNHCR, 2000.

[74] one example: A. Schrobsdorff, Du bis nicht wie andere Mütter.

[75] These cases were presented to the Migration Forum of Caritas Europe in November 2001.

[76] For reasons of personal security, the names and countries are not named although they are known.

as a refugee according to the Geneva Convention in April 1996. The costs for his travel amounted to 6.700 DEM.

5. A lot more can be said about the routes and means of transport taken, but none of these persons would have been able to travel with any ordinary means of transport. And we regard this as a direct consequence of the imposition of the so-called "non-arrival" policy of the European Union Member States. Besides the establishment of the visa requirement for citizens of refugee producing countries and tightening border controls one of the focal tools of this policy was establishing carrier sanctions.

6. States are obliged to respect the principle of non-refoulement to a situation of risk, but one cannot expect carriers to take into consideration this principle. Particularly when they are faced with penalties, carriers would rather not take a person aboard, and by doing so leaving the person in the situation of risk of persecution, exposing them to inhuman or cruel treatment or torture.

Carriers' Responsibility

7. Member states of the European Union have introduced carrier liability acts, penalising the transport of persons without sufficient documents since the 1980s, and incorporated this measure in the Schengen Convention. Now it is to be harmonised among EU member states. The aim has been to reduce the number of asylum seekers not eligible to refugee status. Some countries waived the fine for persons who were admitted in the asylum procedure. In effect, this has been a shift of the burden of immigration control to carriers. However, this can be seen as a privatisation of state obligations. Carriers work in line with economic criteria, and have to do so. In order to reduce possible penalties, they have introduced extensive checking facilities particularly at the airports as the major ports of international travel. But carriers, even if they may ethically be in favour of refugee reception, have no legal obligation towards refugees. Their personnel are not trained, nor would it be acceptable if they took a decision on the validity of a founded refugee claim. The individual case examination is in this situation no longer guaranteed. But as a fine is waived only in the case of persons accepted into the asylum procedure, they carriers might feel an economic urge to check the validity of a claim or – if the carrier wants to be in the safe side – does refuse to transport not adequately documented persons. There is no incentive for carriers to ensure that a refugee gains access to the territory, whereas they face a heavy penalty if the person is subsequently denied access to the procedure.

8. While major concern, and probably the most extensive checking on documents, is with airlines and airports, carrier sanctions are also valid for road, rail and sea carriers. For the rail transport, the Calais-Dover route is certainly the one which receives most attention with numerous persons trying

to enter the United Kingdom without documents through the tunnel. In the Mediterranean the concern is more on ferries, however, as ordinary ferries would have to face penalties as well, most smugglers and traffickers resort to other, often insecure boats. Due to the tight controls, smugglers and traffickers earn a fortune, charging more than an ordinary fare would cost, and put people's life at risk. The loss of lives at European borders has reached the thousands over the past decade, and if we are serious about saving lives, this consequence of tightened border controls needs to be addressed.

9. Small carriers, like taxi drivers at borders, are also held liable for carrying undocumented persons. These are small enterpreneurs and the burden of penalties is putting at risk their enterprise. This has led to serious discrimination that they simply denied carrying persons even if they were already on the territory or would have been able to provide documents, as a documentation on taxi drivers at the German-Polish border shows.

10. A consequence of carrier sanctions is that carriers use similar measures as sometimes immigration officers, a methodology described as "profiling". A person from Ghana is more likely to be checked and questioned about the validity of documents than a person from the US. Black nationals of EU Member States are more often checked and questioned about the validity of their papers, even inside the EU, than whites. In border areas, they may not find a taxi at a station even if they were not undertaking cross-border travel.

Legal concerns:

11. Carriers have challenged the liabilities on various grounds. However, often they argued that the penalties in their country were higher than in other countries and therefore placing them under unfair conditions; therefore they have been challenging the negative effects on competitiveness.

12. Carriers in Austria, challenging the constitutional conformity of carrier sanctions, took a different, and more fundamental approach. The Constitutional Court followed their arguments and suspended the carrier sanctions with its decision of 1 October 2001.[77] The main reason given in the Court's ruling: the law on carriers' liability when establishing the carriers' obligation to provide information to border control authorities is not specified and clear enough and therefore resulting in uncertainty of law.

13. The provision, so the Constitutional Court, did not state clear enough what exactly was expected from the carriers. Were they merely to check whether people had documents or were they obliged to examine these documents' validity? If carriers were to examine the document, how far did they need to go? Was it enough to make a prima facie evaluation or should they go into

[77] Decision by the Constitutional Court in Austrria G224/01 of 1 October 2001

detailed analysis of document s provided? Finally, if the carriers found that a person was not properly documented, did the carriers have to take into consideration the obligations of the Geneva Refugee Convention of 1951? Obviously the law made it difficult for carriers to get a clear picture on what exactly they were obliged to do.

14. But many more concerns exist regarding the constitutional compliance of carrier sanctions. In its decision to start the procedure examining the conformity of the respective legal provision the Constitutional Court in Austria in June 2001[78] raised additional concerns. The Court stated that it needs to be closer examined whether obliging someone to deliver services (contributing to official tasks) free of charge might be in breach of Art. 1 of 1. Protocol of the European Convention on Human Rights with regard to protection of property. Finally the Court stated that there is need for examining whether fining carriers independent of concrete guilt would be in breach of the basic constitutional principle of equal treatment.

Challenges and Conclusions:

15. Christian organisations and humanitarian organisations have raised the concern about the consequences of the imposition of carrier sanctions for many years.[79] From the humanitarian point of view, the effects can be summarised in two ways from the humanitarian perspective:

    High risk for persons in need of international protection not to have access to safe territory.

    Forcing persons into the hands of smugglers and traffickers.

16. The efforts of carriers to challenge the consequences of carriers' liabilities are appreciated, however, we would encourage carriers as organisations with international outreach and experience also to work more intensively not only on economic consequences but on ethical issues like discrimination due to profiling in the immigration procedures and refugees. Carriers are well-placed in sharing experience in international encounter and thus in demanding fair and transparent procedures. They could also play a role in changing images, clearly stating the persons in need of protection should not be depicted as bogus asylum seekers.

17. Carriers ought to have an interest in clear, transparent and accessible regulations for travelling in order to have regulated travel. We are convinced that easier access would reduce the amount of smuggling and trafficking – and this may in turn prove less expensive in money, certainly in lives, than the present system.

[78] Constitution Court in Austria, B544-549/01

[79] an early example is the CCME Briefing paper no. 17 on Carrier Liabilities in the Member States of the European Union by Antonio Cruz, August 1994.

18. As carriers are also obliged to participate in deportations as a consequence of liabilities, they could also cooperate with humanitarian organisations to render more humane deportation orders as recommended by the Council of Europe. We would commend the actions taken by some pilots' organisations which protested against violence exercised during expulsion orders and would hope that similar actions would not be penalised by the carriers but rather taken up in an ethical code of conduct for employees.

19. Finally, we would recommend a continued dialogue and cooperation between carriers, governments and humanitarian Non-Governmental Organisations in order to find adequate solutions to the legitimate interest to control immigration, the obligation to protect persons from persecution, and to have access to means of international and national travel without discrimination.

November 2001/DP-BK

3.3.4 Contribution to the European Commission Hearing on a Community Return Policy on Illegal Residents, Brussels 16 July 2002-10-17, Felix Leinemann (COMECE) and Doris Peschke (CCME)

Return Policy in the framework of a comprehensive migration policy Thank you for inviting Christian Churches to comment on the issue (i.e. the Green Paper[80]). Churches and their organisations are closely working with migrants and refugees, among whom a significant number are undocumented residents. On the basis of our work and out of our commitment to the dignity of the human individual, we work together at European level and regularly publish joint comments on different aspects of a future common asylum and immigration policy of the European Union.

I shall make 3 points:

General comments

Guiding principles in the fight against irregular migration

The importance of voluntary return,

while my colleague Doris Peschke of CCME will focus her contribution on the co-operation with countries of origin.

General comments

We very much welcome the Commission's principle of seeking a comprehensive approach by seeing the phenomenon of return in a broader context.

As we have emphasised before, migratory movements have always happened. Today, they have become a permanent global phenomenon. They are closely related to the EU's relationship to the countries of origin, as well to policy areas such as development co-operation, trade policy, or arms exports.

I should thus start by reiterating the Churches' recognition of migration as a twofold right, to leave one's country and to look for better conditions of life in another country. Certainly, the exercise of such a right needs to be seen in the context of the global common good and justice. In this context, however, it is important to prevent unilateral decisions that are harmful to the weakest.

This is one of the reasons why we are increasingly preoccupied by a certain imbalance of Council decisions with regard to the European Commission's proposals. Without going into detail, it would be enough to compare the number of paragraphs in the Seville Conclusions on control measures against illegal immigration on the one hand, on the legislative work to be sped up on the other.

[80] European Commission: Green Paper on a Community return policy on illegal residents, COM (2002) 175 final.

Over the past three years, many of the Commission's proposals both on immigration and on asylum have been subject to seemingly endless negotiations.

Guiding principles

The green book logically focuses on the return of illegal residents. I should like to underline that in our view the phenomenon of illegal residence might be significantly reduced by:

1. clear, accessible and open procedures for legal labour migration into the EU, as well as
   a coherent and open information policy on these procedures
2. an improved efficiency and quality of asylum procedures, and
   an asylum policy which would make it possible to reach the territory of the Union in a legal way and launch a claim for asylum

(1) In our view, the current lack of sufficient legal possibilities to immigrate is one of the reasons for the increase in irregular migration and critical employment situations. New forms of slavery can be observed. This does not only include the exploitation of women as prostitutes, but also of domestic workers or of workers on construction sites. Paradoxically, these appalling circumstances could logically be seen as the living proof that the clandestine labour market is actually able to absorb the influx of these migrants.[81]

(2) Fair and efficient Asylum procedures as well as access to these procedures are a first step when working against illegal migration. Studies have shown that a range of factors, including distrust of state asylum determination procedures, reluctance to be detained, and fears about return, lead some refugees to choose life as a migrant with irregular status. Moreover, restrictive measures often force legitimate refugees into illegal activities to enter the state in the first place. This makes them subject to return measures even if their asylum claim is legitimate.

The importance of voluntary return

We very much support the Commission's statement that voluntary return should be given preference over forced return. Somehow contradictorily though, the Commissions' Green Paper clearly focuses on the issue of forced return. Voluntary return evidently poses fewer problems.

We believe, however, that voluntary return deserves much more study and evaluation. An increase in voluntary return programmes would offer the opportunity to reduce the number of forced return measures. It would at least reduce the quantity of the problem. In this sense, we should like to encourage

[81] We are aware that the complex challenges of the clandestine labour market require solutions beyond migration policy, involving inter alia social, labour and tax policies based on consultation with the social partners.

the European Commission and Member States to undertake more research and to compare examples of best practice.

It is certainly right to assess that some voluntary return programmes have been relatively successful and that in several other cases the failure of such programmes was the result of a bad implementation.

But from the experience of our work, we are concerned that in various cases voluntary return programmes were carried out with returnees and towards countries of origin, of which neither were prepared for such a return. In other cases the number of returnees jeopardised the success of a voluntary return programme. To our experience this was partly the result of *pressure* exercised – on third country nationals and on third countries – to participate and co-operate "voluntarily". We very much welcome the idea of an evaluation of programmes carried out so far and would be glad to contribute the experience of our member organisations working "on the ground".

To make a practical suggestion, I should like to add that voluntary return is more likely to succeed when the individual has had access to training and work experience during the time spent in the host country. This is true for both refugees and rejected asylum-seekers. It could be advisable to promote and offer short-term qualification courses such as computer or craft courses, even during more or less short waiting periods, e.g. instead of detention.

Another useful means of promoting voluntary return could be to encourage "go and see" visits and to offer reintegration assistance above and beyond financial aid. This approach is likely to make a later return to the country of origin more viable. The individual is able to return with more skills and hence should be better able to provide for himself/herself and in many cases perhaps also provide a valuable contribution to a recovering society.

Thank you very much for your attention.

Cooperation with Countries of Origin

On behalf of the Churches' Commission for Migrants in Europe, CCME, I would like to add some aspects to what my colleague from the COMECE secretariat has said.

The need of cooperation with countries of origin has been rightly analysed and placed on the European Union's agenda by the High Level Working Group on Migration and Asylum and confirmed by the Tampere European Council in October 1999. This linkage has been particularly appreciated by Christian organisations working on migration and asylum issues, as we share the conviction expressed by the Tampere Council that "The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for

human rights, in particular rights of minorities, women and children."[82] Therefore, we were convinced that this comprehensive approach was one based on partnership and solidarity, developing a concept of burden sharing not only within the Union, but also beyond.

We are aware that migration does not figure as a top priority on the list of those involved in development. However, the attempts to convince actors in development to take on board the issue of forced and voluntary migration – comprehensively – suffered a major setback with the public debate prior to the Seville Council when suddenly development aid was reduced to an instrument to force countries of origin and transit to comply with EU migration restrictions. Although the decisions of the Seville Council are far more balanced than the public debate prior to it, the media did not cover the decisions after the summit as well as the debate before. We are convinced that this debate however damaged the realistic perception of both, migration and development by creating connections which do not hold a critical and analytical view.

1. "Everyone has the right to leave any country, including his own, and to return to his country."[83] Of course, this right does not mention a right to immigrate in any country; however, it does effectively prevent governments from introducing extreme emigration controls if they are not to be accused of human rights violations. In addition, and particularly in Europe, we would like to underline that we were convinced that the majority of people across the wider Europe celebrated the end of travel and emigration restrictions at the end of the 80s, beginning of the 90s and would not like such concepts to return. However, in the recent debate that countries of origin and transit should do more to stop irregular migration from their territory, if they did not want to put at risk development cooperation, such concepts do come back to mind.
2. Since Tampere we understood the comprehensive approach with regard to migration and asylum and the concept of partnership with countries of origin as sincerely attempting to balance the necessary control measures with long-term aims of poverty reduction and conflict prevention in order to reduce factors of forced migration. If development aid to countries of origin and/or transit was reduced as a means of penalty – the Seville summit has kept this as an option – the cut in development aid might increase the push factors rather than reducing them, thus even have the opposite to the desired effect. An additional conditionality, which is debated controversially anyway among development experts, is thus not only not helpful, but might turn out counterproductive. The debate on using reduction of development aid as a penalty and a sanction destroys the concept of partnership, which ought to be based on equality and taking serious each counterparts' interest. For quite

[82] Presidency Conclusions Tampere European Council 15-16 October 1999, A I 11
[83] Universal Declaration of Human Rights, Art. 13.2

a big number of developing countries, the revenue in foreign currency through remittances of migrants exceeds benefits from development aid. Some research also proves that low-skilled (and perhaps irregular) migrants send back higher amounts of remittances than highly skilled experts. A cooperative approach needs to acknowledge these legitimate interests of states in order to find appropriate solutions.

3. While we wish to maintain a distinction between irregular migration and criminality around irregular migration, the churches in Europe see an urgent need of international cooperation to fight criminal organisations exploiting the plight of persons forced to migrate or the desire of persons to voluntarily migrate. Therefore international agreements and Conventions need to be adhered to and the United Nations should be regarded as the right forum of agreement as in the United Nations all member states have a say. We are convinced that cooperation can and will be established with a culture of dialogue. In this context we would like to refer to the Protocol on migrant smuggling annexed to the UN Convention on Trans-national Crime, adopted in Palermo in 2000, and re-emphasize the need to protect victims of smuggling and trafficking. We are also convinced that Conventions like the one on the Rights of All Migrants and their family members form an important basis for international comprehensive migration concepts. It is in the absence of international agreements and guarantees and due to a lack of adherence that criminal organisations are exploiting persons who merely wish to improve their lives.
4. In the context of a return policy the readmission agreements with third countries are playing an important role. In line with the fundamental right to return to ones country, we support endeavours to ensure that persons who wish to return to their country of origin should get all necessary assistance, and countries of origin should be obliged to facilitate the return of their nationals. However, the readmission clauses envisage more than this: that countries of transit are obliged to readmit third country nationals who happened to have been on their territory for a shorter or longer period, e.g. for studies or training. This provision is based solely on the interest of EU member states and does not consider sufficiently a third country's capacity of integration nor does it provide for the person to decide on his or her future. We doubt that any EU member state would sign a similar clause e.g. for students from Africa or Asia, to be readmitted in case they cannot return to their home country but have stayed for some months after their studies in an other country. Reciprocity is however an important element of international agreements and should not be sacrificed.
5. We hope and expect that the forthcoming communication by the Commission on development and migration will deal thoroughly with the important connections which deserve attention and appropriate solutions. We also hope – as my colleague has stated, that the normality of migration is

not forgotten and a return policy is designed which upholds the dignity of each person.

3.3.5. Contribution to the European Commission/IOM STOP Conference "Preventing and Combating Trafficking in Human Beings", Brussels, 18-20 September 2002

On behalf of European Christian organisations working for refugees and migrants, we would like to express our appreciation for holding this important conference on "Preventing and Combating Trafficking in Human Beings". We believe that the presence of such a number of high-ranking delegations is an encouraging sign for the commitment to the struggle against trafficking in human beings, and we hope that a dynamic will be created which can give a boost to increased international cooperation in this field.

Many of our member organisations across Europe are actively involved in the social assistance to and counselling of trafficked people. Based on their experience, we would like to add a few thoughts to the debate hoping that these will also be reflected in the envisaged Brussels Declaration. Many contributions have already underlined the needs for increased police and judiciary cooperation. We would therefore like to underline some aspects concerning the assistance to victims.

1. Durable solutions for trafficked people

We want to stress the need for trafficked people to receive a form of protection, which is permanent and lasting. The current debate of a temporary form of protection for victims who cooperate with the authorities goes into the right direction, but not yet far enough. We have to understand that victims are unlikely to cooperate with the relevant authorities when they have to be afraid that they will be sent back home after a certain period and "back home" are likely to be confronted with the same criminal networks, against which they have been testifying.

It is obvious that returning home should be one option for victims, however, we should acknowledge that in order to make that a feasible option, the situation in countries of origin needs to be safe enough for the trafficked person and the family beyond the return. Some victims might be in need of permanent protection in the countries, which they have been trafficked to, and there should be a legal framework allowing for this. We believe the best solution for trafficked persons would include giving them the power of decision-making whether or not to return and when. For persons opting for return, protection in their home countries has to be guaranteed. We are convinced that this requires an increased international cooperation between authorities as well as NGOs.

2. Protection for family members

The criminal networks of trafficking are often exercising pressure on the victims by threatening their families, so that the victims might not testify against the criminal networks. If we want the victims to co-operate we thus have to think about schemes of protection for victims and their families alike. However, this is

an enormous task and may include schemes to help families to free themselves of debts which are frequently used as an argument by trafficking organisations. We are aware that this is an extremely sensitive issue, but solutions may be found in at least some areas.

3. Confidence building measures to ensure cooperation of trafficked people with the authorities

It goes without saying that the assistance and protection of trafficked persons can best be provided by NGO's and authorities together. Moreover it is a strong interest for the society to find the perpetrators and punish them. Some victims are afraid of cooperating with the police, because of negative previous experiences or the fear to be deported or fear to meet corrupt officials.

NGO's in many countries play a crucial role in this context. Very often they are the first points of contact for victims of trafficking. In quite a lot of cases, our member organisations have been able to both assist the victims, build up confidence and trust and encourage the victims to get in touch with the police and cooperate with public authorities in the fight against trafficking. For this kind of cooperation confidence building measures, such as round tables, discussion fora, between NGO's and authorities are needed. Developing this cooperation further could mean to have cooperation contracts between authorities and NGO's with a clear definition of the respective role, the tasks and the responsibilities. Cooperation between authorities and NGO's should be based on mutual respect for the different roles and in confidence acquired through a process of cooperation. NGO's could act as mediators between the victim and public authorities, transmitting the relevant information and the confidence experienced in the cooperation.

4. The work of the NGO's provides continuity and stability to trafficked people

NGO's with their services can provide trafficked people with a long term assistance, which in the ´majority of cases is needed, because of the degrading and traumatic experiences trafficked people went through. This assistance is the first step to rehabilitation and reorientation for trafficked people.

5. NGO's can give a valid contribution to the training of professionals

To deal with trafficked people requires specific skills and specific knowledge. NGO's often have long experience in dealing with migration, with different cultural backgrounds and specifically with trafficked people. This experience should be put at the disposal of professionals of different backgrounds, especially representatives of authorities. Moreover these experiences could be worked off by researchers and reach future professionals in the social field.

6. Networking as a tool to raise awareness and assist victims

We believe that building up a network of international cooperation against trafficking in human beings is not only a responsibility of the states and

intergovernmental organisations, but also of civil society. Networks of NGOs, are a good way to raise awareness in the public, as they have experience in the field and are present at the grassroots level. These efforts, especially transnational networks should be supported at European level. In the long run a coordination of these efforts is needed, to avoid duplication of work and to strengthen links between different existing networks. In addition, networks reaching different groups in societies are needed to create public awareness on the issue of trafficking. One of the problems not sufficiently raised publicly is in our opinion the demand for trafficked persons, particularly women and children. CCME and Caritas Europa thus hope to launch the project "Christian Action and networking against trafficking in women (CAT)" in November 2002 The CAT project will create a network of Church related organisations against trafficking involving countries of origin, of transit and destination. One of the central aims is to create working tools for volunteers and church groups in order to sensitise them for the work with trafficked people.

Caritas Europa/CCME, Brussels, September 2002

3.3.6. Commission Communication towards integrated management of the external borders of the Member States of the European Union [COM (2002) 233 final]

Joint letter to the Danish Presidency, as well as the Council of the European Union, Commission of the European Communities, Directorate General Justice and Home Affairs of the European Commission, European Parliament, Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Dear Minister,

It is with particular interest that our organisations, representing Churches throughout Europe and Christian agencies primarily concerned with migrants and refugees, note the European Commission's Communication towards integrated management of the EU's external borders. As you know, we have been monitoring the EU institutions' work on asylum and migration based on the Amsterdam Treaty and the Tampere conclusions, and we have commented on many pieces of draft legislation, informed by our practical experience – in consultations and in our position papers.

Although we do not claim competence to comment on the management tools proposed in Chapter III of the Commission Communication, we like to offer some general and particular comments on selected points of the five mutually interdependent components of a common integrated management policy (as pointed out on page 12).

We agree that integrated management of borders and the use of most up-to-date management tools necessarily forms part of the EU's policy on the management of migration flows, which is in itself one of the main elements of a broader policy of creating a Common European Asylum System, fair treatment of third country nationals and the partnership with countries of origin. However, although this Communication is mainly about benefits from potential operational synergies to develop better coordination mechanisms, we view it as appropriate to express our deep concern about some of the migration policies to be implemented in the first place. Today the fight against irregular migration, although important, overshadows in a highly problematical way the existing international protection regime, i.e. carrier sanctions make it almost impossible to access asylum procedures by means of normal transport; there are hardly any legal ways of entry to EU Member States for persons seeking protection; more sophisticated control at the EU's external borders in fact trigger more sophisticated ways of irregular entries, resulting in more trafficking and smuggling and, more importantly, greater risk for persons in need of international protection.

We are aware that our case for legal access of refugees is not pertinent in this context. But we view it as appropriate to urge the European Union and its Member States to pay attention to a more balanced policy in the problematic

area of combating illegal immigration and offering protection to those fleeing persecution. Otherwise it would appear that the European Union primary concern is to fortify its borders, irrespective of the financial cost involved or its impact in terms of human rights. We remain very concerned about this policy trend.

The Commission states in the Communication that the "common syllabus for the training of border guards" (pt.41) could be realised in the very short term. We agree that the development of European border control with common standards and curriculum is an important aspect of establishing an area of freedom, security and justice in Europe. We particularly welcome the importance *inter alia* of ensuring "training for the border guards about respect for the rights of, and the protection of asylum seekers". As the Commission clearly states, the policy needs to comply with international obligations and human rights. Comprehensive human rights training is therefore indispensable and should include anti-discrimination and race awareness training.

Furthermore we would like to promote the said training in the curriculum development for European immigration officers. Existing best practice could be incorporated as in the intercultural training provided by church services to border police at Frankfurt am Main and Düsseldorf airport in Germany. This could make encounter easier at borders for both, the immigration officials and those arriving at the border. We also support the proposal that the European dimension of the border guards' functions should be given close attention (for example language training).

The proposed placing of immigration liaison officers is certainly a first step. As border controls are by definition points of international encounters, we would like to advocate the establishment of a European, international border guard units composed of different European nationalities.

Finally, we welcome the Commission's proposal of sharing the burden of controlling the external borders among Member States. This is crucial given that several EU Member States essentially do not have extensive external borders to control.

We hope that these comments are useful and that they will be taken into consideration in the further debates on the EU policy regarding border management.

Sincerely yours,

Bruno Kapfer - Migration Officer of Caritas Europa
Doris Peschke - General Secretary of CCME
Felix Leinemann - Legal Adviser of the COMECE Secretariat
Katleen Hayen - Representative Brussels Office of ICMC
John Dardis - Regional Director of JRS Europe
Anita Wuyts - Programme Associate, Quaker Council for European Affairs

3.3.7. Joint Comments on the Communication from the European Commission on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents COM (2003) 323 final of 3.6.2003

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

Our common Christian belief and our common ethical convictions deeply commit us to safeguarding the dignity of each human being, irrespective of his or her legal status. Many of our pastoral and social services, not only throughout Europe, but also worldwide, have a real knowledge of the shadow world of irregular migrants because irregular migrants often trust the services of Churches and Christian organisations more than public ones when seeking help in situations of distress. However, our experience is not only based on the daily work of our services, but also on several scientific studies, carried out in a number of EU Member States. Thus we regard our services in Europe and overseas as specifically qualified to make substantial contributions to the European Union's search for sustainable and durable solutions concerning the highly complex challenge of irregular migration.

It is against this background that we take our share in the common responsibility for irregular migrants, which the European Union and its societies bear, and consequently, we wish to comment on the European Commission's Communication COM (2003) 323 final on related issues. We will restrain our observations to those matters, which in our view deserve special attention.

EXECUTIVE SUMMARY

We welcome the Commission's intention to incorporate the phenomena of irregular migration flows in its comprehensive approach towards a common European Union immigration and asylum policy as we consider irregular migration as a major challenge to the European Union: The less people have legal access to the European Union, the more people will continue to come through irregular channels and the more the market for smuggling and trafficking in human beings will grow.

According to the experience in the past decade, the Member States and the European Commission need to recognize that only repressive and restrictive policies and measures, especially within the framework of visa and return policies, did not lead to efficient solutions. This is first and foremost a matter of the undeclared labour market in the European Union which serves as a major pull factor together with global economic disparities and violations of human rights which are push factors in the countries of origin.

Against this background the European Union consequently needs to develop fundamentally new policy approaches: The European Union needs to invest substantial financial resources to combat the push factors, to open the labour market together with the social protection system for third country citizens, and to set up realistic programmes for voluntary return.

We do not deny the legitimacy and necessity of parallel repressive and restrictive measures. However, if they are taken, they need to obey to the principle of proportionality and respect human rights.

We acknowledge the difficulty of the Member States and the European Commission to obtain necessary insights in the shadow world of irregular migrants which would help to cope better with the highly complex issues of irregular migration flows. We are ready and willing to provide assistance in this respect under the condition that this would not jeopardize the pastoral and social work of our different services and those who turn to them in situations of distress.

GENERAL REMARKS

As we underlined in our Comment of May 2002 on the Communication on a Common Policy on Illegal Immigration [COM (2002) 0672 final] and on the Proposal for a Comprehensive Plan to Combat Illegal Immigration and Trafficking in Human Beings in the European Union, we welcome the Commission's intention to incorporate the phenomena of irregular migration in its comprehensive approach towards a common European Union immigration and asylum policy. With regard to the recent communication, we are pleased to see that it takes into account certain realities, such as growing irregular immigration (by sea)[84], undeclared work[85], lack of information[86], and root causes in countries of origin[87]. These considerations imply the acknowledgement that those measures, which were taken so far to stop irregular immigration, were basically inefficient.

We share this implicit assessment, and we welcome it because we are convinced that the development of an effective common policy on irregular migration can only succeed when those who are responsible for the development of a common policy take note of essential realities.

Our experience has also shown that neither restrictive visa measures nor reinforced border control measures or forced expulsion will lead to a decrease of irregular migration into the European Union. Irregular migration and irregular residence take on ever-new forms. Even worse, we feel that those policies which were pursued to curb irregular migration contributed considerably towards

[84] COM (2003) 323 final, 2.2.
[85] COM (2003) 323 final, 2.4.
[86] COM (2003) 323 final, 2.5.
[87] COM (2003) 323 final, 3.

creating a growing market for smuggling and trafficking in human beings. Combating trafficking in human beings needs all possible efforts, but the measures need to be effective at various levels. [88]

We regret that the Communication COM (2003) 323 final on the Development of a Common Policy on Illegal Immigration, Smuggling and Trafficking of Human Beings, External Borders and the Return of Illegal Residents does not sufficiently differentiate between the numerous and different groups of irregular migrants. In particular, it is not explicitly dealing with refugees; according to our sources a great number of irregular migrants are refugees, and thus we are particularly concerned about this target group of the respective policies. Another group of grave humanitarian concerns are family members of migrants who legally reside in the European Union. Current legal rules make it impossible for many of them to reunite legally with their family in the European Union; this concerns especially cases of elderly and sick family members who would be left to their fate without the presence of close relatives

We are convinced that only thorough differentiations between the various groups of irregular migrants will render the European Union capable of developing a successful policy on irregular immigration, smuggling and trafficking in human beings and the return of irregular immigrants because these differentiations would enable the European Union to act appropriately, i.e. according to many and very different target groups. For each of these groups sophisticated and refined policies are imperative, if the European Union and its Member States want to manage irregular migrations flows successfully.

We agree that irregular immigration needs to be looked at as a long-term phenomenon,[89] and it will be extremely difficult to find solutions, which will satisfy the legitimate interests of the European Union as well as of those who already immigrated and those who are prepared to take the risks of irregular migration. We are convinced that irregular migration will hardly be controllable, only to be channelled. Churches and Christian organisations are ready to assist in this European as well as global challenge.

COMMENTS ON SPEFICIC ASPECTS

1. Introduction

The Commission applies the term of "management" of migration flows. We welcome the change of terminology towards less criminalizing language. As we already pointed out in our Joint Comment of May 2002 on the Commission's

[88] See also our Comments of May 2002 on the Commission's Communication on a common policy on illegal immigration and the Comments on the Draft Directive for a short-term residence permit for victims of trafficking and smuggling

[89] Cf. "long-term benefits", COM (2003) 323 final, 2.2. ; "spread over a period of ten or twelve years", COM (2003) 323 final, 2.1.

Communication on a Common Policy on Illegal Immigration[90], the vast majority of irregular migrants are neither criminals nor eager to benefit from the social systems in the Member States. Insofar it would only be adequate, if the European Commission abandoned the notions, which nourish the criminalisation of irregular immigrants, such as "combat" or "fight"[91]. However, insofar as the term of "management of external frontiers" respectively "of borders" is applied, it would seem more appropriate to speak of "border police management" or "border guard management", as long as the respective border control policy consists mainly in optimising operational measures of police forces.

We agree with the Commission's opinion that "it is advisable for the Heads of State and Government to review the progress made in the last few months". We would go even further and recommend a review of the past decade which would help the Heads of State and Government to realize that repressive policies and measures alone will not bring about efficient solutions. Furthermore, they also nurture dangerous side-developments which are not acceptable, such as an increasing readiness and willingness among potential migrants to take enormous risks to their property and even lives.

The Commission aims to "create a basis for a follow-up process which will be given shape with the drafting of an annual report". We support this objective because we are convinced that within such an annual report there will be the necessary space for a thorough and critical analysis of current policy approaches, for more differentiation insofar as irregular "immigration is multifaceted in terms of the individuals concerned" as the Commission already stated earlier[92], and for the incorporation of insights gained in praxis by relevant institutions in societies as well as by scientific research on irregular immigration. Concerning the latter, we explicitly encourage the Commission to consider regular scientific accompaniment while drafting the annual report because we know from our own experiences that close co-operation with relevant sciences contribute to develop realistic policies.

2. POLICY DEVELOPMENTS

2.1. Visa Policy

We share the Commission's careful assessment that visa policy "can" significantly contribute to the prevention of illegal immigration. However, an increasingly restrictive visa policy might easily lead to the enlargement of the counterfeiting market. The number of fake visas might not only increase, but

[90] [COM (2002) 0672 final], as well as on and on the Proposal for the Comprehensive Plan to Combat Illegal Immigration and Trafficking in Human Beings in the European Union [Council Document ST 6621/1/02 REV 1]
[91] e.g. COM (2003) 323, 2.2.
[92] COM (2001) 671 final

counterfeited visas might also get ever more expensive, i.e. those who have to resort to counterfeited visas, would get into debt to those who procure or pre-finance fake visas. Such high indebtedness would again strengthen various criminal sectors. In that respect we are particularly concerned about refugees and asylum seekers as well as their family members who often cannot travel with a valid visa because of emergency situations or because they must hide from their country's public authorities who not rarely observe embassies and consulates. In any case, we need to stress that any visa policy may neither result in the violation of the spirit underlying Article 31 of the Geneva Convention nor in a hidden offence of the "refoulement" prohibition of Article 33 of the Geneva Convention.

The Commission informs about the Visa Information System, C-VIS as well as N-VIS, and its investments costs which range from about 130 million to 200 million Euros, and which could be spread over a period of ten or twelve years. We understand that irregular immigration needs to be regarded as a long-term challenge. However, the development of C-VIS and N-VIS is not only extremely expensive from a financial point of view; it also runs the risk to lead to a sell-out of fundamental individual freedoms. Legitimate visa control systems must not violate the individual's right to respect for her or his private life as guaranteed by Article 8 of the European Convention on Human Rights. As far as visa regulations concern nationals of certain, selected countries, attention is required so that these regulations do not discriminate on the ground of national origin as provided for by Article 14 of the European Convention on Human Rights. These considerations are also valid in the case of linking the SIS II to the VIS. With regard to the tremendous costs of the VIS or the SIS-VIS the Communication is lacking a reference to investments in the countries of origin in order to tackle the root causes[93]. It would be interesting to examine whether equivalent financial investments in root cause programmes could lead to more durable solutions. We agree with the Commission that the decision on the further development of the VIS should depend upon strategic orientations to be given by the Council and only then the Commission will take the necessary steps. The Heads of States and Governments will have to justify such high expenditures for a rather uncertain outcome.

Within the framework of the creation of common administrative structures for the establishment of common EU visa issuing offices the Commission points to deficits in co-operation. It must be added that persons from third countries who arrive at the external EU border are often the first victims of this lack of administrative co-operation. When there is a doubt about the visa, in praxis they are often refused entry to the EU territory. Often migrants do not receive correct and comprehensive information about the range of documents required for entry. As a consequence they lack the necessary documentation, for

[93] cf. COM (2003) 323 final, 3.

example financial liability attestation, and hence they are not admitted to EU territory. Time and again, we hear about cases where even persons holding a valid visa are not granted entry. The lack of information, and the high hurdles for obtaining visa drive a number of migrants into the hands of smugglers who "offer a service" which otherwise seems out of reach.

2.2. Border Control Policy: Towards the development of a Common and Integrated Policy for the management of the external borders

As a result of the evaluation of the operational co-ordination and co-operation the Commission raises questions about the Common Unit for External Borders Practitioners and the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) and suggests that certain more strategic co-ordination tasks could remain with SCIFA, and that the more operational tasks could be entrusted to a new permanent Community structure able to exercise the day-to-day management and co-ordination tasks and to respond in time to emergency situations. We support this stimulus because we feel that within such a new structure it would be easier to implement common ideas, such as ensuring "training for the boarder guards about the respect for the rights of, and the protection of asylum seekers" and the inclusion of existing best practise in the training, ideas which we brought forward in our Joint letter to the Danish Presidency, as well as to the Council, the Commission and Parliament of December 2002[94].

The Commission noticed that increasing illegal immigration arriving by sea raised political awareness for the external maritime borders. With due respect to necessary external maritime border controls, we must underline that those may by no means lead to ever more fatalities. On the contrary, maritime border controls, like any border control, must achieve their most noble aim first: the prevention of maritime casualties. We trust that this will be taken into account in particular by the competent authorities of those Member States which will control the Mediterranean region.

2.3. Return Policy

The credibility and integrity of the legal immigration and asylum policies are at stake unless there is a Community return policy on irregular migrants. We would like to add, though, that ultimately this is a question of the quality of the return policy, which has to fulfil the requirements of credibility and integrity itself, too. We are convinced that a credible return policy must consider the large market for undeclared labour, which is the most important pull factor for irregular immigration[95]. The European Union should face the existence of a large undeclared economy and urgently develop a system of minimal social protection

[94] Letter ref. the Communication towards integrated management of the external borders of the Member States of the European Union [COM (2002) 232 final]
[95] Cf. COM (2003) 323 final, 2.4.

for undocumented workers. We are very concerned about proposals enhancing operational co-operation among Member States, including the German initiative for assistance in cases of transit for the purposes of removal by air and the Italian proposals of September 2003 for joined charter flights for expulsion. Grouped expulsions, whether by air, or over land, have to adhere to human rights standards. Particularly if grouped expulsions follow immediately from accelerated procedures without proper case assessment of asylum seekers, they may become collective expulsions and thus violate the European Convention on Human Rights Fourth Protocol art. 4. We appreciate that the Commission has prepared guidelines on security provisions for removals by air, which are crucial in order to safeguard a smooth and safe return of the persons concerned, and we agree that a clear legal basis for the continuation of the removal operation is needed, and that a binding regime of mutual recognition and common standards needs to be established for the purposes pointed out in this Communication. We thus support the Commission's intention to take the initiative to prepare a proposal for a Council Directive on minimum standards for return procedures and mutual recognition of return decisions which should, from our point of view, incorporate effective means of legal redress against deportation decisions. We also see the necessity to improve the process of getting proper return travel documents for irregular migrants. The strengthening of VIS could certainly contribute to the credibility of a return policy. But, as the Commission states itself, this measure would be preconditioned by the fact that the persons concerned would have applied for a visa.

We always stressed the principle of voluntary return. In this context we very much support the Commission's earlier statement that voluntary return should be given priority over forced return[96]. Consequently we are amazed that the principle of voluntary return is not explicitly mentioned in this Communication. We recognize the Commission's encouragement of integrated country-specific return programmes, which is an approach that we basically support. Still, we need to recall that voluntary return programmes were often carried out with returnees who had not been prepared for their return, and towards countries of origin which had not been ready for the reception.

As much as we agree with the Commission that the credibility and integrity of the legal immigration and asylum policies are at stake unless there is a Community return policy on irregular migrants, we have to underline again that they are even more at stake unless there are common, transparent, flexible and just asylum and migration rules of legal access to the European Union.

The Commission states that only the swift implementation of all measures as set out in the Council's Return Action Program of November 2002 will ensure that the message will get across that immigration "must" take place within a clear

[96][11] COM (2002) 0175 final

legal procedural framework. This has to be complemented by the equivalent message that immigration also "can" take place within a clear legal procedural framework.

As none of the immigration proposals by the Commission have yet been adopted in the Council, we see that the integrity of a Community migration policy is severely hampered.

The Commission states that all efforts to fight illegal immigration are questionable, if those who manage to overcome these measures succeed finally to maintain their illegal residence. As we expressed earlier in our Comment of May 2002[97], we regard such an approach as not realistic and as not helpful. For humanitarian reasons alone many formerly irregular migrants were and legally had to be regularized in the European Union. The Commission itself favours clear and transparent channels available for economic migrants to fill permanent or temporary job shortages. Therefore, the Commission itself should consider certain regularisation measures taking best practice in Member States into account. It does not make sense to create and promote mechanisms for the return of people who are integrated in European societies and often essentially contribute to the European economy in working positions and working conditions which EU citizens voluntarily leave to those third country nationals.

2.4. Key flanking measures

We regret that within the framework of the EU's fight against smuggling and trafficking in human beings still no distinction between "smuggling" and "trafficking" is made according to the Palermo Protocols to the UN Convention against Transnational Organised Crime of December 2000.[98] We disagree with the Commission that smuggling and trafficking are mainly controlled by criminal networks. According to our sources this is true for trafficking in human beings. Smuggling, however, is only partially controlled by criminal networks. To a very large extend it is operated by commercial and non-commercial, i.e. private, networks, too. Dismantling these will be practically impossible because there are no "victims" who would want to co-operate with the competent authorities. While we appreciate that the directive granting a short-term residence permit to victims of trafficking has been agreed by the Council, we remain convinced that stronger safeguards for trafficked persons are required[99]. We appreciate that the Commission's work in this area will be

[97] Comment on the Communication on a Common Policy on Illegal Immigration (COM (2002) 0672 final)

[98][Cf. our Comments on the Communication on a Common Policy on Illegal Immigration (COM (2002) 0672 final), May 2002

[99] see our Comments on the Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities, (COM (2002) 71 final), June 2002

guided by the Brussels Declaration of the European Conference on Preventing and Combating Trafficking in Human Beings.

We welcome the Commission's statement that undeclared work tends to act as a pull factor, and we are grateful that the Commission recognises that the employment of irregular migrants can lead to exploitation and insecurity because this creates awareness and sensitivity for humanitarian aspects of irregular migration.

Therefore we, too, favour clear and transparent legal channels available for economic migrants to fill job shortages, although this can only be one element in a comprehensive policy. We are convinced that irregular migration takes and will take place to the same extend as the EU labour market offers undeclared low pay work. Against this background we will further observe the follow-up of the Commission's Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities[100], of which the Commission announces that it will play an important role in this challenge. At the same time we support the Commission's efforts of setting new targets in the employment guidelines as the phenomenon of undeclared work needs a still broader approach. Not only national legislation on regular levels of wages in the Member States are involved, but also fundamental societal values, such as the respect of the rule of law, co-responsibility for the social well-being of the Member States and their society as well as honesty as a basic virtue.

2.5. Operational co-operation and exchange of information

We agree that regarding statistics, the available information is not sufficient, and we understand that the Commission wants to improve this situation, be it through the CIREFI group, ICONet, immigration liaison officers or Europol. However, these means will always get only information which is available to public institutions. This is not without importance, but neither is additional information. We stress this aspect because we experience that information by public institutions tend to criminalise irregular immigrants as those institutions normally get in touch with irregular immigrants only in relevant areas (e.g. police, detention, prison). These contacts do by no means provide sufficient information for a proper monitoring and evaluation of legal and illegal immigration policy. Against this background we suggest that the Commission invites to an extensive hearing of those who can provide additional information. The Commission might also want to examine the possibility of establishing or/and supporting "safe contact offices" in the Member States, which could procure lacking information without jeopardizing irregular migrants.

[100] COM (2001) 386 final

3. PARTNERSHIP WITH THIRD COUNTRIES

We welcome the expression of "partnership" because it sets basic standards for mutual relations. Insofar as these countries[101] often find themselves confronted with illegal and transit migration, they are in fact real partners who share a common problem. "Partnership" in its true meaning also implies that the Commission does not think of a policy that solely aims at maintaining the affluence of the present Member States. Pursuing the constant long-term goal to develop an integrated, comprehensive approach to tackle the root causes of illegal immigration may in fact lead to a concept which defines the management of migration flows as an instrument for more justice between East and West, North and South against the background of the EU as an "area of freedom, security and justice". However, as long as there is no significant action and success in eliminating the root causes of irregular migration, we doubt that reinforcing the external borders will contribute to a solution. Many countries of origin make a large profit from the fact that their citizens work abroad and send money home in order to assure the survival of their families and relatives.
The Commission raises the issue of the new neighbours in the enlarged European Union who are to be given special attention. This implies recognition of the fact that irregular migration movements underlie certain chain mechanisms which are extremely difficult to manage, i.e. for example when nationals of acceding countries already irregularly live and work in the EU, and consequently nationals of non-acceding countries irregularly immigrate to the acceding countries in order to fill existing low pay job shortages there.

Migration related issues are increasingly taking a role in external relations policy. Although the EU needs to continue its respective efforts, we have concerns about this. Integrating migration issues into external relations should not mean what can amount to thinly disguised coercion or penalisation of countries of origin or transit when they are judged not to cooperate with the wishes of EU Member States. It should also not mean that migration issues dominate over development or external relations concerns. We are especially critical of readmission agreements and how they are currently drawn up. We favour instead true migration agreements, which take into account the interests both of country of origin and host country. Any readmission agreement must apply in accordance with international human rights standards and any future readmission agreement must maintain the focus on the individual concerned: they should be drafted and implemented under a human rights framework assuring that the human rights of the individual being returned are respected. We agree with the UNHCR that an important main consideration with any readmission agreement is that it be structured to avoid "orbit" situations, and that bilateral readmission agreements should not be used to return asylum seekers, even where this is technically possible.

[101] The Commission is only referring to nine countries; COM (2003) 323 final, 3., footnote 2

4. THE APPROPRIATE FINANCIAL RESOURCES AND BURDEN SHARING MECHANISM

We share the Commission's concern about the clear disparity between the political importance given in the EU to the JHA policies and the financial resources of the Community budget allocated to these policies. From this we conclude that the de facto importance given in the EU to JHA policies to manage irregular migration flows is far lower than expressed in public speech. We cannot but wonder, whether the Member States have a real interest to manage irregular migration or not because money still is among the most expressive language of the European Union and its Member States.

Burden sharing between Member States and the European Union for the management of external borders is an expression of solidarity, which we share. We, however, would prefer to speak of "responsibility-sharing"[102] which should not only apply to the management of external borders, but also to further management measures.

5. CONCLUSIONS

Thus we support the Commission's conclusion that the principle of solidarity should be reinforced and consolidated particularly with regard to financial allocations. However, financial allocations should be balanced between cooperation with third countries (including measures to tackle root causes of irregular migration), control measures and legal access to the EU labour market. We therefore would like to see more attention given to economic measures.
Regarding the preliminary stock-taking exercise of this Communication we assess that the Commission continues to make progress in its analysis of irregular migration. We are convinced that action aiming at results in reducing root causes of irregular migration is urgent. This aspect is still neglected. Instead, highest priority is given to achieve immediate results in repressive police and border control management - an approach, which is bound to fail as the past has proved.

Finally, we wish to urge the Commission to broaden its perspective. Dealing with irregular migration means dealing with human beings in distress. European values certainly require rule of law and law enforcement, but these have to respect human rights and the dignity of every person at all times. We would wish that the European Commission, European Parliament and the Council of Ministers could bring about a more balanced approach.

January 2004

[102] Cf. COM (2003) 315 final, 6.2.

3.4.1. Joint Letter to the President of the Convention on the Future of Europe, Valéry Giscard d'Estaing

Dear Mr President,

Our organisations represent Christian churches as well as church-related agencies throughout Europe.

The close interest taken by the Churches and these organisations in the work of the European Convention is evident in the individual submissions made by our organisations in recent weeks. We have also welcomed the creation of a structured Forum to enable the variety of institutions, associations and communities in both the Member and Candidate States to participate actively in the debate.

In this joint letter, we should like to emphasise our shared suggestions, reflecting our common values. In particular, we propose the following:

1. The European Union should perceive itself as a community of values, based on the centrality of the human being and the promotion of peace and reconciliation, justice, solidarity, subsidiarity and sustainability.
2. The religious and spiritual heritage of Europe should be acknowledged in any constitutional text. The specific contribution of Churches and religious communities to society should be acknowledged.
3. A future constitutional text should incorporate fundamental rights. Among these, religious freedom in its individual, corporate and institutional dimension should be affirmed.
4. The pursuance of the common good should be integrated as one of the core principles of the European Union. Poverty eradication at a global level, support for the marginalised and those threatened by social exclusion, especially migrants and ethnic minorities, should be specifically declared key objectives. Access to a high level of social services must be guaranteed. The important role played by non-statutory social welfare providers in sustaining a multitude of charitable services should be acknowledged.
5. In order for the European Union to fulfil its responsibility for global and sustainable development, it must be able to speak with one voice on the world stage. Building sound and just relationships, both with its immediate neighbours and globally, is essential to develop a fair and just system of global governance.
6. There is a need to reinvigorate democratic political life and, above all, to ensure that citizens sense that their concerns are heard and are taken seriously. Citizens and legal residents should be able to participate and contribute fully at all levels. A future constitutional text should provide

for a structured dialogue with the variety of institutions, associations and communities in society. In this context, the specificities of Churches and religious communities should be taken into account.

7. A future constitutional text of the European Union should incorporate Declaration N° 11 of the Final Act of the Treaty of Amsterdam, expressing its respect for the status of Churches and religious communities as recognised by each Member State.

We hope that you will find the submissions made by the organisations mentioned above and represented by the signatories to this letter to be an interesting and helpful contribution to shaping the future of the European Union. We are committed to continuing our constructive engagement in the debate in the Convention and intend to make more detailed contributions in the coming months.

Yours sincerely,

Keith Jenkins , Associate General Secretary of the Conference of European Churches (CEC) and Director of its Church and Society Commission

Mgr Noël Treanor
Secretary General, Commission of the Bishops' Conferences of the European Community – COMECE

Denis Viénot, President, Caritas Europa

Jürgen Gohde, President, Eurodiaconia

Jef Felix, Secretary General, International Cooperation for Development and Solidarity – CIDSE

Rob van Drimmelen, Secretary General, Association of World Council of Churches related Development Organisations in Europe – APRODEV
Doris Peschke, General Secretary, Churches' Commission for Migrants in Europe – CCME

Thomas Eggensperger OP, Directeur, Spiritualité, Cultures et Société en Europe – ESPACES

Pierre de Charentenay SJ. Directeur, Office catholique d'information et d'initiative pour l'Europe – OCIPE

28 June 2002

3.4.2. Joint submission to the Working Group No X of the European Convention on the Area of Freedom, Security and Justice

Our organisations represent Churches throughout Europe and Christian agencies particularly concerned with migrants and refugees. Since the entry into force of the Treaty of Amsterdam, we have closely accompanied the gradual development of a Common Asylum and Migration Policy of the European Union. We have issued a series of joint comments[103] on the European Commission's initiatives and closely monitored the Council of Minister's negotiations in these policy areas. On the basis of this experience, we should wish to submit our views relating to question 2 of the mandate of Working Group X.

The European Council of Tampere in October 1999 expressed a strong commitment of the European Union to establish a fair common European asylum system and a comprehensive immigration policy. The European Council of Laeken in December 2001 acknowledged that "despite some achievements such as the European Refugee Fund, the Eurodac Regulation and the Directive on temporary protection, progress has been slower and less substantial than expected. A new approach is therefore needed"[104]. We entirely share this evaluation, while we are concerned about the steps and decisions taken since the Laeken Council.

There is an urgent need for a coherent and harmonised asylum and migration policy of the EU. In order to reach real "burden sharing" regarding the reception of refugees and asylum seekers as called for in Art. 63 N° 2 b), agreement on minimum standards will not suffice. Shared responsibility of the Member States will only be reached by true harmonisation of their policies.

What improvements would have to be made to instruments and procedures?

(a) Qualified majority voting to become rule rather than exception

According to our perception, the major obstacle to progress is a legislative dilemma. The same Member States who committed themselves to establishing an area of freedom, security and justice have created a political firewall, called the unanimity principle. This principle is a de-facto right to veto and allows a single Member State to prevent any compromise beyond its sole national interests. This

[103] These joint statements included comments on the Proposal for a Directive on Family Reunification; on the European Commission's Communications on a Common Asylum Procedure and Status and on a Community Immigration Policy; on a proposed directive on Common Standards for Reception Conditions for Asylum Seekers; on a Common Refugee Definition; and on a Common Policy On Illegal Immigration.

[104] Presidency conclusions of the European Council of Laeken, N° 38.

has lead to blockage situations on several occasions and in the context of different legislative proposals.

We are increasingly concerned about the consequences of the right to veto. To name just one example, the Council negotiations on the directive on family reunification are a worrisome case in point. The current proposal, modified for the second time after two years of fruitless negotiations, falls far short of the goal of harmonising the mechanisms of family reunification for third country nationals in the European Union. In crucial areas the recent proposal would allow Member States to maintain very different approaches. Essentially this would mean loosing the opportunity of harmonising family reunification. Other instruments, like the directive on reception conditions for asylum seekers were agreed only as very minimal standards. We are profoundly concerned that this would set an example for other directives to be decided by the Council in the course of the next year.

We believe the only reasonable way out of this current dilemma in decision-making is the abolition of the unanimity principle on asylum and migration policy. The legislative commitment to reconsider unanimity in Article 67 (2) TEC as well as the slight step forward in the Treaty of Nice are a step into the right direction. It is clear, however, that the political will still has to undergo a ripening process. We feel that the time has come to recognise that a common European policy on asylum and migration can only be achieved by compromise for the good of the whole of Europe.

(b) Democratic control is essential

The time has come also for a more sincere democratic decision-making on European Union level. We are convinced that in any decision-making procedures democratic control is most crucial. This requires transparency in all legislative procedures, particularly when the Council is acting as legislative body. In an area as sensitive as this one, National Parliaments should have a greater role to play. Best practice – for example in the Netherlands – shows that it is possible, on national level, to hold the Home Minister responsible for his negotiating position in the Council. Furthermore, we consider it essential to fully involve the European Parliament into the decision-making process and apply the co-decision procedure to the entire policy area

(c) Effective judicial control

The arrangements in Articles 35 TEU and 68 TEC concerning the jurisdiction of the Court of Justice should be aligned on the general arrangements. Harmonisation requires effective judicial control by the European Court of Justice. This seems an appropriate time to review the restrictions in Article 68 of the EC Treaty with regard to access to preliminary rulings on the interpretation of EC acts based on Title IV TEC. In our view, the general jurisdiction of the Court of Justice to give preliminary rulings laid down in Article 234 TEC should apply: Lower tribunals should have a discretion to submit an issue to the Court

of Justice, whereas courts and tribunals of final appeal should be obliged to bring relevant matters before the Court of Justice. Otherwise, "[t]he fact that judicial control at the EC level is [...] contingent upon discretionary decisions at the level of national courts is likely to weaken the effective implementation of harmonisation measures under Title IV"[105].

(d) Third pillar legal instruments not suited for sustained legislative use

We share very much the opinion expressed by the Secretariat of the European Convention in its "Justice and Home Affairs – Progress Report and general problems" (CONV 69/02) that the 3rd pillar legal instruments are not suited for sustained legislative use. Although framework decisions and decisions – as the newly introduced instruments – seem to be more convenient than for example a convention between Member States, there is a long way of making it an operational tool – with a lot of hurdles on the way, be it the necessity of transporting the agreement authentically into national legislation or the lack of possibilities to make non-compliance an issue. While being aware of the limitations of the third pillar and of the fact that there is no political will towards harmonising the third pillar matters, we would wish to see – in the long run – the project of harmonisation enlarged into these areas as well, then meaning the power to enforce legislative acts and stronger judicial control by the Court of Justice.

(e) Pre-legislative consultation

The question of consultation and dialogue has been addressed in numerous other contributions, either to the Convention or in the debate on European Governance. It is in this context that we should like to mention the consultations of refugee agencies, migrants' organisations, Church groups and NGOs undertaken by the DG Justice and Home Affairs of the European Commission during the legislative drafting process since the entry into force of the Treaty of Amsterdam. In our view, these consultations were able to provide the Commission's proposals with expertise. At the same time, they have enhanced openness and participation.

We support the introduction of a formal procedure for the participation of Civil Society in the process of policy development. This should also apply to such sensitive areas as asylum and migration policy.

Sensitive terminology

We acknowledged the sensitive use of terminology by the Secretariat of the European Convention when speaking about "illegal immigration" but never about "illegal immigrants". However, we would very much prefer to see the term "irregular" used in this context as it is done at the level of the United Nations,

[105] Alston, "The EU and Human Rights" (1999), OUP p. 373.

where the agreed terminology is "migrants in irregular situations"[106]. We wish to encourage the Convention to use its strong position to give leadership and orientation to other stakeholders in the use of correct and sensitive terminology.

Brussels, 15 October 2002

[106] We support the European Economic and Social Committee in its opinion that the term "illegal" should only be used to refer to smuggling, trafficking or exploitative activities. The EESC opinion SOC/095; CES 527/2002 ES/PM/ms continues: "In contrast, some clarification is needed when the term "illegal immigration" is used to refer to individual migrants. Although it is not lawful to enter a country without the required documents and authorisation, those who do so are not criminals. Lumping together irregular immigration and crime, as the media frequently do, distorts the facts and breeds fear-driven and racist attitudes among the general public. Irregular immigrants are not criminals, even though their situation is not legal".

3.5.1. Migration and Development

Preliminary observations by NGOs active in the migration, refugee protection and the development field on the European Commission's Communication on "Integrating Migration Issues in the European Union's Relations with Third Countries", COM (2002) 703 final of 3 December 2002

One of the major challenges faced by the European Union today is to link a fair development policy aimed at eradicating poverty and the EU's declared aim of integrating developing countries into world economy with a clear and comprehensive migration policy. This is especially true in the context that many elements of a comprehensive migration policy have not yet been developed.

Non-governmental organisations active in the related fields of migration, refugee protection and development welcome the European Commission's Communication on "Integrating Migration Issues in the European Union's Relations with Third Countries" (December 2002) as an effort of laying down initial considerations in this regard.

The organisations signing up to this letter aim to contribute their comments, concerns and recommendations outlined below to the discussions initiated by the European Commission's Communication.

Goal failed

We are concerned that the Communication has ultimately failed in its goal with regard to the interrelation between migration and development. Although the analysis reflects the relevant points of concern, the conclusions fall far short from expectations by limiting the focus only on return policies and border control. Furthermore we fear that the Communication seeks to justify the extension of the impact of the fight against irregular migration beyond overshadowing the international protection regime to also taking hostage of the development sector. The signatory organisations regret that the Commission lost an opportunity and shifted the EU policy's focus to only short-term repressive and punitive measures rather than to balance this with refugee protection and development assistance. The EU's partnership with countries of origin should pave the way to develop a better balance between measures combating undocumented migration, measures protecting those in need of international protection and measures providing development assistance.

Protection is burdening others than Europeans

We welcome the Commission's acknowledgement that the major impact of migratory flows, both voluntary and forced, is found in the countries of the South, many of which are developing countries. We consider it a crucial step that the European Commission recognizes that the vast majority of refugees, 85 % of the total of 13 million refugees, are hosted outside the EU countries – with 9 million refugees living in developing countries.

Although some projects aimed at the integration of refugees in developing countries are supported by EU funds (Tanzania, Zambia are mentioned), this is not addressed as a matter of policy priority in the Communication.

In the European Union there are on-going discussions about the concept of protection in regions of origin and about the resettlement of people in need of international protection. We welcome the intention to increase programmes for resettlement to the EU that provide the possibility for persons in need of protection who have no access to effective protection nor durable solutions in their country of first asylum to reach Europe in a safe and legal manner. We stress, however, that this can never replace the duty of Member States to examine in a fair manner applications for asylum by claimants arriving spontaneously in Europe. These debates are not satisfactory when it comes to channelling necessary financial support to UNHCR and host governments to strengthen their capacity to provide effective protection in regions of origin.

A system of sharing responsibility and providing protection in an effective and fair manner on a global level is needed. Since the major impact of refugee and migratory flows is in certain less developed countries, the EU should work closely with UNHCR, host governments and civil society to ensure that sufficient resources are made available to provide protection and assistance to refugees and internally displaced persons in developing countries. We encourage the EU to increase its efforts towards creating a fair system for sharing responsibility on a global level, especially in favour of poorer countries. This should involve provision of financial support to countries of first asylum and provision of protection for refugees in Europe.

We would welcome if the EU Council supported in its conclusions, which are presently negotiated, positive elements on the development-migration nexus particularly for finding durable solutions for refugee protection including local integration and developing comprehensive approaches to addressing protracted refugee situations.

Confusing migration generating countries and least developed countries

Whilst many countries in Sub-Saharan Africa are among the most important recipients of development funds, and range among the poorest both in UNDP and World Bank statistics, they are not found among the highest migrant generating countries. We share the analysis of the Communication that the countries generating migration are to a great extent not the world's least developed countries (LDCs). We are, therefore, very concerned that this analysis is not at all reflected in the conclusions of the paper.

The Commission rightly points to this fact in its analysis, but fails to adequately acknowledge in the proposed actions.

The Communication further fails to acknowledge the impact of internal rural-urban migration on poverty in developing countries. In many poor countries

internal flows of migrants within countries are far more significant than international flows.

No conditionality between development aid and the prevention of migration!

On the contrary, the reader gets the impression that there is a real risk of making development funding conditional on migration prevention measures. We call upon the Commission to put far greater emphasis on ensuring that developing countries receive sufficient development aid from the EU in line with the EC's Development Policy.

We totally reject any conditionality in linking development aid to countries' willingness to cooperate on readmission clauses. We are convinced that investing in short-term prevention actions instead of long-term programmes of sustainable development - will prove disastrous for development policy objectives, and certainly for the poor and marginalised.

Development goals to be included in action

Economic globalisation has led to further marginalisation of those countries that are unable to compete effectively in the global marketplace. In the absence of fair and just rules, globalisation has limited the space for developing countries to control their own development, as the free market-oriented system makes no provision for compensating the weak. The gap between rich and poor is widening and the EU's policies and programmes have so far not changed this trend.

The European Union should direct its efforts towards reducing the inequalities that are exacerbated by globalisation: reinforcing strategies aimed at globally eradicating poverty, improving living and working conditions, creating employment and improving the coherence between the EU's various policy fields (development, trade, agricultures, foreign policy…); strategies that in the long term help to create a more equal world and to reduce forced migratory movements worldwide.

Any expansion of the mandate of development cooperation must therefore be based on the principle of burden sharing between developed and developing countries. This will require that the industrialised countries fulfil their commitment to contribute 0,7 % of the GDP to development.

Forced Migration and Voluntary Migration

We agree that root causes for forced migration need to be fought, however, we think that the concept of fighting the root causes of migration is over-simplistic and does not address the complexities inter alia of protracted refugee situations. The Communication rightly highlights development potentials in migration, like remittances of migrants, but proposes little action to improve and expand this potential. E.g. the development of trade through engaging migrants is only touched upon briefly, but not further developed. No suggestion is made of how

immigration and legal status requirements might be used to foster the involvement of migrants in bilateral or multilateral trade and development. We underline the necessity of continued research in order to develop concrete actions to promote the positive aspects of migration particularly in the link to development.

In this context, one should not overlook the fact that the migration of skilled workers can constitute a continental "brain-drain" problem, as it is often those people with a good education and potential that migrate internationally. We recommend that further proposals on the problems of brain drain be developed particularly for developing countries. These measures might include the development of incentives for national experts to stay in their country.

We believe, furthermore, that greater emphasis must be placed on the prevention of some of the key root causes of migration, including improved measures for conflict prevention and preventing forced migration. This should appear as a priority recommendation in the communication.

Return

We recognise the need for a joint approach regarding return measures as a part of a comprehensive migration policy. We thus welcome the opening up of this debate further to the Commission's Green Book on a Community return policy. We would like to support the principle of the priority of voluntary return, as stated in the Commission's communication. We therefore regret that this principle was omitted in the Council's Action Plan on Return.

With regard to readmission agreements, we would warn against the use of such agreements that aim at returning asylum seekers to countries where there might be a direct or indirect risk of refoulement. We call for the implementation of necessary legal safeguards that ensure respect for human rights law and international principles of refugee protection including the principle of non-refoulement.

Regarding another guiding principle in this field we would equally like to support the Commission's statement that "before the negotiation of any readmission agreement, the political and human rights situation in the country of origin or transit should be taken into account" and would like to express our concern that this principle was also omitted in the Council's decision.

Imbalance of action

While the analysis provided would warrant a vast field of programmatic action, the integration of justice and home affairs issues is limited to return and readmission policies. As we have stated above, the Commission has proposed immigration legislation, but this is not yet in place. As long as no legal alternative, be it short or long-term, is offered, potential migrants will easily be trapped by smugglers and traffickers, which offer an alternative way out of desperate situations.

The establishment of legal immigration is a prerequisite to promoting the development impact of migration. Only if migrants can travel safely and freely between their country of origin and country of destination will their potential to contribute to social and economic development be set free.

Protection of victims of trafficking and programmes for the prevention of trafficking

We are particularly concerned that, although the criminal organisations operate and recruit also in developing countries, the protection of victims of trafficking is not raised in this communication. Particularly with regard to a return policy for victims of trafficking, safeguards need to be internationally agreed. We would like to see components for protection of victims, reception and integration of migrants to be addressed with the same vigour as policing and control elements.

Conclusion

Development policy would benefit if it elaborated programmes addressing internal as well as international migration phenomena and supported possible benefits of migration and unfold the development potential of migrants. Only if migration policy is expanded and a European immigration policy is developed, these policy fields can adequately be combined.

Conditionality does not make sense, as the countries most in need of development assistance are not the most migrants generating countries.
Development aid should go to the countries most in need, and, foremost, to the people most in need. Any compromise on this principle is totally intolerable.
Signed:

ActionAid Alliance, Brussels, Belgium; Africa-Europe Faith and Justice Network, Brussels, Belgium; APRODEV – Association of World Council of Churches related development agencies, Brussels, Belgium; CARITAS Europa, Brussels, Belgium; CCME – Churches' Commission for Migrants in Europe, Brussels, Belgium; Church and Society Commission of the Conference of European Churches, Brussels, Belgium; CIMADE, Paris, France; CORDAID, Netherlands; Commission Justitia et Pax, The Hague, Netherlands; Diakonie, Austria; ECRE – European Council on Refugees and Exiles, London, U.K.; Eurodiaconia - European Federation for Diaconia, Brussels, Belgium; ICMC – International Catholic Migration Commission, Geneva, Switzerland; ISCOS-Cisl, Brussels, Belgium; JRS Europe- Jesuit Refugee Service, Brussels, Belgium; Pax Christi International, Brussels, Belgium; Platform for Information and Cooperation on Undocumented Migrants, Brussels, Belgium; Quaker Council on European Affairs, Brussels, Belgium; Save the Children, Brussels, Belgium

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