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**Contribution to the consultation on the
European Commission's Green Paper**

**“An EU approach to managing economic migration”
COM (2004) 811, Brussels, 11 January 2005**

1. Introduction

Our organisations represent churches throughout Europe - Anglican, Orthodox, Protestant and Roman Catholic - as well as Christian agencies particularly concerned with migrants and refugees. As Christian organisations, we are deeply committed to the dignity of the human person, the concept of global solidarity and the promotion of a society welcoming strangers.

We welcome the initiative by the European Commission to revitalise the debate on labour immigration into the EU. It is very timely that this debate should be reinitiated now, four years after the Commission's proposal for a directive on conditions of entry and residence of third country nationals for the purpose of employment. Moreover, we welcome the efforts of the EU towards a joint policy to manage migration and to provide for a common and transparent framework how to access the labour markets of the EU. This is beneficial for the migrants as well as for the EU, because it might reduce irregular migration and the migrants will have the chance to choose the country where they want to live and work not only according to economic but also to social factors (communities, family ties, language...). On the other hand we are aware that this proposal comes at a time, when there are high unemployment rates in some EU member states and solutions are sought for this problems. It might not be easy to convince the public opinion that economic migration is one aspect of the solution. Policy makers have a huge responsibility in sensitizing the public and promoting a positive attitude towards migration.

2. Summary of our policy messages

- **To provide full access to the EU-wide labour market for all EU nationals and all third country nationals legally residing in the EU**
- **Integration policies have to be an essential part of migration policies**
- **To study migration policies of third countries, including countries of origin and transit**
- **The public debate should be facts based**
- **To plan to gradually achieve EU harmonised labour immigration policy**
- **Labour migration policy should include solutions for undocumented migrants**
- **Harmonisation of workers' rights and social rights in the EU**

- **Ongoing monitoring and evaluation of the measures and stages of the harmonisation process**
- **Labour immigration for all sectors, avoiding (further) segregation on the labour market**
- **Residence permit implies access to labour market**

3. General remarks

Migration policies must respect the inalienable **dignity of each human being** and thus respect human rights. Security concerns have to uphold and may not undermine these crucial principles. The economic, social and cultural benefits of migration for the societies need to be recognised. A European Union based on common values such as “respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights”, “common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality” prevail, as stipulated in the Constitution for the European Union, will need to take these into consideration when developing policies on migration.

Our organisations advocate for a **full access** to the EU labour market for all third country nationals **legally residing** in the EU as a priority. For the purpose of this paper, when we refer to “third country nationals”, we mean third country nationals not residing in the EU. Hence, third country nationals legally residing in the EU should not be subject to admission measures and criteria.

An in-depth **debate** on regulating labour immigration to the EU, involving all stakeholders is necessary and will be helpful, if **based on facts** and not on perceptions and unfounded opinions. Therefore informing public opinion about the needs and benefits of economic migration will be of major influence on the debate. Decision makers play an important role in that process.

In that sense, we fear that an EU centred **utilitarian approach** might endanger a balanced debate. The “utilitarian approach” is too narrow as starting point for the debate on international economic migration if it is solely based on improving the economic and demographic situation of the EU member states, not at improving the situation of the migrant and her/his country of origin. Policy decisions based on such an approach and subsequent measures risk increasing discrimination and segregation of migrant workers. Referring to the decisions taken at the Thessalonica Council in 2003, “*the need to explore legal means for third country nationals to migrate to the Union, taking into account the reception capacities of the member states...*”, our organisations are convinced that if capacities are insufficient to cover the needs and demand, efforts need to be made to improve these capacities.

The establishment of open, transparent and accessible EU admission channels and procedures is vital to a **reduction of irregular immigration** and related phenomena such as trafficking in human beings as it contributes to the availability of understandable and readily accessible information on legal migration channels to would-be-migrants in third countries. We refer to a declaration by the European Committee on migration of the Council of Europe, which “*considers that the lack of open and transparent policies regarding labour migration often forces migrants to resort to claiming asylum. In this respect, it wishes to stress that the Migration Management Strategy and the Helsinki Declaration (2002) encourage European countries to develop channels of legal migration as well as to provide potential migrants with all the necessary information and assistance.*”¹ We also refer to the paper of the EU experts’ group on trafficking in human beings, which regards legal migration channels as an important instrument to reduce the risk of persons to be trapped by traffickers.

Economic migrants entering legally will not be forced to seek employment in the shadow economy and will be less vulnerable to abuse by certain employers, landlords and other so-called “service providers” of doubtful nature. It is encouraging that the green paper highlights “*the importance of ensuring that an EU economic migration policy delivers a secure legal status and a **guaranteed set of rights** to assist the integration of those who are admitted*”.

¹ See Council of Europe report 47th meeting of the CDMG, 12-14 May 2004, appendix IX

Admission procedures however are only one aspect of a well-functioning migration policy. Indeed, an active **integration policy is an inseparable element** of a successful immigration policy. Legal migrants will also be able to avail themselves of the introduction programmes for newly arrived immigrants mentioned in the green paper, including “language training, civic education and information on the basic norms and values of the host society.” Such programmes should include informing immigrants about their rights, and how practically to avail themselves of protection for those rights. Likewise, information campaigns should also target the local population so as to educate them on the root causes and parameters of such migration.

Criteria for admission should contribute to a balanced representation of migrants in the various economic sectors and job levels. This is an absolute must in order to promote integration between equals and to **avoid segregation in the labour market** between “first class” jobs (good working conditions, acceptable salaries) for EU-nationals and “second class” jobs for migrants. We refer to the EU “Lisbon strategy” which recognises the interdependence of economic growth, more and better jobs **and social cohesion**.

4. Degree of EU Harmonisation

Managed or not, economic migration from developing countries to the EU is a fact and, barring an unforeseen and dramatic shift in the world economy, unlikely to change for the next few generations. The long-term needs of European economies and the daily aspirations of people in countries whose economies cannot currently satisfy these aspirations ensure that this migratory flow will continue, whether the legal means for it exist or not. It is far better for third countries, for their citizens who migrate and for the EU-Member states if the EU establishes **policies to manage economic migration with the highest possible degree of harmonisation** as this will provide for better control, less costs for removal of irregular migrants, more contributions to the welfare system, decreasing the vulnerability of migrants, which can generate secondary costs.

The “horizontal approach” establishing a comprehensive common framework, including related policy fields, such as social affairs, integration and development, with a high degree of flexibility would best serve the EU, third countries and the migrants. A comprehensive system would not only be more accessible for individuals, but also easier for the governments of third countries to manage and monitor. It would greatly simplify cooperation agreements, and help countries of origin to support enforcement of migration regulations prior to departure.

We suggest a step-by-step approach to the harmonisation process, comprising the following steps:

- The **ratification** by all EU member states of the International Convention on the Protection of the Rights of all Migrant Workers and the Members of their Families.
- Full and unlimited **access to the EU labour market** for all persons already legally residing in the EU, including third country nationals.
- Further efforts for mutual recognition and assessment of professional qualifications within the EU and with third countries, e.g. in the framework of the EU Neighbourhood Strategy.
- **Regularisation schemes** for irregularly residing migrants.
- **Publication** of all national quota, labour migration procedures and requirements on EU websites.
- **Monitoring** and assessment of labour migration policies and practices in EU member states and third countries, including countries of origin and of transit.
- Conducting comparative **research and studies** on the effects and impacts of bilateral agreements between EU Member States and third countries on social rights and benefits of migrants.
- **Shift from bilateral agreements** between states to agreements between EU and third countries, starting with the EU neighbourhood countries in the Mediterranean and Eastern European regions.

- Shift from national to **EU labour immigration criteria** (EU-quota), increasing access to all economic sectors (reduce overrepresentation of migrants in unskilled and highly skilled jobs).
- Harmonisation of **workers' rights and social rights** in the EU.

To what extent should a European policy on labour migration be developed and what should be the level of Community intervention on this issue?

Poverty and lack of opportunities in the country of origin, in combination with the expectation for better economic perspectives abroad can instigate emigration. However, only restrictive immigration policies create **irregular** immigration. Therefore the EU will only be successful in its efforts to combat irregular migration if it acquires more competence in developing open, transparent and accessible mechanisms in its labour migration policies.

Should a European migration law aim at providing a comprehensive legal framework covering almost any third country national coming to the EU or should it focus on specific groups of immigrants?

European labour migration law should aim at providing a comprehensive framework. This framework should be the basis for migration agreements (determining the transferability of social rights and benefits such as pension, etc) between the EU and third countries. These agreements should include immigration quota for all types of employment, from unskilled labour to highly qualified jobs, short, mid and long term. Quota systems however may not limit existing rights, such as the right to family reunification.

Were the sectoral legislative approach to be chosen, which groups of migrants should be addressed as a priority and why?

We believe that sectoral legislative proposals would complicate the system and risks to contribute to an increase of irregular migration, particularly through the involvement of smugglers and traffickers.

Do you consider that other approaches – such as a European fast track procedure – should be explored? Could you propose other options?

As a principle, all admission procedures should be “fast-track” procedures. Hence all efforts should be made to develop a transparent, accessible and quick assessment procedure. Temporary work permits are worth being explored as accompanying measures.

5. Admission procedures for paid employment

Preference for the domestic labour market

Our organisations consider all workers residing in the EU as ‘domestic labour force’. We do see the need for preferential options for employment for persons already residing in the EU, including persons under subsidiary protection status. It is important in particular to improve training and qualifications of family members of migrants as well as refugees and persons under complementary protection status. Preference policies will have to allow for some regional differences, however. E.g. it may be more feasible for the employer as well as the employee if a third country national from a neighbouring state is employed than from a distant EU member state, e.g. in the Mediterranean region.

How can we ensure that the principle of “Community preference” is applied in an effective way?

First of all, the EU domestic labour market needs to be enhanced. Hence, the internal provisions vis-à-vis the new Member States should be lifted without delay and all persons legally residing in the EU should be given unhindered access to the EU wide labour market, including third country nationals.

This implies free movement of legally residing persons. Increasing the mobility of persons residing in the EU to access employment in other regions is also targeted by the Lisbon strategy. We see the need for further research in this field to identify the factors increasing or hindering mobility, such as language competence, housing, transferability of and access to social security, health insurance and services, housing, education.

The Community preference will in our view require similar mechanisms as transparent migration policies: more accessible information on employment options across the EU, on conditions of employment and recognition of qualifications. The EURES systems could serve as a basis and be developed further. More efforts with regard to communication and information are certainly needed.

Is the existing definition of Community preference still relevant? If not, how should it be changed?

It is reasonable to grant preference to third-country nationals already present in a Member State over newly arriving third country nationals, and it is desirable to extend this preference to those who have already worked for some years in the EU and then returned to their home country. This could encourage circulation of know-how if persons are given choices to come and work for a period, return to their home country for an other period without losing the acquired right e.g. as a long-term resident third country national.

Apart from long-term residents, which categories of third-country nationals – if any – should be given preference over newly arriving third-country workers?

Arriving family members of migrants already residing in the EU need to be given priority over other newly arriving third country nationals.

The reality of irregular migration should be fully acknowledged, while developing a labour migration policy. This requires an approach that takes into account the demand on the EU labour market for qualified as well as unqualified labour force. Regularisation schemes (including provisions for families with children, for medical reasons, for long-term residents who have no links with the country of origin and for persons tolerated in the country of residence) for undocumented migrants should be seen as a means to improve both the individual situation of the irregular migrant and be considered as one response to the demands of the labour market.

Would facilitating mobility of third country workers from one Member State to another be beneficial for the EU economy and national labour markets? How could this be put in practice in an effective way? With which limitations/facilitations?

Yes, by fully applying the principle of free movement of workers within the EU, also for third country nationals legally residing in the EU. Many migrants are more flexible and mobile; there is no sense in limiting intra European mobility of workers.

Admission systems

Should the admission of third-country nationals to the EU labour market only be conditional on a concrete job vacancy or should there also be the possibility for Member States to admit third-countries nationals without such a condition?

Access without conditions for all third country nationals legally residing in the EU and access based on quota for third country nationals residing in a third country should be given. Exceeding the quota should be possible and linked to concrete job-vacancy.

Do you consider that the economic needs test is a viable system? Should it be applied in a flexible way, taking into account for instance regional and sectoral characteristics or the size of the company concerned?

An EU labour immigration policy should aim at solving long-term problems. This is impossible if short term measures are aiming at immediate visible short term results and the debate on the issues at stake is postponed: preparing our societies to accept immigration as a normal and positive process all stakeholders can benefit from. A coherent and transparent EU immigration policy cannot be achieved by introducing an economic needs test in every individual case. The economic needs test should focus on the identification of trends on the labour market, offering a basis for mid-term recruitment schemes. (+/- green cards system).

It cannot be in the interest of sending countries to put migrant workers at the disposal of receiving countries' for the time they are needed there and take them back afterwards. Therefore, on EU level an admission policy for third-country nationals with a long-term perspective should be introduced. This could also to some extent mitigate the demographic problems in most of the EU Member States. For these reasons, admission policies as quota systems are welcomed and should be promoted.

Should there be a minimum time period during which a job vacancy must be published before a third-country applicant can be considered for the post?

Not for third country nationals residing in the EU already. A minimum time period may be necessary to guarantee the preference for persons residing in the EU. However, some flexibility may be agreed with social partners taking into consideration regional and sectoral needs and conditions.

In what other way could it be effectively proved that there is a need for a third country worker?

On the basis of labour market trends, agreements on quotas for third country nationals should be reached in consultation with social partners. Within these margins, employers ought to be allowed to employ third country workers, not residing in the EU.

Should the economic needs test be repeated after the expiry of the work permit, if the work contract – by means of which the third country worker has been admitted – has been/will be renewed?

Repeating the economic needs test after the expiry of the work permit would create a continuous instability of the person's status, which would have serious impact on his or her integration process. For the employer it would be negative because the person had been trained and became introduced to the job. It would be detrimental for a good functioning of the enterprise.

Should the possibility to grant a "job seeker permit" be foreseen?

Yes, we would strongly recommend such a permit.

6. Admission procedures for self-employment

All procedures and measures concerning the admission of third country nationals not residing in the EU to the labour market should contain guarantees that the system will not be abused by employers in terms of "false" self-employment situations to avoid the full application of workers' rights.

Self-employment, e.g. providing services, is a growing percentage of the economy in various sectors. A difficult balance has to be struck in this area between creating an economic environment stimulating entrepreneurship and service orientation and at the same time ensure that employment standards and workers' rights are not undermined by lower standards introduced through short-term service providers with lower social standards than those prevailing in the EU member state concerned.

Particularly in this field of admission procedures for self-employed activities including service provision, coordination mechanisms between labour offices, social partners and chambers of commerce may have to be further developed to agree on targets for the admission. On the basis of annually agreed targets, the relevant authorities could grant permits.

Should the EU have common rules for the admission of self-employed third country nationals? If yes, under which conditions?

For the sake of a dynamic economy, as well as for the enhanced freedom of movement within the EU, common EU rules for the admission of self-employed third country nationals would be desirable. These common rules must have an added value in contributing to preventing situations of exploitation of workers and upholding the social security systems in EU member states. This is vital for social cohesion in European societies. While recognizing the need for flexibility, permanent monitoring and coordination mechanisms are needed to adjust admission rates to economic needs and social requirements.

The concerns raised in the debate about the directive on service provisions in the EU with regard to standards apply also in this field. It will be important to guard social standards and at the same time create the conditions conducive to service providers.

Should more flexible procedures be possible for self-employed persons who wish to enter the EU for less than one year to fulfil a specific contract with an EU client? If so, which?

We would rather like to see faster and more flexible as well as more transparent procedures be developed for all persons wanting to enter the EU.

7. Applications for work and residence permits

Should there be a combined “work-residence permit” at EU level? What are its advantages/disadvantages?

Yes, granting access to the EU with a residence permit should automatically give access to the EU labour market and vice versa. The residence status of the worker should not be dependent on only one position. Otherwise, the employer attains undue control over the employee. In our experience a permit limited to an employer creates dependency and often leads to abuse and exploitation.

8. Possibility of changing employer/sector

Should there be limitations to the mobility of the third country worker inside the labour market of the Member State of residence? If so, which (employer, sector, region, etc.), under what circumstances and for how long?

Once access to the EU labour market has been granted, persons already working in an EU member state should have the opportunity to get a job in any other member state without undergoing unnecessary bureaucratic procedures. The encouragement of mobility within the EU could eventually lead to less people applying for unemployment benefits.

Changing the employer should be possible, once an initial contract has been served according to national regulations for determined contracts.

Who should be the holder of the permit? The employer, the employee, or should it be held jointly?

The employer should hold a permit to employ third country nationals not yet residing in the EU. The employee should receive a combined work-residence permit in order to protect him or her against the risk of exploitation by his or her employer. This permit should be issued on basis of the work contract.

9. Rights

In the absence of migration management, there are and have been several negative consequences for third countries and migrants, both economic and social. A significant shadow economy has evolved that trades in access to the EU and its labour markets. The fees paid to smugglers represent a kind of tax on the wages of these economic migrants. Many of the workers who enter the EU through these illegal channels do not have access to legal protection, or believe that they cannot avail themselves of legal protection. They are thus often exploited, for example paid below minimum wages. Particularly in irregular situations, migrants pay exorbitant cash transfer fees, even for regular migrants, international money transfer fees are too high a percentage. These represent a significant financial loss for the migrants, their family members, and, consequently, their countries of origin.

It is the responsibility of the EU to ensure that the rights of economic migrants are protected and that there is no force, fraud or coercion in the recruiting process. The question of compensating developing countries for their investment in human capital leaving for the EU ought to be addressed in migration agreements between the EU and sending countries, seeking mutual benefits for both sides while maintaining and safeguarding the rights and benefits of the individual migrant. A careful analysis of the cost-benefit of migration would be different for each country. Individual governments may find it desirable to encourage economic migration, while others may wish to restrict it. To provide and stimulate such research and analysis, and facilitating migration agreements and transparency could be the task of a migration observatory, which our organizations would strongly recommend to facilitate a common migration policy for the EU. In our view, such a migration observatory would be best placed in the Council of Europe, but would require active cooperation and support from the EU.

Special attention should be given to the rights of trafficked persons. We refer in this respect to the EU experts' group report on trafficking in human beings, which was presented to the European Commission in December 2004. We highlight in particular § 20 (p. 19) and § 23 (p. 20).

What specific rights should be granted to third country nationals working temporarily in the EU?

They should have equal salary and working conditions, social rights and protection as other workers in the same company and sector, independently of the term of their contract.

Should there be incentives – e.g. better conditions for family reunification or for obtaining the status of long term resident –to attract certain categories of third-country workers? If yes, why and which ones?

The Universal Declaration of Human Rights and the European Convention on Fundamental Rights protects the right to family life. Our organizations have advocated improved conditions for family reunification for all migrants, as family life is also important for social stability and integration in societies. Better conditions for family reunification are required for migrants to really enjoy the same treatment as EU citizens. In our view, a right cannot be used as an incentive.

Moreover, if labour migration is seen as a contribution to the solution of the demographic problems of ageing societies, migrants' families have to be invited. After maximum 5 years of temporary residence, third-country nationals should acquire the right to stay permanently in the EU.

However, incentives to attract migrants of certain categories may be necessary. But we would rather think of incentives like facilitating travel to and from the country of origin even for periods longer than 6 months without losing the status in the EU.

10. Accompanying measures: integration, return, cooperation with third countries

What kind of accompanying measures should be envisaged to facilitate admission and integration of economic migrants, both in the EU and in the countries of origin?

Integration policies should be considered an integral part of an immigration policy. In relation to measures promoting the integration of migrants, our organizations suggest in particular the following measures: Specific intercultural trainings for government officials; representation of migrants in

communities, interreligious dialogue and introduction programmes. Childcare and programmes to facilitate better access to the education system will certainly benefit integration as well. Migrants should be encouraged to fully participate in society, not only as a worker. For a comprehensive set of recommendations on integration, we refer to our joint comments on the Commission's Communication on Immigration, Integration and Employment of April 2004² and the Caritas Europa Paper: "Integration, a process involving all"³. Ideally, potential migrants should be offered comprehensive counselling prior to their decision to migrate.

In line with EU development policies, what could the EU do to encourage brain circulation and address the potentially adverse effects of brain drain?

Measures taken in the context of migration and development have to be considered very cautiously. Jointly with other organisations, we have addressed the issue of migration and development in response to the Commission's communication on "Integrating Migration Issues in the European Union's Relations with Third Countries" in April 2003. ⁴ "The European Union should direct its efforts towards reducing the inequalities that are exacerbated by globalisation: reinforcing strategies aimed at eradicating poverty, improving living and working conditions, creating employment and improving coherence between the EU's various policy fields (development, trade, agriculture, foreign policy...); strategies that in the long term help to create a more equal world and to reduce forced migratory movements worldwide." ... "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 their country of destination will their potential to contribute to social and economic development be set free."

Should host and home countries have an obligation to ensure the return of temporary economic migrants? If so, in what circumstances?

How can return be managed for the mutual benefit of host and home countries? Should a preference in terms of admission be granted to certain third countries and how?

Any return policy should be accompanied by sustainable reintegration schemes. Migrants could be offered a "group-insurance" system (contribution based on salary), enabling them to return home to enjoy the rights they have built up during their employment in the EU (as a pension or capital). It is also worthwhile to explore the possibility to encourage migrants to contribute to a "development fund", which would allow them to start e.g. a business upon return (micro-credit....), or to use remittances for productive investments in the country of origin.

We suggest to consider granting preference in terms of admission to countries respecting workers' rights, having ratified and respecting the International Convention on the Protection of the Rights of all Migrant Workers and their Families" and other relevant international conventions. These Conventions also provide the best framework for the return of migrants to their country.

² Comments on the Communication by the European Commission on Immigration, Integration and Employment (COM (2003) 336 final, April 2004, website: <http://www.ccc-kek.org/English/CCMEcommentsIntegration.pdf>

³ Available on the Caritas Europa Website www.caritas-europa.org

⁴ 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, 11 April 2003, available on the website: <http://www.ccc-kek.org/English/jointletter2003-04-02.pdf>

Could such preferences be linked to special frameworks, such as the European Neighbourhood Policy, pre-enlargement strategies?

Yes, but only once full and unrestricted access to EU labour market for ALL EU citizens is a reality, including legally residing third country nationals. Restrictive post-enlargement measures are not supportive of the concept of a European Union where all citizens are supposed to enjoy the same rights.

11. Conclusion

This green paper is a welcome indicator of the shift in the EU from migration interdiction and control to migration management. A comprehensive common, flexible and transparent framework for admitting economic migrants together with a scheme improving the situation in the country of origin, thus making return of the third-country national a real option is a positive step for managing migration for the benefit of the migrant, the country of origin and the country of reception. Careful thought will have to be given to the human and social consequences of setting up flexible migration schemes. It will be important to avoid that migration management policies create second class citizens or “service providers” who will be denied access to social benefits generally granted to nationals or long-term resident third country nationals. Therefore economic migration should go along with a set of rights of migrants, which protect them from exploitation, abuse and social exclusion.

It is an important step that the European Commission acknowledges the positive implications of migration on competitiveness and growth. At the same time the Commission should keep in mind that a European economic migration strategy is not only about the highly or specially skilled workers but has to focus on the low skilled migrants as well. The migrants should not be reduced to mere manpower.

While recognising that there is a clear need for labour immigration on all professional levels, we urge the EU member states to ratify the International Convention on the Protection of the Rights of all Migrant Workers and the members of their Families.

15 April 2005