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## ***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 28<sup>th</sup> February***

Presented by the Presidency to the Council of the European Union  
(Document ST 6621/1/02 REV 1)

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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.”<sup>1</sup> 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, 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<sup>2</sup>. 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.

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<sup>1</sup> “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

<sup>2</sup> 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.

## Regularisation

We regard the total exclusion of regularisation procedures when the communication states that "Illegal entry or residence should not lead to the 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<sup>3</sup>.

## 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.

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

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<sup>3</sup> 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.

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