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Report “Immigration and Asylum”
– “Green Paper on Asylum Policy”
Directorate General Justice, Freedom and Security
Commission of the European Communities
1049 Brussels
Belgium

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Green Paper of the European Commission on the future Common European Asylum System (COM 2007/301)

Dear Sir/Madam,

We would like to thank you warmly for this opportunity to state our position concerning the Commission's Green Paper on the future European Asylum System. For many years, the two major Christian churches in Germany have been pushing intensively for changes to the law concerning immigration and the protection of refugees. The Conference of German Bishops and the representative of the Council of the Evangelical Church in Germany (EKD) for the Federal Republic of Germany and the European Union have produced detailed statements, focusing particularly on the legal acts required for the implementation of European directives within these fields.

Various Christian organisations based in Brussels - Caritas Europa, the Churches' Commission for Migrants in Europe (CCME), the Commission of the Bishops' Conferences of the European Community (COMECE), the International Catholic Migration Commission (ICMC), the Jesuit Refugee Service (JRS-Europe) and the Quaker Council for European Affairs (QCEA) – have adopted a differentiated stance on the Commission's Green Paper. The requirements outlined in that document are supported expressly by the two major churches in Germany.

We would like to re-examine certain specific aspects, which are also of particular topical importance in Germany. For this purpose, we will also refer to the above-mentioned statement of the Christian organisations.

Re: Questions 1 - 4: Asylum procedure

The fundamental procedural guarantees must be granted to every asylum applicant, particularly access to legal remedies with a delaying effect. This also applies especially for accelerated procedures, such as at borders or in transit zones. It should not be possible for the Member States to dispense with procedural rights, which are imperative for a truly fair procedure.

Asylum applicants must be informed of their rights and the routine adopted for the procedure in a language with which they are truly familiar. If it is merely assumed that the affected person can understand the selected language, it has not been satisfactorily ensured that he will be able to assume his rights effectively within the asylum procedure.

Access to free legal advice and the use of translators must also be provided free of charge. In addition, a ruling concerning the asylum application may only be issued after a personal interview.

The churches in Germany have always spoken out against taking asylum applicants into custody. They also raise serious concerns relating to internment due to illegal immigration. In all circumstances, it must be ensured that internment is only considered as a last resort.

The churches have major doubts concerning the concept of safe third countries. They therefore rejected the introduction of this legal concept into German asylum law in 1993 and remain very critical of the inclusion of this concept in the directive concerning asylum procedures. Transfers to so-called safe third countries prevent individual cases from being examined, without the guarantee in each case that the third country is in a position to guarantee fundamental standards in terms of human rights and full compliance with the Geneva Refugee Convention. It cannot therefore be excluded that persons in need of protection may be deported to their country of origin where they were persecuted, in violation of the principle of non-refoulement by means of a chain deportation. However, for as long as the concept of safe third countries is retained, the affected persons must in all circumstances be provided with the legal means required to delay proceedings.

Re: Questions 6 - 9: Reception conditions

The provisions concerning access to the labour market should be standardised in order that asylum applicants obtain as soon as possible the right to earn their living by means of gainful employment. This not only eases the burden on public funds but defuses any reservations concerning asylum applicants. The act of earning a living for oneself is also an important source of self-esteem and psychological stability. In addition, being part of the world of work also promotes social integration.

The churches in Germany have repeatedly argued against the German Asylum Seekers Benefits Act, as the definition of various standards in order to guarantee a minimum subsistence level is not compatible with the recognition of human dignity, to which all people are equally entitled. After all, the obligation of the state to guarantee a minimum subsistence level is a direct result of

the obligation to protect human dignity. The churches are convinced that asylum applicants should therefore receive the same benefits as other people in need.

In fact, in Germany the Asylum Seekers Benefits Act leads repeatedly to considerable hardships. This is particularly true in the field of health care, in which Germany has so far failed to implement a number of statutory requirements of Directive 2003/9/EC. Therefore, in conflict with Art. 20 of the Directive, the Asylum Seekers' Benefits Act fails to grant any entitlement to asylum applicants, who have become victims of torture, rape or other seriously violent acts, even after the most recent changes to German immigration law. Nor is the *required* treatment always guaranteed, which is in conflict with Art. 15(1) of Directive 2003/9/EC, as Section 4(1) of the Asylum Seekers' Benefits Act limits this entitlement to acute illness and painful conditions. The health care required for the chronically sick is not guaranteed by this provision.

The guarantee of non-cash benefits, which visibly excludes the affected persons from the community and therefore aggravates their already precarious situation, is especially problematic. There is also the added factor that this stirs up prejudices within the local population. On no account should the already minimal benefits be reduced again in order to sanction illegal actions.

It has already been mentioned above that the internment of asylum applicants should cease, even in the case of illegal immigration. It is possible that the affected persons have become victims of arbitrary detention and torture, so that the psychological consequences of renewed imprisonment cannot be foreseen. However, if measures involving the deprivation of liberty for asylum applicants are imposed, the principle of proportionality must be strictly respected. Internment must only be considered as a last resort, if all less burdensome measures (registration requirements, etc.) have proved inadequate. The detention conditions must also take account of the fact that the affected persons are not serving a prison sentence. In all circumstances, they should therefore enjoy the greatest possible freedoms whilst in custody. Within this context, physical freedom of movement within the detention centre is of major significance, as well as visiting rights - not only for legal advisers and non-government organisations, but also for friends, relatives and pastors. Legal counsel and any necessary psychological care must be provided.

The duration of any internment must also comply with the principle of proportionality. It is the opinion of the churches that the maximum period of 18 months for custody pending deportation currently possible according to German law (Section 62(3) Residence Act) is clearly excessively long. On no account should certain categories of person, such as minors, traumatised persons, torture victims, parents with small children, pregnant women and older persons be taken into custody.

Re: Questions 10 - 14: Granting of protection

In relation to the German legislation concerning the implementation of residence and asylum directives issued by the European Union, the two major churches in Germany expressed concern in their joint statement of 14 May 2007 that the statutory requirements of the EU have not been adequately implemented in the field of refugee protection and subsidiary protection. As well as the identification of religiously motivated persecution, this also concerns the guarantee of subsidiary protection for victims of arbitrary violence. It would be a major achievement if the positive requirements within the context of the legal acts of the EU were implemented without any restrictions.

The churches support the demand of the Christian organisations that beneficiaries of subsidiary protection should also obtain extensive rights. As well as access to the labour market, this also particularly concerns the right of family unification. This right is only granted to beneficiaries of subsidiary protection to a limited extent according to German law (Section 29(3) Residence Act). Beneficiaries of subsidiary protection are also disadvantaged in terms of permanent residence status and access to integration courses, in comparison to recognised refugees and persons entitled to asylum. The two major churches in Germany have objected to this in the course of the procedure when the Immigration Act was passed.

A standard protected status, for which the possible structure is described by the Commission in its Green Paper, must not on any account lead to a loss of rights for recognised refugees. In Germany, the welcome improvement of status for GRC refugees enacted by the Immigration Law has unfortunately been accompanied by a loss of status for persons recognised as being entitled to asylum. While the latter immediately obtained a long-term resident permit according to the previous legislation, their residence permits are now initially limited to three years and are only converted into a long-term right of residence after a compulsory check after three years have elapsed, provided their refugee status has not been revoked. If a comparable levelling should occur as a result of the creation of a standard protected status, this would be very regrettable.

The two major churches in Germany support the proposal of the Commission to exclude certain categories of person from deportation. This should apply particularly for minors, handicapped and sick persons, older people, pregnant women, parents with under-age children and victims of torture and abuse.

In addition, the churches in Germany have pushed intensively for the acceptance of a right of abode provision, intended to benefit well-integrated aliens who have been living in Germany for several years with toleration status. Any person that has become well integrated into the society of the host country should not, as a matter of principle, be constantly threatened with deportation. This applies particularly for persons, whose future prospects in their country of origin are very unfavourable. In Germany, a similar provision has been accepted, which needs to be improved but is essentially to be welcomed. It is the view of the churches that a provision aimed at the above-mentioned categories of persons under community law should be advocated for the above-described purpose.

Re: Questions 17 and 18: Integration

Reference has already been made to the significance of access to gainful employment, particularly for social integration. Asylum seekers, in particular, should have this opportunity. Beneficiaries of international protection should be provided with comprehensive rights that enable them to build a new life in the host country. This should include a long-term right of residence, unlimited access to the labour market, the right of family reunification and an entitlement to benefit from integration initiatives. The call of the Commission for beneficiaries of subsidiary protection to be included within the scope of Directive 2003/109/EC concerning subjects of third countries entitled to long-term residence is expressly supported.

Re: Questions 23 and 24: Responsibility sharing

The application of the Dublin provisions repeatedly leads to humanitarian hardships. This includes the separation of families, internment of applicants or torture victims and unsatisfactory treatment of traumatised persons. In Germany, no legal remedies with a delaying effect exist in

relation to transfers, while guarantees for the protection of individuals included in the Dublin provisions (e.g. in order to protect the family unit) sometimes amount to nothing.

To this extent, the churches, as well as the above-mentioned Christian organisations, are very critical of the Dublin provisions. A system for the assignment of responsibilities for the examination of asylum applications must never be at the expense of the rights of asylum applicants. This obviously also applies to the “corrective burden-sharing mechanisms” for the distribution of persons to the Member States after international protection has been granted. These systems should be based on voluntary action and attach major importance to the entitled interests of the affected persons, particularly any family connections that they may have in individual Member States.

Re: Questions 27 - 29: Supporting third countries to strengthen protection

In no circumstances should measures to support third countries in order to strengthen protection make difficult or even prevent access to the asylum systems of the EU Member States. Appropriate measures can only serve to enhance the guarantee of refugee protection, which the EU States are bound to guarantee on the basis of the Geneva Convention.

Subject to this condition, the churches support as a matter of principle the plans of the EU to support regions of origin and transit, which currently accept the vast majority of refugees, with the development of their capacities for the guarantee of refugee protection. The aim of such measures must be to provide effective refugee protection by means of durable solutions (repatriation, local integration or resettlement in a third country), as has already emerged from the Communication from the Commission concerning regional protection programmes (COM 2005/388). It is the opinion of the churches that it is also particularly necessary to analyse the human rights situation in the states within the regions of origin and transit, in order to exclude any cooperation with countries that violate human rights themselves.

Within this context, the churches are also lobbying in particular for the resettlement of refugees in Member States of the EU, if local integration or repatriation is not possible. As the Commission has highlighted in the above-mentioned communication, the voluntary acceptance of refugees by EU Member States is a clear sign of solidarity with the regions of origin and transit, which currently accommodate the vast majority of refugees in the world.

Re: Questions 30 - 32: Resettlement

Concepts for the resettlement of refugees should be developed in close cooperation with the UNHCR, which assumes a very important role in this context. If necessary, the capacities of the UNHCR should be consolidated, in order to cope with increasing demands due to the strengthening of resettlement measures. Constructive use should also be made of the experience of non-government organisations, both in the regions of origin and transit and in the host countries. It is also important that the refugees themselves are included in the process.

The criteria for resettlement could be developed on the basis of Chapter 4 of the UNHCR Resettlement Handbook, which takes into account the individual needs of refugees in many respects. If an actual resettlement application from a country is rejected solely because of insufficient acceptance capacity, this should be made fully clear in order to exclude a negative prejudice effect for future attempts at resettlement.

Re: Questions 33 and 34: Addressing mixed flows at the external borders

The churches share the concern of the Commission that the practical implementation of measures to combat illegal immigration must not impair access for asylum applicants to protective mechanisms.

In this context, the further training of border security staff in compliance with legislation concerning refugees assumes great significance. Persons should also be assigned, who have been specially trained to deal with the needs of particularly vulnerable persons. The UNHCR should be given unlimited access to the asylum applicants located on borders.

The UNHCR has submitted a 10-point action plan for dealing with mixed migration flows, which is considered by the churches to form a good basis for further discussion.

We also refer to the above-mentioned statement of the Christian organisations located in Brussels, which contains more detailed responses to the points in case. We would be pleased if the considerations outlined were taken into account during the continued preparation of the future Common European Asylum System.

Kind regards,

Prelate Dr. Karl Jüsten

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