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**Comments**

**On the Communication from the European Commission  
to the Council and the European Parliament**

**Creating an Area of Freedom, Security and Justice: Assessment of  
the Tampere programme and future orientations  
COM (2004) 401 final**

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1. 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 individual, the concept of global solidarity and the idea of a society welcoming strangers.
2. We recognise that migration and asylum are complex phenomena that represent a major challenge for European society. Our common Christian belief and our common ethical convictions deeply commit us to safeguarding the human dignity of migrants and refugees as well as their families. Our advocacy work on behalf of migrants and refugees in European politics is based on the experience of our pastoral and social services dealing with migrants and refugees not only throughout Europe but worldwide. From the very beginning, we monitored and contributed to the debate on the Tampere programme, hence our assessment of the programme and the future orientation are a continuum.
3. On 2 June 2004 the European Commission issued the Communication "Creating an Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations" in which it evaluates the integration in the field of justice and home affairs and proposes guidelines for the forthcoming multi-annual programme to be adopted in autumn 2004. In addition the Commission published a Staff Working Paper on the same day that contains a table with past legislation and future action to be taken in the field of justice and home affairs. Given our experience particularly in migration and asylum we will restrict our remarks on the two documents to these fields.

**An Area of Freedom, Security and Justice, established in five years?**

4. The Commission states in its overall assessment that "substantial progress has been made in most areas of justice and home affairs" because the Commission has presented the main proposals called for at Tampere. On the question of migration and asylum we think

that a final assessment of the Tampere achievements will only be possible when all relevant legislation is adopted and transposed into national law. In the meantime, we hold that

- Not all areas have been treated with the same priority
  - Proposals have been watered down within the legislative procedure
  - Only the implementation of EU legislation in the Member States and the application on the national level will show whether European legislation will uphold and respect human rights and the obligations according to international treaties (including the Geneva Refugee Convention and related Protocol which all current EU member States have ratified) as agreed in Tampere.
5. The Tampere programme set out an ambitious goal for integration in the field of justice and home affairs: *“The EU should become an area of freedom, security and justice. Apart from a common EU asylum and migration policy this aim should be reached by establishing a genuine European area of justice, a union-wide fight against crime and stronger external action.”* Even though a comprehensive approach on asylum and migration was announced, taking into account not only aspects of justice and home affairs, we are convinced that other policy areas have not been sufficiently involved. The next multi-annual programme should therefore ensure that the future approach to migration and asylum would include more reflection and action on the social and economic dimension as well as the importance of development policies.
  6. According to opinion surveys quoted by the Commission, public opinion supports European action in the field of justice and home affairs and, in particular, a common policy on migration and asylum. These polls give only a tentative idea about public opinion concerning these policy issues; it is often the case that public opinion remains rather vague and indifferent. Like other NGOs, we see the need for the Commission to contribute more to a better public understanding of migration and asylum matters so as to foster a better informed public opinion, which does not fall back into prejudices.
  7. The terrorist acts on 11 September 2001 in New York and Washington as well as on 11 March 2004 in Madrid have changed the debate on migration and asylum substantially. While we agree that these events are signs of a major threat for the world and for the European Union in particular, the European Union has to react in an appropriate way to this challenge. However, we do not agree that measures assuring public security justify generally decreasing the protection of the rights of migrants and refugees as stipulated in international treaties like the Geneva Refugee Convention and the European Convention on Human Rights. We recognize that after the terrorist attacks the Commission has sought to find a balance between enhanced security concerns of European citizens and the integrity of migrants' and refugees' rights. However, we have to state that security aspects of migration have taken precedence in European policymaking.
  8. We fully agree with the Commission that the constraints in the current decision making procedures have hindered the development of a coherent European policy on migration and asylum. The unanimity rule in the Council has tempted Member States to stick to their own national interest even when a suitable compromise had already been found (e.g. qualifications directive). The shared right of initiative with Member States had the effect that national concerns were given priority over Tampere priorities (e.g. the Finnish Readmission clause, the German and Italian initiatives for deportation, the Spanish Action Programme on illegal migration). Hence, we support the full exploitation of the possibilities offered by the Amsterdam and the Nice Treaties in order to establish qualified majority voting in the Council and the co-decision procedure involving the

European Parliament as a general rule for decision-making in the field of migration and asylum as is foreseen in the new constitutional treaty of the EU. Hence we support the reforms foreseen by the EU Constitutional Treaty to be ratified. Nevertheless we should like to reiterate that more effective decision-making procedures alone do not guarantee migrants' and refugees' rights, decision-making has to be applied in line with obligations deriving from international refugee and human rights treaties.

9. The Commission uses several times concepts such as "solidarity" and "burden sharing" in order to promote Member States support for each other in migration and asylum matters. In this regard, we believe that the principle of solidarity should be understood in a wider sense including also non EU-countries such as countries of origin or third countries. Moreover solidarity is a principle that has to apply particularly to migrants and refugees. Equally we would appreciate if policy concepts do not exaggerate notions of burden sharing between the Member States but rather the notion of responsibility sharing in a global context.

### Migration

10. The Tampere programme had been a milestone in the sense that Member States agreed that a **framework for legal immigration** in the EU was necessary. However, the programme in this field is incomplete. For the largest group of immigrants, labour migrants, there is no common basis for admission and residence. While we appreciate that in spring 2004 the first instrument in this area was adopted, the Directive on minimum standards for the entry and residence for the purpose of studies, vocational training and voluntary services, the other proposed directives particularly for employment, could not be agreed among the previously 15 Member States. The repercussions of this lack of agreement on the approaches to issuing or denying visa are obvious, but not sufficiently discussed. While some Member States run huge labour recruitment campaigns for migrants from third countries, other Member States are not willing to engage in a common approach. A major consequence is that visas would be granted in one country but not in another, information on legal channels for those seeking to migrate for various reasons remains often dubious and vague. Even between authorities of Member States, information on admission policies and procedures of other Member states are not always known, how can ordinary persons then have an overview? Particularly with regard to the envisaged cooperation with third countries, for some of which the export of labour is a major foreign currency income factor, reliable and clear information on immigration and labour market options to the 25 EU member states would be essential.
11. Tampere agreed on a new approach to migration taking into account the demographic developments in the EU. The **demographic situation** of ageing societies is not only a feature in most of the previously 15 member states, but even more so in the 10 new member states. The present restrictions to free movement for citizens of 8 of the 10 new member states are not based on this reality. The lack of a common approach to immigration is detrimental to societies at large. In our view, the lack of a common vision on immigration results in less means to regulate migration, leaving it solely to market factors to the detriment of the social factors as well as leaving migrants in irregular situation unprotected.
12. The academic community broadly shares this analysis. But it relates to other fields as well: the lack of legal migration options results in more smuggling and trafficking which we witness every day. Thousands have lost their lives because they do not see alternatives other than to resort to smugglers and traffickers who seem to have to offer more than any organisation or authority can offer at the moment. We are convinced that a sound,

comprehensive immigration scheme is a key also to combating **trafficking in human beings**, reducing smuggling and irregular migration.

13. Therefore any future programme will have to take up immigration policies again. We are aware that this seems to be unpopular at the moment, as unemployment and reductions in public spending for the social sector lead inter alia to increasing racism and xenophobia in European society. Thus it may be important not only to harmonise the conditions for entry and residence, but also to launch programmes and information campaigns about the **positive effects of migration** and raise awareness about the social and civic participation of migrants and migrants association. We believe that migration needs to be understood as an abiding phenomenon in the European Union and we acknowledge that this is recognised in many Commission documents and proposals. We do realise however that more efforts by all stakeholders will be necessary to achieve that interpretation in public perception.
14. **Fair treatment of third country nationals** had also been recognised as essential for a comprehensive approach to a common migration and asylum policy. While we recognise some progress in the legislative framework, particularly through the adoption in 2000 of the two directives concerning the principle of equal treatment, many of the provisions do not apply to third country nationals.
15. We regret that the **fight against racism and xenophobia** is no longer as high on the EU agenda as at the beginning of the Tampere process. We observe with great concern a tendency, particularly in the security measures, to suspect third country nationals, most particularly nationals from countries with a Muslim majority, as potential security risks. This results in delays in issuing visa, e.g. for students, who risk losing their tuition fees which need to be paid in advance, experts not able to attend conferences and business persons losing market opportunities. Fair treatment requires that authorities seriously review their procedures on the treatment of third country nationals. However, this also requires that member states make the resources and training available, e.g. for intercultural and human rights training for border guards, consular employees issuing visa, aliens authorities in member states. More transparency will also have the effect of reducing the risk of corruption in this area.
16. The directive on minimum **standards for long-term resident third country nationals** is a positive development in a number of EU member states. However, this is also one example where the original proposals with high standards have been watered down in the negotiation process. Too many categories of third country nationals are excluded from this directive. We would hope that after a review of the transposition in member states' legislation and some practical experience, this instrument could be revised to be more broadly applied to all third country nationals.
17. The **right to family reunification** is certainly fundamental, and for churches this has been a cornerstone for a comprehensive migration policy. Family reunification is still perceived by many member states as an immigration instrument, because the number of immigrants for the purpose of family reunification is high. However, we have insisted, and continue to do so, that family reunification is a fundamental right, which needs protection and support. Beyond this aspect, family life is also important for integration into European society, as is shown in many reports and studies in member states. We would hope that this notion can be supported in projects through the INTI programme.
18. With the Tampere agenda, and the debates in member states about **integration of migrants**, integration has been taken up as an important part of a comprehensive migration policy. We value the view that integration is essential for European societies and thus appreciated the Thessalonica Presidency Conclusions, particularly to have

annual reports on integration across the Union. We are aware that this area is very new in the Justice and Home Affairs remit. While we see some logic in placing integration in the Justice and Home Affairs field, it requires improved cooperation with those responsible for social affairs and employment.

19. Christian organisations have stated on several occasions that integration is a two-way process. Therefore a future approach will have to tackle the challenge how to get **European society** more involved in the integration process. Whilst we recognise that the Commission in its analysis shares many of our views on integration, we ask that these views be translated into more concrete programmes in the future process.
20. We understand that in principle a comprehensive approach to a European migration policy has to include provisions such as the Framework Decisions against the facilitation of illegal entry and residence as well as the Framework Decisions against smuggling and trafficking in human beings. Equally, we propose that this legislation has to contain clauses **protecting humanitarian assistance** provided by Churches, Christian organisation and other NGOs in order to avoid unjust criminalisation and prosecution. We recognise that good attempts have been made in the first Framework Decision against smuggling and trafficking. Meanwhile we hold that the latter Framework Decision against the facilitation of illegal entry and residence is in practice still lacking sufficient humanitarian safeguards. The legal proceedings against the German boat Cap Anamur in Italy this summer are just one prominent example.
21. We are convinced that no migrant should be forced to **return** to his or her country of origin, if he or she had stayed legally in an EU Member State for five or more years. After such a long period of legal residence the migrant's legitimate interest to stay will outweigh the interest of the host country to enforce the return of the migrant. Hence, the migrant's interest deserves protection in such cases.

### Asylum

22. The objective to establish **minimum standards on the reception** of asylum seekers in Member States is a major element of a Common European Asylum System (CEAS). Unfortunately, the Reception Conditions Directive does not sufficiently reflect this objective and consequently does not contribute in a constructive way to the establishment of the CEAS. Due to the fact that the negotiations were based on the wrong perception that reception conditions would constitute an important pull factor, the **equal treatment** of all asylum seekers, irrespective of the Member State where they apply for asylum, is not guaranteed. This perception has led to sanctions such as the **withdrawal of reception conditions** and provisions based on a minimum level i.e. below acceptable standards. In combination with a denial of access to the labour market, withdrawing reception conditions is deliberately forcing the asylum seeker into begging, the black labour market or even criminality. Moreover, the provisions do not remedy sufficiently the administrative practices in certain Member States, **delaying the registration** of asylum claims and thus denying asylum seekers immediate access to reception facilities. Much will depend on how the provisions will be transposed and implemented in Member States. We insist therefore on close monitoring of the transposition into national legislation of the Reception Conditions' directive. At the same time we recommend a further clarification of the standards in order to ensure its implementation in line with international standards. Furthermore, the Directive formalises the unequal treatment of applicants **at the border** (documentation, material reception conditions, access to information and legal services ...).
23. We regret that justified expectations related to the "full and inclusive application of the Geneva Convention" have not been fully met. The initial proposals for the **qualification**

**directives** of the Commission have been watered down particularly with regard to complementary forms of protection. Like the UNHCR, we do not understand that persons granted a subsidiary protection status should not be accorded the same set of rights and benefits as persons granted a refugee status. While we regard the agreement on this directive as progress, we are in favour of an improved update of the Qualifications directive, clearly reiterating the commitment to a full and inclusive application of the Geneva Convention.

24. The Council at Tampere stressed the commitment of the EU to an "absolute respect of the right to seek asylum". The Asylum Procedures' Directive however does not sufficiently reflect this principle. The "**safe countries of origin**" concept for example provides fewer procedural safeguards to some asylum-seekers based solely on their nationality. The "**safe third country**" concept opens the possibility for Member States to shift responsibility for refugees to third countries, regardless of whether the applicants have meaningful links with such countries. The absence of an explicit right of all asylum seekers to remain in the asylum country pending a final decision (**effective remedy**) on their cases could lead to the removal of applicants to countries where they may suffer torture or other human rights violations and could in some cases amount to *refoulement* contrary to the 1951 Refugee Convention, the European Convention on Human Rights and other international human rights instruments. And finally, the fact that the Directive will leave critical issues such as **the detention of asylum seekers** and the right to legal assistance to Members States' discretion is a violation of the above mentioned "absolute" respect.
25. The directive on the status of persons under **temporary protection** was the first instrument adopted by the Council, and the only one adopted before 11 September 2001. It was a fairly good attempt to develop a balanced common EU-policy in response to major emergencies. Since the deadline of 31 December 2002 for the transposition into national legislation, no situation has emerged leading to an implementation of the directive. Consequently it has not been necessary to use the structural support means as foreseen in the ERF-I (2000/596/EC). However, we would recommend some modifications concerning access to labour market: limiting or denying access to the **labour market** is not compatible with the Lisbon agenda on employment; therefore we suggest that equal rights apply. Denying access to the labour market can lead to social exclusion and can heavily reduce the capacities of the people concerned to an eventual successful integration into the host society. **Freedom of movement** is limited to the responsible Member State. Since the Directive organises a EU-wide burden sharing, it is most likely that the people concerned will have relatives in different EU-Member States, and they should be allowed to move freely to visit them. The restrictive provisions are incompatible with the objectives of the Tampere agenda, "creating an area of Freedom, Security and Justice". With regard to the **duration of the temporary protection status**, we believe that a period of 2 years is a maximum, after which a durable solution should be found for the people concerned. At best, this could be a return, but if this is impossible they should be granted an unlimited residence permit. If the temporary protection can be lifted before the 2 years period, voluntary return accompanied with reintegration measures should be promoted, avoiding forced returns as much as possible.
26. Our assessment of the Dublin Regulation, providing rules for the determination of the Member State, responsible for processing the asylum application is rather negative. Taken into consideration the number of applications transferred between Member States, we question the effectiveness of the provision in terms of responsibility sharing as well as in terms of contribution to a swift processing of asylum applications. The regulation adds a period of uncertainty of up to six months to the asylum procedure. This is clearly not in the interest of the asylum seeker, nor of the Member States. This view is evidenced by

practice in different Member States who decide to process applications, although according to the regulation another Member state might be responsible.

27. For the future programme, our organisations are in favour of a **single asylum procedure** as a logical next step in the process. This initiative requires necessary changes in the adopted instruments in order to improve the coherence of the system. The scope of the Asylum Procedures Directive needs to be extended to all persons applying for temporary or subsidiary forms of protection. At the same time, the quality of decision-making, including the procedural guarantees for the people asking for international protection needs to be improved, in order to bring about consistency between Member States i.a. on recognition rates related to the same country of origin.
28. We would welcome the European Union to broaden its concept of refugee protection by additional protection instruments such as refugee resettlement to the EU and supporting capacity building in regions with high refugee populations. The Commission's communication and Council conclusions of the past two years have started to explore these fields, which we regard as necessary components for an approach, which shares the responsibility for refugees on a global level.

### **Irregular Migration**

29. The "fight against illegal immigration" has been dominating the migration and asylum agenda to a considerable extent. The analyses provided in the Communications of the Commission have taken note also of economic interest. However, the actions proposed have dealt largely with restrictive measures such as preventing illegal entry at sea and land borders, increasing technical capacities to detect illegal entries, and to return migrants without valid permits. As a consequence of these measures, smugglers have increased their profits while thousands of migrants, including many refugees, have lost their lives on their way.
30. We are deeply convinced that the EU has to ensure that people do not lose their lives at European borders, and therefore review some of these policies. This includes looking into administrative procedures making asylum seekers on EU territory de facto "illegal" even if they entered legally, reviewing visa issuing procedures in view of their accessibility for ordinary persons, and particularly the border procedures for asylum seekers at air and seaports.
31. We are deeply concerned about the increased use of detention of asylum seekers and irregular immigrants in the EU. Detention of asylum seekers has become an element of EU reception policy (cf. EU Council Directive on the reception of asylum seekers), detention of irregular migrants has become an element of EU (forced) return policy. We believe that detention should be avoided as much as possible, in accordance with UNHCR revised guidelines. In the other cases at least a maximum time limit for detention should be provided, and a minimum of rights of detainees, certainly not below prisoners' rights, should be ensured.

### **Fight against terrorism**

32. We understand that the fight against organized crime such as terrorism represents a major challenge for a common approach in justice and home affairs. However, European migration and asylum policies must not be regarded as a tool for the fight against organized crime and terrorism. Furthermore, we are concerned about the establishment of public-private partnerships not only in the "fight against terrorism" but also in the field of migration and asylum. Private companies are not bound by the national constitutions and international treaties as the Member States of the European Union are. The level of legal and political control of private action is much lower than the control

level of public action. In our view, the “fight against trafficking in human beings” in particular should exclusively score at criminal organisation but not affect irregular migrants. We strongly support the development of further preventive measures such as information campaigns, initiative to reduce push factors etc.

### **Conclusions**

33. The most recent figures of UNHCR show a decrease in asylum applications in the European Union. We believe that this is an opportunity to draw the attention of public opinion to the real and limited dimensions of the asylum issue. This should allow Justice and Home Affairs to return to the original “spirit of Tampere”, moving towards a Common European Asylum System respecting all international commitments related to the protection of people.
34. At the same time, the UNHCR figures show an imbalance in the responsibility between – the mainly new - Border States and the other member States. In order not to exacerbate this phenomenon we believe that an extension of the Dublin II Regulation would not be appropriate.
35. Immigration policy will have to be coordinated on EU level in order to achieve a common and coherent approach. Unless clear and transparent immigration possibilities provide a clear alternative to smugglers and traffickers, we fear to see an increase of persons being trafficked or losing their lives.
36. Our organisations request the European Commission, the European Parliament and the Council to make increased efforts to develop the second phase of harmonisation in an open and consultative way, inviting experts from Churches, Church-linked organizations and NGOs to contribute to the shaping of the Area of Freedom, Security and Justice for all, including people in need of international protection.

Brussels, 31 August 2004