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Joint Comments on the

Communication from the European Commission

On the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents

COM (2003) 323 final of 3 June 2003

1. The above-named organisations represent churches throughout Europe, Anglican, Orthodox, Protestant and Roman Catholic, as well as Christian agencies particularly concerned with migrants and refugees.
2. Our common Christian belief and our common ethical convictions deeply commit us to safeguarding the dignity of each human being, irrespective of his or her legal status. Many of our pastoral and social services, not only throughout Europe, but also worldwide, have a real knowledge of the shadow world of irregular migrants because irregular migrants often trust the services of Churches and Christian organisations more than public ones when seeking help in situations of distress. However, our experience is not only based on the daily work of our services, but also on several scientific studies, carried out in a number of EU Member States. Thus we regard our services in Europe and overseas as specifically qualified to make substantial contributions to the European Union's search for sustainable and durable solutions concerning the highly complex challenge of irregular migration.
3. It is against this background that we take our share in the common responsibility for irregular migrants, which the European Union and its societies bear, and consequently, we wish to comment on the European Commission's Communication COM (2003) 323 final on related issues. We will restrain our observations to those matters, which in our view deserve special attention.

EXECUTIVE SUMMARY

4. We welcome the Commission's intention to incorporate the phenomena of irregular migration flows in its comprehensive approach towards a common European Union immigration and asylum policy as we consider irregular

migration as a major challenge to the European Union: The less people have legal access to the European Union, the more people will continue to come through irregular channels and the more the market for smuggling and trafficking in human beings will grow.

5. According to the experience in the past decade, the Member States and the European Commission need to recognize that only repressive and restrictive policies and measures, especially within the framework of visa and return policies, did not lead to efficient solutions. This is first and foremost a matter of the undeclared labour market in the European Union, which serves as a major pull factor together with global economic disparities and violations of human rights, which are push factors in the countries of origin.
6. Against this background the European Union consequently needs to develop fundamentally new policy approaches: The European Union needs to invest substantial financial resources to combat the push factors, to open the labour market together with the social protection system for third country citizens, and to set up realistic programmes for voluntary return.
7. We do not deny the legitimacy and necessity of parallel repressive and restrictive measures. However, if they are taken, they need to obey to the principle of proportionality and respect human rights.
8. We acknowledge the difficulty of the Member States and the European Commission to obtain necessary insights in the shadow world of irregular migrants, which would help to cope better with the highly complex issues of irregular migration flows. We are ready and willing to provide assistance in this respect under the condition that this would not jeopardize the pastoral and social work of our different services and those who turn to them in situations of distress.

GENERAL REMARKS

9. As we underlined in our Comment of May 2002 on the Communication on a Common Policy on Illegal Immigration [COM (2002) 0672 final] and on the Proposal for a Comprehensive Plan to Combat Illegal Immigration and Trafficking in Human Beings in the European Union, we welcome the Commission's intention to incorporate the phenomena of irregular migration in its comprehensive approach towards a common European Union immigration and asylum policy. With regard to the recent communication, we are pleased to see that it takes into account certain realities, such as growing irregular immigration (by sea)¹, undeclared work², lack of information³, and root causes in countries of origin⁴. These considerations imply the acknowledgement that those measures, which were taken so far to stop irregular immigration, were basically inefficient.
10. We share this implicit assessment, and we welcome it because we are convinced that the development of an effective common policy on irregular migration can only succeed when those who are responsible for the development of a common policy take note of essential realities.

¹ COM (2003) 323 final, 2.2.

² COM (2003) 323 final, 2.4.

³ COM (2003) 323 final, 2.5.

⁴ COM (2003) 323 final, 3.

11. Our experience has also shown that neither restrictive visa measures nor reinforced border control measures or forced expulsion will lead to a decrease of irregular migration into the European Union. Irregular migration and irregular residence take on ever-new forms. Even worse, we feel that those policies, which were pursued to curb irregular migration contributed considerably towards creating a growing market for smuggling and trafficking in human beings. Combating trafficking in human beings needs all possible efforts, but the measures need to be effective at various levels.⁵
12. We regret that the Communication COM (2003) 323 final on the Development of a Common Policy on Illegal Immigration, Smuggling and Trafficking of Human Beings, External Borders and the Return of Illegal Residents does not sufficiently differentiate between the numerous and different groups of irregular migrants. In particular, it is not explicitly dealing with refugees; according to our sources a great number of irregular migrants are refugees, and thus we are particularly concerned about this target group of the respective policies. Another group of grave humanitarian concerns are family members of migrants who legally reside in the European Union. Current legal rules make it impossible for many of them to reunite legally with their family in the European Union; this concerns especially cases of elderly and sick family members who would be left to their fate without the presence of close relatives
13. We are convinced that only thorough differentiations between the various groups of irregular migrants will render the European Union capable of developing a successful policy on irregular immigration, smuggling and trafficking in human beings and the return of irregular immigrants because these differentiations would enable the European Union to act appropriately, i.e. according to many and very different target groups. For each of these groups sophisticated and refined policies are imperative, if the European Union and its Member States want to manage irregular migrations flows successfully.
14. We agree that irregular immigration needs to be looked at as a long-term phenomenon,⁶ and it will be extremely difficult to find solutions, which will satisfy the legitimate interests of the European Union as well as of those who already immigrated and those who are prepared to take the risks of irregular migration. We are convinced that irregular migration will hardly be controllable, only to be channelled. Churches and Christian organisations are ready to assist in this European as well as global challenge.

COMMENTS ON SPECIFIC ASPECTS

Introduction

15. The Commission applies the term of **“management” of migration flows**. We welcome the change of terminology towards less criminalizing language. As we already pointed out in our Joint Comment of May 2002 on the Commission’s

⁵ See also our Comments of May 2002 on the Commission’s Communication on a common policy on illegal immigration and the Comments on the Draft Directive for a short-term residence permit for victims of trafficking and smuggling

⁶ Cf. “long-term benefits”, COM (2003) 323 final, 2.2; “spread over a period of ten or twelve years”, COM (2003) 323 final, 2.1.

Communication on a Common Policy on Illegal Immigration⁷, the vast majority of irregular migrants are neither criminals nor eager to benefit from the social systems in the Member States. Insofar it would only be adequate, if the European Commission abandoned the notions, which nourish the criminalisation of irregular immigrants, such as “combat” or “fight”⁸. However, insofar as the term of “**management of external frontiers**” respectively “of borders” is applied, it would seem more appropriate to speak of “border police management” or “border guard management”, as long as the respective border control policy consists mainly in optimising operational measures of police forces.

16. We agree with the Commission’s opinion that “**it is advisable for the Heads of State and Government to review the progress made in the last few months**”. We would go even further and recommend a review of the past decade which would help the Heads of State and Government to realize that repressive policies and measures alone will not bring about efficient solutions. Furthermore, they also nurture dangerous side-developments, which are not acceptable, such as an increasing readiness and willingness among potential migrants to take enormous risks to their property and even lives.
17. The Commission aims to “**create a basis for a follow-up process which will be given shape with the drafting of an annual report**”. We support this objective because we are convinced that within such an annual report there will be the necessary space for a thorough and critical analysis of current policy approaches, for more differentiation insofar as irregular “immigration is multifaceted in terms of the individuals concerned” as the Commission already stated earlier⁹, and for the incorporation of insights gained in praxis by relevant institutions in societies as well as by scientific research on irregular immigration. Concerning the latter, we explicitly encourage the Commission to consider regular scientific accompaniment while drafting the annual report because we know from our own experiences that close co-operation with relevant sciences contribute to develop realistic policies.

2. POLICY DEVELOPMENTS

2.1. Visa Policy

18. We share the Commission’s careful assessment that **visa policy “can” significantly contribute to the prevention of illegal immigration**. However, an increasingly restrictive visa policy might easily lead to the enlargement of the counterfeiting market. The number of fake visas might not only increase, but counterfeited visas might also get ever more expensive, i.e. those who have to resort to counterfeited visas, would get into debt to those who procure or pre-finance fake visas. Such high indebtedness would again strengthen various criminal sectors. In that respect we are particularly concerned about refugees and asylum seekers as well as their family members who often cannot travel with a valid visa because of emergency situations or because they must hide from their country’s public authorities who not rarely observe embassies and consulates. In

⁷ [COM (2002) 0672 final], as well as on and on the Proposal for the Comprehensive Plan to Combat Illegal Immigration and Trafficking in Human Beings in the European Union [Council Document ST 6621/1/02 REV 1]

⁸ e.g. COM (2003) 323, 2.2.

⁹ COM (2001) 671 final

any case, we need to stress that any visa policy may neither result in the violation of the spirit underlying Article 31 of the Geneva Convention nor in a hidden offence of the “refoulement” prohibition of Article 33 of the Geneva Convention.

19. The Commission informs about the **Visa Information System, C-VIS** as well as N-VIS, and **its investments costs which range from about 130 million to 200 million Euros, and which could be spread over a period of ten or twelve years.** We understand that irregular immigration needs to be regarded as a long-term challenge. However, the development of C-VIS and N-VIS is not only extremely expensive from a financial point of view; it also runs the risk to lead to a sell-out of fundamental individual freedoms. Legitimate visa control systems must not violate the individual’s right to respect for her or his private life as guaranteed by Article 8 of the European Convention on Human Rights. As far as visa regulations concern nationals of certain, selected countries, attention is required so that these regulations do not discriminate on the ground of national origin as provided for by Article 14 of the European Convention on Human Rights. These considerations are also valid in the case of linking the SIS II to the VIS. With regard to the tremendous costs of the VIS or the SIS-VIS the Communication is lacking a reference to investments in the countries of origin in order to tackle the root causes¹⁰. It would be interesting to examine whether equivalent financial investments in root cause programmes could lead to more durable solutions. We agree with the Commission that the decision on the **further development of the VIS should depend upon strategic orientations** to be given **by the Council** and only then **the Commission will take the necessary steps.** The Heads of States and Governments will have to justify such high expenditures for a rather uncertain outcome.
20. Within the framework of the **creation of common administrative structures for the establishment of common EU visa issuing offices** the Commission points to deficits in co-operation. It must be added that persons from third countries who arrive at the external EU border are often the first victims of this lack of administrative co-operation. When there is a doubt about the visa, in praxis they are often refused entry to the EU territory. Often migrants do not receive correct and comprehensive information about the range of documents required for entry. As a consequence they lack the necessary documentation, for example financial liability attestation, and hence they are not admitted to EU territory. Time and again, we hear about cases where even persons holding a valid visa are not granted entry. The lack of information, and the high hurdles for obtaining visa drive a number of migrants into the hands of smugglers who “offer a service” which otherwise seems out of reach.

2.2. Border Control Policy: Towards the development of a Common and Integrated Policy for the management of the external borders

21. As a result of the **evaluation of the operational co-ordination and co-operation** the Commission raises questions about the **Common Unit for External Borders Practitioners** and the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) and suggests that **certain more strategic co-ordination tasks could remain with SCIFA**, and that **the more operational**

¹⁰ cf. COM (2003) 323 final, 3.

tasks could be entrusted to a new permanent Community structure able to exercise the day-to-day management and co-ordination tasks and to respond in time to emergency situations. We support this stimulus because we feel that within such a new structure it would be easier to implement common ideas, such as ensuring “training for the boarder guards about the respect for the rights of, and the protection of asylum seekers” and the inclusion of existing best practise in the training, ideas which we brought forward in our Joint letter to the Danish Presidency, as well as to the Council, the Commission and Parliament of December 2002¹¹.

22. The Commission noticed that **increasing illegal immigration arriving by sea raised political awareness** for the **external maritime borders**. With due respect to necessary external maritime border controls, we must underline that those may by no means lead to ever more fatalities. On the contrary, maritime border controls, like any border control, must achieve their most noble aim first: the prevention of maritime casualties. We trust that this will be taken into account in particular by the competent authorities of those Member States which will control the Mediterranean region.

2.3. Return Policy

23. **The credibility and integrity of the legal immigration and asylum policies are at stake unless there is a Community return policy** on irregular migrants. We would like to add, though, that ultimately this is a question of the quality of the return policy, which has to fulfil the requirements of credibility and integrity itself, too.
24. We are convinced that a credible return policy must consider the large market for undeclared labour, which is the most important pull factor for irregular immigration¹². The European Union should face the existence of a large undeclared economy and urgently develop a system of minimal social protection for undocumented workers. We are very concerned about proposals **enhancing operational co-operation among Member States**, including the **German initiative for assistance in cases of transit for the purposes of removal by air** and the Italian proposals of September 2003 for joined charter flights for expulsion. Grouped expulsions, whether by air, or over land, have to adhere to human rights standards. Particularly if grouped expulsions follow immediately from accelerated procedures without proper case assessment of asylum seekers, they may become collective expulsions and thus violate the European Convention on Human Rights Fourth Protocol art. 4. We appreciate that the Commission has **prepared guidelines on security provisions for removals by air, which are crucial in order to safeguard a smooth and safe return of the persons concerned**, and we agree that **a clear legal basis for the continuation of the removal operation** is needed, and that **a binding regime of mutual recognition and common standards needs to be established** for the purposes pointed out in this Communication. We thus support the Commission’s intention to take the initiative to prepare a **proposal for a Council Directive on minimum standards for return procedures and mutual recognition of return decisions** which should, from our point of view, incorporate effective

¹¹ Letter ref. the Communication towards integrated management of the external borders of the Member States of the European Union [COM (2002) 232 final]

¹² Cf. COM (2003) 323 final, 2.4.

means of legal redress against deportation decisions. We also see the necessity to improve the process of getting proper return **travel documents** for irregular migrants. The strengthening of VIS could certainly contribute to the credibility of a return policy. But, as the Commission states itself, this measure would be preconditioned by the fact that the persons concerned would have applied for a visa.

25. We always stressed the principle of voluntary return. In this context we very much support the Commission's earlier statement that voluntary return should be given priority over forced return¹³. Consequently we are amazed that the principle of voluntary return is not explicitly mentioned in this Communication. We recognize the Commission's encouragement of **integrated country-specific return programmes**, which is an approach that we basically support. Still, we need to recall that voluntary return programmes were often carried out with returnees who had not been prepared for their return, and towards countries of origin, which had not been ready for the reception.
26. As much as we agree with the Commission that the credibility and integrity of the legal immigration and asylum policies are at stake unless there is a Community return policy on irregular migrants, we have to underline again that they are even more at stake unless there are common, transparent, flexible and just asylum and migration rules of legal access to the European Union.
27. The Commission states that **only** the swift **implementation** of all measures as set out in the Council's **Return Action Program of November 2002 will ensure that the message will get across that immigration "must" take place within a clear legal procedural framework**. This has to be complemented by the equivalent message that immigration also "can" take place within a clear legal procedural framework.
28. As none of the immigration proposals by the Commission have yet been adopted in the Council, we see that the integrity of a Community migration policy is severely hampered.
29. The Commission states that **all efforts to fight illegal immigration are questionable, if those who manage to overcome these measures succeed finally to maintain their illegal residence**. As we expressed earlier in our Comment of May 2002¹⁴, we regard such an approach as not realistic and as not helpful. For humanitarian reasons alone many formerly irregular migrants were and legally had to be regularized in the European Union. The Commission itself favours clear and transparent channels available for economic migrants to fill permanent or temporary job shortages. Therefore, the Commission itself should consider certain regularisation measures taking best practice in Member States into account. It does not make sense to create and promote mechanisms for the return of people who are integrated in European societies and often essentially contribute to the European economy in working positions and working conditions, which EU citizens voluntarily leave to those third country nationals.

2.4. Key flanking measures

¹³[11] COM (2002) 0175 final

¹⁴ Comment on the Communication on a Common Policy on Illegal Immigration (COM (2002) 0672 final)

30. We regret that within the framework of the EU's **fight against smuggling and trafficking in human beings** still no distinction between "smuggling" and "trafficking" is made according to the Palermo Protocols to the UN Convention against Transnational Organised Crime of December 2000.¹⁵ We disagree with the Commission that **smuggling and trafficking are mainly controlled by criminal networks**. According to our sources this is true for trafficking in human beings. Smuggling, however, is only partially controlled by criminal networks. To a very large extent it is operated by commercial and non-commercial, i.e. private, networks, too. **Dismantling** these will be practically impossible because there are no "victims" who would want to co-operate with the competent authorities. While we appreciate that the directive granting a **short-term residence permit** to victims of trafficking has been agreed upon by the Council, we remain convinced that stronger safeguards for trafficked persons are required¹⁶. We appreciate that the Commission's work in this area will be guided by the **Brussels Declaration of the European Conference on Preventing and Combating Trafficking in Human Beings**.
31. We welcome the Commission's statement that **undeclared work** tends to act as a pull factor, and we are grateful that the Commission recognises that the employment of irregular migrants **can lead to exploitation and insecurity** because this creates awareness and sensitivity for humanitarian aspects of irregular migration.
32. Therefore we, too, favour clear and transparent legal channels available for economic migrants to fill job shortages, although this can only be one element in a comprehensive policy. We are convinced that irregular migration takes and will take place to the same extent as the EU labour market offers undeclared low pay work. Against this background we will further observe the follow-up of the Commission's **Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities**¹⁷, of which the Commission announces that it **will play an important role** in this challenge. At the same time we support the Commission's efforts of setting **new targets** in the **employment guidelines**, as the phenomenon of undeclared work needs a still broader approach. Not only national legislation on regular levels of wages in the Member States are involved, but also fundamental societal values, such as the respect of the rule of law, co-responsibility for the social well-being of the Member States and their society as well as honesty as a basic virtue.

2.5. Operational co-operation and exchange of information

33. We agree that regarding **statistics, the available information is not sufficient**, and we understand that the Commission wants to improve this situation, be it through the **CIREFI group, ICONet, immigration liaison officers** or **Europol**. However, these means will always get only information, which is available to public institutions. This is not without importance, but neither is additional

¹⁵ Cf. our Comments on the Communication on a Common Policy on Illegal Immigration (COM (2002) 0672 final), May 2002

¹⁶ see our Comments on the Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities, (COM (2002) 71 final), June 2002

¹⁷ COM (2001) 386 final

information. We stress this aspect because we experience that information by public institutions tend to criminalise irregular immigrants as those institutions normally get in touch with irregular immigrants only in relevant areas (e.g. police, detention, prison). These contacts do by no means provide sufficient information **for a proper monitoring and evaluation of legal and illegal immigration policy**. Against this background we suggest that the Commission invites to an extensive hearing of those who can provide additional information. The Commission might also want to examine the possibility of establishing or/and supporting “safe contact offices” in the Member States, which could procure lacking information without jeopardizing irregular migrants.

3. PARTNERSHIP WITH THIRD COUNTRIES

34. We welcome the expression of “**partnership**” because it sets basic standards for mutual relations. Insofar as these countries¹⁸ **often find themselves confronted with illegal and transit migration**, they are in fact real partners who share a common problem. “Partnership” in its true meaning also implies that the Commission does not think of a policy that solely aims at maintaining the affluence of the present Member States. **Pursuing the constant long-term goal to develop an integrated, comprehensive approach to tackle the root causes of illegal immigration** may in fact lead to a concept which defines the management of migration flows as an instrument for more justice between East and West, North and South against the background of the EU as an “area of freedom, security and justice”. However, as long as there is no significant action and success in eliminating the root causes of irregular migration, we doubt that **reinforcing the external borders** will contribute to a solution. Many countries of origin make a large profit from the fact that their citizens work abroad and send money home in order to assure the survival of their families and relatives.
35. The Commission raises the issue of the **new neighbours in the enlarged European Union who are to be given special attention**. This implies recognition of the fact that irregular migration movements underlie certain chain mechanisms, which are extremely difficult to manage, i.e. for example when nationals of acceding countries already irregularly live and work in the EU, and consequently nationals of non-acceding countries irregularly immigrate to the acceding countries in order to fill existing low pay job shortages there.
36. **Migration related issues are increasingly taking a role in external relations policy**. Although the EU needs to continue its respective efforts, we have concerns about this. Integrating migration issues into external relations should not mean what can amount to thinly disguised coercion or penalisation of countries of origin or transit when they are judged not to cooperate with the wishes of EU Member States. It should also not mean that migration issues dominate over development or external relations concerns. We are especially critical of readmission agreements and how they are currently drawn up. We favour instead true migration agreements, which take into account the interests both of country of origin and host country. Any readmission agreement must apply in accordance with international human rights standards and any future readmission agreement must maintain the focus on the individual concerned: they should be drafted and implemented under a human rights framework

¹⁸ The Commission is only referring to nine countries; COM (2003) 323 final, 3., footnote 2

assuring that the human rights of the individual being returned are respected. We agree with the UNHCR that an important main consideration with any readmission agreement is that it be structured to avoid “orbit” situations, and that bilateral readmission agreements should not be used to return asylum seekers, even where this is technically possible.

4. THE APPROPRIATE FINANCIAL RESOURCES AND BURDEN SHARING MECHANISM

37. We share the Commission’s concern about the **clear disparity between the political importance given in the EU to the JHA policies and the financial resources of the Community budget allocated to these policies.** From this we conclude that the de facto importance given in the EU to JHA policies to manage irregular migration flows is far lower than expressed in public speech. We cannot but wonder, whether the Member States have a real interest to manage irregular migration or not because money still is among the most expressive language of the European Union and its Member States.
38. Burden sharing between Member States and the European Union for the management of external borders is an expression of solidarity, which we share. We, however, would prefer to speak of “responsibility-sharing”¹⁹ which should not only apply to the management of external borders, but also to further management measures.

5. CONCLUSIONS

39. Thus we support the Commission’s conclusion that the **principle of solidarity should be reinforced and consolidated particularly with regard to financial allocations.** However, financial allocations should be balanced between cooperation with third countries (including measures to tackle root causes of irregular migration), control measures and legal access to the EU labour market. We therefore would like to see more attention given to economic measures.
40. Regarding the **preliminary stocktaking exercise** of this Communication we assess that the Commission continues to make progress in its analysis of irregular migration. We are convinced that action aiming at results in reducing root causes of irregular migration is urgent. This aspect is still neglected. Instead, highest priority is given to achieve immediate results in repressive police and border control management - an approach, which is bound to fail as the past has proved.
41. Finally, we wish to urge the Commission to broaden its perspective. Dealing with irregular migration means dealing with human beings in distress. European values certainly require rule of law and law enforcement, but these have to respect human rights and the dignity of every person at all times. We would wish that the European Commission, European Parliament and the Council of Ministers could bring about a more balanced approach.

Brussels, January 2004

¹⁹ Cf. COM (2003) 315 final, 6.2.