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Der Bevollmächtigte
des Rates der EKD bei der
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Contribution to the consultation on the future of Home Affairs policies: An open and safe Europe – what next?

I. Introduction

Contrary to the past the European Commission decided not to elaborate this time a fully fledged five year programme with a detailed action plan in the area of justice and home affairs. Instead it is aiming at strategic guidelines for the future of the Justice and Home agenda. We generally welcome this more pragmatic approach given the fact the EU is still facing an unprecedented economic crisis putting some of its core principles at stake and allowing populists and even extremist voices to determine the sensitive debate on issues like asylum and migration. Nevertheless, we hope that the Commission will take advantage of the next five years to remind Member States of their duties and responsibilities and will not cease to use all the tools and instruments at hand, but also the right to launch legislative initiatives, to overcome protection gaps and incoherent legislative frameworks.

We are grateful to have the opportunity to comment on possible future initiatives in the Home Affairs field, but deplore that there is no real chance for the European Parliament to participate in the development of the planned guidelines. Given the fact that the Lisbon Treaty considerably strengthened the role of the Parliament as a co-legislator in the JHA field this lack of involvement is not living up to the democratic rules in place.

Our statement will mainly focus on the areas of asylum, border management, migration and the right to free movement.

We agree that the next years will primarily important when it comes to **implementing the current aquis**. As the examples of Greece, Hungary or more recently Bulgaria unambiguously underline a focus on a complete and timely implementation of the existing legal instruments in the asylum area is very much needed and must become a top priority for the Commission. But it is not only about enhancing monitoring capacities, but also about the readiness to declare sanctions vis-à-vis Member States who continuously fail to guarantee the EU minimum standards.

Civil society and the Churches in particular are very much committed to **monitoring** how the asylum law is applied in practice and to feeding in their expertise and knowledge in working with asylum seekers, beneficiaries of international protection and migrants. Therefore a

continuous **exchange** between the Commission services and NGOs and Churches in this political area should be fostered and further strengthened in the future.

Quality of decision making and implementation is a key component for achieving a comprehensive and coherent legal system. Regular joint training, practical cooperation, exchange with NGO experts, regular and independent evaluation of the existing instruments and the sharing of best practices must therefore become standard tools of quality assurance in the future.

As the debate about the right to free movement of workers underlines a clear and understandable **communication** strategy about the existing legal instruments is also very important in order to counteract populist rhetoric and anti-European polemic. The Commission should therefore prioritize exchange with legal and administrative practitioners and secure sufficient funding for meetings of Commission civil servants with representatives of public authorities and NGO communities in the Member States. Moreover the Commission should pro-actively engage in communication campaigns on the existing legal instruments and their impact - be it in the asylum or the migration field.

II. Asylum policies

As the Lampedusa tragedy of last October illustrated tragically European Asylum and Migration policies need a re-orientation. This means that human rights and above all human dignity must be respected as core governing principles.

1. CEAS

The agreement on a Common European Asylum System was an important achievement given the difficult political climate. Nevertheless the aims which were proclaimed in the Green Paper on the future Common European Asylum System in 2007¹ remain very valid for the future: “to achieve both a higher common standard of protection and greater equality in protection across the EU and to ensure a higher degree of solidarity between EU Member States.”

We are especially concerned about the failure of Member States (Greece, Hungary, Italy or Bulgaria to name only a few) to comply with the rules of the **reception conditions** directive and to provide **fair and efficient asylum procedures**. It will be important to ensure full compliance with the standards of the respective directives in the next years to underline the credibility of the European Asylum System.

Moreover detention of asylum seekers should not be a part of the reception of asylum applicants. The Protestant Church of Germany has always stressed, that a person seeking international protection should not be detained only on the ground of his or her application for asylum. Nevertheless **detention** is still applied to an inappropriate extent and often completely unnecessarily. Member States should be encouraged by the Commission to consider less far-reaching **alternatives** like non-custodial measures.

¹ COM (2007) 301final, 6.6.2007.

Under no circumstances minors must be detained. Being detained can never be in the best interest of the child: Confining children to living in detention facilities is a disproportionate measure and has major negative impacts on their mental and physical health. In any way Article 37 of the International Convention on the Rights of the Child must be respected. Asylum-seeking and refugee children must be treated first and foremost as children, with their rights and protection needs given priority in all migration policies.

The **Dublin System** needs despite its recent recast and the new “Early Warning and Preparedness” mechanism a **fundamental reform**. As the EKD Synod (Church Parliament) underlined in a resolution at its meeting in Düsseldorf on 13 November (as well as many other EKD member churches) we need a “distribution system showing solidarity and a fair sharing of responsibility”. A system giving asylum seekers a **free choice** to determine in which country to launch an asylum claim would be less time consuming and more effective than the current costly transfers between Member States. Financial compensation from EU funds could be used to make such a kind of system more attractive to Member States. The foreseen evaluation of the Dublin system would be a good opportunity to look into new models of responsibility sharing with regard to asylum claims and ensuring that the most vulnerable do not suffer from the lack of compliance with EU asylum standards as they do right now.

2. Protected entry

We welcome the announcement of the Task Force on the Mediterranean of December 2013² that “the Commission will explore further possibilities for protected entry in the EU in the context of the reflection on the future priorities in the Home Affairs area.” We especially want to foster the idea of developing guidelines on a **common approach to humanitarian permits/visas**. With regard to the envisaged feasibility study on possible **joint processing** of protection claims outside of the European Union we want to underline that by no means a joint processing approach should water down the commitments of the EU as a protection area for refugees. Churches have been warning constantly that there is a danger for refugee protection due to the many practical problems related to joint processing as well as due to the general human rights situation in many third countries. The “externalization” of refugee protection should not be promoted and Member States should be ready to take their responsibilities.

3. Resettlement

Resettlement forms an important part of the external dimension of EU refugee protection policy as it provides for a durable solution, protection and a safe entry. At the same it is a strong sign of solidarity with host countries. It is therefore a great achievement that an EU resettlement programme was adopted in 2012. The programme should be further elaborated. Due attention should be paid to high quality reception and integration support. We also encourage the Commission to continue the efforts vis-à-vis Member States in order to increase their current commitment on resettlement. The number of persons being resettled to the EU must be increased as well as the number of resettlement States. Europe

² Communication from the Commission to the European Parliament and the Council on the work of the Task Force Mediterranean, 4.12.2013, COM (2013) 869 final.

should contribute more significantly to the share of the world-wide resettlement commitment. The idea presented by leading organisations in the refugee field to resettle by 2020 20 000 refugees per year in the EU deserves more political attention and efforts

With regard to the ongoing crisis in Syria resettlement should play a more prominent role in Europe. The Commission should continue to encourage Member States to follow the **German example** of admitting Syrian refugees for humanitarian reasons.

II. Border Management

1. Frontex

Controlling the EU's external borders is a legitimate task of Frontex. However, the **saving of lives** as well as the **protection of human rights** and the **respect of the principle of non-refoulement** should be the priority in all Frontex operations. Neither the borders nor the high seas constitute a lawless zone. Comprehensive and binding common **rules for Frontex sea border surveillance operations** living up to the standards set by the European Court of Human Rights in the *Hirsi Jamaa and Others v. Italy*³ case are therefore necessary. Persons in need of international protection should have **access to EU territory** and should not be pushed or pulled back at the borders. In order to safeguard the principle of *non-refoulement* and to prevent **illegal collective expulsions** the individual personal situation of intercepted or rescued persons needs to be examined before the decision is taken to return them to a third country. The persons concerned shall be granted access to an **effective remedy** with suspensive effect against this decision.

We welcome the establishment of the **Frontex Fundamental Rights Officer** and the **Consultative Forum**. The Forum is made up of European and International Fundamental Rights organisations, among them a number of Christian organisations (Caritas Europa, CCME, ICMC, JRS). For the sake of transparency the members of the Consultative Forum should continue to be able to regularly monitor Frontex operations. The Consultative Forum's recommendations should be taken up by the Frontex Management Board and the Executive Director in order to promote respect for fundamental rights in all Frontex activities. As already called for by the European Ombudsman⁴ a **complaint mechanism** should be installed in case a Frontex operation violates fundamental rights.

We would like to stress that the civilian character of Frontex joint operations needs to be preserved. The deployment of a military mission in the framework of the Common Security and Defence Policy (CSDP) aiming at controlling migration flows is not an appropriate measure to tackle the situation in the Mediterranean.

2. Rescue at sea

Following the resolution of the EKD Synod of 13 November 2013 we would welcome the establishment of a system with **clear cut responsibilities** concerning the rescue of migrants

³ ECtHR, Case of Hirsi Jamaa and Others v. Italy, Application No 27765/09, Judgment of 23 February 2012.

⁴ European Ombudsman, Press Release No 17/2013, 14 November 2013.

and refugees in distress at sea by Frontex and national border authorities.⁵ **Eurosur** in itself is not a sufficient tool to prevent deaths at sea. Its main purpose is the prevention of illegal border crossings. Eurosur may help to detect boats in distress, but does not solve the uncertainties concerning the Member States that is responsible to rescue the individuals in distress. A set of clear rules at EU level is needed here. The EU should also ensure that **humanitarian assistance** rendered to migrants and refugees in distress at sea is **not criminalized** in any Member State.

3. Cooperation with third countries

When **cooperating with third countries** in the area of border management **human rights** of migrants and refugees need to be safeguarded. Cooperation must not result in either **illegal push-backs or illegal pull backs** of individuals in need of protection. The EU shall not discharge its responsibilities towards refugees. **Readmission Agreements** must be designed to protect migrants and shall only be concluded and executed with countries whose migration and asylum policies guarantee safe conditions for migrants and individuals in need of protection.

4. Smart Borders

The Commission proposal on **Smart Borders**, in particular the proposed **Entry/Exit System** (EES) with its database with all ten fingerprints of non-EU travellers, raises serious concerns. The European Data Protection Supervisor stated that the proposal was “costly, unproven and intrusive”.⁶ We would welcome a thorough **re-assessment** of the proposals by the Commission including the option of **withdrawing** the proposal. In any case there should be no access of law enforcement authorities to the EES finger print database, as this would, in a discriminatory manner, treat all non-EU travellers with unjustified suspicion.

III. Migration Policies

1. More legal migration channels

Europe needs migrants especially in times of economic crisis and growing demographic challenges. We support the finding of the Task Force on the Mediterranean from December 2013 pointing out that “the EU and its Member States should continue to explore further possibilities to **open legal channels** which give an opportunity for migrants to reach Europe in a regular manner.” We are looking forward to concrete proposals and measures providing for “more legal mobility opportunities for study and work (..) including by offering alternative avenues of entry to potential asylum-seekers.”

The EU is still in need of a **comprehensive common legal framework on migration** safeguarding fundamental human rights, providing a secure legal status and a guaranteed set of rights in accordance with the respective ILO and UN Conventions and Council of Europe instruments. Open, transparent and accessible EU admission channels and

⁵ 11th Synod of the Protestant Church in Germany (EKD), “Beschluss zur Europäischen Asyl- und Migrationspolitik“, 13 November 2013, http://www.ekd.de/synode2013/beschluesse/s13_i_5_beschluss_asyl_und_migrationspolitik.html

⁶ European Data Protection Supervisor, Press Release EPDS/2013/08, 19 July 2013.

procedures, as well as the availability of **readily accessible information** on legal migration opportunities to potential migrants in third countries, remain crucial to counteract irregular immigration and related phenomena such as trafficking in human beings, as Church Organisations have been underlining.

The **sectorial approach** chosen by the European Commission with different set of rights for different sorts of migrants results from a lack of political commitment of Member States, but does not live up to the idea of a common European migration policy. The existing legal landscape is scattered and confusing. This **piecemeal approach** complicates the system both for migrants and public authorities dealing with migrants in practice. More **information** and **communication** is needed to allow migrants to make an informed decision and to tackle misinterpretations of European rules by Member States and their authorities.

The respect of human rights must be guaranteed for all migrants, irrespective of their residence status. This means that all migrant must have access to basic services like housing, social assistance, health care and education.

2. Family reunification

We welcome that the Commission will provide interpretative guidelines on how to **better apply** the 2003 directive on family reunification (2003/86/EC) ensuring that it lives up to its original aim to **promote family life** allowing for a reasonable prospect of permanent residence. We also support the intention of the Commission to encourage Member States to pay attention to the **special situation of refugees and beneficiaries of subsidiary protection** and not to apply further restrictions. The effective right to family life and family reunification should be accessible for all migrants. Therefore **monitoring** the practice in Member States and providing **recommendations** on how to interpret the provisions of the directive in a favorable manner will remain an important task of the Commission as well as applying sanctions like infringement procedures if necessary. Legal and practical obstacles for family reunification must be removed.

Member States should be continuously be asked by the Commission to facilitate family reunification for **Syrian refugees** who want to unite with their family members in the EU. Bureaucratic burdens should not prevent any admission.

3. Return policies

We appreciate the intention of the Commission to focus on a **better and more effective application** of the provisions of the return directive (2008/115/EC) as well as the intention to convince Member States to foster alternatives on detention and to promote voluntary departure. EKD Member Churches are actively involved in Return monitoring which fulfills the conditions of Art. 8 VI of the return directive (Monitoring bodies have been established at Düsseldorf, Frankfurt and Hamburg airport since 2001). But in Germany as well as in other Member States a comprehensive and fully fledged implementation of the directive is still missing. The Commission should therefore more intensely concentrate on monitoring the implementation of the provision and actively foster the independent and systematic monitoring of forced returns as it is for example provided by the Churches in Germany.

IV. Free movement

The free movement of persons is one of the founding principles of the European Union. The right to free movement is also recognized as a Citizen's Right in the EU Charter of Fundamental Rights. There should be **no restrictions of this right**. We welcome the study of 14 October 2013 published by the Commission on the impact of non-active intra-EU migrants on the Member States' social security systems.⁷ The study proves that there is no considerable phenomenon of so called "benefit tourism" in the EU. The Commission should continue to foster a **facts-based discussion**. To avoid destitution all intra-EU migrants demonstrably seeking work should have access to social benefits covering at least basic needs. The EU should ensure a **better protection of intra EU-migrants against exploitation**, e.g. by establishing better control mechanisms in the Member States. A swift adoption and implementation of the **revised posted workers directive** would be a first step.

Finally we refer to the statement of the NGO platform on Asylum and Migration as well as to the statement of the Christian Organisations on the same topic and endorse the content.

The Protestant Church in Germany (EKD) represents 20 Protestant regional member churches across Germany and brings together around 26 million people from the Lutheran, Reformed and United traditions.

⁷ DG Employment, Social Affairs and Inclusion via DG Justice Framework Contract: „A fact finding analysis on the Impact on the Member States' social security systems of the entitlements on non-active intra-EU migrants to special non-contributory cash benefits and healthcare granted on the basis of residence", 14 October 2013.