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The signatory organisations represent churches throughout Europe - Anglican, Orthodox, Protestant and Roman Catholic - as well as Christian organisations particularly concerned with migrants and refugees. As Christian organisations, we are deeply committed to the dignity of the human individual created in the image of God, the concept of global solidarity

To
The President of the Council of the EU
Mr Janez Janša, Prime Minister of Slovenia
The President of the European Parliament
Mr Hans-Gert Pöttering
The President of the European Commission
Mr José Manuel Barroso

8 January 2008

Negotiations on the proposed Directive on common standards and procedures in Member States for returning illegally staying third-country nationals

Dear Mr President Janša,
Dear Mr President Pöttering,
Dear Mr President Barroso,

Churches and church-related organisations of various denominations have taken a keen interest in the harmonisation of EU regulations in the area of migration and asylum over the past years. Following the consultation launched by the European Commission with the Green Paper on a “Community Return Policy on Illegal Residents”, a joint contribution of the Churches’ Commission for Migrants in Europe (CCME) and the Commission of the Bishops’ Conferences of the European Community (COMECE) was submitted. Subsequently, these and other Christian organisations have followed the development of the proposals of the European Commission and the negotiations in the Council of the EU and in the European Parliament. We are aware that the proposal for a “directive on common standards and procedures for returning illegally staying third country nationals” is the first instrument in this field to be agreed between the Council and Parliament under the co-decision procedure and thus we understand that it may require time and difficult negotiations to reach a compromise.

The compromise envisaged for the vote in the European Parliament and possibly in the Council contains stipulations which give rise to serious concern: for this reason we address this letter to you with the intention of underlining the following points:

Detention

We recognise the attempt to improve the Commission’s proposal with regard to the duration of detention (Article 14, 4). However, we are deeply concerned that Member States should be able to detain persons for up to 18 months on the basis of an administrative decision. This is unacceptable as a common EU standard.

Detention is not the solution. It is expensive. Alternative, cost-effective methods are available.

We also think that the criteria for the extension of a detention period, such as delays in obtaining the necessary documentation from third countries, might open the door to abusive practices at the level of Member States.

Although European governments often state that detention is the only way to ensure an effective removal policy, reports show that longer detention periods do not directly lead to more effective removals. They are therefore unnecessary and inhumane. The prolonged detention of persons, too often in appalling conditions, should never be sanctioned by European Community law.

The Third European Ecumenical Assembly held in Sibiu, Romania (4-9 September 2007) has called upon European states “to stop unjustifiable administrative detention of migrants, (and) make every effort to ensure regular immigration”.

For people who have not been found guilty of committing a crime by a court, detention is **pending** unacceptable, and it violates one of the fundamental human rights protected by international **removal** law – the right to liberty. The EP Compromise Amendment 35 stipulates that **detention** should only be used for as long as removal arrangements are in progress. The formulation of the European Parliament is too vague and open for various interpretations. If removal arrangements are not executed with due expedition and diligence, the detention is not acceptable and may be deemed disproportionate and not to be in compliance with Article 5 of the European Convention on Human Rights.

Re-Entry Ban

Churches in Europe wish to reiterate the concerns expressed by Christian organisations on various occasions over the past years that the draft directive foresees a re-entry ban of five years following the execution of a removal. A re-entry ban amounts to a double penalty, and a period of five years is excessive. It may also have far-reaching consequences for the principle of *non-refoulement*¹ as guaranteed by the 1951 Refugee Convention. The situation of returnees may indeed change after they have been removed, and they may become eligible for the status of refugee. In this case, the re-entry ban may be contrary to the principle of *non-refoulement*.

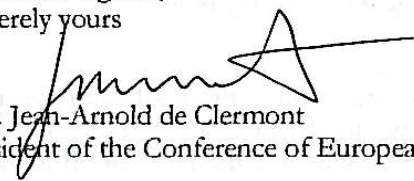
A general re-entry ban for 27 and potentially more EU member states, possibly extending to other Schengen Member States such as Norway and Switzerland, excludes any possibility to find refuge, particularly if imposed for such a long time, not considering that the person may be returning into an unstable condition which might become worse. Some persons would probably feel obliged to turn to smugglers if they are desperate and excluded from legal entry. For such reasons the instrument of a re-entry ban is likely to increase irregular migration, smuggling and the risk of trafficking in human beings. Family relations in EU member states also have to be considered. A re-entry ban for dependent family members and minors would definitely be inappropriate.

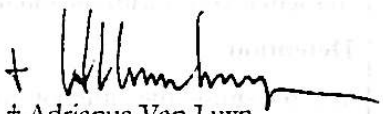
We would therefore urge the European Parliament and EU Member States in the Council of the EU:


- I. to delete provisions for a re-entry ban;
- II. to limit rather than expand the use of detention in removal procedures in EU legislation.


We wish to request that you ensure a balanced and carefully proportioned policy approach in this difficult matter.

With kind regards,
sincerely yours


Rev. Jean-Arnold de Clermont
President of the Conference of European Churches


† Adrianus Van Luyn
President of the Commission of the Bishops' Conferences of the European Community
Bishop of Rotterdam


Rev. Erny Gillen
President of Caritas Europa


Rev. Arlington W. Trotman
Moderator of the Churches' Commission for Migrants in Europe

cc: Member States' Permanent Representatives to the EU
Commissioner Franco Frattini, Justice, Freedom, Security
Mr Jean-Marie Cavada, Chair of LIBE Committee
Mr Manfred Weber, Rapporteur of LIBE Committee

¹ Non-refoulement is the provision in the UN Refugee Convention obliging States not to send a person back into a possible situation of risk or persecution.