

## **Briefing paper on European Migration and Asylum Policy Developments**

### **Meeting with the Representatives of the Slovenian EU Presidency 2008**



**Ljubljana, 10 – 12 December 2007**

This paper presents the main points of concern of Caritas Europa<sup>1</sup> relative to the following policy issues:

- 1. The Common European Asylum System**
- 2. The long term residence directive – refugees and persons under subsidiary protection**
- 3. The proposal for directive on return of third country nationals**
- 4. Trafficking in Human Beings**
- 5. Integration of refugees and third-country nationals**
- 6. labour migration: proposals for directives**
- 7. Migration and development**

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<sup>1</sup> Created in 1971, Caritas Europa is one of the seven regions of Caritas Internationalis, the worldwide confederation of 162 Catholic relief, development and social service organisations working to build a better world, especially for the poor and oppressed, in over 200 countries and territories. Caritas Europa is the umbrella organisation of the European network of 48 Caritas member organisations, working in 44 European countries. Caritas Europa focuses its activities on policy issues related to poverty and social inequality, migration and asylum within all countries of Europe, and issues of emergency humanitarian assistance, international development and peace throughout the world. With regard to all these issues, the organisation develops policies for political advocacy and lobbying at European level as well as at national level. The organisation is strongly involved in supporting the activities of its Member Organisations and those in the wider Caritas Internationalis confederation.

## Promotion of a Common European Asylum System

Caritas Europa appreciates the aims set forth by the European Commission's Green Paper on the future Common European Asylum System (CEAS) presented in June 2007 "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". Caritas's key concern of access to protection is addressed by the Green Paper's objective to increase "the EU's contribution to a more accessible, equitable, and effective international protection regime."

In a separate document published in August 2007<sup>2</sup>, Caritas Europa and its Christian partner organisations have broadly addressed the questions raised by the Commission in the Green Paper. Here is a selection of recommendations related to processing of asylum applications; reception conditions for asylum seekers; a possible uniform status for persons in need of international protection; and sustainable return policies.

### **Caritas Europa recommends the Presidency:**

#### *Processing of asylum applications*

- A single procedure determining whether an asylum applicant qualifies for protection under the Geneva Refugee Convention (1951) or whether the person is entitled to complementary protection, subsidiary protection or other humanitarian protection could be the most effective and efficient approach for status determination. However, the risk of undermining the protection needs would have to be tackled by safeguards ensuring that a single procedure doesn't lead to lesser examination.
- In line with the position of the European Council on Refugees and exiles (ECRE), Caritas Europa opposes the idea of establishing "joint processing centres", but would be in favour of developing decentralised offices or dispatching common teams competent for asylum determination by pooling resources such as well-qualified interpreters and interviewers to assist national determination.
- Applicants should be informed about their rights and the reception conditions in a language they clearly understand and not „as far as possible in a language that the applicants may reasonably be supposed to understand“, as worded by art. 5(2) of the Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers.
- To guarantee a fair and efficient procedure, the transfer of applicants to third countries should be avoided and thus the safe-third country notion be deleted from the Council Directive 2005/85/EC including minimum standards for procedures on granting and withdrawing refugee status. It is apparent that there is no consensus with regard to which countries can be considered "safe" third countries. The system would be fairer, if every asylum claim was considered on its own ground as quickly as possible.

#### *Reception conditions for asylum seekers*

- Art. 7(1) of directive 2003/9/EC leaves it up to Member States whether they grant applicants freedom of movement within the territory or in a specific area only. We strongly urge that, in the absence of compelling reasons to the contrary, asylum applicants and their accompanying family members should

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<sup>2</sup> Caritas Europa and partner organisations contribution to the green paper on CEAS : see [link](#)

have free movement throughout the territory of the Member State in which they apply for asylum.

- As indicated in the Green Paper, the access to the labour market (art. 11) needs a more precise regulation. The directive leaves it up to Member States to lay down the conditions for the access to the labour market. We would like to see a much stronger commitment to offering asylum applicants the earliest opportunity to earn their own living and become self-sufficient.
- Identification of vulnerable asylum applicants must be clearly regulated. Art. 15 and 20 leave too much room for diverging interpretations. Provisions on capacities and expertise to provide especially torture victims with the adequate support must urgently be introduced. Access to psychological care should be an essential part of an adequate treatment.
- Caritas Europa is strictly opposed to any voucher or non-cash system. Experience has shown that providing material reception conditions in the form of vouchers or comparable assistance has in fact not created dignified living conditions for asylum seekers and their accompanying family members. Material reception conditions should always be provided in the form of financial allowances sufficient to cover basic needs, and within a reasonable time.
- In relation to accommodation, we argue for diversification as it is for example the practice in Belgium where different types of housing are foreseen and at the same time permeability between the different forms is possible according to the needs of the asylum seekers. In general, the conditions of accommodation (art. 14 of the directive 2003/9/EC) need further approximation within the European Union.
- Caritas Europa is opposed to detention of asylum applicants. Detention can only be applied as a last resort when less restrictive alternatives or unconditional release are shown to be insufficient. Grounds for detention must be set out clearly. Therefore, art. 7 of the directive 2003/9/EC should precisely indicate what it means by "legal reasons" to detain asylum seekers and list these reasons in conformity with of UNHCR Guidelines.

Caritas Europa will continue to engage in an open dialogue with European Institutions and the future EU presidencies in this area. We together with our partners recommend that the Slovenian Presidency duly take into account the results of the consultation and the hearing which took place in November 2007. It is Caritas Europa's hope that the Slovenian Presidency will give priority to the development of a Common European Asylum System by promoting harmonisation of EU asylum law in full respect of international obligations.

## Long Term Residence Status for Refugees and Persons under Subsidiary Protection

### **Caritas Europa recommends the presidency to:**

Develop a uniform status for persons in need of international protection provided it upgrades the status of persons granted subsidiary protection. If a uniform status would only be possible at the loss of rights accorded to refugees, we would rather maintain the system of diverse sets of rights. Development of a uniform single status can be accomplished by making changes in e.g. articles 26(3) (employment), 28(2) (social welfare), 29(2) (health care) and 33(2) (integration) of the Council Directive 2004/83/EC dealing with minimum standards for the qualification of third country nationals as refugees or as persons who otherwise need international protection.

- All persons in need of international protection deserve the chance to rebuild their life. Thus, certainty about their status is the most important issue. In addition, the right to family reunification, access to employment and integration measures ought to be granted without delay as soon as a person is granted a protection status. Vulnerable persons, particularly minors, persons with disabilities or trauma, should receive the services they require to facilitate as far as possible a life determined by them.
- Uniform international protection status should lead to a long-term resident status after three years of legal stay, even if the person remains dependent on social assistance for reasons beyond his/her control (inability to work for health reasons or trauma, difficulties to acquire language skills due to age etc.). Refugees and persons under subsidiary protection should have the possibility to apply for citizenship after maximum 5 years, starting from the date of asylum application. Furthermore, Caritas Europa would hope that persons granted protection by one EU Member State could enjoy the right to move to another EU Member State on similar conditions as EU nationals, e.g. if they are offered employment, if they have sufficient resources, or if (wider) family members offer accommodation.

## Proposal for directive on return of third country nationals<sup>3</sup>

Caritas Europa is in favour of creating a legal instrument setting common standards and procedures. We are however deeply concerned about the orientations in the current debates in Council and Parliament regarding the proposal for directive on removal of irregularly staying citizens of third countries.

### **Caritas Europa advocates:**

- That vulnerable people in general should never be removed. According to the report of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs on the Commission's proposal, adopted in September 2007, this category comprises children, unaccompanied children, disabled persons, elderly people, pregnant women, single parents with minor children, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. Caritas Europa supports this definition which is in line with international refugee and human rights instruments and should therefore be unconditionally applied in Community legislation.
- That beyond people who cannot be removed for humanitarian reasons, there are also rejected asylum seekers as well as migrants who cannot be removed on factual grounds (e.g.: there is no country ready to accept them). These persons, deprived of a legal status, live often in destitution. Caritas Europa underlines the urgent need to address this serious humanitarian and ethical challenge.

### **Caritas Europa recommends the presidency:**

- To guarantee that all judicial safeguards are included in the directive.

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<sup>3</sup> COM (2005)391

## Trafficking in Human Beings

Caritas Europa is firmly committed to combat human trafficking and related phenomena including forced labour, sexual exploitation, slavery and removal of organs.

To combat human trafficking, Caritas Europa coordinates COATNET (Christian Organisations against Trafficking). COATNET is a worldwide network (49 members comprised of Catholic, Protestant and Orthodox organisations and international networks) which is active in raising public awareness, protecting the vulnerable, assisting and accompanying trafficked persons and foster international cooperation and advocacy.

### **Caritas Europa and COATNET welcome and support:**

- the call of the European Commission for an EU-wide Anti-trafficking Day as a way to raise awareness on one of the most appalling forms of human rights violations, which are a pressing challenge in the EU and worldwide. The chosen title “Trafficking in Human Beings: Time for Action” rightly suggests that it is time to implement policies created by Member States during recent years.
- the initiative of the European Commission’s ‘Expert Group on Trafficking in Human Beings’ to provide governments and civil society with an Assessment Manual to evaluate the progress made in policy implementation. This assessment tool is crucial because many organisations working at a national level are missing indicators to measure progresses.

### **Caritas Europa and COATNET highlight:**

- that the adoption of the Assessment Manual must be complemented by a clear commitment of the EU Member States to implement, monitor and evaluate policy efforts. The appointment of an EU Rapporteur would be supportive of this objective.
- the need for a multidisciplinary and holistic approach in this area. Anti-trafficking should include working with the wider circumstances surrounding the victim. Also, COATNET members appeal to all relevant stakeholders to join forces. Cooperation between involved actors must be established on the basis of clear guidelines, so that victims’ needs can be addressed in the best possible way.
- the ability and networks possessed by churches and religious congregations that enable them to complement the public authorities’ efforts by cultivating a trusting relationship with the victims of human trafficking and by assisting with education and raising awareness.

### **Caritas Europa and COATNET recommend the following priority actions:**

- Synchronise the EU-wide Anti-trafficking Day with the UN-Anti trafficking Day, because human trafficking is a crime with a worldwide dimension.
- Encourage governments to provide means for trans-national cooperation between police, local authorities and NGOs in order to effectively combat this crime
- along with local business, to provide non-exploitative economic alternatives for highly vulnerable groups
- to guarantee a safe and sustainable working environment for victims of trafficking after leaving shelters or crisis centres
- to concentrate research on the demand side and on the profile of the traffickers

## Integration of Refugees and Migrants

From the broad debate on integration, Caritas Europa highlights the necessity for action by the European Union and its member states in the following priority areas: Citizenship, political & cultural rights, mainstreaming integration of migrants, transcultural competence, inter-religious dialogue and empowering migrants.

Integration is dependent on the provision of political, social and cultural rights for all members of society. It is a process of many components, including subjective perceptions which are not measurable. It is, however, important that the legal and structural prerequisites are in place so that every individual has the opportunity to participate as an equal member of society. The reality is that migrants of different status enjoy rights which differ from each other as well as from other members of society.

### **Caritas Europa recommends that:**

- After no more than five years of legal stay a migrant should be entitled to apply for nationality. The conditions for naturalisation should be reasonably achievable;
- A migrant who seeks naturalisation should be entitled to retain the nationality of his/her country of origin (dual or multiple nationality);
- Children born in a country to parents who have resided there legally for a number of years should always be deemed citizens of that country by birth;

**Caritas Europa recommends,** in relation to the suggested EU instruments to promote further development of integration policies in the EU:

- The **National Contact Points on Integration (NCPI)** and their networks should be reinforced in order to be able to play a leading role in the integration debate: e.g. through the organisation of a permanent consultation with all stakeholders: migrants and migrants' associations, local, regional and national authorities, NGOs, trade unions, educational institutions etc. All should be invited and committed to contributing to the national annual reports on integration. The purpose and value of such consultations and the role of the NCPIs in that process should be promoted.
- The **Integration forum** should be organised at the EU level, supported by national or even regional fora. We strongly encourage the Slovenian Presidency to support the NCPI as promoter of these fora, inviting a wide range of civil society representatives, including migrants' organisations, to contribute.
- The **Migrants' platform**: rather than creating a separate platform we would encourage the active involvement of migrants' organisations in the other suggested instruments, especially in the European and national/regional integration fora.
- The **Handbook on Integration** is a useful tool to translate the Common Basic Principles on Integration (CBPI) into practice by providing examples of good practice. Caritas Europa encourages the Commission to edit regular updates of the handbook, but also to organise seminars to enhance the involvement of faith based communities and NGOs.

- The **Integration website** should become a working instrument, a virtual forum where stakeholders can easily find information, documentation and project partners. It should include links to national, regional and local governmental and non-governmental institutions and organisations developing projects promoting integration. Caritas Europa will contribute to the consultation on the instrument, scheduled for January 2008.

## Labour migration – legal framework

It is of major importance that European countries formally recognise that they are countries of immigration, that they need migrants and that a thoughtful and well planned immigration policy can result in an economic, social and cultural wealth for those who succeed in welcoming immigrants, respecting their dignity. This policy must not adversely affect the development of the countries of origin. It must balance different interests and so produce a universal common good.

Caritas calls for the inclusion, in labour migration policy, of regularisation measures for undocumented migrants under certain conditions, to avoid exploitation and degradation of human beings.

**Caritas Europa recommends** that criteria for regularisation of undocumented migrants include provisions for families with children, for medical reasons, for long-term residents who have no links with the country of origin and for persons tolerated in the country of residence.

**Caritas Europa recommends** the Presidency to ensure coherence between the diverse policy initiatives taken at EU level, including:

- providing full access to the EU-wide labour market for all EU nationals and all third country nationals legally residing in the EU
- Ensuring that integration policies are an essential part of migration policies. A residence permit should imply access to the labour market.
- studying migration policies of third countries, including countries of origin and transit
- promoting a facts based public debate
- planning to gradually achieve EU harmonised labour immigration policy
- including solutions for undocumented migrants in labour migration policy
- Harmonising workers' rights and social rights in the EU
- Ongoing monitoring and evaluation of the measures and stages of the harmonisation process
- Regulating legal labour migration for all sectors and levels, according to the needs of labour markets

## Migration and Development

In one way or another, forced migration of people can be attributed to poverty, economic and social inequalities; whether we are talking about migration as a result of conflict, famine, natural disasters, persecution or inequitable access to natural resources.

Caritas Europa, as a network of organisations active in both working fields of migration and development, is highly engaged in the debate on links between both. At its Forum of last September, Caritas representatives committed to build or strengthen cooperation and partnerships with migrants' associations. It is generally accepted that migrants do play a prominent role in the development of their home countries. Their impact however is stronger when their legal status and integration in the country of residence is secure.

For Caritas Europa, the migrants' right of movement is a fundamental principle. Legal entry channels into the EU cannot be limited to reasons of family reunification or to skilled migrants, but should be an integral part of sustainable and responsible immigration policies.

Globalisation encourages thinking of migrants as an economic resource. However, migrants are not a form of capital – they are husbands, wives, mothers, fathers and children. Caritas takes into account the impacts of migration on individuals and their families, people with faces and names.

The feminisation of migration has been observed over the last decades. It is therefore important to include gender perspectives in migration and development initiatives. The fact that women make up the majority of the world's poor and the crucial role of women for successful community-centred development has been underlined in various researches. Particular attention should therefore be given to initiatives empowering migrant women, both in countries of migration and origin, as agents of co-development. A policy, which specifically addresses women as members of the diaspora, recognises their specific situation and seeks to strengthen it, is also more likely to have a positive impact on fostering development and addressing inequalities in countries of origin.

**Caritas Europa recommends** the Slovenian EU Presidency to guide EU debate and initiatives on migration and development by embedding it strongly in the Policy Coherence for Development (PCD) framework. Migration and development programmes are at present financed under several different EU financial instruments, either thematic (Aeneas, NGO co-financing, AUP) or geographical (indicative programme financing). Results of past Aeneas programmes in this area should be considered as well as programmes on return and borders (ARGO, ERF, and Preparatory Actions Return Fund). So far there seems to be little impact assessment of these initiatives.

A meaningful and structured dialogue with Member States, other EU institutions and civil society on the success and shortcomings of migration and development programmes should form an integral part of such an evaluation and organisational learning exercise.

Brussels - Ljubljana, 6 December 2007