

Caritas Europa

43, Rue de la Charité, BE-1210 Bruxelles

CCME – Churches' Commission for Migrants in Europe

174, Rue Joseph II, BE-1000 Bruxelles

COMECE – Commission of the Bishops' Conferences of the European Community (Secretariat)

19, Square De Meeus, B-1050 Bruxelles

Don Bosco International

8, Clos André Rappe, BE-1200 Bruxelles

JRS-Europe – Jesuit Refugee Service Europe

205, Chaussée de Wavre, BE-1050 Bruxelles

Protestant Church in Germany (EKD)

166, Rue Joseph II, BE-1000 Bruxelles

Contribution to the European Commission's public consultation on legal migration of non-EU citizens
--

1. Making legal migration work (Question 10, 11, 12, 103, 105, 106)

Our organisations represent Churches throughout Europe – Anglican, Orthodox, Protestant and Roman Catholic – as well as Christian agencies particularly concerned and dedicated to work with migrants, refugees and asylum seekers. As Christian organisations we are deeply committed to the inviolable dignity of the human person created in the image of God, as well as to the concepts of the common good, of global solidarity and of the promotion of a society that welcomes strangers.

Referring to earlier comments by Christian organisations on labour migration we want to underline that for a long time Churches have been asking for an EU labour migration policy safeguarding 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, focusing on the integration of those who are admitted.

Opening up legal migration channels is beneficial for the migrants and their families, for countries of origin, for the EU and its Member States. Legal migration channels increase the chances for migrants to choose the country they want to live and work in, to find employment according to their skills and qualifications, and to increase their standard of living. At the same time, this would allow EU societies to enjoy the cultural, social and economic benefits of migration. Policies facilitating international workers' mobility may - at least to some extent - prevent people from risking their lives when they seek to enter the EU. Finally, labour migrants entering legally will not be forced to seek employment in the shadow economy and will therefore be less vulnerable to abuse and exploitation by certain employers, landlords and other "service providers".

A comprehensive EU migration framework will have to protect fundamental rights, provide for certainty about the legal status and guarantee social rights. During the last years and in particular the past 24 months,

the EU and its Member States focused more and more on prevention and deterrence of so-called “economic migrants” and on agreements with third countries to step up border controls and the return of rejected asylum seekers and migrants with no permit to stay in EU Member States. Border controls and other deterrence measures however will not be enough to prevent economic migrants from trying to come to Europe in search for a better life or an essential basis for survival. Churches and Christian organisations have advocated for legal pathways to Europe, and labour migration constitutes one of the necessary tools to achieve those.

Due to demographic and economic developments, many countries in Europe will need to attract labour migrants. It is time to face the challenges posed by migration in a constructive way. The European migration and asylum policy is currently flawed, focusing too much on border control and deterrence measures. The EU would be well advised to recognize that the need for opening meaningful, transparent and accessible migration channels could be in the interest of the EU and its member states as well as of those who are moving to the EU and who are urgently needed. Therefore, open, transparent and accessible EU admission channels and procedures are needed, and accurate information of employment-related migration opportunities needs to be made available and accessible to prospective migrants in third countries. Such information would need to be coupled with accessible visa for the purpose of training and employment, as some of the migration partnerships particularly with African countries were rendered meaningless, as issuing visa remained a major stumbling block.

2. Encouraging legal migration by facilitating it well

Already back in 2001 with discussions on the proposed cross-sectoral directive on labour immigration¹ and in 2005, when the discussion around “The Green Paper on an “EU approach to Managing Economic Migration” took place, we have been advocating a Common European Migration Policy. Although the step by step approach of the European Commission was in general reasonable, we regret that the Commission has – partly due to pressure of Member States – decided to pursue the current sectoral approach. This approach has led to labour market segregation and a fragmentation of workers’ rights; it has also increased the complexity of the systems. The incoherent and ever-changing legal landscape fosters irregular migration and exploitation, as even experts, let alone migrants, are not able to understand and follow all the rules in force. It has been a central shortcoming of the EU labour migration policy that it has not opened legal pathways for those employed in lower paid sectors – although entire sectors of the economy depend on foreign semi- and low skilled labour. Consequently, irregular migration and employment are most frequent, and exploitation most striking, in these sectors which are not addressed in current EU migration policy.

We encourage the Commission to use the current legislation as a starting point to develop the European migration system further towards a common, cross-sectoral policy and strive for a higher level of harmonization and protection at EU level. This would help to decrease the vulnerability of migrants, address exploitation of migrants, to reduce the costs for removal of irregular migrants and to increase the contributions to the welfare system. A comprehensive regulation of labour migration makes workers less vulnerable to exploitation, if the legislation is properly enforced and well monitored. Social partners and civil society should be actively involved in the development and implementation of this legal migration framework. Such a framework would also provide a better basis for the cooperation with third countries.

¹ Commission proposal for adoption of a Council directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities (COM(2001) 386

Within a Common European Migration Policy, flexibility regarding the regularization of irregular migrants will be needed. This is of particular relevance to ensure that the legal minimum wage is paid and the principle of equal pay for equal work is upheld. When persons have worked, even if undocumented, they should be entitled to social services other workers enjoy.

3. Equal rights for all workers (Question 106)

The current piecemeal approach creates a threat to equal rights for all workers since it provides different sets of rights depending on the level of qualification. The respect of human and fundamental rights must be guaranteed for all migrants as laid down in the UN Convention on migrant workers' rights, ILO conventions and the EU Charter of Fundamental Rights. They should have equal salary and working conditions, social rights and protection as other workers in the same company and sector. All labour migrants must have equal access to services like housing, social assistance, health care, pension schemes and education. It is important that legally residing third-country nationals can benefit from the same socio-economic rights as EU nationals e.g. working conditions, education and vocational training, social security and access to housing. Also with regard to the recognition of qualifications the situation remains unsatisfactory (even among EU Member States) and further improvements with regard to assessment and recognition of foreign qualifications and diplomas are urgently required.

To facilitate circular migration, the portability of some social security benefits, particularly pension rights, will have to be improved. We think this should be addressed as a priority in negotiations with countries of origin on cooperation with these countries. Also with regard to the recognition of qualifications the situation remains unsatisfactory (even among EU Member States) and further improvements with regard to assessment and recognition of foreign academic qualifications are urgently required.

4. Prioritizing integration measures

A well-functioning migration policy needs integration measures for those who come to the EU, even on a temporary basis: language courses, cultural and entrepreneurial training should not only be offered in the pre-departure period but continued and intensified after the arrival. After the admission, programmes, including information about the protection and enforcement of social rights, should also be provided. Member States need to shift their focus from security related issues to measures promoting integration.

5. Access to the EU labour market und intra-EU mobility (Question 103, 12)

We recommend that third country nationals legally residing in the EU have full access to the EU labour market as well as the right to free movement under similar conditions as EU citizens. The current exclusion of refugees, people with subsidiary or humanitarian protection status, e.g. in the Single Permit Directive, is a "brain waste". Slowly, this seems to be understood, as we can see with the current review of the Blue Card Directive for highly skilled workers. We welcome that it is proposed to include refugees and resettled persons into the scope of the directive. However, we are convinced that the EU labour market should become more open to all legally residing third country nationals as much as possible, as being part of the labour market is also one of the best ways to foster integration.

With the current review, the European Commission intends to make the Blue Card more attractive for highly skilled workers. The procedures should become less complex and the system more accessible by lowering the preconditions for applying (e.g. salary threshold, minimum contract term) and by facilitating intra-EU mobility and long-term residence. The lowering of the preconditions of the Blue Card and the extension of the scope shows that there is a need to attract migrants in a broader way. This also highlights a shortcoming

of the current fragmented legislation. Besides the seasonal workers directive, no legal labour migration channels into medium and low paid positions are established, even though entire sectors of the economy depend on foreign medium and low paid labour. We are convinced that criteria for admission should contribute to a balanced possibility for migrants in different economic sectors to access low to highly paid jobs. In addition, we would like to see the facilitation of intra-EU mobility in the Blue Card revision as a starting point towards a fully applied intra-EU mobility for third country nationals.

6. Working together with third countries

In order to provide an open and transparent legal migration system, the system needs to be embedded in a cooperation with countries of origin. To be successful, the approach towards legal migration should be complemented both by policies and programmes creating decent jobs in countries of origin and by EU labour market mechanisms ensuring access to employment according to the skills and qualifications so as to prevent “brain waste” and “brain drain”; therefore ethical recruitment in certain sectors and protecting and strengthening human resources in developing countries need to be ensured. Moreover, the question of compensating developing countries for their investment in human capital leaving for the EU ought to be addressed in migration agreements between the EU and sending countries, seeking mutual benefits for both sides while maintaining and safeguarding the rights and benefits of the individual migrant. Security concerns and the priority given to the fight against irregular migration might unduly influence the contents of individual mobility partnerships and lead to an imbalanced approach. Safeguards must be put in place to avoid that the prospect of legal migration opportunities be misused, for instance, as a trade-off for readmission agreements.

II. Family reunification directive (Question 14, 105)

The right to family life is – as a fundamental right - guaranteed by the EU Charter of Fundamental Rights (Article 7) and by the European Convention on Human Rights (Article 8). The European Court of Justice stated in the Chakroun² case that the objective of the directive is to promote family reunification and the effectiveness thereof. Although the family reunification directive has been in force since 2003 and the European Commission has published guidelines in 2014, various obstacles and shortcomings still hamper the reunification of families. Experiences show that a full emotional attachment and full integration in a new country largely depend, among other things, on a person’s possibility to live with the family. Therefore, family reunification should take place as early and as complete as possible. This is in the interest of the family life but also in the interest of the hosting society. A number of issues therefore need to be considered:

1. Extending the definition of sponsors

The right to family life and family reunification should be accessible for all migrants. The directive recognizes in particular the need for family reunification for refugees. In recital 8 it is stated that, since refugees were obliged to flee their country and were prevented from leading a normal family life, more favorable conditions for the exercise of the right to family reunification should be laid down. This argumentation does not only apply to refugees but also to persons under subsidiary protection since they were forced to flee their country of origin, too. While the reasons for granting refugee or subsidiary status differ, the time and the conditions for the persons de facto do not. The Commission itself states that “the humanitarian protections needs of persons benefiting from subsidiary protection do not differ from those of refugees, and encourages MSs to

²ECJ, C-578/08, Chakroun, 4 March 2010, para. 43

adopt rules that grant similar rights (...)”³. Unfortunately, we had to observe during the last years that short-term considerations of migration control lead in more and more countries to restrictions of the right to family reunification of people under subsidiary protection. This creates unnecessary hardships for individuals and may have long-lasting negative consequences for family members, thus we would seriously plead to end such differentiation between the right to family reunification of refugees and for subsidiary protected. Access to family reunification for beneficiaries of subsidiary protection would be beneficial for the hosting country, too. Since uncertainty regarding the future of family members in countries of origin or transit countries can hinder the integration process in the hosting country, a fast and easy family reunification helps beneficiaries of subsidiary protection to focus on their integration. Furthermore, family reunification for people under subsidiary protection would be a disincentive for their family members to risk the dangerous journey to Europe by using smugglers and instead provide a safe and legal way into Europe.

2. Extending the definition of beneficiaries

The definition of family should be extended. As a minimum, dependent relatives should be included regardless of their age, and de facto family members (e.g. children who have been living and growing up with a family without necessarily having been formally adopted) and children up to the age of 21. Additional age requirements for spouses to join should not be used beyond the age of majority. Valid concerns about forced marriages should be addressed by other means (see II. 3.). An extended definition could also help to reduce irregular movements since irregular migrants often have family members in the country they try to reach.

3. Integration and Empowerment

Although Member States recognize that labour market participation is one of the most important integration accelerators, they are still reluctant to allow family members access to it. Joining family members should have access to the labour market, education and training as early as possible. This is of utmost importance for their integration, but also for their empowerment and well-being. Integration measures must be accessible, affordable and adaptable to the individual situation of the joining family member (e.g. child care opportunities). Support and guarantee of a legal status for spouses who were forced to marry appears to be an effective instrument to counter forced marriage, a concern which has been raised on several occasion. The same applies to vocational training and other educational programmes in addition to language courses when it comes to violence in the reunited family.

4. Procedural Obstacles (Question 105)

Many legal and practical obstacles make the family reunification procedure complex, lengthy and costly. Obstacles created by Member States are various: some have too short a deadline to request family reunification, some impose long waiting times before sponsors can apply for family reunification, sometimes the accumulation of different time limits leads to an excessively long waiting time. The material conditions which sponsors have to fulfill can also create barriers, as in other cases pre-departure integration measures (like pre-arrival language certificates) when they are not accompanied by support to help fulfilling the pre-departure condition. In many Member States the conditions for these measures are neither accessible nor affordable, nor does the legislation in force pay attention to undue hardships (e.g. lack of educational opportunities for women in certain countries). Although they were presented as an integration facilitator, in reality they operate more as a tool to prevent family reunification. Another procedural issue is that the use of DNA testing and other biometric assessment has in some Member States become routine even though it

³ EC COM on guidance for application of Directive 2003/86/EC on the right to family reunification, P. 24

should be the exception. The European Commission states in its Guidelines that investigations such as DNA testing are not allowed if there are other suitable and less restrictive means to establish the existence of a family relationship.⁴ There is certainly a need for more child protection within the procedure. Children are particularly vulnerable and in need of a family life as fast as possible. Particularly with lengthy procedures, a started but not yet finalised family reunification procedure should not be discontinued when the minor turns 18.

5. Family reunification is a right

It is understandable that the EU and its Member States are keen to attract especially highly qualified workers and therefore are willing to provide incentives for them to come to Europe, as i.e. foreseen with the Blue Card. However, family life as a fundamental right should be guaranteed for all migrant workers in the same way, and therefore family reunification should not be used as an incentive for certain migrant workers but should be facilitated for all migrants as a general principle.

III. Progressively review the long-term residence directive and its implementation (Question 106)

In the context of legal migration, the status of those staying legally merits further attention. We would in this context encourage a thorough evaluation of the long-term residence directive and its implementation, in particular since its scope was broadened to include refugees. In our experience, member states' practices vary considerably in the recognition of times of residence under different residence titles. We are concerned that this – together with the existing expulsion grounds mentioned in the directive – can lead to an uneven playing field. It will also undermine the intention that “the legal status of third country nationals should be approximated to that of Member States' nationals⁵” and thus compromise the correct application of a central element of EU migration law.

⁴ EC COM on guidance for application of Directive 2003/86/EC on the right to family reunification, P. 9

⁵ TAMPERE EUROPEAN COUNCIL 15 AND 16 OCTOBER 1999 PRESIDENCY CONCLUSIONS, point 21