



Commission of the Bishops'  
Conferences of the European  
Community - Secretariat



Churches' Commission for Migrants in Europe  
Commission des Eglises auprès des Migrants en Europe  
Kommission der Kirchen für Migranten in Europa



Jesuit Refugee  
Service - Europe



Quaker Council for  
European Affairs

Mr Michael McDowell  
Minister for Justice, Equality and Law Reform  
President-in-office of the Council of EU  
Justice and Home Affairs  
72-76 St. Stephen's Green  
Dublin 2  
REPUBLIC OF IRELAND

Brussels, 17 February 2004

**Re: EU Directive on Minimum Standards for Member States' Procedures for Granting and Withdrawing Refugee Status (COM 2002/326 final/2)**

Dear Minister,

On 19 February the European Union's Ministers of Justice and Home Affairs will meet in Brussels. Among other items, they will discuss the draft *Directive on Minimum Standards for Member States' Procedures for Granting and Withdrawing Refugee Status*, in particular the question of appeal against decisions taken under regular or accelerated procedures.

As Churches and Christian organisations working on migration and asylum, we welcome the effort to harmonise asylum procedures across the EU Member States. A fair, transparent and efficient asylum procedure is essential for the effective protection of refugees. We are, however, deeply concerned about the following aspects of the current draft Directive:

- The Directive does not provide for the implementation of a decision on asylum to be suspended pending appeal. Instead, it introduces a long list of cases in which Member States may derogate from a refugee's right to remain during the review and appeal procedure. We urge the Council of Ministers to amend the Directive so that negative asylum decisions are, as a general rule, suspended while under appeal. The fact that some EU Member States provide asylum to 30%-60% of applicants only when their initially rejected claims have been accepted on appeal demonstrates the importance of an effective appeals procedure (Source: UNHCR). If the Directive does not allow for suspension under appeal, it will put refugees at risk and undermine the rule of law, one of the fundamental values of the EU.

- The concept of a “safe third country” outlined in the Directive also puts an unfair burden of proof on the asylum-seeker. In our view, the Directive should ensure that all cases be examined and decided on the basis of an individual’s circumstances, regardless of whether a readmission agreement exists between the EU and his or her country of origin. No country can be described as safe in an absolute sense, so we should not simply take for granted that an asylum-seeker will be safe in his or her country of origin. For example, we cannot automatically assume that all neighbouring countries of an enlarged EU are safe.

The implementation of these two provisions would lead to the real risk of refugees, as defined by the *Geneva Refugee Convention* 1951/68, not having their status recognised in any country (so called “refugees in orbit”).

In our view, this draft Directive reveals a concern on the part of Member States to protect themselves against false claims of asylum but does not provide adequate protection, through the appeals procedure, for genuine refugees. Moreover, it introduces a blanket notion of “safe third countries”, which infringes the right of an asylum-seeker to have his or her case judged on its merits. If these failures cannot be corrected, we urge Member States to reject the draft Directive in its current form.

Yours sincerely,

Marius Wanders  
Secretary General  
Caritas Europa

Mgr Noel Treanor  
Secretary General  
COMECE

Doris Peschke  
General Secretary  
CCME

Cornelia Bührle, rscj  
JRS-Europe

signed:  
Martina Weitsch  
Joint Representative  
Quaker Council  
for European Affairs

CC: Enrique Gonzalez Sanchez, Secretariat of the Council of Ministers  
Delegations of the Member States  
European Commissioner António Vitorino