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**Joint comments
on the Commission Proposal for a Council Directive
laying down minimum standards on the reception
of applicants for asylum in Member States
COM (2001) 181 final**

Executive summary

Reception conditions for asylum-seekers currently vary widely across Member-States¹. From our experience as refugee-supporting agencies, the conditions in many cases are so inadequate that they amount to a very real stumbling block to the pursuit of an asylum claim. Some governments' misuse of reception conditions as a key method of deterrence had led organisations that assist refugees to fear that standards are being harmonised on the basis of the lowest common denominator. Although acknowledging the urgent need of harmonising reception conditions across the Union, our indicator for measuring any attempt towards harmonisation is whether in

¹ See UNHCR study: "Reception Standards for Asylum Seekers in the European Union", July 2000 and Legal and Social Conditions for Asylum Seekers and Refugees in Western European Countries, May 2000.

practice it results in “dignified” living conditions. We welcome the fact that the proposed directive clearly states its adherence to this crucial goal.

Certain aspects of this proposal are very much to be welcomed, in particular the fact that:

- asylum-seekers with specific needs receive special attention
- asylum applicants receive a document certifying their status (Art 6) and benefit from comprehensive information about their rights and duties (Art 5)
- it is recognised that the general attitude of public opinion towards applicants for asylum plays a major role in quality of life of applicants.

We are, however, concerned about certain provisions.

It is a matter of profound concern that material reception conditions may be reduced or withdrawn as punishment for “negative behaviour” as set out in Article 22. While we appreciate that Member States may need to sanction criminal behaviour, we strongly believe that the normal national law provisions provide the appropriate mechanism. We consider it highly disproportionate to impose destitution as a penalty. Nobody should be deprived of basic assistance. Member States should always act in consistence with their human rights obligations.

Although we appreciate the principle that asylum seekers shall be given opportunity to earn their living at the latest after a six-month waiting period, we are deeply concerned that Member States should have the opportunity to opt out of further assistance to asylum seekers three months later. Material reception conditions can be withdrawn or reduced when the asylum-seeker and accompanying family members have an income that will support a dignified life-style, not at the end of an arbitrary time period.

We are also very concerned that the proposal allows Member States to reduce or withdraw assistance where asylum applicants stay with relatives or friends. While such a reduction might be appropriate in some cases, it might also create severe hardship in others. We urge that any decision to reduce or withdraw the material aid on the grounds that the applicant is staying with friends or relatives be taken individually.

General remarks

We appreciate that the Commission undertook the challenging attempt to reformulate reception conditions from first principles, taking into consideration an assessment of experience of Member States and other Civil Society actors.

We take the opportunity to thank the European Commission that churches and non-governmental organisations were given the opportunity to provide constructive remarks in the process of consultation on the basis of a discussion paper prior to the finalisation of this proposal. While welcoming the process of consultation with civil society actors on the specific Directive, we would like to recommend developing a formal procedure of consultations like those existing in

some Member States and to use this procedure in the preparation of all proposals for legal instruments².

Embedding the discussion on reception conditions in a broader but related context, we would like to stress the importance of legal access to the territory for asylum-seekers, State-sponsored provision of legal counselling and representation, and an increase in the quality of asylum procedures.³

The following comments are based on our conviction that all asylum seekers have the right to humane and dignified treatment. A large proportion of asylum seekers need protection; many are refugees according to the Geneva Convention; some need protection according to other human rights standards; and still others need protection because of humanitarian concerns. Therefore, for as long as there is no final decision on an asylum claim according to international obligations, the person concerned must be treated as a presumptive refugee and in a way that respects his/her dignity.

Comments on the Articles

CHAPTER I: SUBJECT MATTER DEFINITIONS AND SCOPE

Article 2: Definitions & Article 3: Scope

Arts 2(b), 3(1) The limitation of the scope of this Directive to asylum applicants who are third country nationals is reasonable on the basis that EU nationals applying for asylum in Member States other than their own⁴ are still entitled to benefit from their rights as EU citizens which would include equal treatment.

Article 2 (d) (i) This provision defines as a family member the unmarried partner in a stable relationship only where the legislation of the relevant Member State treats unmarried couples in the same way as married couples. Since, however, equal treatment of married and unmarried couples is often based on jurisprudence or common practice rather than on legislation *per se* we recommend replacing the word “*legislation*” by “*legislation, jurisprudence or practice*”.

Article 3 (1) We welcome the fact that this Directive applies to border procedures.

² This issue was recently taken up by the European Commission in its White Paper on European Governance (COM (2001) 428 of 25 July 2001).

³ See Caritas Europa position paper “Fair treatment for asylum seekers”, February 2001 and this joint comments’ authors’ comments on the Communication by the Commission towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, May 2001

⁴ Member states may opt out of the so-called Spanish protocol (Protocol No. 29 to the Treaty of Amsterdam), as Belgium has done.

Article 3 (1,2,3) The Directive invites Member States to apply these reception conditions to applicants for forms of protection other than the Geneva Convention. We urge the Commission to make this provision a mandatory rather than a discretionary one, on the basis that a two-tier reception system is more complicated to administer and is not logically justified. Given that some states apply a single procedure and status for all forms of protection, and that there is a genuine possibility that such a system could at a future date apply to the whole Union⁵, it would be unreasonable to differentiate between the different forms of protection in this context. Furthermore granting different rights to applicants for various forms of protection might lead to pressure on the person seeking complementary protection to apply for asylum. We support the position of UNHCR that:

“The question of what basic rights and benefits asylum-seekers deserve in order to live in dignity while they are awaiting the determination of their protection claims should be based on their needs rather than on the grounds on which their claims are based.”⁶

The goal of avoiding secondary movements within the Union is an argument against leaving the application of reception standards to Member States’ discretion. At the same time, we are aware that the Amsterdam Treaty only provides a weak legal basis for including applicants for complementary forms of protection into this Directive.

CHAPTER II: GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5: Information & Article 6: Documentation

Articles 5,6 We very much welcome the provisions on information and documentation.

Article 5 (2) This provision obliges Member States to inform each adult accompanying family member of the right to make a separate application for asylum. From our point of view there is no logical reason for this limitation as minors are also entitled to apply for asylum. From practical experience we know individual cases from regions such as Kosovo, Bosnia or Rwanda where the children within a family had the strongest or even the only protection needs under the Geneva Convention. We urge that this provision’s obligation to provide information be extended to include non-adult members of the family who are old enough to understand the implications.

⁵ See discussion in Commission’s Communication on asylum, November 2000.

⁶ UNHCR Comments on the European Commission Proposal for a Council Directive laying down Minimum Standards on the Reception of Applicants for Asylum in Member States, July 2001

Article 7: Freedom of movement

Article 7 (1, 3, 4) The proposal in Art 7 (1) leaves it to Member States whether they grant applicants freedom of movement within the territory or in a specific area only. In the absence of compelling reasons to the contrary, their right to free movement within the State must not be curtailed. We strongly urge that asylum-seekers and their accompanying family members should have free movement throughout the territory of the Member State in which they apply for asylum. Member States are obliged to fully guarantee free movement within the host country under Art 12 International Covenant on Civil and Political Rights (ICCPR) and Art 2,3 of the Protocol 4 to the European Convention on Human Rights and Fundamental Freedoms (ECHR). Against this background we recommend the deletion of the words “or in a specific area of it under the conditions set out in this Article” from Art 7 (1) and the related paragraphs 3-5.

Article 7 (2) We believe as a general rule that asylum seekers should not be detained. Asylum applicants should only be detained as a last resort in exceptional cases when non-custodial measures have proven on individual grounds not to achieve the lawful and legitimate purpose.⁷

Neither the proposed Directive on asylum procedures nor the proposed Directive on reception set out conditions of detention and the procedural guarantees applying in cases of detention. We support UNHCR’s view⁸ that under Article 63 of the Amsterdam Treaty, it is most appropriate to incorporate these provisions in the Directive on reception conditions, and we urge that they be based on the UNHCR *Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*⁹.

In particular, we urge that asylum seekers should not be held with convicted prisoners or those on remand.

Article 9: Families

Article 9 We welcome the recognition of the importance of family unity.

Article 11: Medical screening

Article 11 Being aware that medical personnel must observe confidentiality on individuals’ medical history, we consider that it would nevertheless be helpful

⁷ For more details, see Caritas Europa Migration Commission comments on the proposal for a Directive on minimum standards on procedures in member States for granting and withdrawing refugee status; May 2001

⁸ See footnote 5

⁹ UNHCR Guidelines February 1999

if there was a provision added that expressly stated that the results of medical screening shall be confidential. To avoid misunderstandings, asylum-seekers and their accompanying family members should be informed that this rule of confidentiality applies, and that the results of screening will not prejudice their application for protection.

Article 12: Schooling and education of minors

Article 12 (1) This provision specifies that minors shall be younger than the age of legal majority in the relevant Member State. We note that in article 2 (i) unaccompanied minors are defined as persons below the age of eighteen. There is a potential inconsistency between these two definitions. For the sake of consistency we recommend the same definition of the age of majority be used throughout the Directive.

Article 13: Employment

Articles 13 (1) We welcome the provision that Member States shall not forbid access to the labour market for more than six months. At the same time the proposal leaves it open to Member States to lay down the conditions for the access to the labour market. According to the Explanatory Memorandum this means that Member States “can decide the kind of work asylum applicants may apply for, the amount of time per month or per year they are allowed to work, the skills they should have, etc.”. This interpretation in practice enables Member States to block access by asylum seekers to the labour market – and constitutes a hidden opt-out-clause. We would like to see a much stronger commitment to offering asylum seekers the opportunity to earn their own living and become self-sufficient.

Article 13 (3) This proposal allows Member-States to restrict access to the labour market as a penalty for “negative behaviour” by applicants. We have serious reservations about the appropriateness of this punishment; see below our comments on article 22.

Article 14: Vocational Training

Article 14 We welcome the proposal’s provision that Member States may not forbid access to vocational training to asylum applicants and their accompanying family members for longer than six months.

Since language skills are crucial for succeeding in seeking for job opportunities, the Directive should invite Member States to offer language training as soon as possible after the procedure is started.

We urge the creation of a coherent system for the swift recognition of asylum-seekers' professional qualifications, accompanied by any assistance necessary to align an individual's skills to the needs of the EU labour market. This approach is also likely to make a later return to the country of origin more viable, as the individual is able to return with more skills and hence should be better able to provide for himself/herself and in many cases perhaps also provide a valuable contribution to a recovering society.¹⁰

Our comments in relation to Article 22 also apply to Article 14 (3).

CHAPTER III: MATERIAL RECEPTION CONDITIONS

Article 15: General Rules

Article 15 (1) We observe a lacuna in the provision of material aid: assistance may end upon the notification of a negative first instance decision (Article 15.1 (a)) and resume upon lodging of an appeal (Article 15.1 (b)): during these two stages several days or weeks may elapse, during which the asylum seeker is putting together the elements of his or her appeal. It is unacceptable to submit the asylum applicant and accompanying family members to the risk of destitution and homelessness during this process. We urge that material aid be provided after notification of any negative decision preceding the final determination until the deadline for lodging an appeal has elapsed.

Article 15.1 (b) apparently limits material reception conditions during the appeal procedures to situations where the appeal has suspensive effect. Where an appeal does not have a suspensive effect¹¹ but the applicant has not been removed from the territory he/she should still be entitled to benefit from material reception conditions.

Article 15 (2) We welcome that the proposal obliges Member States to ensure that material reception conditions to be adequate for the health and the well being of applicants as well as the protection of their human rights. We recommend that this standard be defined according to objective criteria applicable to all Member States (see comments on Article 17).

Article 15 (3) The Commission proposes that material reception conditions may be provided in kind, or in form of financial allowances or of vouchers. Experience has shown that providing material reception conditions in the form of **vouchers** or **assistance in kind** has not in fact created dignified living conditions for

¹⁰ See this joint comments' authors' comments on the Communication by the Commission towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, May 2001

¹¹ Here we would like to reaffirm our insistence that it is essential for appeals in asylum cases to have suspensive effect.

asylum seekers and their accompanying family members. A system that limits where asylum-seekers can shop and what they can buy, and that makes their status readily apparent to the public has been shown to stigmatise, impoverish and create substantial hardship for asylum-seekers. Therefore we are opposed to any voucher or non-cash system. Material reception conditions should always be provided in the form of financial allowances; there is no evidence to show that such a system creates a pull-effect.

Article 15 (4) The proposal allows Member States to reduce or withdraw material reception conditions three months after applicants have been allowed access to the labour market. The Commission intends to oblige Member States - as far as the applicants are not financially independent - only to grant a food allowance and access to basic health care. Since some of the Member States could decide to limit reception conditions to a very low level by applying this provision, we have serious concerns about this opt-out clause. Material reception conditions should be withdrawn or reduced when the asylum-seeker and accompanying family members are truly financially independent, not at the end of an arbitrary time period.

If this provision is retained, it is crucial that “basic social care” is defined in terms that ensure that the system does not create a real risk of hardship for those who are not financially independent after this time limit, a category likely to include the most vulnerable of refugees, including those who may be unable to work due to ill-health or the necessity of caring for family members.

Article 16: Housing

Article 16 We are concerned that asylum applicants in receipt of a “grant of a financial allowance or vouchers sufficient to enable applicants to find independent housing” under Article 16.1 (d) are apparently excluded from the guaranteed access to emergency health and psychological care and to health care that cannot be postponed under Article 16.2 (a). Given the general guarantee of health-care in Article 20, we do not believe that this lacuna was intended; however, for the sake of certainty, we would like to see an explicit statement that the guarantee of access to health-care under Article 16.2 (a) also applies to persons housed under the terms of Article 16.1 (d).

While welcoming the guarantees laid down in this section, we urge the inclusion of a guarantee of respect for the cultural and spiritual needs of applicants and their families.

We recommend that large-scale accommodation centres be avoided on the basis that they are more likely to institutionalise occupants and hamper integration.

We are deeply concerned about insensitive dispersal policies that distance asylum seekers from the support of their communities and from essential services, including expert legal advice. Furthermore, experience has shown that exposing asylum seekers to communities that are ill prepared for their arrival can lead to serious tensions.

We recommend the Directive require Member States to ensure asylum seekers are housed in a safe and supportive environment.

Article 17: Total amount of allowances or vouchers

Article 17 Although we welcome that the proposal makes the attempt of defining the level of material assistance by reference to the poverty line, we would be very much in favour of including a definition of poverty either into the provisions or at least in the Explanatory memorandum. We recall that as defined on the EUROSTAT equivalence scale, the threshold level below which one would be threatened by poverty lies at 60% of the average per capita income.

We are deeply concerned that the proposal allows Member States to reduce or withdraw assistance where asylum applicants stay with relatives or friends. While such a reduction might be appropriate in some cases, it might also create severe hardship in others. The relatives and friends of asylum applicants should not be penalised for offering hospitality to applicants. Such a measure is also likely to prove counterproductive in increasing the likelihood that asylum applicants will have recourse to places in reception centres. There may also be more absenteeism from reception centres, as asylum seekers nominally accommodated in such centres stay with the relatives and friends with whom they would otherwise have chosen to live. We believe that the possibility of staying with friends and relatives can be of benefit to individual applicants and to Member States, and it should not be hindered. We agree to the principle that as far as applicants are self-sufficient they do not need to receive any material support.

We urge that any decision to reduce or withdraw the material aid on the grounds that the applicant is staying with friends or relatives be taken individually. In addition to establishing an independent office that can hear complaints, we urge that any decision in this regard shall be taken objectively, impartially and with reasons given, and that applicants should have the right to appeal such a decision, as set out in Articles 19 and 21.

CHAPTER IV: HEALTH AND PSYCHOLOGICAL CARE

Article 20: Health and psychological care during regular procedures &

Article 21: Health and psychological care during other procedures

Article 20 As noted above in our comments on Article 15 (1), we are concerned that there is a gap between loss of the care upon notification of a negative decision and resumption of the care upon lodging of an appeal: during these two stages several days or weeks may elapse, during which the asylum-seeker should not be deprived of health and psychological care. We urge that this entitlement should remain valid after notification of any negative decision preceding the final determination until the deadline for lodging an appeal has elapsed.

Arts 20(2),
21(2) We feel it necessary to underline that this is not an exhaustive list of persons who may have special needs. In particular, we are concerned about the omission of traumatised persons and persons who have experience torture and other forms of violence, which may not be gender-related.

CHAPTER V: REDUCTION OR WITHDRAWAL OF RECEPTION CONDITIONS

Article 22: Reduction or withdrawal of reception conditions following negative behaviour

Article 22 This article provides for a reduction or withdrawal of reception support in the case of applicants for asylum who manifest “negative behaviour.” We regard it as a serious breach of human rights to inflict destitution and homelessness on an asylum applicant and accompanying family members as a punitive measure. A Member State national who commits a criminal offence is not at risk of losing social assistance, a sanction which is hugely disproportionate to the alleged offences envisaged in the Article. An applicant who has concealed financial resources could be required to make financial restitution of the amount by which he is deemed to have unduly benefited; an applicant who has behaved in a violent or threatening manner may be punishable under national criminal law; an applicant who prevents a minor from attending school may require the intervention of an appropriately-trained social worker. While we appreciate that Member States may need to sanction criminal behaviour, we strongly believe that the national criminal law provisions provide the appropriate mechanism.

It is important that asylum-seekers are informed as to what will be deemed to constitute “negative behaviour” and what the potential sanctions are.

CHAPTER VI: PROVISIONS FOR PERSONS WITH SPECIAL NEEDS

Article 23: General principle

Article 23 While we welcome the provision for people with special needs, we feel that there is potential for confusion, given that the category is defined differently in Articles 20 and 21. We recommend that the definition in Article 23 should be used throughout the Directive. It should be made clear that the list is not exhaustive; the principle of individual evaluation is an important one. Other individuals, such as those recently bereaved, may also have special needs.

Article 24: Minors & Article 25: Unaccompanied minors

Articles 24, 25 We welcome the provisions relating to minors and unaccompanied minors.

CHAPTER VII: ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article 29: Local communities

Article 29 We welcome the reference to measures to promote harmonious relationships with local communities. While this is very important for communities where accommodation centres are located, we recall that many asylum-seekers and refugees do not live in accommodation centres, and we urge Member States to take measures to promote harmonious relationships between local communities and asylum-seekers throughout their territory, wherever asylum-seekers may be located.

We are concerned at some of the terms used about refugees and asylum seekers in the media and in public debate, which has a negative effect on public opinion. We recommend that Member States encourage the national media to draw up some principles of best practice in this area. We also urge Member States to make a resolute commitment to give leadership in and to promote the use of accurate and sensitive terminology in the debate on asylum.

As well as combating negative attitudes, we underline that asylum seekers and refugees can make a positive contribution to our societies, and this benefit should be reflected in public discourse.

Article 30: Guidance, monitoring and control system

Article 30 We welcome that Member States are required to provide for the guidance, monitoring and control of the level of reception conditions.

Concluding remarks

Echoing the position of UNHCR, we are convinced that:

*“An adequate standard of reception enables asylum-seekers to present their asylum claims properly and sufficiently, to co-operate with the asylum authorities throughout the procedure and, more generally, to build trust and confidence in the asylum process. In turn, fair and expeditious procedures that quickly and properly identify who is in need of international protection and who is not help reduce the financial costs attached to the implementation of reception schemes”.*¹²

As organisations representing Christian churches throughout Europe, Roman Catholic, Orthodox, Protestant, Quaker and Anglican, as well as church agencies particularly concerned with migrants and refugees, it is part of our tradition to care for the oppressed and to uphold the dignity of the human individual. Against this background, and given that reception conditions are such a crucial part of the asylum system as a whole, we take this opportunity to contribute our comments.

Brussels, September 2001

¹² See footnote 5.