



COMMENTS ON THE EU NEW PACT ON MIGRATION AND ASYLUM

Our organisations represent Churches throughout Europe – Anglican, Orthodox, Protestant and Catholic – as well as Christian agencies particularly concerned 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. We also share the conviction that the core values of the European Union must be reflected in its policies, including in the area of freedom, security and justice.

❖ Holistic approach overshadowed by fundamental rights concerns

On 23 September 2020 the European Commission launched the New Pact on Migration and Asylum, a set of proposals with the aim to strike a new balance between responsibility and solidarity among Member States, faster procedures, and stronger partnerships with third countries. We acknowledge the fact that the Commission has come forward with a holistic approach covering aspects such as asylum, solidarity and responsibility sharing, Schengen, cooperation with third countries and integration. We also acknowledge that the EU Commission has consulted, in particular Member States, prior to the publication of the New Pact and intends to accommodate different perspectives on this complex subject.

With its New Pact, the Commission announced “a fresh start for migration in Europe”. Contrary to the Commission’s message, however, the proposals replicate, in many aspects, deficient policies from the past. For instance, a look at the 2003 Communication on ‘accessible, equitable and managed asylum systems’¹ will show that some of the central intentions of the Pact are already included in the thinking of that time. An evaluation on why the plans of 2003, and many similar proposals since, have failed would certainly have been helpful. In our annexes we would like to examine whether the new proposals are indeed new, to what extent they respect human rights, and how they address current dysfunctionalities in the asylum and migration framework.

¹COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT Towards more accessible, equitable and managed asylum systems, COM (2003) 315final.

The good intentions expressed by the Commission are overshadowed by a number of elements of the Pact, which raise concerns regarding the compliance with fundamental and international law and the effectiveness to provide immediate protection for those in need of it. Unfortunately, the proposals still seem to be influenced by the assumption that within the mixed migration flows arriving in Europe, most of the people are not entitled to protection and therefore accelerated border procedures and swift and efficient returns are core to manage migration in an orderly manner.

❖ **Lower procedural guarantees and extended detention based on misleading statistics**

An element of concern in the Pact is the argumentation that only one third of persons arriving is entitled to international protection, which could jeopardise the principle of case-by-case assessment of individual situations. Moreover, this statistic is misleading as the recognition rate varies enormously from one Member State to another. The figure also only captures first instance decisions and ignores the successful appeals rate. Many applicants from groups of concern (in recent years, for example, Syrian or Afghan nationals) have their protection need recognised by organisationally and politically independent courts, which often criticise the quality of first instance decisions.

We are deeply concerned by the heightened focus on border procedures in the Pact. The fact that accelerated border procedures shall become mandatory, inter alia, for persons with nationalities for which the average European recognition rate is below 20% gives reason for serious practical and legal concerns. Procedures at the borders may lead to more individual suffering and pose challenges for both reception, qualitative decision making and later integration. We believe that every person arriving at the EU borders should be treated fairly and not kept from entering European territory while waiting for a decision on their legal status. Considering that the outcome of the screening affects the rights of the person concerned, the lack of procedural guarantees is alarming, as is the likelihood of detention or *de facto* detention.

❖ **Dublin's fundamental flaws remain, despite improved criteria**

We believe that there is a need for an increased focus on asylum as an individual right and on solidarity, as enshrined in Article 18 of the Charter of Fundamental Rights of the European Union

and Article 80 TFEU. The Pact has been presented as a new reform package allowing a balance between solidarity and shared responsibility in asylum matters. In its implementation, it should not undermine the universally recognised right to seek and enjoy international protection. There are some laudable improvements on family links, which now include siblings and family ties created after leaving the country of origin. The possession of an educational diploma or qualification issued by an educational institution of a Member State is also rightly introduced as a criterion for determining the responsible Member State. Nevertheless, the successive Dublin regulations have not been “put to bed” as announced. In most cases the responsible Member State will still be the first country of entry.

❖ **More solidarity needed to welcome, not to return**

Given that the most important rules of Dublin remain in force, it is essential that the European Parliament and the Council agree on a binding solidarity mechanism which puts the focus on relocation. According to the proposals, the Member States are, to a large extent, free to decide in what way they want to show solidarity to other states. On the one hand, we welcome that solidarity can be expressed through capacity building of the asylum system. On the other hand, we are concerned that return sponsorship becomes an option. It is a paradox that ‘solidarity’ can be expressed in deporting people. Though we acknowledge that states are entitled to decide who can reside on their territory and that some people must be returned, solidarity mechanisms should be about improving protection and reception standards and not create additional risks of rights violations.

As currently proposed, the solidarity mechanism will leave countries at the EU external borders largely alone with the reception task or even increase their responsibility due to mandatory border procedures. People entering through these external border states are likely to continue to be left alone in unacceptable circumstances, which the European Court of Justice, the European Court of Human Rights and also national courts have repeatedly determined, over more than a decade, to be incompatible with fundamental rights.

❖ **Strong focus on returns and externalisation of migration management**

The focus on return also raises several questions. While the Commission correctly analyses the fact that only one third of those who have received a return order leave the EU, it overlooks the reasons behind that reality. Both in the area of return and in other policy measures regarding cooperation with third countries, a strong focus is on making these countries work for the EU in managing migration. This is problematic as it happens against the background that many of these countries already shoulder a substantial part of international responsibility for refugees, often with more limited resources. At the same time, some countries do not respect human rights themselves.

Within the framework of screening and border procedures, we welcome the proposal to create an independent monitoring mechanism to ensure the respect of fundamental rights. Nevertheless, the Pact limits the monitoring to the screening procedure alone. Instead, monitoring should apply to all alleged fundamental rights violations at the borders in order to address pushbacks. Any limitation to specific areas or procedural aspects may lead to blind spots. Furthermore, return border procedures bear a high risk of long-term detention for the persons concerned.

❖ **Focus on integration and migrants' positive contribution: the path to follow**

We hope that during the negotiations over the new Pact, the actual needs and existing problems are analysed and the rights of migrants and refugees, especially the most vulnerable, are considered and respected. As a consequence, the protection of people should be at the centre of this proposal.

In this spirit we do welcome the new Action plan on Integration and Inclusion 2021-2027 presented by the Commission on 24 November 2020. Although it was presented separately from the Pact, it approaches integration with a focus on cohesion, inclusion and anti-discrimination. We hope that this positive approach will inspire current and future negotiations on the Pact in the Council and the Parliament.

Similarly, we welcome the 'Skills and Talent' dimension of the new Pact including, among other actions, the reform of the EU Blue Card Directive, the revision of the Single Permit Directive and the creation of an EU Talent Pool. Nevertheless, this reform and revision should involve third country partners from the beginning in order to avoid brain drain and to address existing inequalities in education and training systems. Furthermore, such measures should include programmes strengthening exchanges in all levels of education, providing opportunities also for medium- and low-skilled students or workers.

❖ High time for a real ‘fresh start’: full and coherent application of CEAS and real solidarity

The previous observations obviously influence any determination on whether the proposals in the New Pact are feasible, realistic and will be effective. Such an evaluation also needs to take account of the development and implementation of EU law in the areas of asylum and migration – which our organisations and members have followed and commented on since the entry into force of the Amsterdam Treaty 1999.

It is high time to evaluate whether new provisions are the only possibility of a fresh start or whether a correct and full application of existing laws should not be the first step towards a functioning Common European Asylum and Migration System. Experience on the ground suggests that the laws adopted so far (on asylum procedures, reception conditions and qualification for international protection) could provide a solid starting point. However, in too many cases, these laws have been broken or ignored by Member States leading to unnecessary suffering of persons in need of dignified shelter and protection. A thorough reform would only urgently be needed for the Dublin system. We recognise this seems currently unrealistic but as long as the principle behind it remains, the system will be neither fair nor effective.

The EU and its Member States should invest in the implementation of the asylum *acquis* in a way that is legally compliant, fair and adequately resourced, building on the relevant decisions of the CJEU and ECtHR. A serious discussion around the notions that existing laws need to be respected should take place. Passing legislation is not an aim in itself, no matter how much effort went into it. We believe Europe has the potential to refuse the logic of closed borders and of deterring people from entering its territory. Instead, we call for a more welcoming, protective and cooperative approach.

In relation to the new proposals, our organisations stand ready to share our expertise and positions and offer the following specific **comments and recommendations** (in annexes):

- Comments on the proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2018/1240 and (EU) 2019/817 and on the amended proposal for a Regulation of the European Parliament and the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.

- Comments on the proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX (Asylum and Migration Fund)
- Comments on Return Policies, Readmissions and Cooperation with Third Countries within the framework of the New Pact on Migration and Asylum.
- Comments on Commission Recommendation on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities (C (2020) 6468 final) and Commission guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence (C (2020) 6470 final).

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- Caritas Europa, www.caritas.eu
 - CCME – Churches’ Commission for Migrants in Europe, www.ccme.eu
 - COMECE – Commission of the Bishops’ Conferences of the European Union (Secretariat), www.comece.eu
 - Don Bosco International, www.donboscointernational.eu
 - Eurodiaconia, www.eurodiaconia.org
 - Sant’Egidio BXL Europe, www.santegidio.org
 - ICMC – International Catholic Migration Commission, www.icmc.net/europe/
 - JRS Europe – Jesuit Refugee Service Europe, www.jrseurope.org
 - Protestant Church in Germany – EKD, www.ekd.de/Bevollmaechtigter-EKD-Dienststelle-Bruessel-25117.htm