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OMCT Position to the European Council of Seville, 21-22 June 2002

A few days before the Summit of Seville, OMCT is gravely concerned by the evolution of the EU asylum and immigration policies since September 11th 2001. This evolution is in complete contradiction with the conclusions of the European Council of Tampere held on 15-16th October 1999, which was calling for *"a comprehensive approach to migration addressing political, human rights and development issues"* and aiming at *"combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children"*. On the contrary, today, European immigration and asylum policies are based on repression and dissuasion and no longer on protection, as shown by the conclusions of the Justice and Home Affairs Council of 13-14th June¹, or by the criminalization of illegal immigrants as well as of asylum seekers and « economical refugees », given the confusion that exists between the different situations and which leads to, among other things, the rise of racism².

On the contrary OMCT believes that an efficient immigration policy goes hand in hand with a foreign policy aimed, in all its aspects, at economic development and effectiveness of human rights, notably economic, social and cultural rights in the country of origin. Indeed, such an evolution only will allow millions of people to find the realisation of their fundamental rights in their own country, such as the right to life and to protection from ill-treatments as well as the right to be free from hunger, the right to an adequate standard of living for themselves and their families and the right to the continuous improvement of their living conditions³ without having to migrate.

Moreover, immigration has been, is and will be an essential contribution to cultural, social and economic enrichment for Europe. Shutting it from migratory flows is therefore not only unrealistic but also undesirable. OMCT would like to recall the European Council's commitment, as expressed in Tampere, to develop *"a more vigorous integration policy [which] should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia"*.

¹ These conclusions include, among others, constraining preventive measures for countries of origin, boarding or transit, as well as sanctions against third countries that would not sufficiently respond to EU demands regarding the control of migratory flows. The EU is thus laying the main responsibility at these third states.

² see In particular Amnesty International's position in "Amnesty International Appeal to the Sevilla Summit", June 12th 2002

³ article 11 paragraphs 1 and 2 of the International Covenant on Economic, Social and Cultural Rights of December 16th 1966

Finally, though it is undeniable that certain aspects of asylum policies are linked to immigration issues, it is important to maintain a distinction between these two policies. Indeed asylum is the right to international protection from serious violations of human rights and shouldn't be used as an instrument towards controlling migratory flows. If a level of co-ordination, or even of communitarization, is necessary to guarantee a similar level of protection in all member states, it should not be done to the detriment of the guarantees offered nor in the sense of a restrictive interpretation of the Geneva Convention⁴.

Therefore OMCT calls on Member States to guarantee, when making decisions at the European Council in Seville, the respect of the following commitments:

- The respect and implementation of the Tampere council's conclusions
- An asylum policy based on protection and not on dissuasion, respecting the Geneva Convention of 1951 in spirit as much as in practice. This implies notably:
 - An absolute and strict respect of the principle of "non-refoulement", i.e. not to be sent back to a third country where there are risks of being subjected to torture or death penalty, in accordance with the European Convention on the Prevention of Torture and the UN Convention against Torture and any other cruel, inhuman or degrading treatment;
 - The full respect by all Member States of the European Court of Human Rights jurisprudence on the right not to be sent back to persecution;
 - The preservation of the possibility to access to the territory, in order not to make the right to asylum meaningless.
- The development of a common immigration policy based on clear and objective common criteria and without being detrimental to the respect of human rights, notably in terms of the protection of family and private life and of non-discrimination. It must go with an integration policy guaranteeing a fair treatment of nationals from non-EU countries, who should enjoy the same rights and obligations as nationals from EU countries⁵. The Member States must also guarantee the respect of fundamental human rights to anyone living on their territory.
- The guarantee of the non-criminalization of solidarity in the framework of the proposal for a framework decision relating to the facilitation of unauthorised entry and residence⁶
- The development of a coherent foreign policy aiming at the economic development and the implementation of human rights in the countries of origin so as to fight against the structural causes of immigration, notably by contributing towards a fair and equal world economic system.

⁴ Convention relating to the Status of Refugees, 28 July 1951

⁵ In particular point 21 of the Laeken conclusions " The legal status of third country nationals should be approximated to that of Member States' nationals

⁶ Proposal for a Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence (2000/C253/03)

OMCT also denounces the lack of transparency in decision-making procedures. As an example, a week prior to the Summit neither the parliament nor the NGOs have been informed of the concrete propositions Spain wishes to submit to the Member States, thus preventing the European Parliament from exercising its role of democratic control and the NGOs from keeping watch on the matter. Moreover it is worth underlining the confusion reigning on the division of responsibilities between the different European players⁷. However, given what is at stake, i.e. the human rights issues going with asylum and immigration policies, the division of tasks demands transparency and real democratic control.

In this regard, OMCT demands an in depth reform in order to reach a clear determination of responsibilities, with the European Parliament holding an increased role so as to improve the efficiency, coherence and legitimacy of the EU action in this field.

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⁷ Indeed, immigration and asylum policies fall under the 3 pillars depending on the different aspects (asylum policy strictly speaking, readmission agreements, traffic in human being, etc.), which are thus submitted to totally different procedures in terms of initiative and decision making as well as in terms of the European Parliament's role.