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Dear Sir,

*The Draft Chapter on Justice and Home Affairs – Chapter X*

We, the undersigned, take this opportunity to comment, jointly on the draft chapter on Justice and Home Affairs which you published last week and which will be discussed in the Plenary on 3 and 4 April 2003 (doc. CONV 614/03).

This coalition of non-governmental organisations includes legal specialists in four Member States – Belgium, France, the Netherlands and the UK. It also includes seven organisations, which represent national organisations in all the Member States. All these organisations are engaged in the issues of asylum, immigration and fundamental rights.

First, we would take this opportunity to welcome your proposal that will incorporate essential principles of human rights into the Convention. In our view the incorporation of the Charter of Fundamental Rights is essential to the legitimacy of the Convention. It is an extremely important counter balance to some of the other measures in the proposal for Chapter X which, without the assurance of binding and judicable fundamental rights protection at EU level would be unacceptable. We also welcome the proposal to extend the jurisdiction of the European Court of Justice in the field of Justice and Home Affairs so that there is a single system of judicial review in the Union, not one which varies depending on the subject matter. Rule of law is an essential element in this field and one which has been too easily sacrificed in the past. This rectification is warmly welcomed.

Secondly, there are seven points in the draft chapter which raise serious concerns. We set out here the main lines of our common concerns and the reasons. A number of us will be supplementing these concerns with detailed draft proposals for changes to the text in due course.

1. The supremacy of the UN Convention relating to the status of refugees and its 1967 Protocol: Article 11 makes reference to this convention but in our view this reference is not strong enough. The protection of refugees must be a fundamental principle of this chapter relating to asylum, immigration but also touching on extradition and criminal law.

Further, the terminology used in this provision leads to confusion when it uses the term "asylum" when it means "refugee status". The term asylum encompasses the full set of rights, benefits and obligations that flow from the recognition of a person as a refugee, beneficiary of subsidiary protection or (in a situation of mass influx) temporary protection. It therefore is considered an overarching concept encompassing all the various forms of international protection.

We also consider it essential that the convention expressly includes an obligation on the Member States to grant access to the territory and to determine claims on the territory of asylum seekers coming to the Union.

2. The Position of National Parliaments and the Monitoring Exercise: Article 31(2) unacceptably limits the role of national parliaments in the process of discussion and adoption of measures in this field. They should be fully engaged and entitled to request information. Regarding Article 3(1), we believe that the monitoring exercise should assess, as a matter of priority, the human rights compliance of legislation and not only efficiency. This field has too long been dominated by pressures regarding efficiency without sufficient respect for the legitimacy of measures impacting negatively on the Member States' international human rights commitments to refugees and migrants.
3. Linked to our first concern is our second: the two institutions which already exist to protect fundamental human rights at the EU level are not mentioned in the chapter at all. We strongly recommend the inclusion in this chapter of the Convention of the powers of the European Data Protection Supervisor and the Joint Supervisory Authority which are charged with the protection of personal data from unlawful exchange; it should also include the powers of the Ombudsman particularly in investigating the propriety of the decision making process and its application. These powers should be extended to include the examination of complaints about the human rights implications of acts of EU bodies and the implementation of EU acts at national level in conjunction with the national ombudsmen.
4. Equal Treatment for Third Country Nationals: Article 12 makes reference to the status of third country nationals lawfully resident in the Union. However, it fails to place as a principle what was agreed at the first Summit on JHA in Tampere, 1999, the commitment to achieve as far as possible equal treatment for lawfully resident third country nationals in the Union with Union citizens. This is a serious failing in the draft and needs to be remedied.
5. The Strategic Committee: Article 5 establishes a strategic committee with a number of operational and other powers. We consider it unacceptable that such a Committee should have any powers wider than operational. Specifically such a Committee must not have any decision making power particularly in light of the subject matter of the chapter. In our view, it is contrary to the principle of accountability and rule of law for a delegated Committee to have decision making powers. Further the European Parliament must be fully informed of and engaged in this process, in particular to ensure application of the principles of accountability and transparency to the exercise of operational (or other) powers by the Strategy Committee. The citizen of the Union is also entitled to be informed through the publication of all notes of deliberation and reports of the committee.

More generally, we believe it is important to indicate expressly that all committees, agencies, and bodies established by the Union and given powers to act in a defined area, are subject to the same rules of accountability and transparency (in particular access to information and judicial review) which apply to the organs and institutions of the Union.

6. Evaluation of compliance: Article 4 proposes that a system of evaluation of compliance take place. We reiterate our comments regarding Article 3 above at point 2. The evaluation must be independent and should not be undertaken by individual Member States. Objective and impartial evaluation should include consultation with independent experts on international human rights and national legal systems, active input from national and European parliamentarians and could incorporate "peer review" through reports from expert groups comprising a number of experts from different Member States. Such evaluation could be co-ordinated by the Commission or by an external, independent body.
7. Readmission Agreements: Article 13(2) adds a specific power to enter into readmission agreements. We wonder at the appropriateness of including such a specific power in a constitutional document. However, much more important, we have very grave doubts about the principles currently operating in this field in the negotiation and settlement of readmission

agreements by the European Union. Instead of such agreements exporting human rights protection and the raising of the standards of treatment of persons, we see them resulting in third states being placed in the invidious position of either having to disregard the provisions of the agreements or risk breach of their human rights obligations, in particular, the duty of all states to allow their citizens (and other persons) to leave the territory.

Further we consider the EU's use of the carrot and stick approach, tying Union aid and trade concessions into the third state's compliance with these breaches of their international obligations to be inappropriate. The decision to accord trade concessions and aid should not be tied to the achievement of certain immigration goals by some Member States. Any provision on readmission agreements, should it appear in the Convention, must genuinely promote human rights protection and not export negative values. As a wider point, we are very concerned about the impact of EU immigration and asylum measures on third countries. There appears to be a tendency among some EU Member States which is being transferred to the EU level to disregard the legitimate interests of third countries in these fields. We recommend the inclusion of a specific clause on human rights and the external implications of EU activities in the fields of immigration and asylum.

These are our initial comments and demands regarding the text. We have covered primarily the issues of immigration and asylum and related points on fundamental rights as these are the questions which are common to the undersigned. Further and wider comments and proposals will be made by some of our number in due course.

We look forward to entering into a fruitful dialogue with you regarding this extremely important part of the Convention.

Yours faithfully

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