

**Opinion on the Communication from the Commission to the Council and the European Parliament on Immigration and Asylum Policies**

(94/C 393/13)

On 28 February 1994, the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the abovementioned communication.

The Section for Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 18 July 1994. The Rapporteur was Mr Flum.

At its 318th Plenary Session (meeting of 14 September 1994) the Economic and Social Committee adopted the following Opinion by a majority vote, with two abstentions.

**1. Introduction**

1.1. Throughout the process of European integration, the Economic and Social Committee has unfailingly adhered to the fundamental principle of respect for human rights regardless of origin, race, sex, creed or nationality. It has constantly supported the idea that people of different origins should be able to live together in peace and without discrimination, has militated in favour of equal rights for citizens in all areas of society (wherever these are not explicitly covered by national civic rights) and has called for an extension of citizens' rights.

1.2. An integral part of the work of the Economic and Social Committee has therefore been the combatting of xenophobia and racism, the improvement of the legal status and living conditions of non-EU nationals living

legally in the European Union, and the upholding of the principle of the right to asylum.

1.3. With the free movement of persons becoming a reality in the European Single Market, an awareness has grown of the need to coordinate and harmonize the European Community's policy on the protection of its external borders. Towards the end of the 1980s the EC Commission accordingly gave consideration to the introduction of a specific Directive setting out the Community's policies on asylum and immigration. The Economic and Social Committee, which had already decided in 1988 to set up a Study Group to this effect, welcomed the Commission's move. The Commission's plans, however, failed to come to fruition, not so much because of the lack of an institutional framework in the Treaties of Rome, as because of the absence of any political agreement within the Council of Ministers. A

Draft Directive drawn up under the responsibility of Commissioner Bangemann was therefore once more withdrawn.

1.4. In connection with the intergovernmental conferences charged with the task of preparing the Maastricht Treaty, the Economic and Social Committee resolutely called for the creation of appropriate Community instruments to a) launch an asylum policy consistent with international laws and standards and based on the finest national traditions, and b) pave the way for an immigration policy based on common criteria.

1.5. With the signing of the Treaty on European Union of 7 February 1992, the institutional framework for Community action is finally in place. Action now would be in the clear interests of the Member States of the European Union, would be beneficial to European citizens and to non-EU nationals and their families legally resident in Europe, would protect individuals suffering from political persecution, would guarantee the humane treatment of refugees, and would prevent illegal employment without discrediting the workers concerned<sup>(1)</sup>. The Committee welcomes the new Treaty provisions but would also stress the need to speed up the procedures for putting them into practice.

## 2. Content of the Commission Communication

2.1. The EC Commission's Communication is a working document which offers an excellent basis for the necessary further development of common policies on immigration and asylum. It contains a general survey of the current level of intergovernmental cooperation in the European Union, describes the instruments which have been developed in the Union, provides a clearly structured plan of the areas within society where action on immigration and asylum is needed, and lays down a framework for further action based on the reality of the immigration and asylum policy objectives actually pursued in the Member States.

2.2. The Commission calls for a common analysis and the launching of possible action in a wide variety of policy areas, ranging from the causes and control of migratory flows to the integration of legal immigrants. The Commission is also in favour of differentiated instruments governing the entry and legal status of immigrants and taking into consideration the various reasons why people leave their country of origin.

2.3. The Commission describes existing instruments for monitoring migratory flows, surveys the legal frame-

work in the European Union, and points to other areas where cooperation might well be successfully stepped up with a view to harmonizing entry and residence criteria.

2.4. The Commission Communication thus contains much of the information necessary to analyze the causes of migration, understand the situation of immigrants and appreciate the conditions which have to be fulfilled for entry. The whole problem is thus put on a more objective footing. This paves the way for a genuine, factually-based and democratic dialogue which will help to remove prejudices and overcome xenophobia and racism.

2.5. The Commission Communication suggests, as the ESC has already demanded, that the European Union should create a European legal framework to plan and regulate immigration, thereby meeting the requirements for a de facto 'society' of immigration. The facts presented by the Commission confirm that the introduction of free movement of workers within Europe has, generally speaking and in terms of sheer numbers, not led to substantial migration between Member States. This is partly due to the success of the Community's cohesion policy. In terms of the migration of well-qualified persons, however, a pattern of well-ordered, integration-driven flows has undoubtedly emerged in the EU.

2.6. The historical experiences of the Member States of the European Union are a major pointer to the instruments which can be used to ensure that migratory flows caused by economic factors are orderly and beneficial to all parties. Important preconditions for controlled migratory flows are equal opportunities and roughly equivalent living conditions in all the regions of Europe; it is not necessary however for living conditions to be absolutely identical.

2.7. The views expressed by the ESC in its Opinions on xenophobia and racism, immigration policy, and the legal status of migrant workers from third countries, are reaffirmed by the Commission and offer a basis for assessing the latter's current proposals on Immigration and Asylum Policies<sup>(2)</sup>.

<sup>(1)</sup> ESC Opinions on the Status of Migrant Workers from Third Countries (OJ No C 159, 17. 6. 1991, p. 12; OJ No C 339, 31. 12. 1991, p. 82).

<sup>(2)</sup> ESC Opinion on Racism and Xenophobia (OJ No C 23, 30. 1. 1989, p. 33); ESC Opinions on the Status of Migrant Workers from Third Countries (OJ No C 159, 17. 6. 1991, p. 12; OJ No C 339, 31. 12. 1991, p. 82); ESC Opinion on Immigration Policy (OJ No C 40, 17. 2. 1992, p. 104).

2.8. The comments which appear below are confined to aspects of the EC Commission's Communication which seem to be of vital importance at the present time, as well as to any additions and changes deemed to be necessary in this complex field.

### 3. General comments

3.1. Coordinated, common immigration and asylum policies within the European Union are inescapable; they are also of quintessential importance if we are to guarantee the free movement of persons in the European Union whilst continuing to show understanding for people suffering from hardship.

3.1.1. The agreed process of coordination will lead in turn to a further deepening of cooperation between the Member States of the European Union and the better mutual understanding of a policy area which, despite common values and a common base, has developed in quite different ways in the Member States of the European Union on account of different historical experiences and policies.

3.1.2. The framework provided in the EU Treaty for the future formulation of the European Union's immigration and asylum policies marks a first important milestone on the road to European integration. Further steps will have to be taken when the intergovernmental conference decides on the future shape of the European Union Treaty.

3.1.3. Common immigration and asylum policies will strengthen economic and social cohesion in the Member States. An agreed common policy on immigration criteria and on the protection of the European Union's external borders will also make it possible for non-EU nationals legally resident in a Member State to move freely within the EU on the same basis as EU nationals.

3.1.4. The Commission has the backing of the Economic and Social Committee in declaring itself to be an 'honest broker' in efforts to gradually put together European policies on immigration and asylum. Discussions on the future shape of the European Union's immigration and asylum policies must not be held behind closed doors. They must be open and pragmatic, as befits a democracy, and citizens of the Union must also be allowed to join in and influence the proceedings.

3.1.5. Asylum and immigration policies in many ways overlap since, in reality, it is not always possible to analytically differentiate between the various reasons why an individual refugee leaves his country, with victims sometimes having been through unimaginable human sufferings and humiliations ranging from hunger and environmental catastrophes to torture and kidnappings. Causes such as political repression, ethnic conflicts, obstacles to freedom of worship, persecution of women, economic hardship, social injustice, violation of civic and human rights, are in some respects closely

intertwined. A common approach is therefore needed, particularly if there is to be real integration in the society of the host country.

3.1.6. Nevertheless, significant differences of opinion exist regarding the measures needed to tackle the causes of flight and migration and the possible help available to those concerned. The Committee here would reaffirm its call for a political blueprint on EU immigration and reiterate its proposals on the need to combat the evils which force people to become refugees<sup>(1)</sup>.

3.2. However praiseworthy, the progress made in putting in place European asylum and immigration policies is essentially confined to 'defensive' aspects. This is regrettable.

3.2.1. The fixing of admission quotas for asylum-seekers and refugees should be categorically rejected.

3.2.2. Family reunification whereby family members join non-EU immigrants legally resident in a Member State of the EU should also be authorized without restrictions, provided the conditions and definitions laid down in EC instruments on the free movement of persons are complied with.

3.2.3. As far as the control of illegal immigration is concerned, previous efforts have been concentrated on expulsions, and not on penalties for the employers of persons without work permits, as the ESC has recommended<sup>(2)</sup>.

3.2.4. Persons seeking refuge in the European Union must be protected against exploitation and inhumane treatment from human smugglers and their organizations. Such organizations and their intermediaries should be tackled with the full power of the law.

3.2.5. Where a person is expelled, reasons must be given for the expulsion order and the person concerned must be informed about his rights.

3.2.6. The fight against illegal employment must not be limited to disciplinary and repressive measures. Policies must also be developed to ensure that illegal employment disappears. Initial action to tackle this problem has already been taken in a number of EU Member States.

3.2.7. Previous national experiences in regularizing the right of residence in border areas need to be analyzed, and any positive aspects to come out of the application of workers' rights to immigrants should be harnessed and used as a basis for Union-wide regulations.

3.3. The Economic and Social Committee considers it essential that all measures taken under asylum and refugee policies should aim to identify people suffering from hardship and offer them help.

<sup>(1)</sup> ESC Opinion on Immigration Policy (OJ No C 40, 17. 2. 1992, p. 104).

<sup>(2)</sup> ESC Opinion on Immigration Policy (OJ No C 40, 17. 2. 1992, p. 104).

3.4. In the formulation of admission criteria, and the drawing-up of a differentiated but coordinated policy to tackle the causes of migration, consideration should be given to all the various factors which cause people to leave their home, either because they are seeking asylum, or need protection as refugees, or wish as migrants to overcome hunger and economic hardship. Having laid down these general points of principle, the Economic and Social Committee would now like to express its views on individual aspects of the problem whilst recommending that the Commission adopt a differentiated approach.

#### 4. Overcoming discrimination and racism

4.1. The Committee reiterates its view that fighting xenophobia and racism, and protecting the basic rights of all people living in the European Union, are at the very heart of the philosophy of the new Europe<sup>(1)</sup>.

4.1.1. Existing legal instruments on the protection of ethnic minorities should be implemented throughout the Union, and if necessary further strengthened. They should also be harmonized under a European Convention on the protection of ethnic minorities. Here the various experiences and policies of the Member States need to be analyzed and further developed.

4.1.2. Common legal criteria for entry into the European Union should be free of discrimination and compatible with the UN Convention on the elimination of all forms of racial discrimination.

4.1.3. Legal instruments confer rights on those concerned and can change patterns of behaviour within a short period of time.

4.1.4. Deep-seated attitudes however can only be changed gradually. Educational and training systems are therefore extremely important in combatting racism and xenophobia. Of supreme importance, in addition, is the setting of a good example by those responsible for promoting harmonious relations: not only the public authorities at all levels, but also parents in relation to their children, political parties, the media, employers and trade unions, the police, churches and individuals.

#### 5. Asylum policy

5.1. People who face persecution by the state or are in physical danger because of their political convictions, nationality, ethnic group, race or religious affiliation should be afforded protection in keeping with the noblest European traditions.

5.1.1. The preparatory work already done by the Member States in connection with the Schengen and

Dublin Agreements, in pursuit of a European asylum policy based on national conceptions, indicates how important and necessary it is to move gradually and with circumspection towards regulation of the problem at European Union level. The present state of affairs however is a sign of Europe's 'fall from grace'. Economic difficulties, though an understandably serious problem, should not present an excuse for lack of action.

5.2. A harmonized European asylum policy must be based on international laws such as the Geneva Convention on Refugees and be in tune with the finest traditions of European countries.

5.2.1. Harmonization entails the adoption of uniform asylum recognition criteria. It is also necessary to examine how the Geneva Convention, which dates from 1951, has been applied in practice.

5.2.2. The right to asylum, concomitant with an obligation on the state to defend human rights, must be fully recognized. Asylum-seekers should on grounds of principle be entitled to enter the host country and stay there temporarily without being returned to the external frontiers of the EU, or to the country where their rights have been violated, whilst their entry dossiers are being processed.

5.2.3. Different national asylum procedures need to be harmonized and asylum-seekers must have access to legal advice even at the stage where their application is first being filed. Decisions should be reached within a few weeks of the asylum application being filed. In the event of the application being turned down, the applicant must have the right to have his case reviewed by an independent court of appeal.

5.2.4. Uniform asylum procedures and the harmonization of asylum recognition criteria will to a large extent ensure that any decisions on asylum are accepted by both parties. Access to the Court of Justice of the European Union offers a guarantee that the law in question will be applied uniformly.

#### 6. Refugee policy

6.1. Special refugee status should be accorded to de facto refugees such as war (including civil war) refugees, as well as to those who cannot be sent back to their country of origin for humanitarian reasons (refugee status B).

6.1.1. Persons with refugee status B should be given the same rights as other refugees under the Geneva Convention, particularly in respect of integration measures such as access to employment, schooling and family unity. Arrangements must be in place so that there is a possibility of prolonging long stays indefinitely.

(1) ESC Opinion on Racism and Xenophobia (OJ No C 23, 30. 1. 1989, p. 33).

6.1.2. To avoid unfair burdens, consideration should be given to the evening out and if necessary redistribution of responsibilities within the EU. Whatever the redistribution method adopted, however, it should not lose sight of humanitarian considerations, and especially the basic principle of family unity.

## 7. Immigration policy

7.1. Legislation on immigration could pave the way for asylum and refugee policies to concentrate on their real and original functions of granting refuge on grounds of political persecution or for humanitarian reasons.

7.2. A future immigration policy should be based on the following principles: curbs on immigration to be achieved by removing the causes in the countries of origin; controls based on nondiscriminatory, realistic admission criteria, including measures to ensure their fair and humane application; protection of the rights of immigrants.

7.3. This common experience should form the foundations of an immigration policy based on the principles of solidarity, humanity and assistance.

7.4. In the meantime all countries of the European Union, including countries with a tradition of emigration, are experiencing immigration from non-EU states. An integrated immigration policy within the framework of harmonized European legislation would help to ensure that this process is both controlled and socially acceptable, although the many existing agreements would also have to be respected. This would make it possible to transform a *de facto* 'society' of immigration into a 'country' of immigration.

7.5. Common immigration criteria are an inevitable and logical consequence of the policy of protecting the rights of legal immigrants.

7.5.1. The Commission Communication makes it clear that progress under the aegis of European cooperation has been very uneven in places. If an immigration policy is to be realistic, carefully-targeted and economical with resources, it needs to rely on specific data bases with the help of which the causes of immigration can be monitored and, more especially, the conditions necessary for successful integration in the European Union can be identified.

7.5.2. Without adequate data on employment trends, workforce potential, housing, nursery care and schooling, there is no proper basis for setting immigration quotas.

7.5.3. A European immigration policy can only be successful and of real help to the people concerned if the competent national and international authorities involve social, religious and human-rights groups in this humanitarian work.

7.5.4. In this context the social partners have a particularly important role to play in the world of work.

7.5.5. Different social groups will also have to be involved in defending humanitarian principles and promoting equal rights and mutual tolerance between people of the host country and immigrants. The instruments available within the European Union should accordingly be used more effectively and, where necessary, combined to concentrate on specific targets.

7.5.6. This policy, however, also presupposes that people who have found a new home in the Community make active efforts themselves to integrate into society which, of course, does not mean that they have to lose entirely their individual cultures. Self-help is important if the native population and immigrants are to live together harmoniously and mutual prejudices are to be broken down or prevented from arising in the first place.

7.6. Apart from the need to coordinate national immigration policies within the European Union, it is particularly important that the European Union and countries of origin should work together. This will make it possible to strengthen the rights of immigrants and make public opinion in the host countries aware that migratory movements are part of the 'normal' course of events. This could help to address and dispel existing fears. Immigration policy thus has a central role to play in stabilizing democratic processes both within the European Union and in the countries of origin.

## 8. Integration policy

8.1. It should be emphasized in particular that immigration and asylum policies should not be confined to the necessary harmonization of legal instruments. Active integration measures are one of the most important elements of any immigration policy based on European traditions.

8.2. The Economic and Social Committee regards integration as a two-way process. A comprehensive integration policy should therefore be targeted not only at the immigrant population, but should also involve the population of the host country, so that measures which promote integration among young people, in schools and in the workplace can attain their true objective of improving mutual understanding.

8.3. The ratification of ILO Conventions by the European Union would be a sound basis for improving the legal situation of migrant workers. Granting migrant workers equal rights, equal treatment, and hence equal opportunities, as the Economic and Social Committee has advocated in its Opinion on the 'Status of Migrant Workers from Third Countries'<sup>(1)</sup>, is an important platform for integration.

8.4. An active integration policy should pay greater attention than before to encouraging the acceptance of refugees and immigrants; this can be done by providing information about the cultural differences of immigrants and the root causes of their departure from their home countries.

8.5. Successful long-term cohabitation can only be achieved if the population of the host country as well as the immigrants themselves are in favour of integration. The European Union should therefore not only examine ways of dealing with migratory pressures from the South and East but should also pay more attention than before to the question of immigration needs (demographic and other).

## 9. Further considerations

9.1. In its comments on citizenship of the Union the EC Commission rightly points to the diversity of legal provisions in the Member States on nationality and naturalization. This is due to the many different historical and philosophical concepts holding sway within the European Union.

9.2. The Economic and Social Committee is of the opinion that Community-wide admission criteria flow logically and inevitably from the policy of granting rights to legal immigrants.

9.3. Another important and logical consequence of this policy is that immigrants should be entitled to live under the same social conditions right across the Community.

9.4. Serious efforts should be made to harmonize naturalization provisions for long-stay immigrants and for immigrants' children who are born or brought up in a EU Member State.

9.5. Naturalization makes an important contribution to integration in that it confers full civic and political

rights. Naturalization for this group of persons should be made easier, partly by allowing applicants to hold more than one nationality.

9.6. Some Member States of the European Union have introduced fixed-term employment permits without offering the right to long-term residence. Careful consideration should be given to this initiative in order to determine what effect it has on (a) employment systems in the host country, (b) the social protection and rights of the workers concerned, and (c) the country of origin. More detailed data needs to be collected in this area, and more information exchanged through the involvement of the social partners.

9.7. In the view of the Committee, particular importance should also be paid to the question of seasonal workers since the economic importance of this type of activity (for everyone concerned) cannot be underestimated. The Committee is therefore in favour of a uniform set of Community provisions in this area, although previous experiences should also be taken into consideration. The Committee believes that a standard approach is needed to (a) the number of seasonal workers allowed in, (b) their period of employment, and c) the procedures for granting authorizations.

9.8. The ESC supports efforts to develop a common philosophy on immigration and asylum policies within the European Union.

9.8.1. Such efforts should be focused on establishing an immigration monitoring centre, on harmonizing admission criteria and on defining minimum rights for immigrants.

9.8.2. The Commission, Council of Ministers and European Parliament should draw up a legal framework in close cooperation with the Member States so that any subsequent problems can be solved.

9.8.3. The ESC asks to be consulted and involved at early stages of the development and implementation of immigration and asylum policies.

9.9. When preparations get underway for the intergovernmental conference on the next phase of the European Union Treaty of 7 February 1992, immigration and asylum policies could perhaps be carried forward and become reality at an early stage by involving and strengthening the rights of the European Parliament. The existing legislative framework for the development of Union-wide immigration and asylum policies should give rise to the adoption of concrete provisions which take into account the Opinions of the Economic and Social Committee. The Economic and Social Committee would also like to be consulted at an early stage of the negotiations on the revision of the Treaty.

<sup>(1)</sup> OJ No C 159, 17. 6. 1991, p. 12; OJ No C 339, 31. 12. 1991, p. 82.

10. The ESC calls upon the Council of Ministers to introduce a Community instrument on European immigration and asylum policies; such an instrument would also take account of the views and ideas put forward by the Committee.

The ESC has taken note of the Council Resolution of 20 June 1994 on Limitations on Admission of

Third-Country Nationals to the Member States for Employment.

The Economic and Social Committee considers that the main thrust of this Resolution is unhelpful since it is at odds with the basic line taken by the ESC itself.

Done at Brussels, 14 September 1994.

*The President  
of the Economic and Social Committee*

Susanne TIEMANN

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