

Own-initiative opinion on the Status of migrant workers from third countries

(91/C 159/05)

On 31 January 1991 the Economic and Social Committee, acting under the fourth paragraph of Article 20 of its Rules of Procedure, decided to draw up an Opinion on the Status of migrant workers from third countries.

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 11 April 1991. The Rapporteur was Mr Andrea Amato.

At its 286th plenary session (meeting of 24 April 1991), the Economic and Social Committee adopted the following Opinion by a majority vote, with two abstentions.

1. Introduction

1.1. In recent years, the Committee has issued three Opinions on the situation of third country migrants:

- a) own-initiative Opinion of 25 October 1984 on migrant workers⁽¹⁾,
- b) opinion of 29 May 1985 on guidelines for a Community policy on migration⁽²⁾. This Opinion largely reflects the earlier one, particularly in its comments on third countries,
- c) opinion of 12 July 1989 on the Mediterranean policy of the European Community⁽³⁾. The Opinion sets out proposals for a policy for migrants from non-EC Mediterranean countries.

1.1.1. The Committee's assessment of the limits of EC policy in this field, and the recommendations and conclusions as to needs set out in the above Opinions, have not been taken up by the Council and remain largely valid.

1.1.2. Nonetheless, the changes which have since occurred in Member States' circumstances and legislation, and the changes wrought the Community integration and the ensuing need for a new institutional framework, suggest to the Committee that further assessments and recommendations are needed.

1.2. The Hanover European Council of June 1988 recognized that immigration needed more detailed Community consideration, and instructed the Commission to draw up a report on the social integration of migrants.

1.2.1. This report, on the social integration of third country migrants residing on a permanent and lawful basis in the Member States⁽⁴⁾, was followed by an experts' report (drawn up on the Commission's behalf) on policies on immigration and the social integration of migrants in the European Community⁽⁵⁾. This latter report is an important contribution to the subject, and its conclusions and recommendations are considered in the present Opinion.

⁽¹⁾ OJ No C 343, 24. 12. 1984.

⁽²⁾ OJ No C 188, 29. 7. 1985.

⁽³⁾ OJ No C 221, 28. 8. 1989.

⁽⁴⁾ SEC(89) 924 final, 22. 6. 1989.

⁽⁵⁾ SEC(90) 1813 final, 28. 9. 1990.

1.3. The Rome European Council on 14 and 15 December 1990 gave further consideration to the subject. Its conclusions call on the Council and the Commission to decide on measures relating to the crossing of external borders. The conclusions go on:

‘The European Council took note of the reports on immigration and asks the General Affairs Council and the Commission to examine the most appropriate measures and actions regarding aid to countries of emigration, entry conditions and aid for social integration, taking particular account of the need for a harmonized policy on the right of asylum.’

1.4. On the initiative of several governments, the extension of Community responsibility in the field of immigration has been put on the agenda of the intergovernmental conference on political union, launched in Rome last December. The Commission Opinion of 21 October 1990 on the revision of the Treaty with a view to political union ⁽¹⁾ contained proposals on this.

1.5. A Court of Justice judgement of 9 July 1987 ⁽²⁾ helped to clarify the Commission’s existing responsibilities under the terms of the second paragraph of Article 118 of the Treaty. The judgement illustrates the possible range of Community responsibility for immigration matters.

1.5.1. Furthermore, on 31 January 1991 the Court of Justice ⁽³⁾ ruled that the provisions of the EC-Morocco Cooperation agreement concerning non-discrimination in pay, employment and social security conditions were directly applicable to Member State regulations. Logically, the decision must apply equally to the other Cooperation and Association Agreements (with Tunisia/Algeria/Yugoslavia and Turkey, respectively) containing similar provisions.

1.6. The time thus seems ripe to frame a fully-fledged Community policy on immigration.

1.6.1. The report of the European Parliament Committee of inquiry on racism and xenophobia also suggests the need for such a step ⁽⁴⁾.

2. Purpose and scope of the Opinion

2.1. In the light of the above, a Community immigration policy should have three main planks:

- a) planning of migrant flows, and regulation of entry and the right to asylum (considered in a separate Opinion currently being drafted);
- b) economic and social integration and free movement within the Community for legally resident immigrants;
- c) voluntary return to the country of origin.

2.2. The present Opinion focuses on the ‘domestic’ aspects of a Community immigration policy. It will concentrate on the questions raised by the presence in the Community of migrants from third countries, as regards their living and working conditions and their impact on the economic and social situation of the Community.

2.3. The term ‘migrants from third countries’ here means people who have moved from their country of origin to an EC Member State to work there as employees or self-employed, and who are legally resident there either temporarily or permanently. The term extends to family members (spouses, children under 18, other dependent offspring, and dependent relatives in the ascending line) and workers in receipt of retirement or invalidity pensions in a Member State.

2.4. The present Opinion therefore does not cover the special problems of Member State citizens whose country of origin is outside the EC, except with reference to the more general question of practical discrimination. The Committee has already insisted on the need to ensure that:

‘all EC nationals, including those who are from ethnic minorities, are assured a share of and a future in a “People’s Europe”, and that rights of residence, of freedom of movement and employment, and the mutual recognition of diplomas and qualifications are applied across the board’ ⁽⁵⁾.

2.5. It is clear that the ‘domestic’ aspects of immigration policy include the conditions governing the entry of migrants into the Member States. Various forms of coordination of entry conditions are already developing. They should be examined by the Community, with full involvement of the democratic institutions and representative bodies.

2.6. The Committee is aware of the link between Community immigration policy and development in the migrants’ countries of origin, particularly those nearest the Community. This topic will be covered in the forthcoming Opinion.

⁽¹⁾ COM 60-90-200 — Luxembourg, 21 October 1990.

⁽²⁾ European Court Reports 1987/7, page 3203.

⁽³⁾ Judgement C 18/90.

⁽⁴⁾ Rapporteur: Glyn Ford Mep, Doc. A3 — 195/90, 23. 7. 1990.

⁽⁵⁾ OJ No C 23, 30. 1. 1989, p. 33.

3. Towards a Community statute for migrant workers from third countries

3.1. The social integration⁽¹⁾ of immigrants in the EC has become an important matter which must be addressed:

- over eight million migrants from third countries now live in the EC,
- although the presence of these migrants has varying implications in individual Member States, partly because migration has occurred over differing periods, it may create similar tensions on the labour market and in society as a whole.

3.2. The Community must, as a body, set out to encourage the social integration of immigrants; not only because this is in keeping with the general values which underpin the Community, but also because failure to integrate has adverse implications for employment and, more generally, for living and working conditions in the Community. Similarly, a misguided form of integration could produce social exclusion and alienation, particularly among young members of migrant families.

3.2.1. Sensitive social insertion, based on equality of rights and opportunities, is the key to preventing the formation of pockets of social isolation and is essential if illegal employment, the underground economy and tax and social security fraud are not to be encouraged.

3.2.2. Discrimination against immigrant workers could lead to 'social dumping' within the Community. A Community policy for the social integration of immigrants is therefore essential to the proper working of the single market.

3.2.3. Granting migrant workers a proper place in the labour market, with equal rights and opportunities, should not be viewed as a further burden on Member States' social systems but rather as an opportunity. For example an increase in the workforce could have a beneficial effect on the social security system, which is currently weakened by negative population growth in the industrialized world.

3.2.4. The Community should aim not only to combat and forestall the problems caused by the absence

⁽¹⁾ The term 'social integration' is used as it has become established in Community terminology. 'Social insertion' would be more appropriate; it avoids confusion with 'assimilation' and does not imply a challenge to immigrants' cultural identity.

of social integration, but also to make the most of what immigrants, particularly the younger generation, have to offer in terms of economic, social and cultural development in a multi-racial and multi-cultural Community.

3.3. The completion of the Single Market will significantly alter the immigration situation, and requires the Community to approach the problem from a new angle:⁽²⁾

- the forthcoming removal of controls at the Community's internal borders highlights the disparate provisions and instruments pertaining in the Member States,
- even if the removal of internal borders allows immigrants to move freely within the Community, under present legislation this does not necessarily mean that they can legally work in all Member States.

It is likely that an increasing number of immigrants will seek to use greater mobility within the Community as a means of escaping the fluctuations of the national labour markets; this could lead to a sharp increase in undeclared work.

3.4. The Community must therefore set itself a two-fold aim:

- a) to harmonize legislative provisions, regulations, instruments and measures for the social integration of migrants in the Member States;
- b) to define conditions for implementing freedom of movement for migrants from third countries under equal conditions to those of Community citizens.

Failure to pursue these two aims would not only foster discrimination (with all the moral implications of a

⁽²⁾ The ILO has devoted considerable attention to this matter, and has issued three papers:

- Informal summary record of the informal consultation meeting on migrants from non-EEC countries in the Single European Market after 1992 — Geneva, 27-28 April 1989.
- Some economic, social and human rights considerations concerning the future status of third country nationals in the Single European Market by W.R. Böhring and J. Werquin (Working Paper in World Employment Programme), Geneva, April 1990.
- Informal summary record of the inter-regional tripartite round table on migrant workers from non-EEC countries in the internal market, Geneva, 15-17 October 1990.

Community based on injustice, restricting the rights of some of those contributing to its development), and hinder the proper working of the single market, but would betray the very ideals underpinning it. The aim of a single Community employment market, alongside a single market in goods, services and capital, would effectively be abandoned: national labour markets would remain, kept separate by their different treatment of third country workers.

3.5. We should not underestimate the link between free movement of migrant workers and harmonization of social integration policies in the Community on the one hand, and coordination of entry conditions on the other.

3.5.1. The primary factor is time: the harmonization of social integration policies and the achievement of free movement should not be delayed pending the definition of common policies to regulate entry.

3.5.2. There is also a cause and effect factor—the future response to the question of migratory flows, for example, is bound to affect the chances of success of policies for social integration and free movement. Proper implementation would not be feasible if entry conditions were too liberal and the Community was faced with a massive influx — but failure would also result

if entry conditions were so stringent as effectively to halt legal immigration and, inevitably, to generate illegal immigration. This would, among other things, put benign Community public attitudes towards immigrants — a precondition for the successful achievement of social integration and freedom of movement — at risk.

3.5.3. The way in which ‘domestic’ questions are addressed will in fact have a decisive effect on immigration controls. For example, if the Community ‘pull’ factor (which combines with the ‘push’ factor in the countries of origin to cause migration) were basically positive (e.g. no longer consisting of a market for illegal labour), this would inevitably affect the number and type of migrants and the measures adopted to regulate their entry.

4. The present Opinion has sought to define the rationale, guidelines and general aims of a Community immigration policy, and more particularly the status of migrant workers from third countries. The Committee will shortly issue an additional Opinion offering specific proposals on economic and social integration and free movement (basic rights, adaptation and harmonization of legislation, active policy), voluntary return to the country of origin, information, and Community coordination.

Done at Brussels, 24 April 1991.

*The Chairman
of the Economic and Social Committee*

François STAEDLIN