

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on the protection of employees in the event of the insolvency of their employer (Codified version)

(COM(2006) 657 *final*)

(2007/C 161/20)

On 23 November 2006, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 February 2007. The rapporteur was Mr Soares.

At its 434th plenary session, held on 14 and 15 March 2007 (meeting of 14 March 2007), the European Economic and Social Committee adopted the following opinion by 160 votes *nem. con.*, with six abstentions.

1. This proposed directive forms part of the Commission's plan to simplify and clarify Community legislation so as to make it clearer and more accessible to the ordinary citizen.

2. Codification is an extremely important administrative procedure, which must be undertaken in full compliance with the normal Community legislative procedure and cannot result in changes of substance being made to the instruments affected by codification.

3. The purpose of this proposal is to undertake a codification of Council Directive 80/987/EEC of 20 October 1980 on the protection of employees in the event of the insolvency of their employer. The new directive will supersede the various acts incorporated in it; this proposal fully preserves the content of the acts being codified and hence does no more than bring

them together with only such formal amendments as are required by the codification exercise itself.

4. Although codification is a process that, by its very nature, cannot and must not amend the directives to which it refers, the EESC considers that the Commission should, in the performance of its duties, do more than simplify legislation. It should study the content of the various directives in order to resolve any issues that might in the meantime have proven to be unclear or that might have in practice been found to be somewhat outdated.

5. Nevertheless, bearing in mind that the subject of the opinion here is the codification of a directive, and taking account of the aims set out in paragraph 1 and the guarantees laid down in paragraphs 2 and 3, the European Economic and Social Committee approves this proposed directive.

Brussels, 14 March 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the Green Paper on diplomatic and consular protection of Union citizens in third countries

COM(2006) 712 *final*

(2007/C 161/21)

On 28 November 2006, the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the *Green Paper on diplomatic and consular protection of Union citizens in third countries*.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 February 2007. The rapporteur was Mr Voleš.

At its 434th plenary session, held on 14 and 15 March 2007 (meeting of 14 March 2007), the European Economic and Social Committee adopted the following opinion by 170 votes *nem. con.* with 1 abstention.

1. Summary of conclusions and recommendations

1.1 The EESC notes that the right to diplomatic and consular protection for EU citizens in third countries strengthens the idea of EU citizenship.

1.2 In this context, the Committee stresses the need to inform citizens much better about this right and considers the results of the information activities to date unsatisfactory. It calls for civil society organisations whose members travel to third countries to be involved in the information activities of the EU and Member States.

1.3 The Committee points out that the relevant EU web portal (www.travel-voyage.consilium.europa.eu) does not contain information about which Member States are represented in which third countries, nor any addresses or contact information for them. It recommends that this and all other necessary information is included in an easily accessible web site with a simple address.

1.4 It should be compulsory for information about the right to protection in third countries as enshrined in Article 20 of the EC Treaty to be printed in all passports issued by EU Member States.

1.5 Recommendations for travellers to third countries should be better coordinated and published in such a way that they are as easily accessible as possible, for example through a web site as suggested in point 1.3.

1.6 The EESC recommends that all measures concerning the right to protection be published not only in the Official Journal, but also in the media in each Member State and be made part of the Commission's communication strategy.

1.7 The Committee supports harmonisation of the scope and legal basis of consular protection provided in third countries by individual Member States and asks that this take place as soon as possible, if necessary through harmonisation of national legislation. In the context of harmonisation in this area, the scope and conditions for provision of protection by individual Member States should be published.

1.8 The Committee welcomes the proposal to extend protection to include EU citizens' family members, where they are citizens of third countries.

1.9 It also supports the proposal to extend the protection provided to include the identification and transfer of corpses of EU citizens and members of their families who do not have EU citizenship. It also asks Member States that have still not ratified

the Council of Europe Convention of 26 October 1973 on the transfer of corpses (until now ratified by only 15 Member States) to do so without delay.

1.10 The Committee recommends that the procedure for providing financial assistance to EU citizens in third countries be simplified. This could be done, for example, by allowing settlement of payments directly to the authorities of the state providing the assistance, writing off these payments when they are very small amounts, and introducing a simple system of balancing debts between Member States.

1.11 The opening of common offices in areas where there is relatively little representation by Member States is a positive step. However, all the issues concerning legislation and international law need to be clarified. The Committee recommends active use of other forms of cooperation such as locating consular officials from Member States that are not represented in the representative offices of other Member States or the exercise of consular functions by the consular post of one EU Member State on behalf of another or the appointment of the same person as consular officer by several EU Member States, in accordance with Articles 8 and 18 respectively of the Vienna Convention on consular relations, and training programmes for Member States' consular staff.

1.12 The EESC would welcome it if the working party on consular cooperation (COCON) guidelines for consular authorities for EU citizens in third countries became legally binding, which would avoid legal uncertainty for EU citizens in third countries who need protection.

1.13 Diplomatic missions and consular offices of Member States represented in third countries should have at their disposal regularly updated contact details for the relevant offices of Member States that are not represented in that country so that they could allow EU citizens to contact them should the need arise. They should also have lists of interpreters for languages of the Member States that do not have representations in the country.

1.14 European Commission delegations in third countries could contribute to consular protection for EU citizens by using the experience they have gained in the protection of boats and fishermen from EU Member States.

1.15 The role of the Commission in coordinating Member States' activities directed at diplomatic or consular protection for EU citizens in third countries should be strengthened.

2. Introduction

2.1 On 28 November 2006, the European Commission published its *Green Paper on diplomatic and consular protection of Union citizens in third countries*. The right to protection by the diplomatic or consular authorities is enshrined in the Maastricht Treaty. Article 20 of the Treaty establishing the European Community thus states that: 'Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State ⁽¹⁾.' The same right is part of the Charter of Fundamental Rights of the European Union, proclaimed in 2000 (see Article 46 ⁽²⁾). Article 20 of the Treaty delegates the 'Members States to establish the necessary rules among themselves and start the international negotiations required to secure this protection'.

2.2 The Member States have adopted Decision 95/553/EC ⁽³⁾, which defines five cases where an EU citizen is entitled to apply for protection by the authorities of another Member State:

- assistance in cases of death,
- assistance in cases of serious accident or illness,
- assistance in cases of arrest or detention,
- assistance to victims of violent crime,
- the relief and repatriation of distressed citizens of the Union.

Member States' representations in a third country may come to the assistance of any citizen of the Union who so requests in other circumstances.

2.3 The applicant must show that he or she is a national of a Member State of the Union by producing a passport or identity card. In the event of loss or theft of those documents, any other proof of nationality may be accepted, if necessary after verification with the authorities of the Member State of which the person concerned claims to be a national. A procedure has been established for providing financial assistance to EU citizens, which is subject to obtaining the permission of the foreign ministry or diplomatic mission of the Member State of which that citizen is a national. It was agreed that the Decision would be reviewed five years after its entry into force. The Decision came into force in 2002.

⁽¹⁾ OJ C 325 of 24.12.2002.

⁽²⁾ The Charter of Fundamental Rights of the European Union, signed in Nice on 7 December 2000.

⁽³⁾ OJ L 314, 28.12.1995, p. 73-76.

2.4 The Member States set up a working party on consular cooperation (COCON) to act as an instrument for pooling experience. COCON has drawn up guidelines of a non-binding nature on consular protection of EU citizens in third countries ⁽⁴⁾.

2.5 Various suggestions on diplomatic and consular protection were put forward in the Commission Communication on implementing the Hague Programme ⁽⁵⁾. Former French Foreign Minister Michel Barnier drew up a similar report for the EU Council in which he suggested a number of measures for establishing a system of civil protection both inside and outside the EU, which would also include diplomatic and consular protection ⁽⁶⁾. Under the Austrian Presidency, in its report of 15 June 2006 the Council summarised the measures taken to strengthen the protection of EU citizens in third countries ⁽⁷⁾. In 2007, the Commission will present its 5th report on Union citizenship, which should include proposals on strengthening diplomatic and consular protection.

2.6 The protection of EU citizens is gaining importance given the high growth of travel by EU citizens to third countries (180 million journeys outside the EU per year) and as not every state has representation in each country. The Eurobarometer survey of July 2006 showed that almost half of the respondents planned to travel to third countries in the next three years ⁽⁸⁾.

2.7 The Commission has therefore submitted a number of measures for discussion in its Green Paper, aimed at strengthening the principle of protection for EU citizens in third countries as an important right for every Member State citizen resulting from their EU citizenship. The measures also take account of the experiences from the aftermath of natural disasters such as the tsunami and Hurricane Katrina, the conflicts in the Balkans and Lebanon and terrorist attacks on Bali and in Sharm El Sheikh.

2.8 The proposed measures include:

- better informing EU citizens of their rights for protection by the diplomatic or consular authorities for EU citizens in third countries and about the representation of EU Member States in those countries,
- printing Article 20 EC in EU Member State citizens' passports,
- coordinating advice to travellers,
- reviewing the scope and legal basis for provision of protection, which are different in each Member State, and possibly harmonising them,

⁽⁴⁾ *Guidelines on consular protection of EU citizens in third countries*, EU Council document 10109/06 of 2.6.2006.

⁽⁵⁾ Commission communication COM(2006) 331 final of 28 June 2006.

⁽⁶⁾ Barnier Report: *For a European civil protection force: europe aid* of 9 May 2006.

⁽⁷⁾ Council of the European Union Presidency Report 10551/06 of 15 June 2006.

⁽⁸⁾ Flash Eurobarometer 188 — December 2006.

- embracing protection of EU citizens in bilateral agreements negotiated by Member States and those negotiated by the EU with third countries, including the possibility of the European Commission delegations in third countries assuming responsibility for providing diplomatic protection,
- extending consular protection to include EU citizens' family members who are citizens of third countries,
- including the identification and repatriation of remains in the protection provided,
- simplifying the procedures for providing financial advances,
- opening pilot common consular offices in the Caribbean, Balkans, the Indian Ocean and West Africa, and encouraging EU citizens to register with them,
- training for Member State consular staff and Community officials.

3. Comments on individual Commission proposals

3.1 The EESC notes that an EU citizen's right to protection in third countries provided by the representation of a Member State of which he is not a citizen is tangible proof of the benefits of membership in the EU, strengthens the feeling of belonging and upholds the idea of EU citizenship.

3.2 In this context, the Committee stresses the need for citizens to be much better informed about this right to consular protection in third countries. Experience to date shows that awareness is minimal. According to the Eurobarometer results, only 23 % of EU citizens who plan to travel to third countries know about this right. Putting up posters in airports, ports and stations and distributing brochures through travel agencies is not enough. Trade organisations, employers' associations and NGOs should also be involved in disseminating the information, because many travellers to third countries are not tourists but business and commercial travellers, employees, and workers from humanitarian organisations. Links to information about consular protection on the EU portal could be added to the web sites of organisations whose members travel to countries outside the EU.

3.3 To be able to make use of the protection in third countries, it is essential to know which Member States are represented in which third countries and to have addresses and contact details for them. This information is very difficult to access; the functionality on the web site www.travel-voyage.consilium.europa.eu, which should contain it, is still under construction. The Committee recommends that this and other necessary information is brought together in an easily accessible web site with a simple address, which someone should also be able to access in case of need from third countries and find the necessary information.

3.4 It should be compulsory for information about the right for protection in third countries as enshrined in Article 20 to be printed in all passports issued by EU Member States. There should also be space to put the contact address for finding the specific information mentioned in paragraph 3.2 or this information should be included in each passport when it is issued.

3.5 Guidelines and advice for travellers are issued by national bodies and recommendations from individual Member States concerning travel to third countries are sometimes significantly different. While these differences can have objective grounds (such as different approaches by third countries to individual Member States), it would be desirable for advice for travellers to be better coordinated between Member States, using their diplomatic and consular representation in third countries, and to publish it in such a way that it is as easily accessible as possible. The possibility of publishing these recommendations on the web site described in paragraph 3.2 should be considered.

3.6 The Commission proposes that measures implementing Article 20 should be published in the Official Journal so that citizens can be better informed of their rights. The Committee agrees, but thinks that this is not enough and that they should also be published in the media in each Member State, this should also be part of the Commission's strategy.

3.7 The Committee shares the opinion of the Commission that harmonisation of the scope and legal basis of protection provided by the consular authorities in third countries by individual Member States is desirable and should take place as soon as possible, if necessary through harmonisation of national legislation. This would enable the differences in the approaches of some Member States to this right to be eliminated (some countries, for example, do not allow administrative procedures to be initiated by citizens in the case of non-provision of assistance, or retain passports when financial assistance is given). Pending harmonisation, the scope and conditions for provision of protection by individual Member States should be available on the above-mentioned central web portal.

3.8 The Committee welcomes the proposal to broaden protection to include EU citizens' family members where they are citizens of third countries and recommends using the procedure provided for by Article 22 EC to allow rights under the Treaty to be extended. This is a humanitarian issue requiring urgent resolution, as was shown by the events surrounding the tsunami, the war in Lebanon and other cases.

3.9 The Committee supports the proposal to extend the protection provided to include the identification and transfer of corpses of EU citizens and members of their families who do not have EU citizenship. In this context, it calls on those Member States that have still not ratified the Council of Europe Treaty of 26 October 1973 on the transfer of corpses (so far only ratified by 15 Member States) to do so as soon as possible.

3.10 One of the most common needs for EU citizens in third countries is emergency financial assistance in cases such as natural disasters, being victims of theft or following an accident or illness. The Committee recommends simplification of the current system requiring the agreement of the authorities of the Member State of which the applicant is a national and reimbursement through the authorities of that state. Other recommendations include considering the possibility of directly reimbursing the state authority providing the assistances, Cancelling such reimbursement in the case of small amounts and introducing a simpler system for balancing payments between Member States.

3.11 The opening of common offices in areas where there is relatively little representation by Member States is a positive step towards strengthening cooperation between Member States in diplomatic and consular representation. The Committee expects that all the issues concerning legislation and international law will be clarified, mainly the status of these offices, the jurisdiction under which they fall, their links with Commission delegations in individual countries, the form of financing, the agreement of the country in which they operate concerning their establishment and responsibilities, and compatibility with the Vienna Convention on diplomatic relations and the Vienna Convention on consular relations.

3.12 The Committee recommends active use of other forms of cooperation such as the exercise of consular functions by the consular post of one EU Member State on behalf of another or the appointment of the same person as consular officer by several EU Member States, locating consular officials from Member States that are not represented in the representative offices of other Member States and training programmes for Member States' consular staff.

3.13 The EESC supports the Commission initiative to also use common offices to enhance cooperation between Member States in the area of visa policy including the possibility of establishing common counters for receiving applications for visas and issuing them. Nevertheless, it considers that this

problem is not directly related to the right of EU citizens to diplomatic and consular protection and should therefore not be linked with it.

4. Additional EESC proposals

4.1 The EESC thinks it would help if the working party on consular cooperation (COCON) guidelines for consular authorities were legally binding, which would avoid legal uncertainty for EU citizens who need protection in third countries.

4.2 Diplomatic missions and consular offices of Member States represented in third countries should have at their disposal regularly updated contact details for the foreign ministries, diplomatic missions and consular offices of Member States that are not represented in that country so that they could allow EU citizens to contact them should the need arise.

4.3 As shown in the Eurobarometer survey, one of the main concerns for EU citizens is the possibility to communicate in their mother tongue in times of need. For this reason, it would be desirable for Member State representations to have lists of interpreters for languages of the Member States that do not have representations in the country.

4.4 The Committee recommends consideration of the possibility of using European Commission delegations in third countries to provide consular protection for EU citizens, given the experience gained by these delegations for the protection of boats and fishermen from EU Member States. It therefore recommends launching negotiations with relevant third countries on recognising the right of Commission delegations to provide protection for EU citizens in agreed cases.

4.5 The Committee is in favour of strengthening the role of the Commission in coordinating the activities of Member States concerning diplomatic and consular protection of EU citizens in third countries as set out in the draft treaty establishing a Constitution for Europe, which seeks to strengthen the rights of EU citizens.

Brussels, 14 March 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS