

*Result of the vote*

For: 39, against: 40, abstentions: 6.

**Point 6.6.2**

'Comment 2: the EESC disagrees with the blanket obligation for promoters to bear the burden of proof, since this category often includes SMEs which do not have the financial ability to conduct protracted legal disputes or to provide the mandatory information set out in the annex. More specifically, it should be left up to judges to decide who should bear the burden of proof, in line with the relevant circumstances.'

*Result of the vote*

For: 27, against: 48, abstentions: 8.

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**Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities'**

(COM(2002) 71 final — 2002/0043 (CNS))

(2002/C 221/18)

On 20 February 2002 the Council decided to consult the 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 13 May 2002. The rapporteur was Mr Pariza Castaños.

At its 391st plenary session of 29 and 30 May 2002 (meeting of 29 May), the Economic and Social Committee adopted the following opinion by 44 votes to two with no abstentions.

**1. Summary of the proposal for a directive**

1.1. The aim of the draft directive is to step up the fight against illegal immigration and trafficking in human beings through cooperation with its victims. They are to be granted a special residence permit if they cooperate in combating these activities. Cooperation may take the form of providing information, lodging a complaint, or giving evidence in a trial.

1.2. The residence permit granted to such persons will be valid for six months, and may be renewed if the conditions under which it was initially granted continue.

1.3. The draft directive considers victims of trafficking in human beings to be those so defined in the UN Protocol on trafficking, basically meaning the women and children concerned. It deems the victims of action to facilitate illegal immigration to be persons who have suffered harm, such as having their lives endangered or being physically injured.

1.4. Once the authorities have come into contact with victims, they are to inform them of the possibility of obtaining the residence permit, and grant a 30-day reflection period in which they can decide on whether to cooperate. During this period, they will receive assistance and care.

1.5. The directive makes no provision for victim or witness protection, since this is already governed by European or national legislation.

## 2. General comments

2.1. The proposal for a directive encourages victims to cooperate in combating illegal immigration. It defends the victims of trafficking and smuggling of human beings by offering them the opportunity of escaping from their plight through cooperation with the authorities.

2.2. The draft directive is a useful tool for combating illegal immigration, and ties in with the range of legislative proposals being drafted by the Commission to equip the EU with a common policy on immigration and asylum. However, the Committee would once again urge the Council to speed up its work, since its attitude is deeply disappointing to European citizens. One of the factors driving illegal immigration is the lack of a common policy for managing migratory flows through legal channels.

2.3. The Committee also wishes to point out that illegal immigration is caused by poverty, lack of opportunities, injustice and human rights violations. The way in which the Member State authorities treat those affected by illegal immigration must always be based on respect for human rights and humanitarian values.

2.4. It is not easy to secure the cooperation of victims, since they are often threatened by criminal networks. They are also frightened and suspicious of contact with the authorities. Their cooperation must therefore be properly acknowledged and rewarded. Victims who cooperate with the authorities must receive all the necessary guarantees and legal support from the outset.

2.5. The Economic and Social Committee hopes that two objectives will be met: the first is to obtain real cooperation from victims, so that the criminal organisations trafficking and smuggling human beings can be combated more effectively; the second is for victims, in exchange for the risks they take in cooperating, to be offered the best means of escaping from networks on which they are dependent and which exploit them. Their protection should be guaranteed by the authorities.

2.6. While the Committee welcomes the positive progress represented by the draft directive, it would suggest a number of changes to enhance its effectiveness.

2.6.1. The proposed residence permit to be granted to cooperative victims is of short duration. A six-month permit is not enough. Permits should be for one year, and renewable: this is an attractive and fair offer which will induce victims to opt for the cooperation which is asked of them.

2.6.2. The draft directive uses the term 'victims of action to facilitate illegal immigration' only in connection with those who have suffered some harm, such as threats to their lives or physical injury. Only such individuals may benefit from cooperation with the authorities. The Committee believes that if the main aim is to fight organised crime, cooperation should also be sought from persons who have been in the hands of such organisations without having been endangered or suffering physical injury.

2.6.3. The directive should envisage dealing with groups of victims. Victims often belong to a group sharing the same situation. When an individual from a group contacts the authorities and begins to cooperate, great discretion will probably be needed so as not to alert the criminal network involved. At an appropriate point in the process, however, the other victims from the group should be given an opportunity to cooperate with the authorities by lodging complaints against the criminal network, and should be eligible for the legal residence permit. In some cases, this could be of great value in ensuring that police and court action is effective.

2.7. The role of social associations is scarcely touched upon in the proposal, although the Committee believes this could be of huge significance. Provision should be made for a social association providing assistance to a victim to encourage him or her to enter into cooperation with the authorities, and to be involved throughout the ensuing procedure, during both cooperation with the judicial authorities and the process of granting and renewing the residence permit. Social associations could provide legal assistance to victims, together with whatever social support is required to complement public assistance from the authorities.

2.7.1. Since the criminal networks involved in trafficking, smuggling and exploiting people are often international, international networks of social associations have a vital role to play in assisting victims. Such associations must be supported by the national and European authorities.

2.8. The proposal for a directive refers to the victims of action to facilitate illegal immigration and trafficking in human beings, but does not give a detailed explanation of what cases trafficking involves. It does however stipulate that "Trafficking in human beings" means the offences defined in Articles 1, 2 and 3 of the Council Framework Decision<sup>(1)</sup> on which a political agreement was reached at the Council meeting of 27 and 28 September 2001<sup>(1)</sup>. Article 1 of the Framework Decision states that trafficking in human beings for both sexual exploitation and labour exploitation is covered, and refers to 'practices similar to slavery or servitude'.

<sup>(1)</sup> Article 2.c).

2.9. Consequently, the victims of labour exploitation are also protected by the draft directive, and may obtain residence in exchange for cooperation with the authorities, in extreme cases. However, in the Committee's view, the meaning of labour exploitation should be made clearer. The Committee believes that this should not be confused with 'illegal employment': there may be many cases in which employers take on workers with irregular status because they have no other choice, without this going hand-in-hand with exploitative work conditions. Labour exploitation occurs when the working conditions are considerably out of balance as compared to generally accepted working conditions, infringing established legislation and labour standards. Simple exceeding of the usual conditions is not enough.

2.10. Police forces should have special services for dealing with the victims of these crimes, in order to increase trust and cooperation on the part of victims. Experience with services of this kind in some Member States has been very promising.

### 3. Specific comments

#### 3.1. Article 8.1

In connection with the reflection period of 30 days granted to victims to whom cooperation with the authorities is offered, it should be borne in mind that such cooperation may be proposed by a social association. For this reason, the Committee proposes that Article 8.1 be amended. In such cases, the victim or victims must also be granted the reflection period, with the accompanying assistance and care measures, as soon as the association proposes cooperation with the authorities (i.e. even before the victims have contacted the authorities).

#### 3.2. Article 8.4

The requirement for the individual to have severed links with the authors of the offences should be interpreted in a flexible way, since the break will frequently be gradual. Support for victims must however be provided from the moment cooperation begins.

#### 3.3. Article 10.1

3.3.1. In [the Spanish version of] Article 10.1(a), the word 'necesidad' should be replaced by 'utilidad' [translator's note: this is intended to bring the Spanish version into line with the English and other language versions].

3.3.2. In Article 10.1(c), in the light of the point 3.2 above, the authorities should adopt a flexible approach, with constant concern for the interests of the victim who is providing cooperation. The current wording of the article may restrict victims' safeguards.

3.3.3. The authorities should at all times act in such a way that the rights and safety of the victim prevail over all other considerations.

#### 3.4. Article 10.3

The Committee considers that this and other points referring to the six-month permit should be amended to specify a one-year temporary permit. Two channels for renewal should be provided: continuation of the initial conditions of cooperation with the judicial authorities, or fulfilment of the requirements for renewal of an ordinary residence permit (in any of the forms in which such permits are granted: for self-employment, employment, etc.).

#### 3.5. Article 10.4

Family members accompanying a victim should also be granted residence. The Committee therefore considers the wording of this point, under which permits on humanitarian grounds are at the discretion of the Member States, to be inappropriate.

#### 3.6. Article 14.a)

Victims who are minors must always enjoy the most favourable conditions, in keeping with international treaties. Protection of minors prevails over all other considerations. This point should grant social associations broad scope to define the conditions under which minors cooperate with the authorities. Cooperation, however, can only be explicit where minors have the necessary maturity.

#### 3.7. Article 14.b)

The Committee supports the stipulation that Member States shall ensure that minors have access to the educational system under the same conditions as nationals. In consequence, the second sentence of the point, allowing Member States to limit educational access to the public system, should be deleted.

3.8. *Article 14.c)*

In the case of unaccompanied minors, the first requirement must be to place them under the guardianship of the public authorities.. Aspects concerning their legal representation and cooperation should be dealt with subsequently.

3.9. *Article 15*

It should be made clear that for all victims, return to the country of origin is always a voluntary option. Where minors are involved, it must be ensured that they possess the maturity necessary to formulate their wishes.

Brussels, 29 May 2002.

3.10. *Article 16.1*

In accordance with the comments made in point 3.4 above, this article should allow resident permits to be renewed on grounds other than those on which they were originally granted. More specifically, they should be renewed when the conditions for renewal of residence permits under each Member State's legislation are met.

3.11. *Article 16.2*

Member States should adopt a positive attitude to granting permits to victims following completion of the cooperation process. Consequently, the Committee believes that ordinary aliens law, as specified in the point, should also apply to permit renewal, without the need to apply for a new permit.

*The President*  
*of the Economic and Social Committee*  
Göke FRERICHS

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