4. Conclusion

4.1 Gender equality has been supported by 30 years of legislation and whilst the EESC commends the Commission for its move to simplify and make the directive easier to read, true equality across Europe cannot be achieved without positive action on the part of all Member States in demanding equal treatment for men and women. The Committee believes that exchanging and promoting good practices and increasing social dialogue in this field are a concrete way of delivering progress and fully recognizes the fundamental role of the social partners, highlighting their activities within the 'Work Programme of the European Social Partners 2003-2005'. The Commission must do more in promoting equal treatment, equal opportunities and the value of women to the European economy in order to achieve the Lisbon goals.

4.2 The EESC would request the Commission to consider encouraging Member States to produce a guideline booklet highlighting the main features of European gender directives as they have been transposed into national legislation, the obligations of employers and the rights of employees, to remove the ignorance surrounding equal treatment and enhance the benefits to the economy.


The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions’ — ‘Study on the links between legal and illegal migration’

(COM(2004) 412 final)

(2005/C 157/15)

On 4 June 2004, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned communication.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 24 November 2004. The rapporteur was Mr Pariza Castaños.

At its 413th plenary session on 15 and 16 December 2004 (meeting of 15 December 2004), the European Economic and Social Committee adopted the following opinion by 138 votes, with 8 abstentions.

1. Summary of the Communication

1.1 The Thessaloniki European Council of July 2003 stressed the need for the EU to explore legal means for third country nationals to migrate to the Union, taking into account the reception capacity of the Member States, within the framework of an enhanced co-operation with the countries of origin. The Commission has presented the results of a study requested by the European Council on the links between legal and illegal migration. It asks whether or not legal avenues for the admission of migrants reduce incentives for illegal migration. Following this Communication, the Commission will present a Green Paper on legal channels for immigration.

1.2 In the first part, the Commission examines existing legal channels for labour migration. The admission of third-
country nationals for the purpose of employment is governed by the legislation in force in each Member State and this varies considerably. Some States have closed their doors to labour migration, whilst others have policies that allow immigrant workers to enter the country if they have a job offer, with due respect for the principle of national preference. Some States also admit self-employed workers. Most economic migrants are initially admitted on a temporary residence permit, which may last from between one to five years.

1.3 The number of economic immigrants admitted by States in any given year is also determined by very different methods. Some States only accept highly skilled workers (for example the German Green Card system) and the United Kingdom’s
Highly Skilled Migrant Programme). Others (a number of southern European States) also accept less skilled workers under a range of procedures. Some States, such as Italy, use a quota system. Others, including Spain, have even signed bilateral agreements with some countries to allow their nationals to be admitted. The Commission Communication examines the various instruments used to manage immigration.

1.4 The Commission also looks at the regularisation measures adopted in various countries, such as Belgium. On the one hand, these measures are welcomed because they integrate immigrants into society and prevent them from being exploited in the workplace, but on the other, they are criticised because they act as an incentive for illegal immigration.

1.5 In the second part, the Commission points out that illegal immigration takes many forms and that it is extremely difficult to obtain precise information. Although the exact scale of illegal immigration in the EU is not known, it is estimated to be considerable. Reducing illegal immigration flows is therefore a priority at both national and EU levels.

1.6 The Commission highlights the clear link between hidden economies, unregulated labour markets and illegal immigration, especially in sectors such as construction, agriculture, catering, and cleaning and house-cleaning services. Within the EU, the shadow economy represents between 7% and 16% of GDP.

1.7 The impact of existing legal channels, such as bilateral agreements, on reducing illegal immigration is extremely difficult to gauge. The Commission points out that the Member States have not carried out the necessary evaluations. Nor has an evaluation been made of the impact of visa policy on reducing illegal immigration.

1.8 It is hoped that closer cooperation with the countries of origin will help to reduce illegal immigration flows. This was recommended at the Tampere, Seville and Thessaloniki European Councils. Currently, however, Member States’ experience implementing closer cooperation is limited and the results are not, on the whole, particularly striking. The Commission suggests that it might be necessary to adopt a different approach to the incentives offered to third countries.

1.9 In the third part, the Commission presents its conclusions and suggests approaches to follow. Given the clear lack of reliable and comparable data at EU level, the Commission has agreed to present an annual statistical report on migration, which will require information to be coordinated and exchanged between Member States. It refers to the steps taken to date: the establishment, in 2002, of the group of experts known as the Committee on Immigration and Asylum, the initial creation of the European Migration Network (on which a pilot project has run throughout 2004) and the creation of a network of National Contact Points for Integration. With regard to illegal immigration, an early-warning system has been set up and progress has been made on information exchanges.

1.10 The Commission believes that due to the effect of demographic decline and ageing, recruitment of third country national workers and immigration for economic reasons into the EU is likely to continue and increase. Countries of origin, too, are repeatedly asking for more legal migration channels.

1.11 The Commission draws attention to the fact that its proposal for a Directive on the admission of workers (1), tabled in 2001, received no support from the Council. It asks whether the admission of economic migrants should be regulated at EU level, the degree of harmonisation to aim for and whether or not the principle of Community preference for the domestic labour market should be maintained. The Commission states that the draft Treaty establishing a Constitution for Europe confirms European competence in migration policy, but leaves the Member States to decide the number of migrants to be admitted; there is also the need for measures adopted in this field to provide added value at EU level. At the end of this year, the Commission will present a Green Paper on the proposal for a Directive and the difficulties within the Council, and will organise a public hearing at the end of 2004.

1.12 The Commission considers that regularisation measures have helped to deal with a large number of illegal migrants, but must not be seen as an appropriate way of managing migration flows. The Committee on Immigration and Asylum must further analyse regularisation procedures with a view to identifying and comparing practices.

1.13 Strengthening the integration of third country nationals legally residing in the Member States is an essential objective which, in the Commission’s view, must form part of all future proposals. A fundamental aspect of this objective is integration into the labour market, and this is why the Commission recalls the need for measures such as reducing the unemployment gap between nationals of third countries and EU nationals. Reference is also made to the importance of promoting greater mobility in the EU labour market, which has already been facilitated by the 2003 Directive on long-term residents (2) and by Regulation 1408/71. The recognition of professional qualifications of third-country nationals also needs to be improved.

(1) COM(2001) 386 final
(2) Directive 2003/109/EC
1.14 The Commission is of the view that undeclared work is a significant pull factor for illegal migration, and the main aim must therefore be to transform undeclared work into regular employment. This objective is already included in the employment policy guidelines.

1.15 Developing a Community return policy, amongst other policy instruments, is also a priority, to ensure that illegal immigrants return to their country of origin. The Commission proposes to create a financial instrument for return management for the years 2005 and 2006.

1.16 Lastly, the Commission states that this study has confirmed that stepping up cooperation with countries of origin or transit is necessary to reduce illegal migration flows and to organise legal immigration. All available information must be pooled in order to determine how well this cooperation is working. The idea of developing training programmes in countries of origin in skills which are needed by the EU could be explored. There are also others, such as partially amending visa policy to establish some categories for which visas can be issued more rapidly.

2. General comments

2.1 The EESC welcomes the fact that the Commission is presenting this Communication, which gives a new boost to Community immigration policy. Discussions within the Council are progressing extremely slowly due to the rather uncooperative attitude of some governments. The EESC has already stated in various opinions that there is a clear link between legal immigration and illegal immigration. Where adequate, transparent and flexible channels for legal immigration do not exist, illegal immigration increases. A sound asylum policy is also needed, as is harmonised legislation that guarantees adequate protection for those in need of international protection.

2.2 The Communication from the Commission on immigration, integration and employment and the Thessaloniki European Council expressed the view that the number of economic migrants from third countries will increase markedly in the EU over the coming years. The increase in economic immigration is being seen in both highly skilled and low-skilled jobs. As the EESC has stated, immigration should be channelled through legal and transparent means in order to avoid the problems currently experienced by the labour markets. In order to achieve this, there must be appropriate cooperation between the authorities and the social partners.

2.3 It is hard to understand why the Council has not adopted the Directive on the admission and residence of immigrant workers proposed by the Commission in 2001. In its opinion the EESC considered the Commission proposal to be welcome but insufficient, proposing that two channels should be available for the admission of workers: obtaining a work and residence permit in their country of origin, and also the possibility of a temporary entry and residence permit for the purpose of seeking work. In proposing this Directive, the Commission has fulfilled its obligations arising from Tampere, but the Council, with the attitude it has demonstrated, has lost sight of this aim.

2.4 In response to the Commission’s question, the EESC would state that it is indeed necessary for the admission of economic migrants to be regulated at EU level; to ensure this, there must be a high degree of legislative harmonisation, as set out in the draft Treaty establishing a Constitution for Europe. In previous opinions the EESC has already called for the EU to rapidly develop a common immigration policy and harmonised legislation. The Committee will examine the Green Paper being drawn up by the Commission and will issue an opinion on the matter.

3. Specific comments

3.1 Existing legal channels for labour migration are inadequate. Bilateral agreements, quotas, programmes for the admission of highly skilled workers and the other instruments currently available are clearly not sufficient to ensure that economic migration occurs through the legal channels, because illegal immigration continues to increase. The European Union and the Member States need an open form of legislation that allows labour immigration through channels that are legal and transparent, for both highly skilled workers and those working in less skilled jobs.

3.2 Various Member States have decided to open up immigration only to highly skilled workers. The Commission Communication looks at the experiences of Germany and the United Kingdom. The EESC considers that these are extremely limited experiences, which should be viewed positively, although they fail to meet existing needs in these sectors of employment. Furthermore, Member States should have new legal instruments for the immigration of the less skilled workers required by their labour markets, who are currently to a large extent involved in the hidden economy and in illegal employment and immigration, especially in sectors such as domestic help, healthcare, personal services, agriculture, catering, construction, etc.

3.2.1 It is extremely important that would-be immigrants have sufficient and clear information on existing instruments governing legal immigration in the Member States. The consular services must pass this information on to the countries of origin and, in Europe’s reception States, immigrants must be informed about these instruments.

3.3 Furthermore, the bilateral agreements between Member States and third countries to regulate labour migration constitute an extremely positive development, because they are managed through cooperation with the countries of origin, which is what the Council, the Commission, the European Parliament and the EESC have been calling for since Tampere. Most of these agreements are used to manage temporary immigrants and those in low-skilled jobs. The EESC would like it noted, however, that these agreements could be more effective if they were managed in collaboration with the social partners in Member States and countries of origin. These experiences have also highlighted problems in Member State consular offices, which lack staff specialised in labour migration.

3.3.1 The EESC also proposes that, on the basis of the association and cooperation agreements between the EU and various third countries, the EU could develop specialised labour migration departments. Association and cooperation agreements between the EU and third countries could cover opportunities for labour migration and training programmes. Migration to Europe by qualified workers from the countries of origin could create a new barrier to the development of those countries and the European Union and the Member States must, therefore, cooperate with them to ensure that immigration becomes a factor for development and not an additional problem.

3.3.2 Furthermore, those countries do not enjoy a balanced relationship with the EU in terms of trade and financial and technological flows. The association and cooperation agreements between the European Union and third countries must contain new political and economic instruments that make a positive contribution to the development of those countries. This is the only way to secure sound cooperation on preventing illegal immigration. Full cooperation between the EU and developing countries is also needed in the framework of the WTO.

3.4 Some Member States use a quota system to manage the bilateral agreements, once they have assessed the needs of their labour market, in collaboration with employers’ associations and unions. Due to falling numbers and the cumbersome bureaucracy that this system creates, the results are not as good as expected. An example is provided by the States in which illegal immigration is increasing considerably (such as Spain) and yet the quotas have not been met. A more flexible system for managing quotas might be more useful, for example, if temporary visas for the purpose of seeking work were to be issued, as the EESC suggested in its opinion (5) on the Directive on admissions.

3.5 There are many people in the EU, ‘without papers’ who, as the Commission states, work illegally and in the hidden economy. These people have entered the EU illegally or have reached the end of their legal stay and have not returned to their country of origin. The Commission Communication looks at return and regularisation policies.

3.6 The EESC does not agree with the Commission’s statement that the only coherent approach to dealing with illegal residents is to ensure that they return to their country of origin (6). This is not a realistic approach, because the systems and instruments for return are not equal to the task of addressing the situation facing millions of people. In its opinion (7) on the Green Paper on a Community return policy on illegal residents, and in its opinion (8) on the open method of coordination, the EESC has already expressed its position: The EESC believes that compulsory return should not be the EU’s only or prime response to immigrants currently in the EU in an irregular situation. What is needed is a comprehensive policy incorporating both return and regularisation (9). If the policy of compulsory return is not combined with regularisation measures, the numbers of people in irregular situations will remain unchanged, feeding the hidden economy and leading to increased exploitation in employment and social exclusion (10). The EESC hopes that Community policy will promote programmes for voluntary return and believes that forcible return should be reserved for situations in which such action is truly justified, as the EESC stated in the aforementioned opinion on the Green Paper on a Community return policy (11).

3.7 The EESC has already stated that the status of the many people in an irregular situation should be regularised, under certain conditions linked to the degree to which they have put down roots in social and employment terms (12). The Council and the Commission are right to assert that undeclared work must be transformed into regular employment and, to achieve this, there must be cooperation from the persons concerned, many of whom are illegal immigrants. The cooperation of the social partners is also required (13).

(1) See OJ C 80 of 3.4.2002, the rapporteur was Mr Pariza Castaños

(2) See OJ C 61 of 14.3.2003, the rapporteur was Mr Pariza Castaños

(3) See OJ C 260, 17.9.2001; the rapporteur was Mr Pariza Castaños

(4) See OJ C 221 of 17.9.2002, the rapporteur was Mrs zu Eulenburg

(5) See point 2.2. of the Communication

(6) See point 2.4 of the same opinion

(7) See OJ C 61 of 14.3.2003: rapporteur, Mr Pariza Castaños

(8) See point 2.2 of the EESC opinion on the Green Paper on a Community return policy on illegal residents

(9) See OJ C 61 of 14.3.2003: rapporteur, Mr Pariza Castaños

(10) Opinion on the Communication on Community immigration policy, OJ C 260, 17.9.2001; the rapporteur was Mr Pariza Castaños.

(11) Opinion on the Communication on Community immigration policy, OJ C 149, 21.6.2002, the rapporteur was Mr Pariza Castaños.

(12) Opinion being drawn up, SOC/172; rapporteur: Mr Hahr
3.8 Illegal immigration is closely linked to the hidden economy and to undeclared work. Immigration is only one aspect of the hidden economy, however, and the features of illegal employment constitute a pull factor for illegal migration flows. The EESC therefore welcomes the legislation in place in some Member States making it easier to regularise the situation of these persons, for employment or humanitarian reasons, or because they have already integrated into society. This approach might also help to prevent a build-up of persons in an illegal situation, necessitating extraordinary regularisation procedures. These instruments must be transparent and must be implemented with the necessary information and coordination between Member States.

3.9 Immigrants must be fully integrated into the European labour market, through the promotion of greater mobility. The EESC supported (1) the Directive on the status of third-country nationals who are long-term residents, which will make mobility easier for immigrants who are granted this status. The EESC also supported extending Regulation 1408/71 (2) to cover third-country nationals. It would be appropriate to extend this mobility to other immigrant groups, under the European Employment Strategy, also making use of the EURES network.

3.9.1 The Commission states that the proposal for a Directive on services in the internal market for the provision of cross-border services will also increase mobility. The EESC is drafting an opinion (3) that contains a number of proposals to remedy the problems created by this Directive.

3.10 Many immigrants are unable to undertake work that matches their training because the authorities in the Member States do not recognise their professional qualifications. The EU must extend the Directives on professional qualifications, in order to facilitate the recognition of those obtained in the country of origin. This will prevent situations of discrimination from arising and Member States and European companies will both gain more from people’s work if they take account of their professional qualifications.

3.11 The lack of adequate data means that the impact of visa policy on reducing illegal immigration cannot be evaluated. The requirement for a short-term visa for third-country citizens might reduce the volume of illegal immigration arising from this situation, but consideration must be given to the risk that the number of persons falling victim to human trafficking networks could increase. The EESC supports using the visa instrument only in exceptional circumstances. The Visa policy could restrict the mobility of persons in a severely discriminatory way, which means that appropriate management is required of the consular authorities — a form of management that is transparent and which eliminates any potential corruption.

3.12 The EESC agrees with the Commission’s assertion that combating illegal immigration must continue to be a crucial part of managing immigration. Opening legal channels for labour migration, reducing the scale of the hidden economy and illegal employment, cooperation with the countries of origin, etc., must be accompanied by truly effective monitoring of the EU’s external borders.

3.13 Criminal organisations involved in trafficking human beings are extremely powerful and are linked to other criminal activities. In various opinions (4), the EESC has called for criminal networks trafficking in human beings to be combated more effectively. Cooperation between the Justice and Home Affairs authorities of the Member States and the European Commission must be improved. EUROPOL and EUROJUST must be provided with the most appropriate political, legal and administrative instruments. Work must be speeded up on the European Border Control Agency and also, in the medium term, on setting up a European border guard service.

3.13.1 Some parts of Europe, such as the southern islands (including Malta, Lampedusa and the Canaries), face particular difficulties because they form mid-way points for illegal immigration and sometimes receive more migrants than they are able to integrate. The European Union must therefore develop a system of solidarity to resolve these situations.

3.13.2 The illegal trade and trafficking in persons must be combated whilst guaranteeing that victims are protected by international humanitarian legislation and by the European conventions on human rights. Illegal immigrants form part of vulnerable groups that require special protection. Their lives and safety are the priority. The EESC adopted an opinion (5) to improve victim protection.

(1) Opinion on the Directive concerning the status of third-country nationals who are long-term residents, OJ C 36 of 8.2.2002, rapporteur: Mr Pariza Castaños
(2) Opinion on Regulation (EEC) No. 1408/71 in OJ C 157 of 23.5.1998, rapporteur: Mr Liverani
(3) Opinion on the proposal for a Directive on services in the internal market. Rapporteur: Mr Metzler, co-rapporteur: Mr Ehnmark
3.14 The EESC supports the establishment of an open method of coordination for immigration and asylum policy (1). The EU currently has a Committee on Immigration and Asylum, which is doing sterling work coordinating and advising, but its mandate is inadequate. The Thessaloniki European Council provided for a pilot project to establish a European Migration Network. This Network warrants the EESC’s support, because it represents a step towards better coordination within the EU.

3.15 The EESC welcomes the fact that the aims of Community immigration policy include measures for integration, as the Committee has called for (2). The reception given to newly arrived immigrants, their integration into the labour market, language training, combating discrimination, and participation in civil, cultural and political life must be strategic aims for the EU. The EESC considers it crucial for the social partners and civil society organisations to support the public authorities on integration policies.

3.15.1. The Committee wishes to convey the idea to the people of Europe that immigrants are much-needed members of our community and contribute to Europe’s economic, social and cultural enrichment. The EESC wishes to continue to cooperate actively with the other EU institutions to ensure that the Tampere objectives are met and that an appropriate common immigration policy is implemented and that legislation is harmonised. With this aim in mind, the Committee will be putting in place a permanent instrument (3) in conjunction with the Commission, with the social partners and with civil society organisations. Combating racism, xenophobia and discrimination is the way to achieve equal treatment and integration.

3.16 The Social Agenda (4) currently contains a number of objectives for promoting integration, combating discrimination and ensuring equal treatment. In the coming years, as a consequence of increasing numbers of immigrants, some of the objectives of the EU’s social policy guidelines will have to be adapted.

3.17 The EESC underlines the fact that the draft Treaty establishing a Constitution for Europe has laid new foundations for Community immigration policy and recalls that it adopted an own-initiative opinion (5) proposing that Treaty should grant EU citizenship to third-country nationals with long-term resident status, in order to make it easier for them to exercise their political rights and to promote integration. The EESC also adopted an own-initiative opinion (6) proposing that the Member States of the European Union ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which was approved by the General Assembly of the United Nations (7), which aims to protect the human rights and dignity of people across the globe who emigrate for economic or employment-related reasons by means of appropriate legislation and good national practice. Once again, the Committee calls on the Council and the Commission to consider ratifying this convention.

Brussels, 15 December 2004

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

(1) Opinion of Ms zu Eulenburg in OJ C 221 of 17.9.2002
(2) Opinion in OJ C 125, 27.5.2002, on Immigration, integration and the role of civil society organisations; conference organised by the EESC and the Commission on 9 and 10 September 2002: Immigration: the role of civil society in integration.
(3) To be decided on (a monitoring centre, annual conference ...)
(4) Opinion of the EESC on the Communication on the mid-term review of the social policy agenda, OJ C 80 of 30.3.2004, rapporteur: Mr Jahier
(7) Resolution No. 45/158 of 18 December 1990, in force since 1 July 2003