

Opinion of the European Economic and Social Committee on the ‘Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State’

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(2009/C 27/24)

On 7 February 2008, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 10 June 2008. The rapporteur was **Mr Pariza Castaños**.

At its 446th plenary session, held on 9 and 10 July 2008 (meeting of 9 July), the European Economic and Social Committee adopted the following opinion by 140 votes to three, with seven abstentions.

1. Preliminary comments

1.1 Eight years have passed since the Tampere European Council, when the EU decided to push forward a common immigration policy. However, little progress has been made on one of the key aspects — immigrant admission policy and legislation. This is still governed by national legislation, with no harmonisation at EU level to regulate admission; national legislation varies greatly and expresses contradictory policies.

1.2 Over six years have passed since the Commission drew up its *Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities* ⁽¹⁾. The EESC and the Parliament issued Opinions ⁽²⁾ supporting the proposal. However, the proposal did not make it past the first reading by the Council. Since then, some States have drawn up new legislation on economic immigration, taking very different approaches.

1.3 In the years to come, Europeans will need new economic migrants to contribute to social and economic development ⁽³⁾. The demographic situation indicates that the Lisbon Strategy

could fall apart if we do not change immigration policies. Active policies for the admission of both highly qualified and less qualified workers are needed.

1.4 It is incomprehensible that in the Council of the European Union some governments have vetoed the Commission’s legislative proposals and are perpetuating the restrictive policies of old. Meanwhile, the black economy and illegal employment are growing, creating a real ‘pull factor’ for undocumented migrants. In the absence of common European legislation, the Member States are adopting new legislation with very different political agendas, adding further barriers to harmonisation. These different political agendas and legislative disparities cause confusion and uncertainty amongst citizens.

1.5 The EESC has proposed that with regard to legislation on the admission of immigrants, the Council of the European Union should abandon the unanimity requirement and adopt its decisions by qualified majority and co-decision with the Parliament ⁽⁴⁾. This is the only way to draft good legislation, which makes progress towards harmonisation in the EU.

1.6 The EESC believes that immigration legislation should be included in the Lisbon Treaty under the ordinary procedure (Commission initiative, qualified majority in the Council and co-decision with the Parliament).

1.7 However, this proposal for a directive is being debated in the Council under the unproductive principle of unanimity. Therefore, as the Committee proposed in its opinion on the Hague programme ⁽⁵⁾, ‘*This change must take place now, before the study of new legislative proposals*’. The EESC proposes that the

⁽¹⁾ COM(2001) 386 final.

⁽²⁾ See the EESC opinion of 16 January 2002 on the Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities (rapporteur: Mr Pariza Castaños) (OJ C 80, 3.4.2002) and the EP opinion in OJ C 43 E, 19.2.2004 (rapporteur: Ms Terrón i Cusí).

⁽³⁾ The conclusions of the European Council of December 2006 (the plan for a legal migration policy) and also see the EESC opinion of 10 December 2003 on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment, rapporteur: Mr Pariza Castaños (OJ C 80, 30.3.2004).

⁽⁴⁾ See the EESC opinion of 15 December 2005 on the Communication from the Commission to the Council and the European Parliament: The Hague Programme: Ten priorities for the next five years — The Partnership for European renewal in the field of Freedom, Security and Justice, rapporteur: Mr Pariza Castaños (OJ C 65, 17.3.2006).

⁽⁵⁾ See footnote 4.

Council adopt the 'bridging' procedure already in force with regard to asylum, so that these directives may be approved by qualified majority and co-decision with the Parliament.

1.8 As already stated by the Committee, *'For the new admission legislation, an overall, horizontal legislative framework is preferable to sectoral legislation. The proposal for a Directive on admission drawn up by the Commission and supported by the EESC, with a few changes, remains a good legislative proposal. Additionally, specific rules could be drawn up for sectoral issues and particular situations. If the Council of the European Union were to opt for a sectoral approach, geared only towards the admission of highly skilled migrants, it would not apply to much of migration, and would also be discriminatory. This option might be easier for the Council, but it does not respond to European needs (6)'.*

1.9 The Lisbon Treaty sets the limits for common legislation, including Member States' right to 'determine volumes of admission' of migrants to their country. This limit does not prevent a high degree of legislative harmonisation from being reached in the EU. It is an incentive for national management of economic migration to be dealt with using common, transparent procedures. The power to issue work and residence permits would belong to authorities in the Member States, but within the framework of Community legislation. Thus, each Member State could decide, in cooperation with the social partners, on what kind of immigration it requires. National legislation should take account of each country's specific circumstances, whilst also respecting European legislation.

1.10 This proposal for a horizontal directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State meets the aims of the European Union to establish a comprehensive immigration policy.

1.11 This aim was first adopted at the Tampere European Council of October 1999, the final declaration of which states that the EU should guarantee fair treatment for third-country nationals residing legally in the Member States, and that their rights and obligations should be equivalent to those of EU citizens themselves.

1.12 The Hague Programme of November 2004, however, recognised that 'legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development, and thus contributing to the implementation of the Lisbon strategy'.

1.13 The Commission drew up a Green Paper (7) in 2004 with the aim of opening up a debate and a period of

consultation on the management of economic migration within the EU. The EESC drew up an opinion (8) proposing that the EU lay down common legislation on the admission of migrants; such legislation should have a high degree of harmonisation and be horizontal rather than sectoral.

1.14 The European Council of December 2006 adopted the policy plan on legal migration, which is intended to meet two objectives:

1.14.1 to lay down admission conditions for specific categories of migrants (highly qualified workers, seasonal workers, remunerated trainees and intra-corporate transferees) in four specific legislative proposals; and

1.14.2 to establish the general framework for an approach that is equitable and based on respect for migrant workers' rights.

2. Proposal for a Directive

2.1 The proposal for a directive is intended to secure the legal status of already admitted third-country workers and to introduce procedural simplifications for the applicants.

2.2 There are considerable differences in the Member States' treatment of migrant workers.

2.3 Significant differences also exist in the treatment of migrants in comparison with Community workers.

2.4 The directive aims to establish a single application procedure for third country nationals seeking to enter the territory of a Member State for the purpose of residence and employment and a common set of rights for third country workers residing legally: working conditions, including pay and dismissal, association, access to vocational training and to the main social security benefits, etc.

2.5 This is a horizontal directive, and includes economic migrants and persons who were issued with a residence permit for purposes other than work and were subsequently given access to the labour market on the basis of Community or national provisions (e.g. family members, refugees, students, researchers).

2.6 The directive's scope excludes third country nationals who are posted workers (9) because they do not form part of the labour market of the Member State to which they are posted, intra-corporate transferees, contractual service suppliers

(6) See footnote 4.

(7) Green paper on an EU approach to managing economic migration (COM(2004) 811 final).

(8) See the EESC opinion of 9 June 2005 on the Green paper on an EU approach to managing economic migration, rapporteur: Mr Pariza Castanos (OJ C 286, 17.11.2005).

(9) Directive 96/71/EC.

and graduate trainees, seasonal workers and lastly third-country nationals who have acquired long-term resident status.

2.7 This proposal establishes the obligation for Member States to examine each application to work and reside in their territory in a single application procedure — and if granted — to issue a single permit enabling the applicant to stay and work.

2.8 To this end, each Member State should designate a competent authority to receive the application and issue the single permit, without prejudice to the role and responsibilities of other national authorities with regard to the examination of and the decision on the application.

2.9 The single permit is to take the harmonised format of the residence permit for third-country nationals in accordance with Regulation (EC) No 1030/2002.

2.10 The single permit will entitle its holder to enter and stay in the territory of the Member State issuing the single permit, have free access to the entire territory, pass through other Member States and to exercise the activities authorised under the single permit.

2.11 With regard to the single procedure, a number of procedural safeguards are established, such as the need to give reasons for a decision rejecting the application for a single permit; in any event — and where this matter falls within the remit of the Member States — the conditions and criteria on the basis of which an application for a single permit can be rejected have to be laid down in national law.

2.12 The directive also lays down the obligation to provide a means of redress in the event that the application is rejected and notification of this possibility must be issued in writing together with the rejection. Information must also be provided regarding the documents required when submitting the application and any fees to pay.

2.13 Where rights are concerned, the directive establishes a minimum requirement for ensuring equal treatment for every individual granted a single permit, without prejudice to the right of Member States to adopt more favourable provisions.

2.14 The directive stipulates that third-country workers shall enjoy equal treatment with nationals at least with regard to:

- Working conditions, including pay and dismissal as well as health and safety at the workplace.
- Freedom of association and affiliation and membership of an organisation representing workers or employers or of any professional organisation.
- Education and vocational training.
- Recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures.

- Equal treatment as regards social security covers the benefits set out in Regulation EC 1408/71, also extending its provisions to persons coming to a Member State directly from a third country.

- Payment of acquired pensions when moving to a third country.

- Tax benefits.

- Access to goods and services, including procedures for obtaining housing and the assistance afforded by employment offices.

2.15 Member States may restrict the right to equal treatment:

- by requiring proof of appropriate language proficiency for access to education and training;

- by restricting rights to study grants;

- by restricting equality in working conditions (including salary, dismissal and health and safety in the workplace), freedom of association, tax benefits and social security rights for persons engaged in a specific occupation.

2.16 As regards the recognition of diplomas, the proposal grants equal treatment in accordance with national procedures and refers to Directive 2005/36/EC, which states that a third-country national who acquired qualifications in other Member States should have them recognised in the same way as for EU citizens.

2.17 With regard to equal access to goods and services made available to the public including both public and private-sector housing, Member States may restrict the right to public housing to third-country nationals who have been staying in the Member State concerned for at least three years.

2.18 Lastly, the proposed directive guarantees respect for more favourable provisions in Community agreements or international instruments, including those adopted by the Council of Europe and which apply to third-country migrant workers who are nationals of Council of Europe member countries. The proposal is also without prejudice to more favourable provisions contained in international conventions prohibiting discrimination on the basis of national origin.

3. General comments

3.1 The EESC has proposed that The Council of the European Union should abandon the unanimity requirement and adopt its decisions by qualified majority and co-decision with the Parliament ⁽¹⁰⁾. This is the only way to draft good legislation that represents progress on harmonisation within the EU.

3.2 The Committee welcomes the fact that the Lisbon Treaty includes legislation on immigration in the ordinary procedure (a Commission initiative, qualified majority in the Council and co-decision with Parliament).

⁽¹⁰⁾ See footnote 4.

3.3 Once the Lisbon Treaty is ratified and enters into force, the distribution of powers between the EU and the Member States will be clearer and whereas the Council will adopt decisions by qualified majority and by co-decision with the Parliament, superseding the current unanimity rule that prevents truly common legislation from being adopted; the European Economic and Social Committee proposes that, when adopting legislation on immigration, the Council use the ordinary procedure (as it did when deciding on legislation on asylum), thus anticipating the provisions of the Lisbon Treaty.

3.4 The EESC proposes that the Council's work on this directive take priority over the Directive on highly qualified employment (COM(2007) 637), and the other sectoral directives, and also proposes that the Commission speed up its work on the other directives on admission that it has planned for the coming months (covering seasonal workers, remunerated trainees and intra-corporate transferees).

3.5 The Committee hopes that the EU will have adequate, sufficiently harmonised legislation so that immigration can be channelled through legal, flexible, transparent procedures, in which third-country nationals are fairly treated, with comparable rights and obligations to EU citizens.

3.6 The rights and obligations for third-country nationals contained in the proposed directive, based on equal treatment as regards salaries, working conditions, freedom of association, education and vocational training, represent a good starting point for future immigration legislation.

4. Specific comments

4.1 The EESC considers that this horizontal directive, which includes a single procedure and a set of rights for third-country workers residing legally in a Member State, is crucial for the EU in order to cement the bases for a common policy on economic migration. The proposal for a directive respects the Member States' right to determine the number of immigrants that they wish to admit.

4.2 The EESC wishes to highlight the importance of the Commission's proposal for providing the EU with horizontal legislation on the admissions procedure and on the rights of third-country workers residing in Member States' territory.

4.3 In its opinion on the Green Paper ⁽¹¹⁾ the EESC expressed its support for a single procedure for immigration for the purpose of employment: *'The relationship between residence and work permits shows clear differences in the various Member States. The EESC believes that harmonised legislation is needed for the EU. The authority responsible for issuing permits would be that of each Member State. Permits granted by a Member State should be*

recognised as such in the rest of the EU. The EESC recommends that the legislation keep bureaucracy to a minimum and make things easy for the persons concerned, i.e. the migrants, employers and authorities. It would be advisable to have a single permit, namely, the residence permit, which would be combined with a work permit.'

4.4 With regard to rights, in the opinion on the Green Paper referred to above, the EESC already stated that: *'The starting point for this debate must be the principle of non-discrimination. Migrant workers, whatever the period for which they are authorised to reside and work, must have the same economic, labour and social rights as other workers'*. The Committee wishes to highlight the role of the social partners at the different levels (business, sector, national and European) in promoting equal treatment at work. The EESC held a hearing, in conjunction with the Dublin Foundation and the social partners, the conclusions of which were set out in another opinion ⁽¹²⁾.

4.5 The opinion on the Green Paper ⁽¹³⁾ stated that: *'In specific terms, the EESC proposes a series of rights that should be granted to third-country nationals temporarily and legally working and residing within the EU'*. The Committee wishes to point out that immigrant workers pay taxes to the national authorities of their host country, in addition to employment-related social security contributions, in line with Member State legislation.

4.6 In addition to equal treatment in the workplace (working conditions, salaries and dismissals, health and safety at work, rights of association, etc.), the EESC also proposed including:

- *'the right to social security, including healthcare;*
- *the right to have access to goods and services, including housing, under the same conditions as nationals;*
- *access to education and vocational training;*
- *the recognition of degrees, certificates and qualifications in the context of Community law;*
- *the right to the education of minors, including funding and study grants;*
- *the right to carry out teaching and scientific research in accordance with the proposal for a Directive ⁽¹⁴⁾;*
- *the right to free legal aid in cases of need;*
- *the right of access to a free placement service (public service);*

⁽¹²⁾ See the EESC opinion of 13/14 September 2006 on Immigration in the EU and integration policies: cooperation between regional and local governments and civil society organisations (rapporteur: Mr Pariza Castañón) (OJ C 318, 23.12.2006).

⁽¹³⁾ See footnote 8.

⁽¹⁴⁾ See the Proposal for a Commission Directive (COM(2004) 178) on the admission of third-country nationals to carry out scientific research in the European Community. See also the EESC opinion of 27.10.2004 on the Commission Communication to the Council and the European Parliament on the presentation of a Proposal for a Directive and two Proposals for Recommendations to facilitate the admission of third-country nationals to carry out scientific research in the European Community (rapporteur: Ms King) (OJ C 120, 20.5.2005).

⁽¹¹⁾ See footnote 8.

- the right to be taught the language of the host society;
- respect for cultural diversity;
- the right to free movement and residence within the Member State.¹⁵

4.7 In 2004, the EESC also adopted an own-initiative opinion⁽¹⁵⁾ proposing that the European Union and the Member States ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, adopted by the General Assembly of the United Nations in 1990⁽¹⁶⁾, with the aim of promoting migrant workers' fundamental rights not only in Europe but worldwide. The EESC proposes that the Commission take new steps to ratify the Convention, in order to strengthen an international system for immigrant rights.

4.8 The Committee proposes that the directive's explanatory statement include a new paragraph to the effect that the ILO rules on immigration law, especially the ILO Conventions on migrant workers (C 97 and C 143), should be complied with.

4.9 The EESC also proposes that the directive safeguard gender equality, which forms part of the Community *acquis*, as well as EU anti-discrimination legislation.

4.10 Seasonal workers should not be excluded from the scope of the directive. Although the Commission is drawing up a specific directive, the EESC considers that the principle of equal treatment, especially in the workplace, should also be guaranteed for this category of worker.

4.11 The Committee wishes to state its concern at and disagreement with the possibility of the directive allowing Member States to restrict the right to equal treatment⁽¹⁷⁾, in

relation to working conditions (including pay and dismissal, health and safety in the workplace and social security) and as regards freedom of association. This restriction contradicts the proposal set out in Article 2. Such restrictions could also contravene the principle of non-discrimination. The EESC considers that, taking account of the case-law of the Court of Justice of the European Communities, equal treatment is one of the principles of Community law.

4.12 In any event, where restrictions are in place, they should always be interpreted in line with other binding international legislation that is more generous, specifically the Universal Declaration of Human Rights, the International Pact on Civil and Political Rights or the European Convention on Human Rights, and with various ILO Conventions and Community and national laws that are more generous.

4.13 The directive envisages that when a single permit is rejected, this should be done in writing and the individual concerned should be able to challenge the decision in the Member State's courts. The Committee proposes that for a judicial decision rejecting the renewal, suspension or withdrawal of the single permit on the basis of criteria specified in national or Community law⁽¹⁸⁾, the administrative decision should be postponed until the judgment is final.

4.14 Lastly, the EESC wishes to highlight the importance of integration. It has drawn up a number of own-initiative opinions promoting integration policies⁽¹⁹⁾ and has held conferences and hearings on the subject. The EU and the national authorities should work together to promote integration policies, because integration, the promotion of equal treatment and the fight against discrimination are all challenges facing European society, especially local authorities, social partners and civil society organisations. The Committee is working together with the European Commission to set up the European Integration Forum⁽²⁰⁾.

Brussels, 9 July 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽¹⁵⁾ See the EESC opinion of 30 June 2004 on the International Convention on Migrants (rapporteur: Mr Pariza Castaños) (OJ C 302, 7.12.2004).

⁽¹⁶⁾ Resolution 45/158 of 18 December 1990, which entered into force on 1 July 2003.

⁽¹⁷⁾ Art. 12-2.

⁽¹⁸⁾ Art. 8.

⁽¹⁹⁾ EESC opinion of 21 March 2002 on Immigration, integration and the role of civil society organisations (rapporteur: Mr Pariza Castaños) (OJ C 125, 27.5.2002).

EESC opinion of 10/11 December 2003 on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment (rapporteur: Mr Pariza Castaños) (OJ C 80, 30.3.2004).

EESC opinion of 13/14 September 2006 on Immigration in the EU and integration policies: cooperation between regional and local governments and civil society organisations (rapporteur: Mr Pariza Castaños) (OJ C 318, 23.12.2006).

Conference on 'The role of civil society in promoting integration', Brussels, 9 and 10 September 2002.

⁽²⁰⁾ <http://integrationforum.teamwork.fr/>.