

Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — A Common Immigration Policy for Europe: Principles, actions and tools

COM(2008) 359 *final*

(2009/C 218/15)

On 17 June 2008 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A Common Immigration Policy for Europe: Principles, actions and tools'

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 December 2008. The rapporteur was Mr PARIZA CASTAÑOS. The co-rapporteur was Ms BONTEA.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February), the European Economic and Social Committee adopted the following opinion by 130 votes to one with four abstentions.

1. Conclusions: Managing Immigration

1.1 The EESC has proposed that the Council of the European Union abandon the unanimity rule for immigration policy and adopt decisions by qualified majority and by co-decision with the Parliament, and considers that immigration legislation should be included in the Lisbon Treaty under the ordinary procedure. Taking into account the current circumstances, which could delay the adoption of the Lisbon Treaty, the Committee would like to reiterate its proposal for the Council to adopt the 'bridging' procedure to speed up the entry into force of the qualified majority and co-decision system.

1.2 In its opinions the Committee has taken the view that immigration policy and legislation should fully respect the **human rights** of all people, equal treatment and non-discrimination. To strengthen this objective, **the EESC proposes that two new common principles should be included: Fundamental Rights, and the Rule of Law and Fundamental Freedoms.**

1.3 The EESC underlines the need for the European Commission and the Member States to set up and develop a mechanism for **consulting all relevant stakeholders**, primarily the social partners (trade unions and employer organisations) but also civil society, immigrant associations, academic experts and international organisations. In order to structure this participation and enhance the EESC's role, the Committee has

adopted an opinion ⁽¹⁾ on setting up the **European Integration Forum.**

1.4 Several years have passed since the Commission proposed setting up an Open Method of Communication (OMC), which was supported by the EESC ⁽²⁾ and the Parliament but not adopted by the Council. The EESC supports the Commission's proposal for a **common methodology**, and considers this to be an initial step towards establishing an **open method of coordination.** In the Committee's view, common principles should be converted into **common objective indicators**, which should form part of **national immigration profiles.** Each Member State will draw up an annual report and the Commission will produce an annual summary report, which it will forward to the European Parliament. **The EESC considers that it too should be consulted in this process.** On the basis of the Commission report, the **Spring European Council** will make a political assessment and draw up recommendations.

1.5 The social partners, civil society organisations and national parliaments will be involved in drawing up the annual reports for each Member State, in line with national procedures. The EESC wishes to highlight the need to publish, promote and raise public awareness of this annual report.

⁽¹⁾ See the EESC opinion on 'Elements for the structure, organisation and functioning of a platform for the greater involvement of civil society in the EU-level promotion of policies for the integration of third-country nationals'; rapporteur: Mr Pariza Castaños (OJ C 27, 3.2.2009).

⁽²⁾ See the EESC opinion on the 'Communication from the Commission to the Council and the European Parliament on an open method of coordination for the Community Immigration Policy', and the 'Communication from the Commission to the Council and the European Parliament on the Common Asylum Policy, introducing an open coordination method'; rapporteur: Ms zu Eulenburg (OJ C 221, 17.9.2002).

1.6 The Committee considers that the open method of communication is the appropriate instrument for guaranteeing coherence between national policies and should be used to ensure that the Member States move forwards together to secure the aims set at Tampere and thus create a European area of freedom, security and justice. The OMC should be implemented **without delaying the legal framework** provided for in the Treaty and confirmed at the Tampere and Hague Councils.

1.7 The EESC would like the EU to have suitable, highly harmonised legislation, so that immigration can be channelled through legal, flexible and transparent legal procedures in which third-country nationals are fairly treated, with comparable rights and obligations to those enjoyed by EU citizens.

1.8 The Committee considers that cooperation between the authorities and the social partners would enable a considerable number of people who are today working illegally to regularise their administrative situation so that their job is legalised.

1.9 Cooperation and solidarity between Member States, including a strong financial component, needs to be improved. Effective use should thus be made of the funds of the General Programme for Solidarity and Management of Migratory Flows (2007-2013), as a means of sharing the burden and supplementing national budgetary resources.

2. Introduction

2.1 The aim of the communication is to encourage the Council to adopt a set of common political principles to guide the development of future immigration policy and is part of a wider political process to develop the policy foundations for the adoption of the new multi-annual programme for freedom, security and justice policies, which will replace the Hague Programme, and will be adopted during the Swedish presidency in the second half of 2009.

2.2 The French Presidency has attempted to secure the Council's approval of the European Pact on Immigration and Asylum⁽¹⁾ in order to give fresh political impetus to these policies and improve intergovernmental cooperation.

⁽¹⁾ See European Council conclusions 14368/08.

3. General comments

3.1 The EESC welcomes this Commission communication, which seeks to improve cooperation and co-ordination in the EU on immigration policy and considers that it is important to enhance the added-value of a common European immigration policy, together with the proactive role that the Commission must play.

3.2 The Committee should have been consulted by the French Presidency on the European Pact on Immigration and Asylum. The EESC considers that the Commission's approach emphasises the need to strengthen the Community method and that the Council's conclusions emphasise intergovernmental cooperation. The Committee welcomes the idea of closer cooperation between governments and suggests to the Council that, in the process of developing immigration policies, the Commission's right of initiative should be supported and that the Parliament and the EESC should play a more active role.

3.3 The communication notes that a common immigration policy is a key priority for the EU. The policy should be guided by a co-ordinated, integrated approach at the European, national and regional levels, and developed in partnership and solidarity between Member States and the Commission. The communication proposes adopting a set of **common, politically binding principles** to be agreed by the Council and then developed by means of **specific measures**. This would be accompanied by a **common methodology and a monitoring mechanism**.

3.4 The EESC broadly supports these objectives.

3.5 The EESC has proposed⁽²⁾ that the Council of the European Union should abandon the unanimity rule for immigration policy and adopt decisions by qualified majority and by co-decision.

3.6 In its opinions the Committee has taken the view that immigration policy and legislation should fully respect the **human rights** of all people, equal treatment and non-discrimination, and therefore shares the Commission's view that immigration policies 'should build on the **universal values** of human dignity, freedom, equality and solidarity espoused by the EU, including full respect of the Charter of Fundamental Rights and the European Convention on Human Rights'.

⁽²⁾ See the EESC opinion 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).

3.7 When the Lisbon Treaty comes into force it will be the first time in the history of European integration that the Charter of Fundamental Rights has been officially recognised as legally binding on Member States and the EU institutions when adopting and implementing Community law. Both the EU institutions and the Member States will have to ensure that all policies, including those relating to the area of freedom, security and justice, respect fundamental rights.

3.8 Moreover, Article 47 TEU, as set out in the Lisbon Treaty, recognises that *'The Union shall have legal personality'*; and Article 6.2 of the same Treaty stipulates that, based on its new personality, *'The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms'*.

3.9 The EESC has proposed⁽¹⁾ that the Commission, Parliament and the EU Council promote, within the field of external policy, **an international legal framework for migration** on the basis of the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. This international legal framework should include the main ILO conventions and the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, which has not yet been ratified by the EU Member States, despite the fact that the EESC adopted an own-initiative opinion⁽²⁾ proposing that this be done.

3.10 To strengthen this objective, **the EESC proposes that two new common principles should be included: Fundamental Rights; and the Rule of Law and Fundamental Freedoms.**

4. Specific comments on the basic principles

4.1 The Commission is proposing **ten common principles** for the development of a common immigration policy, grouped under three headings: **prosperity, solidarity and security.**

4.2 The EESC notes, however, that the principles derived from fundamental rights are missing; as the immigration policy and legislation (admission, borders, visas, return, conditions of residence, etc.) of the EU and its Member States should respect human dignity and fundamental rights, the EESC

suggests that a new heading should be added entitled **Human Rights, including two new principles:**

Principle A: Fundamental Rights

4.3 In their immigration policies, the EU and its Member States should respect the European Union's Charter of Fundamental Rights, in order to combat racism and discrimination and strengthen the principle of equal treatment. Respect for these principles should form the basis for drafting EU legislation on immigration.

4.4 In a recent opinion⁽³⁾, the EESC stated that the rights and obligations for third-country nationals – set out in the proposal for a Directive for the single procedure (COM(2007) 638 final) on equal treatment regarding salaries, working conditions, freedom of association, education and professional development – is a good starting point for future common legislation on immigration.

Principle B: The Rule of Law and Fundamental Rights

4.5 Taking into account the Member States' agreement that the EU should sign up to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the EESC believes that the legal guarantees contained in this convention should be included in the common principles for immigration policy, to ensure that all immigrants have effective access to the rights and guarantees provided by the Rule of Law while they are resident in the EU.

5. Common basic principles for the future development of a common immigration policy (European Commission proposal)

5.1 **Prosperity:** the contribution of legal immigration to the socio-economic development of the EU.

5.2 The communication highlights the contribution that legal immigration has made to the EU's socio-economic development. The EESC has repeatedly commented on the positive effects of immigration for host societies in Europe, taking into account the challenges of the Lisbon strategy. The Committee therefore hopes that the limitations entailed by the transitional periods affecting nationals of the new Member States will soon be abolished.

⁽¹⁾ See the EESC opinion on 'EU immigration and cooperation policy with countries of origin to foster development'; rapporteur: Mr Pariza Castaños (OJ C 44, 16.2.2008).

⁽²⁾ See the EESC opinion on 'the International Convention on Migrants'; rapporteur: Mr Pariza Castaños (OJ C 302, 7.12.2004).

⁽³⁾ See the EESC opinion 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', rapporteur: Mr Pariza Castaños (OJ C 27, 3.2.2009).

5.3 The section on **prosperity** contains three principles:

Principle 1: Clear rules and a level playing field

5.4 The EESC would like the EU to have suitable, highly harmonised legislation, so that immigration can be channelled through flexible and transparent legal procedures in which third-country nationals are fairly treated, with comparable rights and obligations to those enjoyed by EU citizens.

5.5 It is essential for the EU to cooperate with the countries of origin in order to manage migratory flows. The EESC has recently adopted two opinions ⁽¹⁾ proposing that collaboration between countries of origin and European host countries should be improved.

5.6 The common visa policy should be applied in a more flexible way, as it often hinders the management of legal migratory flows.

Principle 2: Matching skills and needs

5.7 Against the backdrop of the Lisbon strategy, immigration for economic purposes should respond to a common needs-based assessment of EU labour markets, addressing all skills levels and sectors in order to guarantee the principle of Community preference.

5.8 As regards the evaluation of the needs of 'qualified workers' in the EU and Member States up to 2020, in a recent opinion ⁽²⁾ the EESC made a number of proposals relating to the 'Blue Card' Directive.

5.9 As regards the development of 'immigration profiles' providing information on the participation of immigrants in the national labour market, in the Committee's view, there is a need to improve national and EU data on migratory flows and labour markets; the EESC considers that the concept of 'immigration profiles' should be flexible and take worker adaptability into account.

5.10 The EESC would like to highlight the importance of knowledge of languages and professional training for

⁽¹⁾ See the following EESC opinions:

- on 'EU immigration and cooperation policy with countries of origin to foster development', rapporteur: Mr Pariza Castaños (OJ C 44, 16.2.2008),
- on 'Migration and development: opportunities and challenges', rapporteur: Mr S. Sharma (OJ C 120, 16.5.2008).

⁽²⁾ See the EESC opinion on the Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, rapporteur: Mr Pariza Castaños (OJ C 27, 3.2.2009).

immigrant workers – which are essential to ensure they are able to find work and are better able to adapt to changes in labour markets – together with the need to recognise professional qualifications acquired outside the EU.

5.11 The EESC agrees with the Commission on the objective of promoting entrepreneurship among immigrants. The obstacles that still exist in national legislation on immigration must be overcome, however, if this objective is to be achieved.

5.12 As immigrant workers are most at risk of losing their jobs, it is essential to develop measures to bring more people into employment, with a particular focus on women and particularly disadvantaged individuals.

5.13 The EESC considers that in order to combat illegal employment, the measures envisaged in the Directive on sanctions against employers should be used together with incentives and active policies to regularise and legalise the employment of immigrants. For this to be achieved, both national and EU legislation on immigration must be more flexible and more closely linked with labour market trends, since it is necessary to develop and consolidate consultation with the social partners and a proper social dialogue.

5.14 Compliance with ILO regulations must be ensured, especially the ILO Conventions on migrant workers (C97 and C143).

Principle 3: Integration is the key to successful immigration

5.15 The EESC has produced a number of opinions ⁽³⁾ promoting integration policy, and is therefore pleased that integration is one of the principles underpinning immigration policy. The '**common basic principles**' which were adopted

⁽³⁾ See the following EESC opinions:

- on 'Elements for the structure, organisation and functioning of a platform for the greater involvement of civil society in the EU-level promotion of policies for the integration of third-country nationals'; rapporteur: Mr Pariza Castaños (OJ C 27, 3.2.2009);
- on 'Immigration, integration and the role of civil society organizations'; rapporteur: Mr Pariza Castaños (OJ C 125, 27.5.2002);
- 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);
- on 'Civil society participation in the fight against organised crime and terrorism'; rapporteurs: Mr Rodríguez García-Caro, Mr Pariza Castaños and Mr Cabra de Luna (OJ C 318, 23.12.2006).

by the Council in 2004, should form the basis of integration policies, and the first of these refers to integration being a two-way or reciprocal process (between the immigrants and the host society). The Committee shares the Commission's objective that European societies '*should enhance their capacity to manage immigration-related diversity and enhance social cohesion*'.

5.16 The Committee supports the Commission proposals and considers that consolidating the EU Framework for Integration will require fresh political impetus from the Council. The EESC has proposed the concept of 'civic integration' which is based on 'bringing immigrants' rights and duties, as well as access to goods, services and means of civic participation progressively into line with those of the rest of the population, under conditions of equal opportunities and treatment' ⁽¹⁾. It is therefore essential to ensure that immigrants are more involved socially and politically at the local, national and European levels. The Committee produced an opinion for the European Convention ⁽²⁾, proposing that third-country nationals who are long-term residents should be granted **EU citizenship**.

5.17 The Commission is currently coordinating a national network of contact points which is proving a very positive experience. The EESC underlines the importance of exchanging and analysing the experience and good practices of Member State authorities and the fact that the Council will set up an **Open Method of Coordination**, which will require developing **suitable statistical systems and common indicators** that Member States should use when evaluating the results of integration policies.

5.18 '*Integration programmes*' must be developed for '*newly arrived immigrants*' including a linguistic dimension (learning the language), a cultural and civic dimension (commitment to fundamental European values) in the framework of '*specific national procedures*' such as '*integration curricula, explicit integration commitments, welcome programmes, national plans for citizenship and integration, civic introduction or orientation courses*'.

5.19 In collaboration with the Dublin Foundation and the social partners, the Committee analysed the working conditions of immigrant workers ⁽³⁾, and concluded that diversity in the workplace increases opportunities for both companies and workers; and that collaboration with the social partners should complement legislation and public policy at work.

5.20 In a number of opinions the Committee has proposed that the rights of immigrants should be included in European

legislation, and that immigrants should be informed about their rights and responsibilities (under the law of the host country).

5.21 Bearing in mind that in the Member States some rights depend on the length of time immigrants have lived in the country, the EESC agrees with the Commission that immigrants should have non-discriminatory and full access to healthcare, social protection, social security and pension rights. The European Pact on Immigration and Asylum also states that certain rights should be guaranteed, such as access to 'education, work, security, and public and social services'.

5.22 In its opinion on the Green Paper the Committee proposed that the various rights ⁽⁴⁾ should be recognised.

5.23 The EESC has in a number of opinions ⁽⁵⁾ proposed that Directive 2003/86/EC on the right to family reunification be amended, because it is highly restrictive, does not respect fundamental rights and forms an obstacle to integration.

5.24 Furthermore, the **European Integration Forum** should be set up - before March 2009 - as proposed by the EESC ⁽⁶⁾ and endorsed at the preparatory conference of April 2008. The Member States should assist the Forum's members in taking up their duties.

⁽⁴⁾ 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;
- The right to free legal aid in cases of need;
- The right of access to a free placement service (public service);
- 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.

⁽⁵⁾ See the following EESC opinions:

- 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),
- on the 'Green paper on an EU approach to managing economic migration', rapporteur: Mr Pariza Castaños (OJ C 286, 17.11.2005),
- 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),
- on the 'Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment', rapporteur: Mr Pariza Castaños (OJ C 27, 3.2.2009).

⁽⁶⁾ See the EESC opinion on 'Elements for the structure, organisation and functioning of a platform for the greater involvement of civil society in the EU-level promotion of policies for the integration of third-country nationals'; rapporteur: Mr Pariza Castaños (OJ C 27, 3.2.2009).

⁽¹⁾ See the EESC opinion on 'Immigration, integration and the role of civil society organisations', rapporteur: Mr Pariza Castaños; co-rapporteur: Mr Melicias (OJ C 125, 27.05.2002).

⁽²⁾ See the EESC opinion on 'Access to European Union citizenship'; Mr Pariza Castaños (OJ C 208, 3.9.2003).

⁽³⁾ See the EESC opinion 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).

5.25 **Solidarity:** coordination between Member States and cooperation with third countries.

5.26 The Commission proposes improving political solidarity. The section entitled Solidarity and Immigration hinges on three principles:

Principle 4: Transparency, trust and cooperation

5.27 The common immigration policy should be founded on a high level of political and operational solidarity, mutual trust, transparency, shared responsibility and joint efforts from the European Union and its Member States. The EESC endorses these principles and wishes to highlight the need to move beyond the intergovernmental sphere to ensure that the EU institutions are involved in the common immigration policy.

5.28 There is a need to improve the distribution of information and mutual trust and to adopt more coordinated approaches, monitor the impact of national measures beyond national borders and develop interoperable systems, taking into account the activities of EUROSUR.

5.29 In a recent opinion⁽¹⁾, the EESC supported the European Commission's initiatives to ensure that Member States improve their statistics on immigration.

Principle 5: Efficient and coherent use of available means

5.30 Solidarity should include a strong financial component that takes into account the specific situation of the external borders of certain Member States. Consequently, effective use should be made of funds provided under the General Programme for Solidarity and Management of Migratory Flows (2007-2013), as means of sharing the burden and of supplementing national budgetary resources.

5.31 The EESC produced an opinion⁽²⁾ criticising the approach adopted in policies on the management of

migratory flows and proposed an approach that takes account first and foremost of individuals as holders of basic human rights.

5.32 Particular attention should be paid to urgent needs, such those generated by a massive influx of immigrants. The Committee also wishes to point out that there are sometimes humanitarian emergencies that require the EU's solidarity.

5.33 The EESC supports the endorsement of the Budgets Committee of the European Parliament of an amendment to the 2009 EU Budget to allocate financial resources for the establishment of a 'Solidarity Mechanism' to enable burden sharing among EU Member States. This includes allocation of funds for the European Refugee Fund, the promotion of other resettlement schemes and funds for the EU's Frontex agency to enable it to extend its maritime missions in Southern Europe on a permanent basis with effect from next January.

Principle 6: Partnership with third countries

5.34 The EESC has drawn up two opinions⁽³⁾ proposing a new approach for European policies: immigration policy should be managed in cooperation with the countries of origin, to ensure that migration is a factor for development in those countries. This would mean reformulating many aspects of these policies, including those concerning admission criteria and migrants' opportunities for mobility.

5.35 The Committee therefore welcomes this principle, because managing migratory flows requires partnership and cooperation with third countries.

5.36 The brain-drain must be limited, training and education improved and local labour markets strengthened. Decent work must be promoted, the development potential of remittances realised and irregular immigration prevented.

5.37 In conjunction with those Member States that are interested, mobility partnerships should be established with third countries, paving the way for legal emigration to Europe.

5.38 Possibilities for circular migration should be provided, through legal and operational measures granting legal immigrants the right to priority access to further legal residence in the EU.

⁽¹⁾ See the EESC opinion on the 'Proposal for a Regulation of the European Parliament and of the Council on Community statistics on migration and international protection', rapporteur: Ms Sciberras (OJ C 185, 8.8.2006).

⁽²⁾ See the EESC opinion on the 'Proposal for a Decision of the European Parliament and of the Council establishing the European Refugee Fund for the period 2008-2013 as part of the General programme Solidarity and management of migration flows — Proposal for a Decision of the European Parliament and of the Council establishing the External Borders Fund for the period 2007-2013 as part of the General programme Solidarity and management of migration flows — Proposal for a Council Decision establishing the European Fund for the Integration of Third-country Nationals for the period 2007-2013 as part of the General programme Solidarity and management of migration flows — Proposal for a Decision of the European Parliament and of the Council establishing the European Return Fund for the period 2008-2013 as part of the General programme Solidarity and management of migration flows'; rapporteur: Ms Le Nouail-Marlière (OJ C 88, 11.4.2006).

⁽³⁾ See the following EESC opinions:

— on 'EU immigration and cooperation policy with countries of origin to foster development'; rapporteur: Mr Pariza Castañón (OJ C 44, 16.2.2008).
— on 'Migration and development: opportunities and challenges'; rapporteur: Mr Sharma (OJ C 120, 16.5.2008).

5.39 Association agreements should include aspects of social security, covering, amongst other things, the possibility of transferring acquired social rights, especially pension rights, to countries of origin.

5.40 **Security:** effectively combating 'illegal immigration'

5.41 In previous opinions ⁽¹⁾, the EESC has warned that '...Some clarification is needed when the term "illegal immigration" is used to refer to individual migrants. Although it is not lawful to enter a country without the required documents and authorisation, those who do so are not criminals. (...) Irregular immigrants are not criminals, even though their situation is not legal'. The real criminals are those individuals who illegally traffic in people and those who exploit illegal immigrants.

5.42 The section on **security** contains four principles:

Principle 7: A visa policy that serves the interests of Europe and its partners.

5.43 The EESC would like to know whether the Commission has sufficient data to assess the impact of visa policy on reducing illegal immigration. The requirement for people in some third countries to have a short-term visa can reduce illegal immigration from those countries, but can also increase the number of individuals falling victim to trafficking networks and people-smugglers. Furthermore, visa policy can be seriously discriminatory as a result of restricting mobility and the consular authorities must therefore manage the issue carefully, acting swiftly, in a transparent manner, and ensuring that no corruption is possible.

5.44 The Committee agrees that uniform Schengen European visas should be adopted, and that common consular centres serving a number of Member States could be created.

Principle 8: Integrated border management

5.45 With a view to preserving the integrity of the Schengen area without internal border controls, the Commission proposes that the 'integrated management' of strategies for checks at the EU's external borders be strengthened and developed.

5.46 The operations of FRONTEX should be strengthened; an integrated system of border checks should be developed, using the 'new technologies', and the potential of the

European Commission's Seventh Framework Programme should be realised. It is crucial that FRONTEX develop and enhance further its coordination and support roles in respect of Joint Operations and its ability to react rapidly to the needs of Member States at the external borders. In the future the EU will decide on the operational Command and Control of FRONTEX considering the implications of national and international law.

5.47 Cooperation with third countries needs to be built up and the development of their migration management and control capacities supported.

5.48 The Committee wishes to highlight the need to preserve the Schengen area, with no internal border checks and to strengthen cooperation and solidarity between Member States when managing the EU's external borders.

5.49 The EESC also supports the creation of a one-stop-shop at land borders, where each traveller is subject to one check by one authority.

5.50 The large-scale and constant influx of immigrants to a given EU region is primarily a **humanitarian problem** that the national authorities must remedy with the help and support of the EU. Some European regions such as the islands of Malta, Lampedusa and the Canaries face specific problems because due to their southerly location they form mid-way points for irregular immigration and sometimes receive more immigrants than they can cope with. It is, therefore, crucial that the European Union has a system of solidarity in place, including operational burden sharing in relation to Member States facing recurrent and massive arrivals of illegal immigrants by combining European and pooled national resources.

5.51 The EESC would like to see the effectiveness of border checks matched by respect for the right to asylum, because many people in need of international protection reach the EU's external borders illegally. The Committee will be adopting another opinion ⁽²⁾ on the Common European Asylum System.

5.52 The EESC supported ⁽³⁾ the creation of FRONTEX and the future establishment of a European border guard and of a European border guard school, because border checks should be carried out by officials who have a specialist understanding of people trafficking and considerable technical know-how.

⁽¹⁾ See notably the EESC opinion on the 'Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration', rapporteur: Mr Pariza Castaños (OJ C 149, 21.6.2002).

⁽²⁾ See the EESC opinion of 25 February 2009 on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Policy plan on asylum - an integrated approach to protection across the EU'; rapporteur: Mr Pariza Castaños, co-rapporteur: Ms Bontea (Not yet published in the Official Journal).

⁽³⁾ See the EESC opinion on the 'Proposal for a Council Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders'; rapporteur: Mr Pariza Castaños (OJ C 108, 30.4.2004).

5.53 The Agency's tasks should include coordinating rescue services – especially sea rescues – to prevent the use of risky immigration networks and help people who are in danger as a consequence of using such networks.

Principle 9: Stepping up the fight against illegal immigration and zero tolerance for trafficking in human beings

5.54 The Commission proposes tackling undeclared work and illegal employment via preventive measures, law enforcement and sanctions. Protection and support for victims of human trafficking should be enhanced and collaboration with countries of origin and transit improved

5.55 The Committee considers that combating irregular immigration is the task not only of border guards but also of the European labour markets, which in some sectors and in some countries offer irregular immigrants undeclared work. The EESC recently adopted an opinion⁽¹⁾ in which it endorsed the Commission directive sanctioning employers that take on irregular immigrants, highlighting the importance of the social partners and immigrants' working conditions.

5.56 Irregular immigration will also decline when the EU and the Member States have legislation on the admission of new immigrants that is more open and flexible, as the EESC has proposed in a number of opinions.

5.57 The Committee supports the Commission, which wants to ensure that illegally residing third-country nationals have access to services that are essential to guarantee fundamental human rights (e.g. education, especially of children, and basic health care).

5.58 The EESC considers that the existence of hundreds of thousands of irregular immigrants in the EU represents a challenge for the EU and for its Member States. Compulsory return cannot be the only answer, because people's dignity and humane treatment must always be guaranteed. Nor is this policy financially viable. The Committee has thus proposed, in other opinions that⁽²⁾ *'Within the framework of policy coordination, the Commission should urge the Member States to prepare regularisation measures, averting the risk of irregular immigration being considered as a "back door" to legal immigration. In regularising the situation of those involved, consideration should be given to the degree to which they have settled in social and employment terms'*. In the Committee's view, cooperation between the authorities and the social partners would enable a considerable number of

people who are today working illegally to regularise their administrative situation so that their job is legalised.

5.59 The lack of effective controls at external borders is often exploited by criminal networks that traffic in human beings and have no qualms about putting people's lives at serious risk in order to increase their illegal profits. In another opinion⁽³⁾, the EESC pointed out that the authorities must protect victims, in particular the most vulnerable, such as children, and victims of trafficking for sexual exploitation, with the same energy with which they combat criminal networks that traffic in and exploit human beings.

5.60 The Committee is extremely concerned at the use of biometric systems, which could be used in a discriminatory manner and could breach people's right to privacy.

Principle 10: Effective and sustainable return policies

5.61 The Commission considers that return policies are an indispensable component of the EU's policy on illegal immigration and that indiscriminate large-scale regularisations of illegally staying persons should be avoided, *'while leaving open the possibility for individual regularisations based on fair and transparent criteria'*.

5.62 The Commission proposes giving a European dimension to returns policies by ensuring the full mutual recognition of returns decisions. In its opinion⁽⁴⁾, the EESC considered that, whilst no common immigration and asylum legislation exists, the mutual recognition of returns decisions is highly problematic if respect for the fundamental rights conferred under the rule of law is to be guaranteed.

5.63 In that opinion, the Committee proposed that the most successful return policies are those that offer adequate incentives and which are managed in conjunction with the International Organisation for Migration (IOM) and specialist NGOs.

5.64 The EESC was not consulted during the process of drawing up the directive on returns, but agrees with human rights organisations that claim that some of its provisions (the duration of confinement in detention centres, the lack of legal protection, the inadequate treatment of minors, etc.) **are not consistent with fundamental rights and the rule of law**.

⁽¹⁾ See the EESC opinion on the 'Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals', rapporteur: Ms Roksandić, co-rapporteur Mr Almeida Freire (OJ C 204, 9.8.2008).

⁽²⁾ Notably the EESC opinion on the 'Green Paper on a Community return policy on illegal residents', rapporteur: Mr Pariza Castaños (OJ C 61, 14.3.2003).

⁽³⁾ See the EESC opinion 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', rapporteur: Mr Pariza Castaños (OJ C 221, 17.9.2002).

⁽⁴⁾ See the EESC opinion on the 'Proposal for a Council Decision setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals', rapporteur: Mr Pariza Castaños (OJ C 220, 16.9.2003).

5.65 Steps must be taken to ensure that the countries of origin readmit their nationals - because they are obliged under international agreements to do so - and current readmission agreements should be assessed in order to improve their implementation and to draw lessons for the negotiation of future agreements.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI
