

**Opinion on the proposal for a Council Directive concerning the approximation of the legislation of the Member States, in order to combat illegal migration and illegal employment**

The text referred to the Committee has been published in *Official Journal of the European Communities* No C 97 of 22 April 1978, page 9.

**A. LEGAL BASIS FOR THE OPINION**

On 18 April 1978, the Council referred the abovementioned proposal to the Economic and Social Committee in accordance with Article 100 and 198 of the Treaty establishing the European Economic Community.

**B. OPINION OF THE ECONOMIC AND SOCIAL COMMITTEE**

The Economic and Social Committee prepared its opinion on the above matter at its 159th plenary session, held in Brussels on 31 May and 1 June 1978.

The full text of the opinion is as follows:

**THE ECONOMIC AND SOCIAL COMMITTEE,**

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 198 thereof,

Having regard to the request made by the Council of the European Communities on 20 April 1978 for the Committee's opinion,

Having regard to the decision taken by the Committee's Bureau on 26 April 1978, instructing the Section for Social Question to prepare an opinion on the matter,

Having regard to the Committee's opinion on the initial Directive of 23 February 1977 <sup>(1)</sup>,

Having regard to the opinion given by the Section for Social Questions dated 18 May 1978,

Having regard to the oral report presented by the rapporteur, Mr Kirschen,

Having regard to the discussions at the Committee's 159th plenary session held on 31 May and 1 June 1978 (meeting of 31 May 1978),

Whereas the continuing economic crisis has highlighted the serious situation of illegal migrant workers;

Whereas efforts must be directed first and foremost to ensuring that illegal migrant workers receive welfare protection consistent with the objectives of the Community;

Whereas it is necessary to have equitable rules governing all foreign workers – especially as regards social security, legal aid and economic conditions of life,

**HAS ADOPTED THE FOLLOWING OPINION**

unanimously:

1. In its opinion of 23 February 1977 on the initial proposal for a Council Directive on illegal migrations, the Committee congratulated the Commission on its choice of legal instrument (a Directive) and legal basis (Article 100 of the EEC Treaty), but regretted that no concrete steps had been taken by the Community to improve the critical situation of illegal migrant workers.

2. The Commission has responded to this criticism, because it has amended the draft Directive to include the following:

- the strengthening of cooperation between the Member States in the campaign against illegal migration and clandestine employment,
- the imposition of appropriate penalties,
- the fulfilment of employers' obligations,
- the safeguarding of workers' rights ensuing from work carried out.

These various recommendations are also to be found in the Council resolution of 9 February 1976 on an Action Programme for Migrant Workers.

3. The Commission has taken into consideration the views put forward by the Committee and put the accent more on prevention, especially as regards information services for migrants.

4. As far as punitive sanctions are concerned, the Commission considers that measures to penalize illegal employment should take into account the social and human consequences they may have for the illegal migrant worker.

<sup>(1)</sup> OJ No C 77, 30. 3. 1977, p. 9.

5. The most notable advance, however, has been made in respect of protection – a field which had scarcely even been touched upon in the initial proposal. In its opinion on this initial proposal the Committee had in fact forcefully made the point that illegal migrant workers were very frequently the victims of unscrupulous individuals, and in many cases were convinced that they had complied with the laws of the host country.

#### 6. Specific comments

6.1. The Commission has noted in its explanatory memorandum (a) the importance of providing potential migrant workers with information in third countries and (b) the vital need for cooperation between authorities in the labour-importing and labour-exporting countries. This is what the Committee had wanted the Commission to do.

6.2. The Committee is nevertheless convinced that an 'agreement' should be concluded between the nine Member States, under the aegis of the Council, to try an experiment in 'Community criminal law' in this area. Such a move would be of great importance from a political point of view since the alignment of various aspects of criminal law in the Community would be a notable landmark on the road to European unity.

6.3. As far as Article 1 is concerned, the Committee reiterates the concern expressed in its original opinion about the plight and specific problems of refugees. The Committee would once more like to stress the importance of compliance with the various international regulations on asylum for refugees; and under no circumstances should people who have left their country of origin for political reasons be regarded as illegal migrants.

In its original opinion the Committee also urged that Article 1 of the proposed Directive should make explicit

mention of the fact that illegal workers 'in transit' through a Member State's territory should also be covered. The Committee regrets that this suggestion has not been taken up.

6.4. The Committee is gratified to see that Article 2 now contains a paragraph 3 on cooperation with the employers and unions concerned in relation to the control of labour flows. This is what the Committee had requested in its original opinion.

6.5. The Committee regrets that Article 4 of the new proposal does not expressly state that traffickers of migrant labour must be prosecuted in any Member State in which they operate. The present unacceptable situation will be put right only if trafficking is systematically stamped out.

6.6. The Committee is pleased that the Commission has wholly taken up in Article 5 its suggestion that a worker and his family must not bear the cost of deportation if they are expelled from a country.

6.7. Judging from the content of Articles 6 and 7, the Commission has also taken up the Committee's request that legal aid should be free, that all possibilities of appeal should be allowed, and that deportation orders would automatically be suspended if appeals were lodged.

The Committee would also point out that in its opinion of 23 February 1977 <sup>(1)</sup> on the initial proposal of the Commission it stated that 'as regards the more general issue of appeals against decisions imposing penalties for alleged illegal employment, the appeal proceedings must take into consideration social and humanitarian factors, and the possible legal repercussions the worker may have to suffer when he returns to his country of origin'.

<sup>(1)</sup> OJ No C 77, 30. 3. 1977, paragraph 2.5.2.

Done at Brussels, 31 May 1978.

*The Chairman*  
*of the Economic and Social Committee*  
Basil de FERRANTI