

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration'

(COM(2001) 672 final)

(2002/C 149/17)

On 21 January 2002 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned 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 10 April 2002. The rapporteur was Mr Pariza Castaños.

At its 390th plenary session (meeting of 25 April 2002), the Economic and Social Committee adopted the following opinion by 97 votes to one with two abstentions.

1. Summary of the communication

campaigns, etc. Steps to promote peace, political stability, human rights and sustainable economic development should be taken in connection with the countries of origin.

1.1. The communication addresses various aspects of preventing and combating illegal immigration, and proposes action in areas such as visa policy, information exchange, border management, criminal law and return policy.

1.2. There is a section on guidelines, targets and requirements, in which key markers for future policy in this field are laid down, and another on an action plan specifying what action should be taken.

1.3. The section on guidelines, targets and requirements opens by pointing out that illegal immigration is multifaceted and complex, and requires a thorough knowledge of its causes, forms, patterns and channels if future measures are to fit the facts.

1.3.1. The communication states that illegal immigration should be tackled without jeopardising the ability of people who require international protection to gain access to the Member States. In order to maintain this balance, the Member States should explore the possibility of offering rapid access to protection, so that refugees do not need to resort to illegal immigration. Greater use should be made, for example, of the possibility of processing requests for protection in the place of origin, or facilitating the arrival of refugees in the Member States through resettlement schemes.

1.3.2. Preventive measures necessary to combating illegal immigration include research into its causes, support for new partnerships with the countries of origin, information

1.3.3. The criminal activities associated with irregular migration flows, involving both smuggling and trafficking in human beings, must be countered and punished appropriately, which means that Member State criminal law needs to be harmonised. Progress must be made on common standards for dealing with illegal employment, the liability of carriers, and regulations on illegal entry and residence.

1.4. The section on an action plan puts forward measures on visas, information exchange and analysis, frontier measures, operational and police coordination, criminal law and return policy.

1.4.1. The significance of visa policy to illegal immigration lies in the fact that some illegal immigration occurs when people pass through the proper border posts but do not have the right documentation, or offer false documentation. The current Schengen visa is a high-quality document which is effective in countering forgery, but further steps need to be taken to improve ways of identifying the visa-bearer. Thought should be given to the idea of setting up joint visa posts, which would provide better technical services and equipment, at lower cost. A European electronic visa information system is also necessary: in addition to identification by the document itself, a further check could be made through the relevant database.

1.4.2. Information exchange and analysis is of great importance in understanding illegal immigration and dealing with it appropriately. There needs to be more work on analysing causes, methods of entry and so on. Information exchange systems must therefore be modernised and the proposal to set up a European Migration Observatory put into practice. The establishment of an Early Warning System, or a permanent communication network, has also been proposed. This would allow each Member State to report any information on illegal migratory movements instantly.

1.4.3. Possible steps to be taken in migrants' countries of origin and transit include the creation of a network of immigration and airline liaison officers to coordinate action in the countries of origin themselves. A broad package of measures is also needed, including financial assistance for third countries in such areas as support for asylum infrastructure, awareness-raising campaigns, training for their public officials, expert meetings, improved border control equipment etc. Awareness-raising campaigns would focus on the risks involved in illegal immigration as well as other aspects.

1.4.4. Improving the EU's external border controls requires measures such as creating a European border guard, developing a training curriculum for border officials, or establishing joint border teams. The creation of a European border guard school is proposed as a future development.

1.4.5. These proposals could be combined in order to create a single technical support agency. This would include the European Migration Observatory, the Early Warning System, the European Border Guard School and systems management (SIS, Eurodac, European Visa Identification System).

1.4.6. Europol should expand its role in detecting and dismantling criminal networks, and should be granted further operative powers, especially with regard to trafficking or smuggling of human beings.

1.4.7. All the Member States must make any necessary changes to their aliens law and criminal law in order to increase their effectiveness in tackling people traffickers and smugglers. Smuggling is defined as action connected with an illegal border crossing, while trafficking means exploitation of persons. Anti-smuggling measures have been set out in a recent directive, and there is a framework decision on combating trafficking in human beings. Fresh legislative proposals are, however, required to deal with the situation of the victims of trafficking. The Commission is to present a proposal on residence permits for victims of trafficking who cooperate in investigations and criminal proceedings against exploiters.

1.4.8. Illegal employment of irregular migrants stimulates unlawful migratory flows and must be tackled with appropriate sanctions: these should include charging the costs of return and other expenses to their employers. The Member State should ensure that this business does not pay.

1.4.9. Carriers also bear specific responsibilities. They are obliged to take all necessary measures to ensure that aliens are in possession of valid travel documents. The Council has already adopted a directive on this aspect, but further regulations and greater harmonisation are necessary.

1.4.10. Return policy supplements the above-mentioned measures. Priority should be given to voluntary return. Broader cooperation and joint action by the Member States is needed regarding transit and readmission aspects: the human rights situation in the country of origin must always be taken into account in reaching re-admission agreements. The Commission is currently preparing a green paper on a Community return policy.

2. General comments

2.1. The Committee would firstly comment on the terminology used. The term 'illegal' should be used in particular to refer to smuggling, trafficking or exploitative activities, so that those engaging in and profiting from such activities are considered 'illegal'. In contrast, 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. Lumping together irregular immigration and crime, as the media frequently do, distorts the facts and breeds fear-driven and racist attitudes among the general public. Irregular immigrants are not criminals, even though their situation is not legal.

2.2. The Committee's initial general comment on the communication would be to express its full support for combating illegal immigration, particularly those aspects involving smuggling and trafficking of human beings. These criminal activities have resulted in a new form of slavery and an illegal trade on a large scale, which feeds on the suffering of millions of people. It is one of the greatest scourges of our times, against which the rule of law should deploy every means at its disposal.

2.3. The Committee welcomes the communication's affirmation of the need to recognise the right to international protection for those who require it and, consequently, to combat illegal immigration without jeopardising the right of asylum. The Committee is however convinced that this right is not sufficiently safeguarded by the terms in which the communication is couched, particularly with regard to carrier liability. This aspect will be discussed under the specific comments below.

2.4. The Committee supports the Commission's proposal to create new legal instruments allowing sanctions for smugglers and traffickers in human beings to be increased, and agrees with harmonisation of criminal and aliens legislation, so that all the Member States can act with the same vigour in this area.

2.5. As argued in the Committee's Opinion on a new Community immigration policy⁽¹⁾, the Community institutions and the Member States need to promote new legislative instruments and enhance their political and administrative work to prevent the illegal employment of irregular immigrants. This same need is reflected in the communication's comments on the 'pull factor' represented by illegal employment.

2.6. The communication takes scarce account of the Commission's own analysis of the causes of irregular immigration in its November 2000 Communication on a Community immigration policy⁽²⁾. At the time, it was pointed out that one of the reasons for the increase in irregular immigration is the lack of legal channels for labour migrants: demand for labour exists in certain sectors of the European economy, but at the same time current immigration policies make legal entry very difficult. This is one of the causes of migration through irregular channels: consequently, measures should be taken to settle the status of those who find themselves in this situation.

2.7. Since restrictive immigration policies, as currently pursued, are largely responsible for many people 'not having the right papers', the Commission and the Member States should consider regularising their situation so that they can legally obtain employment contracts.

2.8. The Committee believes that a common policy on illegal immigration is needed as a necessary adjunct to a common immigration policy. The Council should step up its work on adopting the directives on family reunification, status of long-term residents, and entry and residence conditions for new immigrants. This would significantly reduce the problem of irregular immigration.

3. Specific comments

3.1. In analysing the causes and defining the objectives of a common policy on illegal immigration, equal emphasis should be placed on two major aspects:

- combating smuggling, trafficking and illegal employment of human beings;
- opening up legal channels for migratory flows.

These two aspects must always be considered in tandem, although the second is not covered in the communication since it is currently under discussion in other European Commission proposals. The issue of illegal immigration is not a matter for the police and courts alone.

3.2. *Illegal employment*

3.2.1. Steps to combat illegal employment must be given greater importance. When illegal employment of irregular immigrants infringes existing labour conditions established by law, it should be defined as exploitation. The term 'exploitation' is used in the communication only when discussing trafficking: in the Committee's view, it should also be used with reference to illegal employment under certain circumstances.

3.2.2. Since proper channels for legal immigration do not yet exist, in the course of their business some employers offer work to irregular migrants, because they are unable to find legal migrants.

3.2.3. A minority of employers take advantage of their irregular situation to exploit them, imposing labour and pay conditions which violate all labour standards and/or collective agreements. A few employers also act as accomplices to the networks illegally smuggling human beings.

3.2.4. Exploitation of workers should therefore not be subject to economic sanctions alone: the criminal law of the Member States should be brought to bear.

3.2.5. The proposal to confiscate all financial gains from criminal activities relating to irregular immigration meets with the Committee's approval.

3.2.6. The social partners must be involved in combating the exploitation of irregular immigrants through illegal employment. Trade unions and employers' associations should cooperate with the public authorities to stamp out exploitation of immigrants. The Committee agrees with the Commission's proposal to eliminate any competitive advantages gained by employers through irregular work. The possible future directive mentioned by the Commission could help eliminate this problem.

⁽¹⁾ OJ C 260, 17.9.2001 (rapporteur: Mr Pariza Castaños).

⁽²⁾ Communication from the Commission COM(2000) 757 final.

3.3. *Rewarding victims who cooperate with the judicial authorities*

3.3.1. Victims of illegal work exploitation should be considered sympathetically. When immigrant workers caught up in illegal employment are subjected to extreme conditions, they must be seen as victims of exploitation. It should therefore be stated that if victims cooperate with judicial enquiries into illegal and exploitative working, they will be granted legal residence, as is the case for the victims of trafficking in human beings (point 4.7.2 of the communication).

3.3.2. The Committee welcomes the Commission's swift preparation of a legislative proposal on residence permits for victims who are prepared to cooperate in investigations and criminal proceedings against their exploiters.

3.4. *Penalising carriers*

3.4.1. The Committee would repeat in the present opinion that it opposes penalising passenger carriers. It has already argued, in a previous opinion ⁽¹⁾, that transport companies and their employees should not be responsible for checking passengers' travel documents, as this may prevent the right of asylum, protected by international conventions, from being exercised by asylum seekers trying to reach the territory of an EU Member State. The responsibility for checking travel documents should lie with qualified officials, and could be exercised by the network of liaison officials which the Commission proposes be set up in the countries of origin, rather than by travel operator staff.

3.4.2. Further to the above point, the Committee understands the term 'carrier' to mean a passenger transport company which operates in full compliance with the law by carrying persons who have paid the appropriate fare. It does not therefore apply to goods carriers who knowingly transport people unlawfully, a circumstance which should be covered in any consideration of illegal smuggling.

3.5. *Regularising persons with irregular status*

3.5.1. The Committee's other main objection to the content of the communication concerns the way irregular immigrants in the EU should be treated. The communication speaks only of return policy: in the Committee's view, while this is necessary, it cannot be the sole response to irregular situations.

3.5.2. 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.

3.6. *Cooperation on visa and border control policy*

3.6.1. Cooperation with the countries of origin is a crucial instrument for channelling migratory flows on a legal basis, and for forestalling illegal immigration.

3.6.2. In issuing visas and controlling external borders, the Member States must cooperate with each other and comply with the obligations they have assumed. It is worth bearing in mind that the EU's external borders are going to come under major pressure from migrants in the coming years.

3.6.3. Coordination and exchange of information between liaison officers is needed in order to implement this joint policy.

3.6.4. The Committee wishes to support the Commission's proposal to set up a European border guard with common standards and a harmonised training curriculum. In the medium term, steps should be taken towards the creation of a border guard school. Border controls should be carried out by officials who are skilled in dealing with people and possess thorough technical know-how.

3.6.5. It is very important to provide financial assistance for third countries in combating trafficking and in managing legal migratory flows; these require preventive information campaigns targeting irregular immigration. The social partners and other civil society organisations could take part in such campaigns.

3.6.6. The Committee would point out that priority financial assistance should be given to the applicant countries, which will be subject to transitional periods before their workers enjoy freedom of movement. These countries will also be asked to make additional efforts in terms of border controls and their own immigration flows.

3.7. *Combating organised crime*

3.7.1. Europol's role in detecting and dismantling criminal networks involved in smuggling irregular immigrants should be stepped up. Europol should be given more operative powers, with full implementation of Article 30 of the Treaty on European Union. No effort should be spared in tracking down the financial networks connected with trafficking and smuggling of human beings.

⁽¹⁾ Opinion on the Communication from the Commission on a common asylum procedure, in OJ C 260 of 17.9.2001 (rapporteur: Mr Mengozzi).

3.7.2. Eurojust and the European judicial network should be reinforced in order to tackle organised crime, money laundering and the networks engaged in smuggling human beings. The Convention on mutual legal assistance merits the support of the Committee.

3.7.3. The Committee gives its full backing to the Council and Commission in combating smuggling and trafficking in human beings. New criminal provisions are required to increase penalties; these offences should fall within the remit of the common police and judicial area being developed by the EU in order to combat terrorism and organised crime.

3.8. *European Migration Observatory*

3.8.1. The Committee considers that the Commission's proposed action plan contains positive elements, particularly the establishment of a European Migration Observatory to monitor and carry out comparative analysis of both legal and irregular migratory flows, and the creation of an early warning system on illegal immigration.

3.9. *Return policy*

3.9.1. Turning to readmission and return policy, the Committee would emphasise that the voluntary aspect should be encouraged, and the utmost consideration given to humani-

tarian values. The Member States of the EU must not enter into readmission agreements with third countries where serious political instability or human rights' violations are rife. The Committee will scrutinise the green paper on a Community return policy with great care.

4. **Concluding comments**

4.1. The Committee welcomes the Commission's proposal for civil society to be involved in efforts to prevent and fight illegal immigration. The European Economic and Social Committee can also contribute to the drafting of the proposed action plan.

4.2. A common policy against illegal immigration must take account of all its contributory factors. It must not be restricted to law-enforcement and judicial policies alone which, although certainly necessary, cannot by themselves diminish irregular immigration.

4.3. The Committee calls for greater speed and responsibility on the part of the Council in its legislative work concerning immigration and asylum. The present delay in drafting the directives and regulations proposed by the Commission makes it difficult to ensure that migration takes place through legal channels.

Brussels, 25 April 2002.

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