

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 — An open and secure Europe: making it happen’

COM(2014) 154 final

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Rapporteur: **José Isaías Rodríguez García-Caro**

On 14 March 2014, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the:

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — An open and secure Europe: making it happen.

COM(2014) 154 final.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 20 June 2014.

At its 500th plenary session, held on 9 and 10 July 2014 (meeting of 9 July), the European Economic and Social Committee adopted the following opinion by 85 votes to 1 with 7 abstentions.

1. Conclusions

1.1 In keeping with the position long held by the European Economic and Social Committee, as expressed in its opinions on the Communications from The Hague Programme⁽¹⁾ and the subsequent Stockholm Programme⁽²⁾, the EESC believes that the foundation and starting point for policies on freedom, security and justice must be protection of the fundamental rights guaranteed by the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. The EESC considers that the policies advocated by the European institutions must ensure a balance between fundamental rights and security. The Judgment of the EU Court of Justice on Directive 2006/24/EC on the retention of data relating to Europeans’ electronic and telephone communications for at least six months declares that this directive is invalid on account of the proportionality principle. However, the CJEU considers that the retention of data is a legitimate objective which serves general interests.

1.2 The Committee is concerned to note that intolerance, racism and xenophobia towards immigrants are on the rise in Europe and also that in some Member States the protection of fundamental rights is being eroded. Equal treatment and anti-discrimination policies represent the pillars of integration policies. The EESC proposes that the Commission designate a single dedicated Commissioner to identify, strengthen and adopt measures to protect fundamental rights.

1.3 Similarly, the Committee considers that the European Union must strive towards the consolidation of an international system that facilitates and regulates immigration and mobility, based on the United Nations’ human rights conventions, the Convention on the Rights of the Child, the Convention on the Protection of the Rights of Migrant Workers and the ILO’s conventions.

1.4 As a representative of organised civil society, the EESC is a partner who must be taken into account and be involved at every stage of the debate between the Commission, the European Parliament and the Council on an open and secure Europe.

⁽¹⁾ OJ C 65, 17.3.2006, pp. 120-130.

⁽²⁾ OJ C 128, 18.5.2010, pp. 80-88.

1.5 The EESC's view is that the Communication from the Commission should have taken a more practical approach. It contains a series of ideas that we believe need more detail and structure. We also consider that the Communication should have concentrated in particular on identifying the main problems currently preventing Europe from being more open and secure.

1.6 Immigrants make a positive contribution to the economic and social development and diversity of Europe, which is facing a major demographic challenge due to the ageing of its population. The EU is in the midst of a serious economic crisis and has high unemployment rates, but even so, the labour markets in a number of Member States are calling for new immigrants. Without a robust migration policy, when the crisis is over and the economic cycle changes, the structural problems caused by the demographic situation may worsen if steps are not taken.

1.7 The EU must set up a common asylum system with harmonised legislation, based on the Treaty's provisions for a common policy in this area. The Dublin Convention should be replaced with a more solidarity-based system within the EU that also takes account of asylum seekers' wishes.

1.8 The EESC considers that a credible focus on irregular immigration and returns requires vigorous action, using all available tools, against organised criminal networks smuggling and trafficking human beings. We are convinced that closer coordination between the Member States is crucial if existing means and instruments are to be put to good use in tackling the criminals who foment and facilitate irregular immigration.

1.9 The EU must take responsibility for monitoring its external borders, which are the borders of the entire European Union in the Schengen area. Frontex should become a European border guard service, prioritising both the protection of people whose lives are in danger, and respect for the laws in force.

1.10 The EESC proposes that Europol become a European agency under a European political or judicial authority, with a remit that extends beyond its current coordinating role, and, as soon as possible, with its own operational capability for investigation across the EU in cooperation with Member States' police forces.

2. Introduction

2.1 Although only a few years have passed since the launch of the Stockholm Programme for *An open and secure Europe serving and protecting the citizen*, the implementation of some of the measures proposed in it has enabled the European Union to develop policies aimed at creating a more open and secure society for all of us who live in the European Union's area of freedom and understanding. This is a European Union in which even the slightest hint of discrimination, racism or xenophobia has no place.

2.2 The strengthening of the Schengen area, the agreement on a Common European Asylum System, the improved common visa policy, increased European cooperation on combating those aspects of organised crime which are most dangerous to people (terrorism, human trafficking, cybercrime etc.) and increased cooperation with non-EU countries on migration, although major achievements, are still insufficient.

2.3 In an increasingly interconnected and interdependent world, where information flow is constant and unpredictable challenges requiring a response are emerging, we need to progress towards and develop higher levels of freedom and security, both for EU citizens and for those coming from non-EU countries, wishing to join and be integrated into our society and to contribute to it, thus enriching our values and improving their own living conditions.

2.4 As the lifespan of the Stockholm Programme ⁽³⁾, on which the EESC drew up a mandatory opinion ⁽⁴⁾, is about to end, we need to answer the question asked in the Commission's communication: how can we make an open and secure Europe happen?

⁽³⁾ OJ C 115, 4.5.2010.

⁽⁴⁾ OJ C 128, 18.5.2010, pp. 80-88.

2.5 On 8 April 2014, the Court of Justice of the European Union (CJEU) ⁽⁵⁾ declared European Directive 2006/24/EC ⁽⁶⁾, requiring Member States to oblige communication network and service providers to retain data on Europeans' electronic and telephone communications for at least six months, to be invalid. The Court took the view that by requiring the retention of those data and by allowing the competent national authorities to access those data, the directive interferes in a particularly serious manner with the fundamental rights to respect for private life and to the protection of personal data. Furthermore, the fact that data are retained and subsequently used without the subscriber or registered user being informed is likely to generate in the persons concerned a feeling that their private lives are the subject of constant surveillance. The Court stated that the retention of traffic data (and implicitly the directive) constitutes serious interference with the fundamental right to respect for private life enshrined in Article 7 of the EU Charter of Fundamental Rights. The Court's ruling of 8 April 2014 confirms that respect for citizens' rights and freedoms is crucial for the European venture. While invalidating the directive because of the proportionality principle, the CJEU considers that retaining data is a legitimate objective which serves general interests.

3. The Communication from the Commission

3.1 The communication is the result of a discussion in which all the institutions and bodies concerned with these EU policies took part, making their contributions by means of the *Open and Safe Europe: What's next?* conference held in Brussels in January 2014, to which the EESC contributed, and a very wide-ranging public consultation.

3.2 The communication includes an introduction, briefly summarising progress so far in meeting the ambitious targets of the Stockholm Programme, before moving on to the second part of the document which sets out a series of political priorities.

3.3 The priorities are listed as follows:

- An effective policy of migration and mobility.
- Schengen, visas and external borders.
- A Common European Asylum System (CEAS) in practice.
- Further strengthening the Global Approach to Migration and Mobility (GAMM).
- A Europe that protects.

4. Comments

4.1 *An effective policy of migration and mobility*

4.1.1 The EESC has repeatedly voiced its views on migration, mobility and integration policies in its opinions over the years. We reaffirm the validity of these opinions, and particularly of those proposals they contain that have not yet been taken on board. In this context, the EESC could not agree more on maximising the benefits of migration and integration, as they can unquestionably contribute to smart, sustainable and inclusive growth, as the Commission's document points out. It needs, however, to be borne in mind that in a Europe where racist and xenophobic ideologies are on the rise, zero tolerance must be displayed towards such movements. Countering discrimination, racism and xenophobia must be areas for priority action in any measures under consideration to create a more open and secure Union.

4.1.2 Attracting talent and highly skilled workers, attracting and retaining students from non-EU countries who will then stay and work in the EU, facilitating the recognition of qualifications in those countries, assisting potential emigrants in their own countries of origin so as to make it easier for them to enter the Union — these are all important measures which are of great value in enriching the Member States of the Union intellectually and economically and they should, therefore, be supported by the EESC. But first we must realise that it is not the same thing to attract talent and skilled workers away from non-EU countries with a high capacity for generating intellectual value and wealth and from countries which are struggling to emerge and achieve greater levels of wealth and prosperity. The latter case might be an excellent strategy for the EU Member States but it could represent a serious loss of human capital for non-EU countries. The EU and third countries need to cooperate under the Mobility Partnerships.

⁽⁵⁾ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-04/cp140054en.pdf>

⁽⁶⁾ Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ L 105, 13.4.2006, p. 54.)

4.1.3 The EESC is concerned at the impact of this strategy on developing third countries which need to maintain trained and qualified human capital in order to rise out their current impoverished condition. When framing policies to attract external talent to the EU, ways of drawing upon this human capital while introducing measures to compensate the countries of origin so their growth is not jeopardised must be a priority. It should not be forgotten that the long-term solution for people from under-developed countries to secure a better future is not to attract them into the EU so they can find work and better living conditions, but to work for their countries to achieve such a level of development that their people do not see emigration as their only chance for survival.

4.1.4 The complementary and indissoluble link between integration and immigration was acknowledged in the conclusions of the Justice and Home Affairs Council of June 2007. The EESC has drawn up a number of opinions expressing its views on this subject over the years. In the present period of economic difficulty, it is all the more necessary once again to state that *'equal treatment and anti-discrimination policies represent the pillars of integration policies'*. This recommendation is contained in the EESC's exploratory opinion on the *Integration of immigrant workers* ⁽⁷⁾ drawn up in 2010. That opinion remains entirely relevant and is therefore reflected in the present document.

4.1.5 The European Integration Forum is an ideal platform for civil society and immigrants' organisations. The Committee restates its undertaking to continue cooperating with the Commission in the Forum's activities and in implementing the European integration agenda.

4.1.6 The EESC considers that a credible focus on irregular immigration and returns requires vigorous action, using all available tools, against the organised criminal networks that use people as money-spinning merchandise by bringing them into the EU through irregular channels, against human traffickers who sexually exploit women and children, and against profiteers who use irregular, virtually slave labour. Victims should be guaranteed protection under international humanitarian law and European human rights conventions, as they are vulnerable groups requiring special protection. We are convinced that closer coordination between the Member States is crucial if existing means and instruments are to be put to good use in tackling the criminals who foment and facilitate irregular immigration.

4.1.7 The Committee advocates cooperation with non-EU countries as key to finding a regulated, humanitarian solution to returning to their countries of origin persons who have migrated to the EU Member States irregularly. The Committee supports the recommendations of the International Organization for Migration (IOM) on promoting voluntary assisted return.

4.1.8 To this end, a policy of cooperation is needed with the countries of sub-Saharan Africa, the southern Mediterranean and the Middle East, at least equivalent to that which is being developed with non-EU European and Asian countries. Spain, Greece, Italy Cyprus and Malta are under strong pressure from irregular migration from that part of the world, across the Mediterranean and through the Balkans, leading to tragic events such as those that have occurred on the shores of Lampedusa and which must be prevented by all means. The Committee urges the Commission and the Council to ensure that the European Union becomes more involved in a problem which concerns the Union itself and consequently all the Member States, and not only those located on the external borders, with more solutions and fewer reproaches to individual Member States.

4.1.9 A *Task Force Mediterranean* was set up following the disaster in Lampedusa in October 2013. The Task Force culminated in the publication of a Communication on the work it had accomplished ⁽⁸⁾, putting forward a package of short-, medium- and long-term measures in five main fields, along similar lines to the priorities set out in the communication from the Commission under discussion in the present opinion. The EESC deems it essential that short-term measures be complemented by long-term measures aimed at addressing the root causes of involuntary migration (poverty, human rights violations, conflicts, lack of economic opportunities, poor working conditions, unemployment, etc.).

4.1.10 Irregular migration, which puts the lives of migrants from sub-Saharan countries at risk, can be more effectively combated in the countries of origin than during transit and/or in the countries of destination. The EESC will support all measures enabling action to be taken in the countries of origin, showing greater decisiveness in situations of humanitarian crisis, improving living conditions in the countries of origin and, essentially, doing what we have so often said we would do but have not done faced with the desperate migration of hundreds of thousands or millions of persons.

⁽⁷⁾ OJ C 354, 28.12.2010, pp. 16-22.

⁽⁸⁾ COM(2013) 869 final.

4.2 Schengen, visa and external borders

4.2.1 If people associate the name Schengen with anything, it is that it represents free movement of persons throughout the signatory States. The right to free movement and residence for EU citizens is a right protected and regulated by the Treaties. Completing the common visa policy and making it more flexible, assessing each application individually without prejudices based on nationality, establishing consular Schengen visa centres, revising the list of countries for which visas are required. All these aspects are important and deserve joint action to ensure improved support and implementation.

4.2.2 However, the Committee is concerned, in the light of some actions taken by certain Member States, that it will not be credible for the Member States to seek to make it easier for citizens of non-EU countries to enter the EU at a time when some Member States are threatening to send EU citizens back to their countries of origin, because they are unemployed, or quite simply preventing them from entering. The Committee regrets the fact, that in the absence of entirely free movement of Union citizens, it will not be credible to apply it to citizens of non-EU countries.

4.2.3 With regard to the external borders, the EESC wonders if the EU's participation in protecting the Union's southern and eastern border is commensurate with the current situation there. In spite of the stronger role for Frontex brought about by amending Council Regulation (EC) No 2007/2004, it may be asked if integrated management of external borders is possible in the EU. The EESC would reiterate the recommendations in made in its opinion⁽⁹⁾ on the proposal for an amendment to the regulation, and considers that Frontex should become a European border-guard service comprising a European body of border guards.

4.2.4 The 'smart borders' package, on which the EESC drew up an opinion⁽¹⁰⁾, based on a Registered Traveller Programme (RTP), will allow frequent travellers from third countries to enter the EU using simplified border checks following pre-screening and vetting, and an Entry/Exit System (EES) that will record the time and place of entry and exit of third country nationals travelling to the EU. When applied, this will speed up, facilitate and strengthen both border control procedures and border crossing for third country nationals travelling to the EU. The EESC supports the implementation of the package, since it is convinced that the introduction of new technologies will facilitate modern management of the Union's borders. It therefore urges the European institutions to press ahead with the legal instruments to facilitate the rapid implementation of these technologies.

4.3 A Common European Asylum System

4.3.1 We believe that major progress has been made in providing the EU with a legislative framework improving access to asylum for people requiring protection, making decisions on granting asylum faster and more reliable. In spite of this, when it comes to transposing European legislation into national law and applying it, the EESC would return to the comment it made in its opinion⁽¹¹⁾ on the Communication from the Commission on the Policy plan on asylum: An integrated approach to protection across the EU⁽¹²⁾. With regard to the application of asylum legislation in the Member States, the Committee argued that *'The EU should develop a common legislation without compromising protection standards in any way, so that it will be Member States with insufficient levels of protection that have to change their legislation. The Member States will always have a degree of discretion when implementing EU asylum legislation, but the EESC will only support EU legislation that provides a high level of protection and reduces the scope for interpretation which, as is currently the case, might prevent the legislation from being applied correctly'*.

4.3.2 The Common European Asylum System needs to be consolidated to ensure that all the Member States are applying the same criteria, ensuring legal security for asylum seekers. The EESC believes that solidarity between Member States may be one of the areas requiring greatest effort. Individual Member States may experience particularly strong pressure, as a result of various circumstances. More Europe is needed in this context, as in the case of defending the external borders.

⁽⁹⁾ OJ C 44, 11.2.2011, pp. 162-166.

⁽¹⁰⁾ OJ C 271, 19.9.2013, p. 97.

⁽¹¹⁾ OJ C 218/78, 11.9.2009.

⁽¹²⁾ COM(2008) 360 final.

4.3.3 However, and in the light of the experience and evidence built up concerning irregular migration, it is legitimate to ask if more solidarity and shared responsibility is possible in this area under current circumstances. For this reason, and to reply to the question of how to foster solidarity and responsibility among the Member States, we share the Commission's view that relocation towards countries experiencing less pressure, and the pooling of reception places, should be encouraged. As the EESC explained in its own-initiative opinion on *Irregular immigration by sea in the Euromed region* ⁽¹³⁾, 'This is not only about showing solidarity, but also about Member States taking up their responsibilities by means of mechanisms to share burdens brought about by irregular immigration'.

4.3.4 With regard to managing large numbers of people in crisis situations, as in the case of Syria, and in connection with asylum applications by means of more flexible instruments, as advocated by the Commission in its communication, it is worth pointing out that the EESC previously expressed its support for the introduction of a single common asylum procedure leaving no space for the proliferation of disparate procedural arrangements in Member States ⁽¹⁴⁾. The flexibility shown by the Commission should apply only to temporary protection: the authorities must step up their efforts to assess applications from those who are in real need of asylum and separate them from those submitting fraudulent applications.

4.4 *Strengthening the Global Approach to Migration and Mobility*

4.4.1 Migratory movements of human beings are not only motivated by a desire for a better future. Instability, political upheaval, climate change and many other factors cause and have caused, over the centuries, major movements of people. What differentiates past migrations from those occurring today is guarantees and respect for the fundamental rights of all human beings. The European Union, the largest area of freedom and security in the world, must therefore work with the countries of origin to encourage ordered mobility which guarantees the rights of citizens of those countries and keeps them out of the hands of the organised criminal networks which traffic in human beings.

4.4.2 In its opinion ⁽¹⁵⁾ on the *Global Approach to Migration and Mobility* ⁽¹⁶⁾, the EESC specifically voiced its support for 'the *Global Approach to Migration and Mobility (GAMM)*, which closely links immigration and asylum policies to the EU's external policy'. The EESC has stated its position on this matter on numerous occasions, and continues to support developing an ever-closer link between the internal and external dimensions of migration and mobility policy, and greater coherence between EU immigration and asylum policies on the one hand and development cooperation policies on the other.

4.5 *A Europe that protects*

4.5.1 The Internal Security Strategy adopted in 2010 provides for joint EU action on the main threats to security. It is based on five strategic objectives which, while remaining valid, should be revised and updated with a view to tackling the challenges of the next five-year period, encouraging synergies with other key areas where security is essential for consolidating achievements and making further progress.

4.5.2 The Committee agrees with the Commission that disrupting international criminal networks operating within the EU must be a priority for all the Member States, and coordination of efforts to this end must be an EU objective. Organised crime is always one step ahead of the legal and police resources deployed against it. The internationalisation of organised crime requires a major collaborative effort between states, which must be closely coordinated by the European Union.

4.5.3 We cannot allow criminal networks to avoid being dismantled, or to delay the process, by exploiting disparities in the law and police powers and through a multitude of court applications. If crime can span borders, then we must progress more rapidly towards border-free justice in the Union. The EESC believes that we cannot afford to continue delaying global solutions to organised crime.

⁽¹³⁾ OJ C 67, 6.3.2014, p. 32.

⁽¹⁴⁾ OJ C 218/78, 11.9.2009.

⁽¹⁵⁾ OJ C 191, 29.6.2012, p. 134.

⁽¹⁶⁾ COM(2011) 743 final.

4.5.4 The Committee considers that training and information are not in themselves sufficient to disrupt crime networks, and consequently urges that, while continuing with the European training programme for law enforcement officials, thought be given to turning Europol into an operational investigative police force with EU-wide powers to pursue cross-border crime, especially trafficking in human beings, upgrading its functions from coordination to full-scale operations. Here, we would highlight the recommendation made in the exploratory opinion on *Civil society participation in the fight against organised crime and terrorism* ⁽¹⁷⁾: ‘The EESC proposes that Europol become an European agency under an European political or judicial authority, with a remit that extends beyond its current coordinating role, and with its own operational capability for investigation across the EU in cooperation with Member States’ police forces’.

4.5.5 Constantly mapping out long-term horizons, goals and target dates may end up by wearing people down, as what they want is solutions. We need to achieve greater flexibility and eliminate bureaucracy in these areas too, which are so important to people’s everyday lives — otherwise, we will just swell the ranks of the Eurosceptics.

4.5.6 The Commission’s most recent anti-corruption report to the Council and the European Parliament makes it clear that corruption persists on a European scale. The abuse of power for personal gain must be prosecuted and punished, especially where organised crime plays a part. The EESC gives its full backing to cooperation between the institutions and with the Member States to tackle this scourge, which undermines the credibility of our political system.

4.5.7 The EESC will back all legitimate and democratic initiatives that may be taken to prevent terrorism and to address radicalisation and recruitment. Any legitimate and democratic measures that prevent young people from being indoctrinated by extremist movements or parties and thus directly initiated into and incited to take part in terrorist activities must of course be promoted throughout the Union and beyond its borders. Identifying areas of risk and focal points for the dissemination of extremist ideologies are priorities for ensuring our individual and collective security. There has to be a free flow of information in this area so that radicalisation and recruitment activities can be spotted early on and strong measures taken to nip them in the bud. Here, the Committee would reiterate the recommendations made in its opinion on the Communication from the Commission on *The EU Counter-Terrorism Policy: main achievements and future challenges*.

4.5.8 We must remember that terrorism may come from outside our borders but may also arise at home, as the recent history of Europe teaches us. We therefore have to prevent radicalisation and extremist violence, in street disturbances in European cities, being used as a focal point for recruitment for the future activities of avowedly terrorist groups. Street violence recognises no borders, and violent trouble-makers can often move from one country to another, exploiting events wherever they occur. The Committee therefore points to the need for closer cooperation between the various national police forces, in order to identify and take action against these violent gangs, who might subsequently join terrorist groups.

4.5.9 The EESC would voice its support for the measures being taken to raise levels of security for the public and businesses in cyberspace. In the light of the foreseeable increase in internet crime, the measures being carried out by the European Union to combat cybercrime deserve the strongest possible support. Cooperation with non-EU countries must make it possible to adopt a global approach to crime with a global dimension which does not stop at any border. Prevention is again crucial in this area to avoid being overtaken by cybercriminals in the use of new technologies. The European Cybercrime Centre should receive more resources, including financial ones, even though it has only recently been set up.

4.5.10 The EESC, as a representative of organised civil society in the EU, cannot understand why there are still EU Member States which have not yet ratified the Council of Europe Convention on Cybercrime.

4.5.11 In a Europe which is based, among other freedoms, on free movement of persons and goods, stepping up security through the management of borders must become a common policy activity which guarantees security for all citizens of the Union. The entry of goods through any customs post and their free movement throughout the Union requires sound common instruments for the effective management of the external borders which do not allow some borders to be strict while others are lax.

⁽¹⁷⁾ OJ C 318, 23.12.2006, p. 147.

4.5.12 Common responses to emergencies already happen without the need for regulation, when individual people spontaneously take the initiative to help without any authority needing to ask them. However, coordinated action and a joint response to crises and disasters add value by increasing the effectiveness and efficiency of the response to situations of this kind.

4.5.13 The EESC agrees with the Commission's view that European internal security also means acting beyond our borders, in a global context. In all areas related to freedom and security, cooperation between the Member States, and with non-EU countries, is essential if we are to continue to progress towards a better and fairer world, in which organised crime and terrorism do not endanger the hard-won freedoms and rights which we all enjoy.

Brussels, 9 July 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE
