



European Economic and Social Committee

REX/414
European immigration
policies

Brussels, 11 September 2014

OPINION
of the
European Economic and Social Committee
on
European immigration policies
(exploratory opinion)

Rapporteur-General: **Giuseppe Iuliano**

On 3 June 2014, in accordance with Article 304 of the Treaty on the Functioning of the European Union, the Italian presidency of the EU decided to ask the European Economic and Social Committee to draw up an exploratory opinion on

European immigration policies
(exploratory opinion).

On 8 July 2014, the Committee Bureau instructed the Section for External Relations to prepare the Committee's work on the subject.

Given the urgent nature of the work (Rule 59 RP), the Committee appointed Mr Iuliano as rapporteur-general at its 501st plenary session, held on 10 and 11 September 2014 (meeting of 11 September), and adopted the following opinion by 161 votes to 6 with 6 abstentions.

*

* * *

1. **Conclusions and recommendations**

- 1.1 The new phase of European immigration policy should adopt a strategic approach, with a medium- and long-term vision, and should focus on finding a holistic and comprehensive way of providing legal, open and flexible channels for admission to the EU. On the basis of the work done by the EESC and the European Integration Forum, this opinion calls on the representatives of the Community institutions and national governments to take account of the key role of the social partners and organised civil society in providing European immigration policies with a social dimension and added value. Their impact on the labour market, living and working conditions and fundamental rights should also be taken into account.
- 1.2 The EESC believes that 15 years after the first attempts to construct a European immigration policy, it is time to put into practice the political values and principles set out in the Lisbon Treaty by means of concrete and specific policy measures that go beyond the discussions on powers between the EU and national governments. The EESC believes that tangible results must be achieved in order to develop a truly common and joint policy on immigration, asylum and external borders.
- 1.3 By means of a common immigration policy, the EU can provide considerable added value. The EESC would like to see priority given to tackling barriers and discrimination on the labour market. The EU should adopt a Common European Immigration Code, and a Handbook of Common European Guidelines to ensure its implementation and accessibility. This should go hand in hand with a European strategy to make the EU more attractive to

talent and to tackle barriers relating to qualifications. The EU should establish a permanent European platform for work-related migration. The EESC offers its services for this task, to be the place where the social partners discuss and analyse national policies on immigration for employment purposes and where good practices are exchanged.

- 1.4 The EU has embarked on the second phase of the Common European Asylum System (CEAS). And yet, Member States continue to apply different practices and different levels of protection. The principle of solidarity and shared responsibility must be implemented to ensure a more balanced distribution of asylum applications between Member States. The Dublin Convention should be replaced with a more inclusive system that takes account of asylum seekers' wishes and that ensures a more proportionate distribution of responsibility among the Member States. The European Asylum Support Office (EASO) should also be given greater powers to carry out its work, in particular its operational support activities and joint asylum support teams in Member States that need special or emergency support. The EU must ensure that the Member States make more harmonised, coherent, independent and flexible use of humanitarian visas, as set out in the Common Visa Code.
- 1.5 European borders policy should be rooted in greater shared responsibility for their monitoring and surveillance and for safeguarding rights and principles when administering them. Member States forming the EU's common external territorial border face difficult situations related to migration flows and asylum seekers. The EU should put in place procedures for the provision of financial, operational and reception support. The role of Frontex should be stepped up, and it should become a European border-guard service comprising a European body of border guards to support Member States. At the same time, a more effective and standardised system of accountability should be developed for its activities, and for the implementation of the provisions of Regulation 656/2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.
- 1.6 The EU should promote an international regulatory framework for migration and play a part in promoting Member States' ratification and implementation of international human rights instruments and standards for migrants. The EU should forge a strategic alliance with other international players working in the fields of human mobility and human rights, such as the UN and the Council of Europe.
- 1.7 The challenges posed by the cross-border mobility of persons cannot be addressed solely through the "outsourcing" of border monitoring and surveillance. Work should therefore continue on the Global Approach to Migration and Mobility. The EU should offer these countries and their nationals further opportunities for immigration for the purposes of employment or education via legal, flexible and transparent procedures. Mobility partnerships should be more balanced and also legally binding on the signatories. The European External

Action Service should ensure better coordination between the priorities of external policy and immigration policy, adopting an approach in which human rights form a central strand.

2. **Introduction: Towards a new immigration, asylum and borders policy up to 2020**

- 2.1 The Italian EU presidency asked the European Economic and Social Committee (EESC) to draw up an exploratory opinion on the future European immigration, border and asylum policy. The EESC wishes to contribute by making strategic proposals based on its previous opinions on immigration-related matters¹. The **social partners and representatives of organised civil society and social dialogue** should be involved throughout the discussion process leading to the next phase of the **European immigration policy up to 2020**. The "**social dimension**" is key to ensuring the added value, proportionality and impact of these policies.
- 2.2 The EESC has stated on numerous occasions that European immigration policy should take a **strategic medium- and long-term** view and should focus on providing a **holistic and comprehensive approach** to open and flexible legal channels for entry to the EU. It should ensure that fundamental rights are safeguarded, provide sustainable and inclusive solutions for access to international protection, take into account the situation on the labour market and address the challenges inherent in integration policies and their effects on vulnerable groups, racism and xenophobia.
- 2.3 The Committee has given a major commitment to ensuring that immigration policies are implemented in a way that involves immigrants themselves, in particular in the framework of the **European Integration Forum**² that the Commission decided to set up, based at the EESC, in 2009. The Forum has established itself as the **European platform for facilitating multi-stakeholder dialogue and the active participation** of civil society organisations and immigrants in key discussions on European integration-related policies. The Forum is currently in a process of redevelopment, with a view to covering all policies on immigration. On the basis of an assessment study on its workings and results, **the Committee wishes to further develop its commitment to the Forum**, in particular to strengthen its ties with immigrant organisations, to ensure that it contributes by following up policies, and to improve cooperation with Parliament and the Committee of the Regions.

3. **A common immigration policy**

- 3.1 15 years have now passed since the Treaty of Amsterdam in 1999 took the first steps towards developing a common policy on immigration, asylum and borders. The EESC considers that

¹ EESC, Immigration: Integration and Fundamental Rights, 2012. <http://www.eesc.europa.eu/resources/docs/qe-30-12-822-en-c.pdf>

² <http://ec.europa.eu/ewsi/en/policy/legal.cfm>.

when the future European immigration agenda is drawn up, it should return to its **founding principles, set out in the Tampere programme in 1999**³, in particular, the principles of fair and equal treatment of third-country nationals, solidarity and shared responsibility, the fundamental rights laid down in the EU Charter of Fundamental Rights, and the rule of law. The Lisbon Treaty serves as the **common working guide**. These **general principles**, which are laid down in the treaties, **should be fully implemented**.

- 3.2 The Committee believes that European aspirations and values have been replaced by rhetoric, and too often practice and laws conflict with values⁴. The EESC calls on the Council and the Member State representatives to take **a decisive step that goes beyond rhetoric and declarations of principles and adopt tangible initiatives that will achieve real results when implemented**. This must be done not only in close inter-institutional partnership with the European Commission and the European Parliament; the social partners and organised civil society are also major allies in this process.
- 3.3 The migration-related challenges faced in the Mediterranean and all along the EU's common external borders are well-documented and their coverage in politics and in the media often borders on the irrational and on nationalist populism. The EESC calls for a rational debate based on objective and independent data and studies. Clear priority should be given to what is really needed in order to **consolidate and develop a truly common and joint policy on immigration, asylum and external borders**. The EESC believes that it is time for a new European strategy for the common European immigration policy, one that is linked to the Europe 2020 strategy and geared towards **putting principles into practice**.
- 3.4 In areas where the political interests of Member State representatives are so great, it is essential that the **fundamental rights** of all third-country nationals subject to these policies (including undocumented immigrants) are the cornerstone of any future policy⁵. Priority should be given to the challenges of improving the **living and working conditions** of the millions of migrants working in the EU⁶. The EESC attaches particular importance to issues concerning the **impact of immigration policies on employment and social policies**, and has promoted an approach that analyses employment and the implications of migration policies for the exclusion or socio-economic integration of workers and their families⁷.
- 3.5 Policies on conditions for the entry and residence of third-country nationals are competences shared between Member States and the EU. The Treaty of Lisbon requires the EU to develop

³ European Council Conclusions, Tampere Programme, 15-16 October 1999 [SN 200/99](#).

⁴ CESE 343/2009 - SOC/320 ([OJ C 218, 11.9.2009, p. 78](#)).

⁵ [OJ C 128, 18.5.2010, p. 29](#).

⁶ European Trade Union Confederation, Action Plan on Migration, adopted by the ETUC Executive Committee, 5-6 March 2013, http://www.etuc.org/documents/action-plan-migration#.U_MOE-JU3To.

⁷ EESC opinion of 17 March 2010, CESE 450/2010 ([OJ C 354, 28.12.2010, p. 16](#)).

a common immigration policy in all of its stages. The Committee considers that the EU could provide considerable added value by means of a common policy and shared legislation on issues of employment and education, which enjoy **a high degree of harmonisation, adopting a horizontal approach**, instead of sector-specific rules⁸. The current legal framework is fragmented, opaque and diffuse. This situation creates **legal uncertainty and policy incoherence**, which need to be remedied as soon as possible.

- 3.6 The EESC believes that there is need to consolidate existing legislation by means of an **Immigration Code**. The code should provide greater transparency and legal clarity regarding the rights and freedoms of third-country nationals residing in the EU, and should consolidate legislation through a uniform and transparent framework of common rights and standards, including those that cover undocumented migrants⁹. The code should also address the socio-economic situation of third-country workers in the EU¹⁰. Another priority should be to improve access to European rights and standards, and the fight against discrimination and racism in the labour market, on the basis of a **Handbook of Common European Guidelines**.
- 3.7 One of the greatest problems afflicting many immigrants and many businesses in Europe, **the recognition of academic and professional qualifications**, also needs to be resolved¹¹. The EESC calls for a **European strategy to be drawn up to make the EU more attractive to international talent**, and calls for unjustified barriers to professional and academic qualifications to be tackled. These steps should go hand in hand with the adoption of horizontal legislation¹².
- 3.8 Due account should be taken in this regard of **the demographic situation and the ageing of the population and the labour markets** in the Member States. In its 2011 exploratory opinion¹² on the **role of immigration in the demographic situation in Europe**, the EESC stressed that over the coming years, immigration by workers from non-EU countries and their families should be increased. The EU needs an **open and flexible form of legislation** that allows work-related immigration through channels that are legal and transparent, not only for highly-skilled workers and workers with mid-level skills, but also for those working in less skilled jobs as long as Member States remain free to determine their volumes of admission. The EESC would like priority to be given to **tackling barriers and discrimination in the labour market** for vulnerable migrant worker groups such as women. At the same time,

⁸ [OJ C 286, 17.11.2005, p. 20..](#)

⁹ EESC opinion of 15 September 2010, SOC/373 ([OJ C 48, 15.2.2011, p. 6](#)). The EESC underlined the need to harmonise the rights of undocumented migrants in the EU. See point 11.2 of the opinion.

¹⁰ European Trade Union Confederation, Action Plan on Migration, adopted by the ETUC Executive Committee, 5-6 March 2013, http://www.etuc.org/documents/action-plan-migration#_U_MOE-JU3To.

¹¹ EESC opinion of 15 September 2010, SOC/373 ([OJ C 48, 15.2.2011, p. 6](#)).

¹² [OJ C 80, 3.4.2002, p. 37](#). EESC opinion of 15 September 2010, SOC/373 ([OJ C 48, 15.2.2011, p. 6](#)).

¹² [OJ C 48, 15.2.2011, p. 6](#).

however, it is to be acknowledged that immigration is not the only response to labour market shortages and Member States may consider other complementary solutions which may be more appropriate.

- 3.9 The EU should establish a **permanent European platform for work-related migration** at the EESC, where the social partners, the public employment services of the Member States, recruitment agencies and other stakeholders discuss and analyse national labour migration policies and exchange practices to identify labour market needs and existing barriers to equal socio-economic inclusion. The EESC reiterates its support for the Commission¹³ and proposes that the Council request an exploratory opinion on setting up such a body.

4. **A common European asylum policy: the Common European Asylum System (CEAS)**

- 4.1 The EESC welcomes the adoption of the **second phase of the CEAS**. Nevertheless, despite the high level of legislative harmonisation, national legislation is given too much discretion, which means that Member States can have very different policies and philosophies¹⁴. Divergent national traditions have remained in place and levels of protection still vary from one Member State to another¹⁵. The EU should prioritise achieving a **high level of protection, reducing the current scope for interpretation and ensuring access to effective remedy for asylum seekers** so that those rights and principles are accessible in practice.

- 4.2 The **Dublin Convention** determines which Member State is responsible for examining an asylum application but, in the EESC's view, this system does not make for solidarity between the EU's Member States. The system was designed on the assumption that asylum systems in the Member States are similar, which is not yet the case. The Dublin Convention should be replaced with a **more inclusive system in the EU** that takes account of asylum seekers' wishes and ensures a more proportionate sharing of responsibility among the Member States¹⁶.

- 4.3 **The European Asylum Support Office (EASO)** in Malta should be given greater scope to identify and assess the state of asylum in the EU¹⁷ and the differences in asylum practices between the Member States, as well as the differences in their legislation, and to propose the necessary changes in the CEAS. The EASO should be developed further still as a centre for

¹³ EESC opinion SOC/352 of 4 November 2009, point 4.4.14 ([OJ C 128, 18.5.2010, p.80](#)). The Commission, in Communication 154 of 11 March 2014, has again presented its initiative for the platform, which was rejected by the Council in the Stockholm Programme.

¹⁴ <http://www.unhcr.org/pages/49c3646c4d6.html>.

¹⁵ See the EESC opinion of 12 March 2008 on the Green Paper on the future Common European Asylum System, rapporteur: Ms Le Nouail-Marlière ([OJ C 204, 9.8.2008, p.77, point 1.1](#)).

¹⁶ See the EESC opinion of 12 March 2008 on the Green Paper on the future Common European Asylum System, rapporteur: Ms Le Nouail-Marlière ([OJ C 204, 9.8.2008, p.77](#)).

¹⁷ <http://easo.europa.eu/wp-content/uploads/EASO-AR-finall.pdf>.

monitoring and analysing the results of the second phase of the CEAS, in close collaboration with the Fundamental Rights Agency (FRA). The EESC recommends increasing EASO's powers to provide permanent technical and operational support for Member States whose asylum and reception systems require special or emergency support, in the form of **joint asylum support teams**.

- 4.4 The Committee has on several occasions stated its desire for the EU to launch **regional protection and reception programmes** in cooperation with neighbouring States, funded by the EU, in line with UNHCR¹⁸ guidelines and in close cooperation with organised civil society¹⁹. Before continuing to support this policy, an independent assessment should be made of all these programmes and of the funding earmarked for their implementation; only then should they be expanded and converted into a new mechanism that commits the EU. Existing programmes appear to attach greater priority to preventing asylum seekers from entering the EU and to international protection than to ensuring a genuine improvement in the protection of refugees²⁰.
- 4.5 These regional programmes could be bolstered by **resettlement programmes** that establish a system for inviting people who have been granted refugee status by third countries to take up permanent residence in an EU Member State. Here too, the experience of organised civil society and international organisations must be taken into account before such programmes are developed. The EESC proposes enhancing solidarity and responsibility within the EU through an adequate distribution of obligations and the implementation of **resettlement programmes**. These steps should be accompanied by a study of the proposal to establish a **system for the joint processing of asylum applications in the EU and the possibility of establishing the principle of mutual recognition for approved asylum applications and the free movement of beneficiaries of protection**.
- 4.6 The EESC also believes that it is necessary to simplify entry into the EU for people in need of protection. It recommends a more harmonised, consistent, independent and flexible use of **humanitarian visas** by Member States, as set out in the Visa Code, and the establishment of a mechanism for monitoring its implementation in practice and access by applicants to effective legal remedy and the right of appeal in the event their application is refused²¹. The EESC supports the Commission's new proposal revising the Visa Code²² and hopes that negotiations secure the use of humanitarian visas.

18 UNHCR Resettlement Handbook, July 2011 (with 2013 and 2014 revisions), available at: <http://www.unhcr.org/4a2ccf4c6.html>.

19 See EESC opinion SOC/320 of 25 February 2009, [OJ C 218, 11.9.2008, p. 78](#).

20 *ibid.* (point 7.2.2).

21 Articles 19(4) and 25(1) of the Visa Code. Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas ([OJ L 243, 15.9.2009, p. 1](#)).

22 European Commission, Proposal for a Regulation on a Union Code on Visas (Visa Code) (recast) (SWD (2014) 67 final) {SWD (2014) 68 final}, COM(2014) 164 final, 1 April 2014, Brussels.

5. **Towards a common borders policy**
- 5.1 The creation of the Schengen area stands out as one of the most significant achievements of European integration. The EU's external borders are borders common to all the States participating in Schengen, and **responsibility for their monitoring and surveillance and for safeguarding rights and principles in its administration** should also be common to all. Member States whose location means that they form the EU's common external territorial border face difficult situations related to migration flows and asylum seekers. The EESC stresses the importance of the principle of **solidarity and fair sharing of responsibility** enshrined in Article 80 of the Treaty on the Functioning of the European Union. The EU should put in place **procedures for the provision of financial, operational and reception support**, taking account of individual Member States' economic and social situations, and should provide support for Member States whose asylum systems are under greatest pressure.
- 5.2 The Schengen Borders Code regulates the crossing and monitoring of borders, taking account of the requirements that non-EU nationals must meet in order to enter and stay. The EU draws up lists of countries whose nationals need a visa and has a common policy on short-stay visas set out in the Visa Code. The EESC recommends giving priority to ensuring **the consistent, flexible and effective application of both codes**, and to ensuring that the rights and guarantees provided for third-country nationals are accessible.
- 5.3 The EU should shoulder greater responsibility for monitoring its external borders. The role of **Frontex** (the External Borders Agency) should be strengthened, not only from the financial point of view, but also in terms of its powers and operational capacities. The EESC reiterates its recommendation that Frontex²³ become a **common European border-guard service**²⁴ comprising a European body of border guards to support Member States²⁵. At the same time, a more effective and standardised system of accountability should be developed for Frontex's activities and its joint operations and exchanges of information, also covering Eurosur (the external border surveillance system). The role of the Consultative Forum on Fundamental Rights²⁶ should be strengthened and a complaint mechanism developed²⁷.

²³ [OJ C 44, 11.2.2011, p. 162](#)

²⁴ S. Carrera (2010), *Towards a Common European Border Service*, CEPS Working Documents, Centre for European Policy Studies, Brussels.

²⁵ The European Council conclusions of 26-27 June 2014 set the goal of studying the possibility and feasibility of their establishment as one of the policy priorities for the future Area of Freedom, Security and Justice (AFSJ) agenda up to 2020. European Council conclusions, 26-27 June 2014, [EUCO 79/14](#), Brussels, 27 June 2014.

²⁶ <http://frontex.europa.eu/news/first-annual-report-of-the-frontex-consultative-forum-on-fundamental-rights-published-WDPSJn>

²⁷ <http://www.ombudsman.europa.eu/en/cases/specialreport.faces/en/52465/html.bookmark>.

- 5.4 The EESC has expressed its support for establishing smarter borders, in particular the Entry/Exit System (EES) and the Registered Traveller Programme (RTP)²⁸. Before developing other large-scale IT systems an independent assessment of the Visa Information System (VIS) and the Schengen Information System (SIS) II²⁹ would need to be carried out. The links between these systems and the smart borders package are not clear, and no further systems should be put in place unless their necessity, proportionality and compatibility with fundamental rights are proven³⁰.
- 5.5 The rules applicable to **search and rescue situations which may arise during a border surveillance operation at sea** are a key common challenge. Member States have obligations under international law that stipulate respect for the human rights of asylum seekers and undocumented migrants. The EESC welcomes the adoption and entry into force of the Regulation on rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex³¹. The EESC considers that priority should be given to the **effective practical application** of these search and rescue rules.
- 5.6 **The illegal trade and trafficking of persons** must be combated, while guaranteeing that victims are protected by international humanitarian law and by the European conventions on human rights. The EESC does not consider **a person without legal papers to be a person without rights or a criminal**. The EU and the Member States should protect their fundamental rights. The expression "illegal immigration" should not be used when referring to migrants who find themselves in an irregular administrative situation. Making a link between illegal migration and crime stirs up fear-driven and xenophobic attitudes.

6. The external dimension of immigration policies

- 6.1 The EESC has proposed³² that the EU promote **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 States³³.

²⁸ [OJ C 271, 19.9.2013, p. 97.](#)

²⁹ See EESC opinion SOC/456 of 11 July 2012, point 16.2 ([OJ C 299, 4.10.2012, p. 108](#)).

³⁰ http://ec.europa.eu/bepa/european-group-ethics/docs/publications/ege_opinion_28_ethics_security_surveillance_technologies.pdf
See the European Court of Auditors report ecadocuments/sr14_03/sr14_03_en.pdf

³¹ Regulation No 656/2014 of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 27.6.2014, [OJ L 189, 27.6.2014, p. 93](#).

³² EESC opinion, [OJ C 44, 16.2.2008, p. 91](#).

³³ EESC opinion, [OJ C 302, 7.12.2004, p. 49](#).

- 6.2 The EESC calls on the European institutions to adopt a **strategic alliance with other international players** working in the fields of human mobility and human rights, such as the UN and the Council of Europe. The EU should play a role in promoting common international standards adopted by these international organisations and covering the rights and freedoms of migrants, asylum seekers and refugees in the framework of organisations such as the UN, the Council of Europe and the ILO.
- 6.3 The EESC has frequently stated its support for the **Global Approach to Migration and Mobility (GAMM)**³⁴ and for the conclusion of different mobility partnerships. The challenges raised by the cross-border mobility of persons cannot be addressed solely through an approach based on border controls or on the "outsourcing" of this monitoring to third countries. The Committee has repeatedly supported the GAMM as the most appropriate framework. A common immigration policy should have a "comprehensive approach" that goes beyond security or policing considerations which view human mobility as a crime and link it artificially to other threats facing Europe.
- 6.4 Mobility partnerships should include mobility and legal migration strands in a more comprehensive and balanced way, as a key priority. The EESC supports the mobility partnerships that have been agreed with some countries of origin³⁵. It proposes, however, that these agreements be more **balanced and legally binding** on the signatories. Their priorities hitherto have focused on security, return, the readmission of unlawful migrants and border surveillance. The EU should also offer these countries and their nationals opportunities for immigration for the purposes of employment or education via **legal, flexible and transparent procedures**.
- 6.5 In particular, the EESC proposes that the EU offer its partner countries **channels facilitating mobility, visa acquisition and the admission of new immigrants**. The Committee supports the inclusion of other matters in the new agreements, such as:
- enhanced access to information on job vacancies in the EU;
 - capacity-building for matching labour supply and demand;
 - recognition of academic and professional skills and qualifications;
 - development and implementation of legal frameworks for better portability of pension rights;
 - measures to improve cooperation on matters related to skills and how to better match labour supply and demand;
 - making entry and long-term residency laws more flexible in order to facilitate voluntary return without loss of the right of immigrants to remain in the country.

³⁴ REX/351, [OJ C 191, 29.6.2012, p. 134](#).

³⁵ See EESC opinion REX/398 of 9 July 2014.

- 6.6 Immigration and asylum policy needs to ensure **better coordination between the EU's external and immigration policy priorities**. The European External Action Service (EEAS) should play its full role and cover immigration, asylum and border control policies, in order to ensure a more consistent approach with a wider outlook than Member States' Home Affairs Ministries. The European Parliament should also be given a greater role in these matters, in order to ensure greater democratic scrutiny³⁶.

Brussels, 11 September 2014

The President
of the
European Economic and Social Committee

Henri Malosse

³⁶

See EESC opinion REX/398 of 9 July 2014.