



European Economic and Social Committee

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European immigration
policy

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OPINION

of the

European Economic and Social Committee

on

European immigration policy and relations with third countries

(Exploratory opinion)

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On 6 December 2013, in accordance with Article 304 of the Treaty on the Functioning of the European Union, the Greek presidency of the EU decided to ask the European Economic and Social Committee to draw up an exploratory opinion on

European Immigration policy and relations with third countries.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 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 64 votes to 1 with 4 abstentions.

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1. Conclusions and recommendations

- 1.1 The purpose of this opinion is to feed into the work of the Greek presidency, and also to give continuity under the Italian presidency, to ensure that the external dimension of the EU's immigration and asylum policy is strengthened. Immigration is a particularly complex issue that calls for cooperation between many stakeholders and joint, comprehensive management by the EU, at both international and European levels¹.
- 1.2 The EU has to stop treating immigration policy as an almost exclusively internal matter. It is this erroneous idea that lies at the root of some of our mistakes. The EESC considers that Europe should manage immigration as part of a global approach that embraces both **internal** and **external** aspects: internal management of migration flows and cooperation with third countries must be seen as components of a single policy, if it is to be effective.
- 1.3 We must also adopt a global approach to the **challenge of human mobility** in a **globalised economy**. Immigration and mobility are closely interlinked. International dialogue on the mobility of people and migration should tie in with other aspects of European policy such as trade, development cooperation, human rights and security.
- 1.4 As EU Member States cannot adequately manage immigration and asylum individually, the Treaty lays the foundations for a common policy that must be established on the basis of harmonised legislation. The principle of solidarity and fair sharing must be strengthened.

¹ See REX/375 and REX/351.

- 1.5 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. The EU should increase solidarity between the Member States and improve the sharing of responsibilities.
- 1.6 Some European regions face specific problems because of their geographical location as they are mid-way points for irregular immigration and sometimes receive more immigrants than they can cope with. The European Union should put in place procedures for better sharing responsibilities, and for the provision of financial, operational and reception support.
- 1.7 In a globalised world, Europe must work together with third countries and the international institutions to promote an international legal framework for migration and mobility.
- 1.8 Here, the EESC believes that immigration must be addressed in three inter-related locations: in the immigrants' **countries of origin**, in **transit countries** and in the **countries of destination**, in this case the EU, **as only in this way will it be possible to address migration flows effectively**.
- 1.9 Immigration and asylum policy needs to be better coordinated with the EU's external policy. The European External Action Service (EEAS) should carry out its role and cover immigration, border and asylum policies, in order to ensure greater consistency. The EESC, which has contributed to the work of the Greek presidency, welcomes the inclusion of the external dimension of migration, asylum and border management in the strategic guidelines to adopted by the European Council on 26-27 June 2014. The European Parliament should also be given a greater role in these matters.
- 1.10 Under a Global Approach to Migration and Mobility (GAMM), the EU should conclude agreements with third countries, especially neighbouring countries, immigrants' countries of origin and transit countries.
- 1.11 The Committee proposes that, to this end, dialogue be stepped up with these countries, with a view to concluding new mobility and migration partnerships with broader content, as set out in points 1.3 and 5.1.6.
- 1.12 Mobility partnerships have a number of limitations that will need to be overcome in the next few years, because they are not binding on the contracting parties. Their flexibility helps secure political agreements without imposing legal obligations, but in the EESC's view, they should be converted into binding international agreements.
- 1.13 Mobility partnerships' priorities should include aspects relating to economic migration and mobility: in addition to security, repatriation and border surveillance, greater priority should be given to the organisation of legal migration and visa policy, recognition of qualifications, social security rights, and migration and mobility's contribution to development.

- 1.14 The EESC proposes setting up EU migration offices in countries of origin, run by the European Commission and staffed by officials from the EEAS, DG HOME and DG EMPL. The EU's immigration web portal is a useful but inadequate tool. It should be available in more languages and be more interactive.
- 1.15 Cooperation needs to be improved with countries of origin and transit and irregular migration must be anticipated and prevented. Information campaigns also need to be launched, and criminal networks illegally trafficking or smuggling migrants effectively tackled. Police and judicial cooperation is crucial to the fight against criminal networks. In order to make their unlawful profits, traffickers and smugglers endanger people's lives and safety. Mobility partnerships should develop new forms of cooperation on border surveillance and on assisted return.
- 1.16 Equally crucial are financial assistance and development programmes based on the **positive conditionality principle (more for more)**, simultaneously addressing the various factors involved in immigration, including a return and readmission policy. Similarly, it is important to strengthen civil society organisations and their involvement in the mobility partnerships.
- 1.17 The EESC also advocates cooperation between Frontex and Europol to combat organised crime, particularly trafficking and smuggling of migrants and close cooperation with human rights organisations, such as the International Organisation for Migration, the United Nations High Commission for Refugees (UNHCR) and the International Centre for Migration Policy Development. Equally, the EESC supports the Commission's Regulations for more flexible management of the Asylum and Migration Fund and the Internal Security Fund from 2014 onwards.
- 1.18 At EU level, an appropriate and cohesive common European policy on immigration should be established, and based on the mutual support and commitment of all Member States. The EU must adopt an effective return policy based on international treaties pertaining to repatriation and readmission. The EU's borders, including the sea borders of the Mediterranean EU Member States, are the borders of all EU Member States and, this being the case, it is the responsibility of all Member States actively to ensure their protection, in accordance with the treaties.
- 1.19 The human rights of irregular immigrants should be respected at all times, during their rescue or reception, until they acquire protection status, when they are in an irregular situation "without papers" or when being sent back to their countries of origin. Additional and better temporary residence and reception centres for immigrants should be established in all Member States, with support from the entire European Union, taking into account conditions regarding health and medical assistance provision, as well as faster examination of asylum or social assistance applications. The EESC reiterates its opposition to holding asylum seekers

and irregular immigrants in detention centres, especially children, minors who are unaccompanied, pregnant women and those with serious illness.

- 1.20 The Committee is concerned to note that intolerance, racism and xenophobia towards immigrants are on the rise in Europe and is also alarmed because in some Member States the protection of people's fundamental rights is being eroded.
- 1.21 All Community institutions have reiterated immigration's importance for the EU, for reasons of both economics and demography. The Europe 2020 strategy also makes this point. As the EESC has repeatedly stated, European immigration policy must therefore be proactive and protect human rights, combat labour-related and social discrimination and further develop the integration agenda.
- 1.22 The EU should set up a common asylum system based on harmonised legislation. The Dublin Convention should be replaced with a more inclusive system within the EU that takes account of asylum seekers' wishes and that ensures a more proportionate distribution of responsibility among the Member States.
- 1.23 The new regulation on the **Asylum, Migration and Integration Fund** focuses particularly on emergency and crisis situations. The EESC agrees with the Commission's proposal to ensure that the EU has the capacity to act flexibly, with sufficient financial resources to tackle emergencies. The arrival of many people from Syria and other war zones in Africa means that the EU has to take action, because these are humanitarian emergencies.

2. **Introduction**

The absence of a common European immigration policy, the recent and on-going tragic events with respect to deaths at sea off Libya, Malta, Greece, Italy and Spain, the ever growing numbers of refugees arriving at the borders of Syria, the complexity of the problem and the sheer volume of people, are all factors putting considerable pressure on the ability of the Mediterranean countries in particular to respond. For this reason, we welcome the fact that immigration issues will continue to be a priority for Italy, the Member State currently holding the EU presidency, as it was for Greece, the outgoing presidency.

3. **Europe and the international governance of migration**

- 3.1 In the 21st century, both migration flows and people's mobility will increase. Currently, only 3% of the world's population live outside their country of birth, but trends suggest that these movements will grow in future (the annual growth rate stands at 3%). It should be pointed out, furthermore, that migration flows are increasing between the countries of the South,

especially to what have come to be known as the emerging countries. Mobility between EU Member States² and within the European Economic Area is also on the rise.

- 3.2 Poverty, unemployment, demographic trends, lack of opportunity, conflicts, environmental disasters and climate change are some of the causes of international migration.
- 3.3 The EESC has proposed that, under its external policy, the EU should promote an international legislative framework for migration and mobility that will alleviate pressures on Member States. 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 States³. The EESC calls on the European Commission to draw up a report on the measures Member States are taking, in order to pave the way for ratifying the convention in the very near future.
- 3.4 The main objective of this opinion is to examine and highlight the main issues raised by immigration in all its aspects, as indicated, so as to seek comprehensive solutions that will secure an immigration policy that is effective but which also respects immigrants' rights.

4. **The internal dimension: the EU's common immigration, asylum and integration policy**

4.1 Common immigration policy,

- 4.1.1 Over the last ten years, the EU has gradually adopted a **common legal framework** for such aspects as long-term resident status and family reunification. Entry conditions have been harmonised for students and researchers, and there is the Blue Card for highly qualified migrants. Cross-cutting legislation has also been adopted, with the single permit for migrant workers and the Directive on the admission of temporary workers and the Directive for the admission of intra-corporate transferees.

The EU needs to give a boost to the common policy on labour immigration and equip itself with a legal framework that is coherent, comprehensive, cross-cutting and guided by respect for workers' rights, equal treatment, the needs of companies and the legal employment of migrant workers. Legislation and cooperation with the countries of origin are needed, allowing labour immigration through channels that are legal and transparent, for both highly skilled workers and those working in less skilled jobs.

A comprehensive and coherent immigration, asylum and border management policy is needed, together with legislative harmonisation, actively involving the Member States, the European Commission administration, the EEAS and the relevant European bodies.

² See SOC/373.

³ EESC own-initiative opinion of 30 June 2004, rapporteur: Mr Pariza Castaños.

- 4.1.2 The EESC and the Commission are cooperating closely on **integration policies**. Under the umbrella of the Common Basic Principles, the EU is developing an agenda for integration that also entails a financial fund. The EESC and the Commission will continue to work together in the European Integration Forum.
- 4.2 A common asylum system
- 4.2.1 The EU is establishing a **common asylum system** and legislation for harmonisation, but the situation is still far from adequate, because the Member States have different policies and laws in place⁴,
- 4.2.2 The Committee has criticised the EU for showing little solidarity when it comes to asylum, as 90% of requests have been processed in just ten Member States. In relative terms, it is the smaller countries, such as Malta, Cyprus and also Greece, that are facing the greatest pressure.
- 4.2.3 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 Member States. Asylum seekers should be able to submit their request in any Member State. In the medium term, the EU must be given new powers to ensure that it and not national authorities manage requests. In this way, requests would be examined more quickly and the conditions for granting asylum would also improve. In short, the Dublin Convention should be replaced with a more inclusive system within the EU that takes account of asylum seekers' wishes and ensures a more proportionate distribution of responsibilities among the Member States.
- 4.2.4 In order to help the Member States develop the new asylum system, the **European Asylum Support Office (EASO)** has been set up, and will also provide technical and operational assistance. EASO should have the task of assessing national asylum systems and their compliance with European and international law and fundamental rights.
- 4.2.5 The EESC proposes that **resettlement programmes** be expanded to transfer refugees from outside the EU and to resettle them within its borders, in cooperation with third countries and the UNHCR.
- 4.2.6 The Committee also suggests expanding the **relocation programmes** within the EU, providing financial incentives for Member States adhering to it. In the Committee's view, there is currently very little solidarity between Member States when it comes to the resettlement and relocation of beneficiaries of protection and asylum seekers.

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The EU has obligations vis-à-vis asylum policy under the Treaty on the Functioning of the EU, the Charter of Fundamental Rights and international conventions.

4.2.7 Relocation should be carried out on the basis of a permanent, established mechanism. In this context the Commission should submit a legislative proposal for a permanent and effective intra-EU relocation mechanism, on the basis of an EU distribution key for the relocation of asylum seekers, as described in the European Parliament report on enhanced intra-EU solidarity in the field of asylum (2012/2032 INI). In order to ensure that the mechanism is as effective as possible, this legislative proposal should also take into account the practical experience gained with the EUREMA Pilot Project for Malta⁵.

4.3 Preventing irregular immigration

The EESC believes that greater solidarity is needed within the EU. Some European regions face specific problems because of their geographical location as they are often mid-way points for irregular immigration and sometimes receive more people than they can cope with. The EU should put in place procedures for the provision of financial, operational and reception support, taking account, among other things, of the economic and social situation in the individual Member States.

4.3.1 The link made in some politicians' speeches between immigration and crime does not reflect the reality of the situation and encourages xenophobic attitudes. Most immigrants whose situation in the EU is not regular entered lawfully on a short-stay visa and extended their stay, or have a temporary immigration permit and do not leave when this expires.

4.3.2 Many of these people are working under unfair employment conditions, when not completely outside the scope of labour law, or in the informal economy, and find themselves socially excluded. In the light of certain situations of this nature, civil society organisations and the EESC have supported processes to regularise the situation of irregular immigrants and have more generally called on the EU to adopt proposals, recommendations and measures to prevent such situations from arising.

4.3.3 The rights of irregular immigrants must be upheld in all circumstances, from the time of their rescue or arrest until they receive protection or are returned to their countries of origin. Irregular migration by sea often results in the loss of life. Against this backdrop, the EESC stresses the importance of upholding fundamental human rights in all situations.

4.4 External borders and visas

4.4.1 The EU needs a common **external borders policy** that is credible, effective, legitimate and subject to democratic checks. Member States in the Schengen area do not carry out checks at their shared borders. They thus have to cooperate and share responsibility for managing their

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EUREMA is an EU pilot project for the relocation of beneficiaries of international protection from Malta within the EU, endorsed in the European Council Conclusions of 18-19 June (document 11225/2/09 CONCL 2).

external borders. The **Schengen Borders Code** regulates the crossing of borders and checks, taking account of the requirements which non-EU nationals must meet in order to enter and stay for up to three months. The EU draws up lists of countries whose nationals need **visas**.

4.4.2 The EESC considers that the role of Frontex should be stepped up, developing it over the medium term into a European border-guard service comprising a European body of border guards. Its main function would be to apply the common rules laid down in the Borders Code. The EESC believes that **EU solidarity with the Member States should be stepped up**, in line with their geographical location.

4.4.3 The illegal trade and trafficking of persons must be combated whilst guaranteeing that victims are protected by international humanitarian law and by the European conventions on human rights. Under Article 6(2) of the Schengen Borders Code, border guards may not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation and under Article 13, third-country nationals refused entry have the right to appeal.

4.4.4 The Committee supports the Commission proposal to amend visa legislation. Cooperation with third countries is crucial to visa policy, which often involves reciprocity.

4.5 Return

4.5.1 The mobility partnerships should provide for return procedures based primarily on voluntary return with support systems put in place⁶. However, in the event that the forced return procedure is implemented, the human rights of repatriated people must be given the utmost respect, in accordance with the Council of Europe recommendations⁷.

4.5.2 Any agreements with third countries must be based on the principle of positive conditionality, offering financial assistance and setting up development programmes in order to prevent irregular immigration.

4.5.3 The repatriation of immigrants who entered the EU on an irregular basis must be treated in accordance with the established rules. In this regard return agreements with third countries are crucial in ensuring that the rights of returning migrants are fully respected.

4.5.4 The Charter expressly prohibits collective expulsions and ensures that no one may be removed, expelled or extradited to a country where there is a serious risk that they would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment – the *non-refoulement* principle. However, several NGOs have condemned instances of

⁶ In cooperation with the International Organization for Migration.

⁷ *Twenty Guidelines on Forced Return*, CM(2005) 40.

collective expulsion and expulsion of irregular immigrants and asylum seekers to countries where human rights are violated. The EESC points out that the European Convention on Human Rights and the Charter contain provisions that are applicable to any European policy on irregular immigration – with particular focus on protection in the event of return, expulsion or extradition.

- 4.5.5 The ECHR has interpreted Article 3 of the European Convention on Human Rights to mean that persons with serious illness may not be detained or expelled, as they are in need of medical care, and the same applies to pregnant women. The situation of minors also requires specific attention and protection, especially where they are unaccompanied.
- 4.5.6 The EESC reiterates its opposition to holding asylum seekers and irregular immigrants in **detention centres** as a matter of course, as this must remain an extraordinary measure⁸. The Committee calls for greater transparency concerning detention centres within and outside the EU and for the UNHCR to be kept informed of the situation of persons detained in them.

5. **The external dimension of immigration and asylum policy**

5.1 The global approach to migration and mobility

- 5.1.1 The first step in the process was taken by the European Council, which adopted the **Global Approach to Migration (GAM)** towards the end of 2005. In order to further develop the external dimension of European migration policy, the Commission has put in place a number of initiatives.
- 5.1.2 **Mobility partnerships** are the most important political instrument for implementing the GAMM. The pilot phase is now over, and the Commission carried out a political assessment of their implementation in 2009⁹.
- 5.1.3 The Commission recommended addressing new challenges to immigration and asylum policies (such as war and population movements in the Mediterranean region) by establishing a dialogue for migration, mobility and security in the EU, in its communication entitled *A dialogue for migration, mobility and security with the southern Mediterranean countries* COM(2011) 292. The EU then opened dialogues with a number of countries.

⁸ See EESC opinion of 16 July 2009 on *Minimum standards for the reception of asylum seekers*, rapporteur: An Le Nouail-Marlière, adopted at the plenary session of 15 and 16 July 2009.

⁹ European Commission (2009), *Mobility partnerships as a tool of the global approach to migration*, Commission staff working document, SEC (2009) 1240, Brussels, 18 September.

- 5.1.4 Six mobility partnerships have been concluded with the following countries: Cape Verde (May 2008)¹⁰, Moldova (May 2008)¹¹, Georgia (November 2009)¹², Armenia (October 2011)¹³, Azerbaijan (December 2013)¹⁴ and Morocco (June 2013)¹⁵. Mobility Partnership negotiations with Tunisia have been completed and a joint declaration was signed on 3 March of this year. Negotiations have begun on a Mobility Partnership with Jordan and should be completed before the end of the Greek presidency, while new dialogues on migration, mobility and security are about to start with other southern Mediterranean countries such as Egypt, Libya, Algeria and Lebanon. The EU-Africa Summit's declaration on migration and mobility¹⁶ has a global approach, which the EESC endorses.
- 5.1.5 The Commission published an assessment of the global approach to migration¹⁷ in 2011, calling on the EU to strengthen its external migration policy, and presented a revised Global Approach to Migration and Mobility (GAMM) based on four pillars: 1) organising and facilitating legal migration and mobility; 2) preventing and reducing irregular migration and human trafficking; 3) promoting international protection and enhancing the external dimension of asylum policy; and 4) optimising the development impact of migration and mobility.
- 5.1.6 The mobility partnerships have certain limitations which the EESC believes must be overcome in the next few years. From a legal point of view they are a form of "soft law". They are joint declarations between the EU, a group of relevant Member States and a third country, but do not bind the parties. Their flexible nature makes it easier to attain political agreement, but not legal responsibility. As the EESC has already pointed out¹⁸, mobility partnerships should be international agreements that are binding on the contracting parties.
- 5.1.7 The mobility partnerships should develop their mobility and migration strands in a more comprehensive and balanced way, and this should be a priority for them. Their priorities have so far focused on security, return, readmission of irregular migrants and border surveillance.

10 Council of the European Union (2008), *Joint declaration on a mobility partnership between the European Union and Cape Verde*, 9460/08, ADD2, Brussels, 21 May.

11 Council of the European Union (2008), *Joint declaration on a mobility partnership between the European Union and Moldova*, 9460/08, ADD1, 21 May.

12 Council of the European Union (2009), *Joint declaration on a mobility partnership between the European Union and Georgia*, 16396/09, Brussels, 20 November.

13 Council of the European Union (2011), *Joint declaration on a mobility partnership between the European Union and Armenia*, 14963/1/11, Tuesday, 11 October, 2011.

14 http://europa.eu/rapid/press-release_IP-13-1215_en.htm 5.12.2013.

15 Council of the European Union (2013), *Joint declaration on a mobility partnership between the European Union and Morocco*, 6139/13, 3 June 2013.

16 EU-Africa Summit 2-3 April 2014, Brussels.

17 Commission Communication on *The Global Approach to Migration and Mobility*, COM(2011) 743 final, 18.11.2011.

18 See REX/351.

The Commission communication on the dialogue stated that "increased mobility" would be subject to specific conditions to be met by third countries. The EESC believes that the EU should offer these countries opportunities for immigration via legal and transparent procedures¹⁹.

5.1.8 The EESC proposes that the EU offer partner countries channels to facilitate mobility, visa acquisition and the admission of new immigrants. The Committee²⁰ supports the inclusion of other matters in the new agreements, such as:

- 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;
- enhanced access to information on job vacancies in the EU;
- measures to improve cooperation on matters related to skills and how to better match labour supply and demand, building upon the work already done by the European Training Foundation.

5.1.9 The establishment of immigration centres by the EU in the countries of origin will enhance the EU's presence in those countries while also eliminating misinformation spread by smuggling rings and encouraging legal immigration applications. Special attention must be paid to strengthening local civil society, or creating it where it does not yet exist.

5.1.10 In humanitarian crises caused by massive population displacements in transit territories, the establishment of immigration and temporary residence centres could be financed by the EU, taking into consideration the principle of positive conditionality. Cooperation with the UNHCR and the IOM in these centres will guarantee protection under the international asylum system for those who require it.

5.1.11 The EU must forge agreements with transit countries, and pay special attention to requirements regarding human rights principles and repatriation.

5.1.12 The signing of agreements could also extend to cooperation with **Frontex** and **Europol**. Combatting organised smuggling rings is the key to preventing and reducing irregular immigration. People who fall victim to exploitation by smugglers should be considered to be innocent victims.

19 See REX/351.

20 See SOC/268 and REX/236.

- 5.1.13 Following the disaster in Lampedusa, the JHA Council of 7 and 8 October 2013 set up the Task Force Mediterranean. The group's work culminated in the publication of a Communication on the work of the Task Force Mediterranean (COM(2013) 869), putting forward a package of short-, medium- and long-term measures in five main fields: measures in cooperation with third countries; regional protection, resettlement and improved legal avenues to Europe; the fight against human trafficking, smuggling and organised crime, reinforced border surveillance and assistance and solidarity with Member States dealing with high migration pressure.
- 5.1.14 The EESC deems it essential that short-term measures be complemented by long-term measures aimed at addressing the root causes of involuntary migration.
- 5.1.15 The December 2013 European Council endorsed the measures proposed and reiterated the need to act with determination in order to prevent loss of life and to avoid future tragedies. It confirmed the priority of working together with third countries to prevent such occurrences.

Brussels, 9 July 2014

The president
of the
European Economic and social Committee

Henri Malosse
