SOC/130
COMMUNITY
RETURN POLICY

Brussels, 11 December 2002

OPINION

of the

European Economic and Social Committee

on the

Communication from the Commission to the Council and the European Parliament on a Community return policy on illegal residents

(COM(2002) 564 final)

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On 14 October 2002 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

> *Communication from the Commission to the Council and the European Parliament on a Community return policy on illegal residents*
> (COM(2002) 564 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 25 November 2002. The rapporteur, working without study group, was **Mr Pariza Castaños**.

At its 395th plenary session (meeting of 11 December 2002) the European Economic and Social Committee adopted the following opinion by 113 votes to one with ten abstentions.

1. Summary of the Commission proposal

1.1 Return policy is presented by the Commission as an integral part of immigration and asylum policy. The Commission notes that, on the one hand, legal immigration channels must be consolidated and protection given to those needing it and, on the other, illegal residents must be returned (preferably voluntarily, but by force if necessary), since "A credible threat of forced return and its subsequent enforcement send a clear message to illegal residents in the Member States and to potential illegal migrants outside the EU that illegal entry and residence do not lead to the stable form of residence they hope to achieve"[1] Hence a return policy is a necessary adjunct to a comprehensive immigration and asylum policy.

1.2 The Commission's communication also responds to the call of the Seville European Council of 21 and 22 June 2002 for the approval by the end of the year of the basic components of an expulsion and repatriation policy.

1.3 Before establishing the bases of a return policy, the Commission had already opened a broad debate on the issue. To this end it presented a green paper[2] and initiated a debate which culminated on 16 July 2002 in a conference attended by organisations and institutions from all the Member States and applicant countries. The EESC also participated in this conference.

1.4 The present communication addresses only the return of irregular residents (or illegal residents, in the terminology used in the communication). A further communication will deal with the return of legal residents who wish to return to their country of origin and how their return could benefit the development of that country.

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1 Point 1.22 (2nd para.) of the communication.

2 See EESC opinion on the green paper: CES 1019/2002

1.5 The aspect examined by the communication in greatest depth is cooperation between the Member States to streamline the repatriation of illegal residents. To this end it calls for short-term measures in the field of operational cooperation and for medium-term legislative measures to establish some common standards for the mutual recognition of Member States' repatriation decisions.

1.6 Short-term operational cooperation between the Member States includes the following:

– new statistical methods, among which the Commission singles out the publication of a comprehensive annual report on asylum and immigration statistics;

– direct networking between Member State authorities responsible for managing returns;

– exchange of experience and best practice, for which a handbook of best practices will be drawn up;

– joint training of officials responsible for managing returns: seminars, regular meeting, etc.;

– better identification of illegal residents who do not present or hold any documents. For this, it is proposed to set up a database with photo and scanned travel documents of all persons applying for visas in any Member State consulate;

– assistance between Member State authorities for the transit of returnees where it is necessary to use the airports of other Member States or transit through their territory, whether the return be forced or voluntary;

– facilitate the work of immigration liaison officers (ILOs) in countries of origin or transit;

– use joint charter flights to reduce the cost of repatriating illegal residents;

– create an adequate framework for coordination based on (i) greater use of the ICONet and (ii) setting up a technical support facility.

1.7 The common minimum standards to be established in the medium term to enhance cooperation between the Member States include the following:

– the expulsion of persons against whom an expulsion order has been issued in one Member State and who have been apprehended in another state. This objective raises the need for a binding legal framework so that this second state can execute the expulsion order issued by the first;

– minimum standards which have to be respected in the removal procedures. For instance, how to proceed when the person to be expelled is suffering from a physical or mental illness, is a minor or a pregnant woman, or the expulsion will mean breaking up a family. Also when the physical resistance of the person to be expelled has to be overcome, etc. It is important to reach agreement

on these minimum standards so that Member States can cooperate with the expulsion orders issued by others;

– minimum criteria for distinguishing between mandatory reasons for expulsion, such as a serious threat to public order or national security, and other less serious reasons, since the mutual recognition of expulsion decisions will operate differently according to the seriousness of the reason. Minimum safeguards for the judicial review of expulsion decisions will also be necessary;

– an agreed approach to situations where the legal residence of a person comes to an end and they have to be regarded as an illegal resident;

– minimum standards for detention conditions for persons awaiting expulsion. Identification of persons who should not be detained, such as unaccompanied children, the elderly, pregnant women, people with serious disabilities, etc.;

– standards for establishing proof of return, especially in the case of voluntary return.

1.8 The communication advances the idea of "integrated return programmes" aimed at encouraging voluntary return and successful reintegration of returnees in their country of origin. The communication refers to the development of projects which involve advice to returnees, assistance with travel, assistance with training and employment, assistance with housing, etc. The Commission states that incentives to encourage potential returnees to go back voluntarily should be assessed and that sufficient financial assistance should be available to put this into practice. The Commission calls for consideration to be given to the possibility of a Community financial instrument.

1.9 The effectiveness of a return policy, particularly in the case of forced return, is totally dependent on cooperation with countries of origin and transit. These countries have to readmit their own citizens, or persons transiting their territory, where they have been apprehended in an illegal situation in a Member State. The communication views cooperation with these countries from the following angles:

– administrative cooperation, aimed at strengthening certain institutions in the countries of origin and developing measures for the reintegration of returnees;

– readmission agreements are difficult to achieve unless they contain specific benefits for the countries of origin which conclude them; hence the Commission affirms the need to define such incentives;

– cooperation with transit countries to persuade them to admit persons who cannot return directly to their country of origin.

1.10 The Commission concludes its communication by asking the Council to endorse the Return Action Programme by the end of the year.

2. General comments

2.1 The communication has been published in the wake of the debate around the green paper on this issue. The EESC welcomes the participatory approach adopted for drawing up these policies. The Commission and the Council should make appropriate use of the various proposals. The EESC notes with satisfaction that the communication has taken account of several of the proposals contained in its opinion.

2.2 In its opinion on the green paper, the EESC has already given its views on most of the issues raised by the Commission. It is not necessary to repeat them here. The present opinion should be seen as supplementing its predecessor.

2.3 It must always be borne in mind that a person "without papers" is not a person without rights and that an illegal immigrant is not a criminal, although their situation may not be legal. Express support is given to the emphasis placed in point 1.2.3 of the communication on the need to observe human rights standards, even in the case of persons "without papers". This includes in particular standards with regard to social and economic rights.

2.4 This communication, as already pointed out here, refers almost exclusively to the return of illegal residents. The EESC realises that it is necessary to build on what was laid down at the Seville Council, but would wish, once again, to draw attention to the need to speed up the legislative work so that the EU has a common policy for economic immigrants providing legal and transparent channels for immigration; the same applies to common legislation on asylum.

2.5 The EESC would remind the Commission that various of its opinions have pointed to the need to take action on regularisation. Forced return, as the Commission states, is a necessary adjunct to immigration policy. The EESC considers that expulsion and obligatory repatriation are extreme measures.

2.6 The Commission announces a forthcoming communication on immigration and development in which it will analyse the way in which the return of residents to their countries of origin can be beneficial to the development of these countries. The EESC welcomes the announcement of this communication, but would reiterate the need to ensure that the forced return of illegal residents is also of benefit to the development of countries of origin. This idea is broached in point 2.4 on integrated return programmes, but in too general terms.

2.7 In its opinion on the green paper, the EESC states that voluntary return should be given priority and forced return used only as a last resort. The Commission's communication also advocates favouring voluntary return, but this idea is not adequately reflected in the actual proposals. The most extensive section, and that which contains the most specific measures, is that on cooperation between Member States in the organisation of forced returns.

2.8 Another reason why the need for voluntary return must be highlighted is that (humanitarian) non-governmental organisations will only become involved in return activities if return

is voluntary. The involvement of these organisations is highly desirable and sometimes a precondition for the success of return programmes. Accordingly, this matter should not be dealt with solely between states.

2.9 It is essential that any return policy be based on respect for human rights and fundamental liberties. In its opinion on the green paper the EESC already warned that Articles 3, 5, 6, 8 and 13 of the European Convention on Human Rights and Articles 3, 4, 19, 24 and 47 of the Charter of Fundamental Rights contain specific provisions which are applicable to a return policy for illegal residents.

2.10 Voluntary return is addressed mainly in the section on integrated return programmes, but this section is much less specific. The EESC would therefore call on the Commission to flesh out its proposals for the organisation of voluntary return, in parallel to its proposals on forced return. The EESC would support a Community financial instrument for the development of return programmes.

2.11 It is necessary to ensure in all cases that forced return procedures are carried out under effective judicial protection. All persons against whom an expulsion order is issued should have full access to judicial appeal, and the appeal should have suspensive effect. The latter is essential given the nature of the act of expulsion: if a judicial ruling goes in favour of the person concerned, but is issued after they have already been expelled, in most cases the outcome will not benefit them, infringing their right to effective judicial protection.

3. Specific comments

3.1 Without a common policy and legislation to channel immigration legally and a common policy and legislation on asylum, the application of some of the proposals put forward in this communication is putting the cart before the horse. The Commission realises this, but the Seville Council has decided thus.

3.2 This is the case with the mutual recognition of return decisions, aimed at ensuring that expulsion orders issued by one Member State are executed by another (where the illegal immigrant is apprehended in a different state from the one which ordered their expulsion) without the need for a new expulsion decision[3]. The EESC considers that it would be premature to apply this measure without unified standards and criteria on the interpretation of the Geneva Convention and on persons with a right to subsidiary protection. The Commission recognises this in the communication[4]. The EESC would like to see a balance between the measures to reduce illegal immigration and the measures needed to ensure immigration takes place through legal channels.

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3 Point 2.31 (1st para.) of the communication

4 Point 2.31 (2nd para.) of the communication

3.3 The right to family unity should clearly prevail over expulsion on grounds of illegal residence. On this basis, the EESC would reiterate what it said in its opinion on the green paper: there should be no expulsion when it would involve family separation.

3.4 Regarding the coercive measures to be used when someone physically opposes expulsion, the communication states that such measures have their limits and that the physical integrity of the returnee is of the utmost importance[5]. The EESC affirms that there should be no discussion on whether the physical integrity of the returnee is of greater or lesser importance; quite simply there must be nothing in the expulsion procedure which threatens this physical integrity. Unfortunately there have been many people whose only crime was to come to Europe looking for work and a decent future, but who have died during the expulsion proceedings because of the brutal conduct of some officials.

3.5 The communication analyses the limits that should be set to the detention of persons awaiting expulsion, taking up several of the proposals that the EESC put forward in its opinion on the green paper as well as suggestions made by various organisations at the conference organised by the Commission on 16 July 2002. The EESC welcomes this, but would reiterate one point raised in that opinion. The communication states that returnees in detention should as far as possible be separated from convicts[6]. In the EESC's view, there should be a strict prohibition on returnees being held in jails, since illegal immigrants awaiting expulsion are not criminals.

3.6 The communication quite rightly stresses that the principle of proportionality must apply to the detention of persons awaiting expulsion. As a matter of principle, the detention of such persons should not be used to coerce or exert pressure on them (e.g. with a view to obtaining identity papers).

3.7 The EESC has already expressed its views on these matters in its opinion on the green paper. It should be noted that detention pending expulsion should not exceed 30 days.

3.8 To avoid serious problems for the persons concerned, it is crucial that the EU establish, on a temporary basis, a list of countries to which people may not be deported on account of the risk to their lives, the lack of freedom, war or humanitarian crisis.

3.9 The Commission concludes its communication by asking the Council to endorse the Return Action Programme by the end of the year, in accordance with the mandate given by the Seville European Council. The EESC would like the Council and the Commission to reflect on the contradiction and lack of balance between the delay in common legislation for legal immigration and the adoption of such harsh measures against illegal immigration as expulsion and obligatory repatriation.

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5 Point 2.32 (4th para.) of the communication

6 Point 2.35 (7th para.) of the communication

Brussels, 11 December 2002.

The President of the European Economic and Social Committee	The Secretary-General of the European Economic and Social Committee
Roger Briesch	**Patrick Venturini**