

## Opinion on the status of migrant workers from third countries

(91/C 339/15)

At its plenary session of 24 April 1991 the Economic and Social Committee adopted an Own-initiative Opinion on the Status of Migrant Workers from Third Countries.

The Economic and Social Committee Bureau proposed, under the terms of the third paragraph of Article 20 of the Rules of Procedure, that an additional Opinion be drawn up on the status of migrant workers from third countries.

The Section for Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 11 September 1991. The Rapporteur was Mr Amato.

At its 289th plenary session (meeting of 26 September 1991) the Economic and Social Committee adopted the following additional Opinion by 48 votes to 2, with 36 abstentions.

### 1. Foreword

1.1. On 24 April 1991 the Committee adopted an Opinion setting out the rationale, guidelines and general aims of a Community policy on immigration, and more particularly the status of migrant workers from third countries.

1.2. The present Opinion seeks to offer specific proposals on economic and social integration, free movement, voluntary return to the country of origin, information and Community coordination.

### 2. Economic and social integration and free movement

#### 2.1. Definitions

2.1.1. By 'integration' policy—a term which has become established in Community terminology—we mean a policy designed to promote the economic and social insertion of immigrants. The term 'integration' does not imply a challenge to immigrants' cultural identity, and should not be confused with 'assimilation'.

2.1.2. Community policy on integration and free movement, as discussed in the present Opinion, covers immigrants from third countries who are legally resident in the Community. For a definition of the term 'immigrant', the reader is referred to point 2.3 of the Committee Opinion of 24 April 1991.

2.1.3. In accordance with the international conventions covering migrant workers, sailors from third countries who are employed on ships of the Community

Member States are not considered as immigrants for the purposes of this Opinion.

#### 2.2. Principles

2.2.1. A Community policy of integration and free movement should be founded on the principle of equal rights and equal opportunities for legally resident immigrant workers from third countries.

2.2.2. Key points of reference here are provided by Conventions 97/49 and 143/75 of the International Labour Organization (ILO), which both affirm this principle, and Recommendation 151/75/EEC on equal opportunities and treatment on the labour market; the Convention on protection of the rights of all immigrant workers and their families, approved at the UN General Assembly of December 1990, takes a similar line.

2.2.3. All Member States should make an immediate common commitment to ratify these Conventions. Such a step would facilitate the framing of a Community policy on the subject pending their ratification by the Community.

2.2.4. An integration policy must clearly also be founded on the principle of equal obligations, i.e. full respect by immigrants for legislation and other regulatory provisions, on the same terms as Community nationals.

#### 2.3. A Community legal framework

2.3.1. On the basis of the abovementioned principles, a Community legal framework should be drawn up which:

a) lays down the rights of immigrants from third countries;

- b) fosters adaptation (*inter alia* on the basis of international conventions) of EC legislation and approximation of Member States' legislation on residence, employment and living conditions of immigrants;
- c) provides effective measures to combat illegal and undeclared work, use of middlemen, and trafficking in labour. As in previous Opinions, the Committee emphasizes the need for an EEC Directive laying down preventive and dissuasive measures to curb the various forms of illegal work, *inter alia* on the basis of ILO Convention 143/75 and the above-mentioned UN Convention;
- d) promotes the fight against racism and xenophobia. The Committee stresses the need for an effective, fully committed Community policy, based for example on codes of conduct and legislation in line with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

#### 2.4. Immigrants' rights

2.4.1. The Community should affirm and pursue equality of rights between EC and non-EC workers as an independent political choice.

2.4.2. Firstly the Community should accept the principle of extending the Community social charter to immigrant workers and their families. If the basic social rights of workers enshrined in the charter are to be more than just key Community principles, and are to be translated into minimum EC conditions for workers in order to avoid distortions of competition between firms in different Member States, then these basic rights must also apply to immigrant workers from third countries.

2.4.3. As regards extension of the Community social charter to immigrant workers, it should be specified that:

- a) The extension to immigrants of some of the basic social rights enshrined in the charter is implicit and in general is already operative in the Member States;

it can thus be made immediately operative for all immigrants (e.g. right to equal pay).

- b) Some national legislations do not currently allow immigrants full exercise of some basic social rights (e.g. access to employment). Common arrangements and conditions should therefore be laid down at Community level to avoid discrimination in the exercise of these rights.
- c) It is out of the question for some of the rights enshrined in the Charter (e.g. right of workers to free movement) to be extended automatically to all immigrants. A gradualist approach should be used, with these rights only being guaranteed in the case of permanent residents.
- d) Lastly, exercise of some rights is inevitably affected by the existence of special conditions (in the social security field, for example, this would include the existence of any bilateral agreements with the countries of emigration).

2.4.4. Secondly, the basic rights which are not included in the charter because they are peculiar to immigrants should also be defined (right to be joined by other family members, right to protect one's cultural identity, etc.). Here too, a gradualist approach is needed, deciding which rights also apply to temporary immigrants and which are reserved for permanent residents.

2.4.5. On the basis of these considerations, the abovementioned Community legal framework should define, as an adjunct to the Community social charter, the arrangements and conditions under which immigrants are guaranteed exercise of their collective rights.

#### 2.5. Adaptation and harmonization of legislation

2.5.1. In the Committee's view, this should be pursued in two stages:

- a) Definition, on the basis of the rights listed above, of a common core of provisions. These would include EC rules on freedom of movement, and minimum thresholds for national legislation on the economic and social integration of migrants. These thresholds must be set at a level which is high enough to ensure a real EC social area and labour market.

- b) Upward alignment of national legislation, building on the above common core of legislation.

2.6. *Preliminary proposals for the definition of a common core of legislation on immigrant workers from third countries*

2.6.1. Residence

Immigrant workers should be guaranteed the right of residence, once the legal conditions for acquiring this have been met.

The rules on the duration of temporary residence (maximum two years, as indicated in ESC Opinion 571/89 of 27 April 1989) should be standardized, as should those for obtaining permanent residence.

Permanent residence should be granted automatically after two years of temporary residence.

It should not be possible to revoke temporary or permanent residence on economic grounds. Expulsion of legally resident immigrants should only be possible on penal or security-related grounds.

Acquisition of residence should be the only condition for access to all other rights. This access will however draw a distinction between temporary and permanent residence.

2.6.2. Reunification of families

To ensure that immigrant workers with a right of permanent residence are genuinely entitled to be joined by their families (spouse, children under 18, other dependent offspring, dependent relatives in the ascending line), procedures should be simplified, a time-limit should be set for their completion and all administrative conditions other than that of the permanent residence of the petitioner should be abolished.

Family members authorized to join the immigrant should be granted permanent residence; this gives them access to the exercise of other rights (access to employment, education, integration into society, health care, social security, and so on).

The spouse of an immigrant worker who stays in a Member State after divorce, death or departure of the

partner should not lose his or her resident status provided that he or she has had that status for at least two years.

2.6.3. Mobility within the Community

Immigrants legally resident in a Member State should be able to move within the Community as freely as EC nationals. Immediate steps should therefore be taken to abolish visa requirements for journeys within the Community.

Pending the removal of border controls at the Community's internal frontiers, immigrants resident in a Member State should be issued a document entitling them to move freely within the Community.

Once internal borders have been removed, travel by immigrants resident in a Member State should not be subject to any time-limits or administrative requirements which do not apply to EC nationals.

2.6.4. Free movement of immigrant workers

Immigrant workers from third countries who have been legally resident in a Member State for two years or longer should have the right of access to employment in another Member State. Such immigrant workers should be treated in the same way as Community workers, in accordance with EC legislation on the free movement of workers.

In such cases, the immigrant worker and his family should be granted temporary residence by the second Member State. This could subsequently be made permanent in line with the conditions set out in 2.6.1.

2.6.5. Access to employment and the labour market

Legal residence (even if temporary) should entitle immigrant workers to benefit from the same employment and training services as the Member State offers to other workers. Work and business permits specifically designed for immigrants should be abolished.

Legislative and administrative provisions which discriminate against immigrant workers in terms of job mobility, recognition of qualifications, employment and training services, and job-creation and enterprise schemes, should also be abolished. They should be

replaced by provisions to prohibit and combat this type of discrimination.

Immigrant workers should also be eligible for employment in the public sector (except in 'sensitive' sectors and posts) in their Member State of residence.

#### 2.6.6. Equal treatment

EC and Member States' legislation should grant immigrant workers (including those with temporary residence) the right to the same treatment (equal pay, working conditions, social security and health care) as EC workers.

To ensure that immigrants in the different Member States have equal possibilities of retaining the rights acquired in their countries of origin, the Community should gradually conclude bilateral agreements with these countries on social security for migrant workers. These agreements should apply in all Member States.

Equal treatment should also extend to social protection measures (minimum guaranteed income, family allowance, unemployment benefit, disablement benefit, etc.) and social assistance. It will be up to Community legislation to establish which of these measures should be reserved for immigrants with permanent residence.

#### 2.6.7. Education and vocational training

The right of immigrant children to attend state schools and to follow the normal curriculum should be backed by provisions to help them integrate and to provide support, in particular with a view to perfecting their command of the host country language. This would help cut the number of immigrant children (including second generation) who fail to achieve academic success and drop out of the education system.

Immigrant workers' access to language courses and vocational training does not depend solely on non-discriminatory legislation. Positive measures are also required, including special programmes for women.

Common rules must also be established for the recognition of qualifications acquired in the country of origin, both for purposes of employment and for immigrants who wish to continue their studies.

#### 2.6.8. Housing

All legally resident immigrant workers should be guaranteed the right of access to accommodation.

Whilst it is acceptable for temporary immigrants to be housed in short-term accommodation, permanent immigrants must be guaranteed the right to benefit from public housing policies on the same terms as Community nationals.

#### 2.6.9. Health care

Member States' health services should guarantee health care, under the same conditions as nationals, to all legally resident immigrant workers, including temporary residents, and their families.

#### 2.6.10. Safeguarding culture of origin and cultural identity

The right of immigrants to maintain and enhance their cultural identity, to practise their religion and to deepen their knowledge of their country of origin should be enshrined in a common legislative base, as the meeting of different cultures may help to contribute to the cultural heritage. This right should be exercised in a manner which will not create tensions between cultures.

#### 2.6.11. Civil and political rights

The gradual acquirement of civil and political rights goes hand in hand with integration in the host country. Common rules are needed to help the immigrant to play an informed part in this process, not only by removing any obstacles but also by offering him positive assistance and certain guarantees.

The first right to be guaranteed to all immigrants, including those with temporary residence, is the right of association, as this is the first step towards integration. Association in this context means association both between immigrants and in the organizations of the host country (trade unions, leisure associations, cultural and religious associations).

#### 2.6.12. Granting of citizenship

Precise rules, simple procedures, and definite time limits

should be applied for the granting of citizenship to immigrants from third countries.

Citizenship completes the body of rights reserved for nationals. It is thus particularly important that it should leave no room for discrimination. Any discrimination which did occur should be punishable by law.

#### 2.6.13. Right of appeal

Regulations guaranteeing the rights of immigrants would be incomplete without the right of appeal against decisions on the abovementioned rights, particularly as regards access to resident status, employment and social integration, and expulsion.

Community and national regulations should specify procedures for appeal to the relevant authorities.

#### 2.7. An active integration policy

It is a known fact that discrimination and obstacles which prevent immigrants from becoming economically and socially integrated are caused not only by laws, but also by entrenched behaviour patterns and situations. These non-legislative obstacles can only be eliminated by a vigorous policy of ensuring social, economic and civil integration.

The Community's role should be twofold:

- a) coordination of active national policies;
- b) establishment of a Community programme of positive action to promote the economic and social integration of immigrants, guided by the rights outlined above and targeted against discrimination.

#### 2.8. Initial proposals for a Community programme of positive action to promote the economic and social integration of immigrants

2.8.1. A Community programme of this sort must take account of the differing patterns of immigration. An in-depth study should first be made of the distribution of immigrants within the Community, so that action can then be appropriately targeted.

2.8.2. The Committee lays particular stress on the need to ensure:

- That third country immigrants have full access to all EC cultural education and training programmes, and all programmes designed for young people.
- An active employment policy for immigrants, based on special programmes of language tuition and vocational training, including programmes to cater for the training needs of women.
- That health services take account of the fact that immigrants often have different disease patterns and respond differently to illness. Supplementary programmes and information campaigns could perhaps be devised to help immigrants make informal use of the national health services; this would be particularly helpful for more recent immigrants who have come to join relatives, or for asylum seekers.
- That short-term accommodation is available for temporary immigrants and asylum seekers.
- That local bodies receive help with district planning, to avoid excessive concentrations of immigrants in certain areas; this adversely affects both the overall social balance and the integration of the immigrants (formation of ghettos).
- That positive action is taken to reduce the number of immigrant children who are academically unsuccessful or drop out of education.
- That positive action is taken to help women and young people (including second-generation immigrants) to integrate in civil, social and cultural life.
- That initiatives are taken to help immigrants deepen their knowledge of their country and culture of origin.
- That knowledge of these countries and cultures is promoted among Community nationals (in schools, the work-place, the media and so on). Such knowledge is vital to help stamp out racial, religious and cultural prejudice and discrimination.

— That reception centres are set up, *inter alia* with the help of the social partners, to help immigrants by:

- a) providing information and advice on economic matters, employment, access to social and welfare services, and the fulfilment of legal obligations;
- b) providing social assistance for immigrants suffering hardship;
- c) promoting initiatives to improve relations between the immigrant community and the local population, and to foster mutual understanding;
- d) providing premises for the activities of immigrants' associations.

— That immigrants' associations receive support when implementing information programmes and schemes to promote integration.

— That immigrants and their associations have access to legal advice.

### 3. Assistance with voluntary return to the country of origin

3.1. Temporary immigration remains common, and in some cases is on the increase. It may occur because individual immigrants plan to return to their country of origin later, or it may be dictated by the requirements of the Community labour market. Provided that the immigrant is legally employed and legally resident in accordance with the principles and rules outlined above, temporary immigration could be positively encouraged by means of common procedures and instruments.

3.2. People who migrate individually often have trouble fitting in with local labour market needs. Emigration in many cases proves unsuccessful, with the attendant risk of creating widespread areas of alienation.

3.3. In order to help temporary immigrants and cross-frontier commuters (seasonal workers or otherwise) to find more permanent solutions, and help unsuccessful immigrants, the Committee considers that common procedures and instruments should be devised in such cases to assist with voluntary return to the home country and re-integration there.

3.3.1. This should not only entail the provision of information and guidance, but also the promotion of projects (e.g. small business development) as part of development cooperation.

## 4. Horizontal aspects of Community immigration policy

### 4.1. Information

4.1.1. The Community must devise information procedures and instruments for use within the EC and in the countries of emigration.

4.1.2. The information should be designed to:

— make EC citizens (and young workers and students in particular) aware of the reasons for migration and its patterns, on the basis of the economic, social and cultural circumstances of the countries of emigration,

— provide guidance for intending immigrant workers in third countries, with details of conditions and opportunities in the EC as a whole, for both permanent and temporary migrants,

— inform immigrants already in the EC of their obligations and rights, of reception facilities and integration possibilities, and of opportunities for maintaining and enhancing their ethnic cultures.

4.1.3. Immigrants' associations should play a special role, providing linkage between the host country and the country of origin, although this role should not extend beyond the overriding aim of protecting and promoting their members' interests.

### 4.2. Coordination of Member States' immigration policies

4.2.1. A Community policy of the type outlined here calls for EC coordination of national policies. As a first step in this direction, exchanges of information and experience should be stepped up.

4.2.2. Joint action and research (with the emphasis on information and guidance) would be made easier if each Member State had a single authority responsible

for immigration problems, and there were EC level coordination between these national bodies.

4.2.3. The Community should also devise criteria and procedures for regularizing the position of clandestine immigrants in the various spheres of activity and Member States.

4.2.4. The Community should also play a coordinating role to ensure that Member States adopt a similar line in international bodies tackling immigration policy and the question of immigrant workers.

## 5. Community powers and instruments

5.1. Before establishing a Community immigration policy, it is necessary to:

- make the best use of the present institutional powers of the Community, on the basis of full implementation of the Guidelines for a Community policy on migration laid down by the Commission in 1985, and the relevant Council Resolution,
- identify and fully implement the duties incumbent on the Commission from the direct application of the rules on non-discrimination contained in Co-operation and Association Agreements,

— define the changes which should be made to the Treaty by the intergovernmental conference on political union.

5.2. At all events the Committee considers that if the Council has the political will, the proposals set out here could be implemented within the present framework of Community responsibilities.

5.2.1. This is feasible not only by means of co-operation between Member States under Article 118 of the Treaty and the Court of Justice judgment of 9 July 1987, but also by the adoption of Community legislation.

5.2.2. The measures proposed here which affect Member States' legislation could also be translated into binding legal instruments. A number of Treaty articles could be used in justification, including Articles 3 C, 100, 100 A and 235.

5.3. Community responsibilities on immigration policy will obviously have to be specified more precisely when amendments are made to the Treaty at the intergovernmental conference on political union.

Although the Committee is aware of the present political problems, it considers that rules on free movement of workers and other citizens should be explicitly extended to third country migrants. Immigration policy, in all its various aspects, should be fully incorporated among the Community's social policy responsibilities.

Done at Brussels, 26 September 1991.

*The Chairman  
of the Economic and Social Committee*

François STAEDLIN