



European Economic and Social Committee

SOC/300
**Skilled jobs/conditions of
entry and residence of
third-country nationals**

Brussels, 9 July 2008

OPINION

of the
European Economic and Social Committee
on the

**Proposal for a Council Directive on the conditions of entry and residence of third-country
nationals for the purposes of highly qualified employment**

COM(2007) 637 final – 2007/0228 (CNS)

On 7 February 2008, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment
COM(2007) 637 final – 2007/0228 (CNS).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 June 2008. The rapporteur was **Mr Pariza Castaños**.

At its 446th plenary session, held on 9 and 10 July 2008 (meeting of 9 July), the European Economic and Social Committee adopted the following opinion by 139 votes to three with nine abstentions.

*

* *

1. Preliminary comments

- 1.1 Eight years have passed since the Tampere European Council, when the EU decided to push forward a common immigration policy. However, little progress has been made on one of the key aspects – immigrant admission policy and legislation. This is still governed by national legislation, with no harmonisation at EU level to regulate admission; national legislation varies greatly and expresses contradictory policies.
- 1.2 Over six years have passed since the Commission drew up its *Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities*¹. The EESC and the Parliament issued Opinions² supporting the proposal. However, the proposal did not make it past the first reading by the Council. Since then, some States have drawn up new legislation on economic immigration, taking very different approaches.
- 1.3 In the years to come, Europeans will need new economic migrants to contribute to social and economic development³. The demographic situation indicates that the Lisbon Strategy could fall apart if we do not change immigration policies. Active policies for the admission of both highly qualified and less qualified workers are needed.

¹ COM(2001) 386 final.

² See EESC opinion of 16 January 2002 on the *Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities*, Rapporteur: Mr Pariza Castaños (OJ C 80, 3.4.2002) and the EP report in OJ C 43E, 19.2.2004 (Rapporteur: Ms Terrón i Cusi).

- 1.4 It is regrettable that in the Council of the European Union some governments have vetoed the Commission's legislative proposals and are perpetuating the restrictive policies of old. Meanwhile, the black economy and illegal employment are growing, creating a real "pull factor" for undocumented migrants, which the Proposal for a Directive on sanctions against employers⁴, on which the EESC has issued an opinion⁵, aims to reduce. In the absence of common European legislation, the Member States are adopting new legislation with very different political agendas, adding further barriers to harmonisation. These different political agendas and legislative disparities cause confusion and uncertainty amongst citizens.
- 1.5 The EESC supports the inclusion of immigration legislation in the Lisbon Treaty under the ordinary procedure (Commission initiative, qualified majority in the Council and co-decision with the Parliament).
- 1.6 However, this proposal for a directive is being debated in the Council under the unproductive principle of unanimity. Therefore, as the Committee proposed in its opinion on the Hague programme,⁶ *"This change must take place now, before the study of new legislative proposals"*. The EESC proposes that the Council adopt the "bridging" procedure already in force with regard to asylum, so that these directives may be approved by qualified majority and co-decision with the Parliament.
- 1.7 As already stated by the Committee, *"For the new admission legislation, an overall, horizontal legislative framework is preferable to sectoral legislation"*⁷. *The proposal for a Directive on admission drawn up by the Commission and supported by the EESC, with a few changes*⁸, *remains a good legislative proposal. Additionally, specific rules could be drawn up for sectoral issues and particular situations. If the Council of the European Union were to opt for a sectoral approach, geared only towards the admission of highly skilled migrants, it*

³ See the Council conclusions of December 2007 (Plan on legal migration) and the EESC opinion of 10 December 2003 on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment*, Rapporteur: Mr Pariza Castaños (OJ C 80, 30.4.2004).

⁴ COM(2007) 249 final.

⁵ See EESC opinion of 13 March 2008 on the *Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals*, Rapporteur: Ms Roksandić, Co-rapporteur: Mr Almeida Freire, adopted at the plenary session of 12-13 March 2008.

⁶ See EESC opinion of 15 December 2005 on the *Communication from the Commission to the Council and the European Parliament: The Hague Programme: Ten priorities for the next five years – The Partnership for European renewal in the field of Freedom, Security and Justice*, Rapporteur: Mr Pariza Castaños (OJ C 65, 17.3.2006).

⁷ See EESC opinion of 9 June 2005 on the *Green paper on an EU approach to managing economic migration*, Rapporteur: Mr Pariza Castaños (OJ C 286, 17.11.2005).

⁸ See EESC opinion of 16 January 2002 on the *Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities*, Rapporteur: Mr Pariza Castaños (OJ C 80, 3.4.2002).

would not apply to much of migration, and would also be discriminatory. This option might be easier for the Council, but it does not respond to European needs."

- 1.8 The Lisbon Treaty sets the limits for common legislation, including Member States' right to "determine volumes of admission" of migrants to their country. This limit does not prevent a high degree of legislative harmonisation from being reached in the EU. It is an incentive for national management of economic migration to be dealt with using common, transparent procedures. The power to issue work and residence permits would belong to authorities in the Member States, but within the framework of Community legislation. Thus, each Member State could decide, in cooperation with the social partners, on what kind of immigration it requires⁹. National legislation should take account of each country's specific circumstances, whilst also respecting European legislation.
- 1.9 The EESC believes that as legislation on the admission of immigrant workers is linked to labour market trends, there should be dialogue between the national authorities and social partners.
- 1.10 The Hague Programme of November 2004 recognised that "legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development, and thus contributing to the implementation of the Lisbon strategy".
- 1.11 The European Council of December 2006 approved the Policy Plan on Legal Migration, which is intended to meet two objectives:
- 1.11.1 to lay down admission conditions for specific categories of migrants (highly qualified workers, seasonal workers, remunerated trainees and intra-corporate transferees) in four specific legislative proposals; and
- 1.11.2 to establish the general framework for an approach that is equitable and based on respect for migrant workers' rights.
- 1.12 The Committee recently adopted two opinions¹⁰ proposing that immigration be managed in cooperation with countries of origin in order to boost their development. In a recent opinion¹¹, the EESC already proposed that the provisions of Directive 2003/109 be made more flexible for long-term residents, and made other proposals to be taken into account when drawing up new directives on admission.

⁹ See footnote 4.

¹⁰ See EESC own-initiative opinion of 25 October 2007 on *EU immigration and cooperation policy with countries of origin to foster development*, Rapporteur: Mr Pariza Castaños (OJ C44, 16/02/2008) and EESC own-initiative opinion of 12 December 2007 on *Migration and development: opportunities and challenges*, Rapporteur: Mr Sharma, adopted at the plenary session of 12-13 December 2007.

¹¹ See EESC own-initiative opinion of 25 October 2007 on *EU immigration and cooperation policy with countries of origin to foster development*, Rapporteur: Mr Pariza Castaños (OJ C44, 16/02/2008).

2. Proposal for a Directive

- 2.1 The proposal aims to facilitate the attraction of highly qualified workers by harmonising fast-track entry procedures, based on shared definitions and criteria and favourable residence conditions. It includes a specific scheme for "young professionals", and encourages intra-Community mobility.
- 2.2 Individual and physical scope
- 2.2.1 The objective is to establish conditions of entry and residence for over three months of third-country nationals and of their family members for the purpose of highly qualified employment, and to regulate the criteria governing their residence in other Member States. "Highly qualified employment" is defined as the exercise of genuine and effective work under the direction of someone else for which a person is paid and for which higher education qualifications or at least three years of equivalent professional experience is required.
- 2.2.2 The scope of the proposal covers third-country nationals who apply to be admitted to the territory of a Member State for the purpose of highly qualified employment. The following categories are excluded: applicants for international protection or persons under temporary protection schemes; refugees; researchers; family members of EU nationals who are exercising their right to free movement; persons with long-term resident status in the EU; beneficiaries of international agreements.
- 2.2.3 The directive will be without prejudice to more favourable provisions included in bilateral and multilateral agreements with third countries, and will not affect the Member States' right to adopt or retain more favourable provisions, except with regard to conditions of entry into the first Member State.
- 2.3 Conditions, procedures and rights
- 2.3.1 The proposal establishes entry conditions and admission criteria, under which individuals must:
- a) present a valid work contract or a binding job offer of at least one year;
 - b) fulfil the conditions set out under national legislation for the exercise of the regulated profession specified in the work contract or binding job offer;
 - c) for unregulated professions, present the documents attesting the relevant higher professional qualifications in the occupation or sector specified;
 - d) present a valid travel document and valid residence permit;
 - e) have health insurance;
 - f) not be considered to pose a threat to public policy, public security or public health.

- 2.3.2 The gross monthly salary specified in the work contract or job offer must not be lower than a national salary threshold defined and published for the purpose by the Member States, which must be at least three times the minimum gross monthly wage as set by national law¹².
- 2.3.3 Third-country nationals of less than 30 years of age and holding higher education qualifications are exempt from some of these conditions. The gross monthly salary must be at least two-thirds of the national salary threshold. Moreover, when the applicant has completed his/her higher education in the Member State and obtained a Bachelor's and a Master's degree in a higher education institution located within the Community, proof of professional experience in addition to the higher education qualifications will not be required.
- 2.3.4 Under Articles 7 and 19.5, this will be without prejudice to the competence of the Member States to determine volumes of admission of third-country nationals for highly qualified employment.
- 2.4 Blue Card
- 2.4.1 Third-country nationals fulfilling these criteria will be granted an EU Blue Card. The initial validity of the Blue Card will be two years and will be renewable for at least the same duration¹³. If the work contract covers a period less than two years, the EU Blue Card will be issued for the duration of the work contract.
- 2.4.2 Member States will determine whether applications for a Blue Card are to be made by the immigrant worker or by his/her employer.
- 2.4.3 As a general rule, the application will be considered and examined when the third-country national concerned is residing outside the territory of the EU. However, the proposal also allows Member States, in accordance with their national legislation, to accept an application submitted when the third-country national concerned is legally present in its territory but not in possession of a residence permit.

¹² "Member States where minimum wages are not defined shall set the national salary threshold to be at least three times the minimum income under which citizens of the Member State concerned are entitled to social assistance in that Member State". Article 5.2.

¹³ The format of the EU Blue Card should be in accordance with the provisions of Regulation (EC) No 1030/2002 of 13.6.2002, laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002).

2.5 Rights

- 2.5.1 For the first two years of legal residence in the Member State concerned as holder of an EU Blue Card, access to the labour market for the person concerned will be restricted to the exercise of paid employment activities under the applicable conditions for the award of the Blue Card. At the end of this period, the immigrant worker will enjoy treatment comparable to that of nationals of the Member State as regards access to the labour market and highly skilled employment. Unemployment in itself will not constitute a reason for revoking an EU Blue Card, provided that it does not exceed three consecutive months.
- 2.5.2 The EU Blue Card gives holders the right to equal treatment with nationals in the following fields: working conditions (pay, dismissal, health and safety at the workplace); freedom of association; affiliation and membership of an organisation representing workers or employers; education and vocational training (study grants); recognition of degrees, certificates and other professional qualifications; social security; social assistance; payment of acquired pensions when moving to a third country; tax benefits; access to goods and services and the supply of public goods and services (procedures for obtaining housing and the assistance afforded by employment offices); and free access to the entire territory of the Member State concerned.
- 2.5.3 Member States may apply derogations, such as restricting access to certain employment activities or social rights.
- 2.5.4 The preamble to the proposal states that favourable conditions for family reunification and for access to work for spouses should be a fundamental element of any scheme aiming to attract highly qualified workers to the EU. The proposal therefore sets down a series of derogations to the conditions laid down by Directive 2003/86 on the right to family reunification¹⁴ in order to give these types of immigrants access to this right.
- 2.5.5 The proposal also includes a number of derogations to Directive 2003/109 concerning the status of third-country nationals who are long-term residents¹⁵. Highly qualified third-country nationals will have access to more rights and more favourable, flexible administrative treatment than other individuals holding long-term resident status.
- 2.5.6 Member States will have to grant third-country nationals whose applications have been accepted every facility to obtain visas.
- 2.5.7 After two years of legal residence in the first Member State as a holder of an EU Blue Card, the proposal allows for the possibility of moving to a second Member State for the purpose of highly qualified employment, subject to fulfilment of the same conditions as for acquisition of

¹⁴ Council Directive 2003/86/EC of 22.9.2003 on the right to family reunification (OJ L 251, 3.10.2003).

¹⁵ Council Directive 2003/109/EC of 25.11.2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004).

the Blue Card in the first Member State. The members of the individual's family may accompany or join him/her.

3. General remarks

- 3.1 The European Economic and Social Committee believes that there should be a common, fast, transparent procedure for admitting workers, in line with the provisions of the Lisbon Treaty regarding the Member States' right to define the number of immigrants that they will admit.
- 3.2 The EESC considers that, in line with the principles and values of the EU, immigration legislation should comply with the EU Charter of Fundamental Rights and anti-discrimination legislation.
- 3.3 Once the Lisbon Treaty is ratified and enters into force, the distribution of powers between the EU and the Member States will be clearer, and the Council will adopt decisions by qualified majority and by co-decision with the Parliament, superseding the current unanimity rule that prevents truly common legislation from being adopted.
- 3.4 The European Economic and Social Committee proposes that, when adopting legislation (this and subsequent directives) on immigration, the Council use the ordinary procedure (as it did when deciding on legislation on asylum), thus anticipating the provisions of the Lisbon Treaty, and proposes that the Commission speed up its work on the other directives on admission that it has planned for the coming months (covering seasonal workers, remunerated trainees and intra-corporate transferees).
- 3.5 The Committee hopes that the EU will have adequate, sufficiently harmonised legislation so that immigration can be channelled through legal, flexible, transparent procedures, in which third-country nationals are fairly treated, with comparable rights and obligations to EU citizens.
- 3.6 The rights and obligations for third-country nationals contained in the proposed directive, based on equal treatment as regards salaries, working conditions, freedom of association, education and vocational training, represent a good starting point for immigration legislation, which should be extended to all categories of immigrant workers.
- 3.7 The Committee agrees that the new immigration legislation should make less restrictive provisions for family reunification than Directive 2003/86.
- 3.8 The EESC concurs that immigration legislation should be more flexible with regard to residence permits, as it suggested in a recent opinion¹⁶, so as to enable circular immigration systems that would encourage development in countries of origin and offset the more negative

¹⁶ See EESC opinion of 25 October 2007 on *EU immigration and cooperation policy with countries of origin to foster development*, Rapporteur: Mr Pariza Castaños (OJ C44, 16.2.2008).

effects of the "brain drain". In the opinion, the EESC proposed a number of modifications to the Directive on the status of long-term residents (2003/109/EC) in order to make procedures more flexible. The opinion also included various proposals regarding the other admission directives.

4. Specific comments

- 4.1 The EESC considers that salary is not an appropriate criterion for consideration as a highly qualified worker.
- 4.2 The concept of "highly qualified" should be linked to higher education certificates and qualifications or equivalent vocational skills rather than the salary that the worker is to receive¹⁷.
- 4.3 Moreover, making salary one of the requirements for access to the EU Blue Card will make it hard to achieve a common policy in the EU. The major differences in national minimum wage levels that currently exist between the Member States hinder harmonisation.
- 4.4 The EU must make swift progress in recognising professional qualifications, bearing in mind the Bologna process which aims to facilitate mutual recognition of degrees awarded by European universities. While there is no European system for the recognition of qualifications, there should be a national authority which is responsible for recognition, taking into account Directive 2005/36 on the recognition of professional qualifications, the criteria used by the ILO to define highly qualified workers¹⁸ and UNESCO's International Standard Classification of Education (ISCED 1997¹⁹).
- 4.5 The EESC endorses the criterion of three years of equivalent professional experience in the definition of "highly qualified employment". However, this could also pose practical problems when it comes to professions requiring more extensive higher education qualifications. In any event, it should be the national authority that is responsible for assessing professional equivalency, in cooperation with the social partners.
- 4.6 The EESC believes that the European Commission's proposal to offer preferential conditions to highly qualified immigrant workers, by allowing them more favourable treatment than established in Directives 2003/86 and 2003/109, could lead to different categories of

¹⁷ See EESC opinion of 30 May 2007 on the *Proposal for a Recommendation of the European Parliament and of the Council on the establishment of the European Qualifications Framework for lifelong learning*, point 5.6, Rapporteur: Mr Rodríguez García-Caro (OJ C 175, 27/07/2007).

¹⁸ See the ILO's International Standard Classification of Occupations (ISCO-88).

¹⁹ http://www.unesco.org/education/information/nfsunesco/doc/isced_1997.htm.

immigrants being treated differently. It must be ensured that these exceptions do not affect the overall consistency of European immigration policy and the principle of equal treatment²⁰.

- 4.6.1 The proposal for a Directive on highly qualified employment will facilitate and increase family reunification rights. The EESC believes that the right to family life is a fundamental right which cannot be contingent on the type of economic activity or employment of a worker. The EESC has already proposed in earlier opinions that Directive 2003/86 on family reunification be amended, as it should include the exceptions provided for in the proposed Directive on highly qualified employment²¹.
- 4.6.2 The EESC is concerned that the proposed directive does not establish the right to work for family members of Blue Card holders who move to another Member State.
- 4.6.3 Moreover, those third-country nationals who, after a residence period of five years, have long-term European resident status will have a less favourable legal status than highly qualified migrant workers. The criterion of stable, permanent residence will become a secondary factor when it comes to establishing legal certainty and integration in the EU. The EESC has already proposed in a recent opinion²² that the provisions of Directive 2003/109 should be made more flexible for all long-term residents.
- 4.7 There are some aspects of the proposal whose compatibility with Member States' international legal obligations is debatable. For instance, the requirement that the professional mobility of EU Blue Card holders be restricted during the first two years of legal residence does not comply with the provisions of the European Convention on the legal status of migrant workers (1977), Article 8 of which establishes a maximum period of one year.
- 4.8 Under the proposed directive, an individual who is unemployed for three consecutive months would not be able to renew the EU Blue Card. However, this three-month limit does not match the five months set down in the European Convention on the legal status of migrant workers (Article 9.4).
- 4.9 The EESC suggests that a period of unemployment of six months be considered, in order to comply with international agreements and make it easier for workers to find new employment. This period is particularly necessary when the worker is attending a training course in order to obtain a new job.

²⁰ Tampere European Council, Presidency conclusions, 15 and 16 October 1999. Point 18: "The European Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia".

²¹ In the coming months, the Commission is to issue an assessment report on the operation of the directive.

²² See footnote 16.

- 4.10 The EESC considers that the interim measures which temporarily limit the free movement of workers from the new Member States are a derogation which, particularly with regard to the employment of highly qualified workers, should be swiftly revoked, and the principle of preference for EU citizens should be guaranteed.
- 4.11 It is not acceptable that the scope of the directive should exclude refugees and asylum seekers. As the EESC has proposed, persons in need of international protection should be able to work²³, including those with high qualifications.
- 4.12 The fact that the proposal provides for a more flexible system for under-30 year-olds (lower salary bracket) could be considered discriminatory, and the EESC does not endorse this.
- 4.13 Lastly, the EESC wishes to highlight the importance of integration. It has drawn up a number of own-initiative opinions promoting integration policies²⁴ and has held conferences and hearings on the subject. The EU and the national authorities should work together to promote integration policies, because integration, the promotion of equal treatment and the fight against discrimination are all challenges facing European society, especially local authorities,

²³ EESC opinion of 12 March 2008 on the *Green Paper on the future Common European Asylum System*, Rapporteur: Ms Le Nouail-Marlière, adopted at the plenary session of 12 and 13 March 2008.

²⁴ EESC opinion of 21 March 2002 on *Immigration, integration and the role of civil society organisations*, Rapporteur: Mr Pariza Castaños (OJ C 125, 27.5.2002).

EESC opinion of 10/11 December 2003 on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment*, Rapporteur: Mr Pariza Castaños (OJ C 80, 30.3.2004).

EESC opinion of 13 September 2006 on *Immigration in the EU and integration policies: cooperation between regional and local governments and civil society organisations*, Rapporteur: Mr Pariza Castaños (OJ C 318, 23.12.2006).

Conference on *The role of civil society in promoting integration*, Brussels, 9 and 10 September 2002.

4.14 social partners and civil society organisations. The Committee is working together with the European Commission to set up the European Integration Forum²⁵.

Brussels, 9 July 2008.

The President
of the
European Economic and Social Committee

The Secretary-General
of the
European Economic and Social Committee

Dimitris Dimitriadis

Patrick Venturini

²⁵

<http://integrationforum.teamwork.fr/>