

Opinion of the European Economic and Social Committee on the Identification of outstanding barriers to mobility in the internal labour market (exploratory opinion)

(2009/C 228/03)

On 27 June 2008, the European Economic and Social Committee received a referral from the future Czech Presidency on the

'Identification of outstanding barriers to mobility in the internal labour market' (exploratory opinion).

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 March 2009. The rapporteur was Ms DRBALOVÁ.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March 2009), the European Economic and Social Committee adopted the following opinion by 152 votes to 1 with 5 abstentions.

1. Recommendations

1.1 Mobility in Europe should remain one of the EU's political priorities, especially at a time when Europe is being forced to face up to the challenges of globalisation and technological transformation and contend with declining demographic trends and the fallout from the financial and economic crisis. The approach adopted to strengthen mobility must take account of conditions in the individual Member States, be well coordinated at European level, enjoy national support and be transparent in its form. The measures adopted must contribute to establishing a new concept for a fair and balanced mobility and supporting the development of new forms of mobility.

1.2 The EESC supports the European Commission's European Job Mobility Action Plan 2007-2010 and considers it an instrument for removing current obstacles and achieving the objectives set out in the European Strategy for Growth and Jobs.

1.3 The Committee also welcomes the European Commission's plans to publish the Green Paper on the mobility of young people in 2009 and eagerly awaits the findings and conclusions of the public debate.

1.4 The EESC calls for action to unlock the full potential of the EURES (European Employment Services) system and the adoption of further measures to improve the quality, scope and accessibility of the information and services provided and to raise awareness among the European public and, especially, European businesses. Equally, the Committee recommends that the European Commission identify the reasons why some

categories of workers – such as the low-skilled and the unskilled – represent only a fraction of the total number of portal users.

1.5 The EESC invites the Member States to take account of the mobility dimension in all political decisions and – in line with the recommendations of the *Integrated Guidelines for Growth and Jobs* ⁽¹⁾ – to incorporate firm objectives into their own National Strategies and National Reform Programmes. The Member States should strive to devise mobility-supporting active labour market policy schemes.

1.6 The EESC generally supports the efforts to enhance the coordination of social security at Community level and congratulates the French presidency on the satisfactory outcome in negotiations on the amendments to Regulation 883/2004 ⁽²⁾ in line with the results of the discussions on the implementing provision. The EESC once again calls for the implementing regulation for Regulation No 883/2004 to enter into force as soon as possible, to ensure that the improvement and simplification it brings to mobility can kick in as soon as possible.

1.7 Regarding the application of Regulation 883/2004, the Committee recommends that one of its future opinions focus in particular on how this document ties in with Regulation 1612/68 EEC ⁽³⁾, Directive 2004/38/EC and the relevant decisions of the ECJ with a view to ensuring greater transparency, legal security and compliance with the principle of equality in the Member States.

⁽¹⁾ Integrated Guidelines for Growth and Jobs (2008 –2010), COM(2007) 803 final, Part V – 2007/0300 (CNS).

⁽²⁾ Regulation No 883/2004 of the European Parliament of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p 1-123). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:166:0001:0123:EN:PDF>.

⁽³⁾ Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257, 19.10.1968, p 2-12).

1.8 While the EESC welcomes the proposal for a directive on the portability of pensions ⁽⁴⁾, which represents yet another step by the Commission towards increasing cross-border mobility within the EU, it harbours serious concerns regarding its content. The Committee considers that the directive does not, in fact, help remove the principal barrier to cross-border mobility and the portability of pension rights – namely, double taxation. In addition, the proposal includes other provisions which will lead to an increase in the costs of pension systems, and thereby put their future at risk.

1.9 Based on the findings of the July 2008 EUROPASS evaluation report, the Committee recommends that the European Commission examine why low-skilled workers represent such a low proportion. The Committee also calls for action to unlock the full potential of all EUROPASS tools, especially EUROPASS mobility, by improving European coordination and support within Member States, by getting all stakeholders on board, as well as through greater transparency. As regards the *European Qualifications Framework*, the Committee considers that it is crucial to establish ties with the European Credit Transfer and Accumulation System in the area of higher education, vocational training and training in general. If the EQF is to bring added value, it must remain simple, reliable and really help managers recruit the foreign workers they need.

1.10 The EESC noted with interest the second EC report of 18 November 2008 on the application of transitional periods for the new Member States and calls on those Member States which continue to apply transitional arrangements with regard to the free movement of persons to respect the findings of this report and to follow the procedures arising from the treaties. This prerequisite must be met if the principle of fair mobility, curbing social dumping and undeclared work is to be applied.

1.11 The Committee welcomes both the Commission's decision to set up a Committee of Experts which will deal with the technical aspects of the application of the Directive and the invitation for the European social partners to formulate a joint analysis of the impact of the ECJ rulings.

⁽⁴⁾ Implementing the Community Lisbon Programme: Proposal for a Directive of the European Parliament and of the Council on improving the portability of supplementary pension rights (COM(2005) 507 final – 2005/0214 (COD)).

1.12 The Committee draws attention to the delays in the implementation of Directive 2005/36/EC on the recognition of professional qualifications (deadline for implementation: 27 October 2007).

1.13 The EESC sees the EC's current legislative proposals to facilitate economic migration from third countries as a further step by the Commission to promote mobility and economic migration within Europe. The rights and obligations of third country nationals set out in the proposed directive, which are based on equal treatment, are a good basis for migration legislation and should be extended to all categories of migrant workers. The EESC considers that the interim measures which temporarily limit the free movement of workers from the new Member States are a derogation which should be swiftly revoked ⁽⁵⁾.

1.14 The EESC fully respects the independence of the European social partners and expects them to actively contribute to increasing mobility in order to improve the situation on the labour market and to boost the EU's competitiveness.

1.15 The EESC calls upon the Member States and the Commission to work together to draw up, implement, monitor and assess non-discriminatory social reintegration programmes aimed at citizens and their families returning to States in which they have lived or resided, after having worked for a period of time in another Member State.

2. Introduction

2.1 The European Commission declared 2006 the European Year of Workers' Mobility. The aim of this initiative was to raise public awareness in Europe about employment opportunities within the EU and about their rights and entitlements.

2.2 The mobility of citizens is enshrined in the EC's primary law through the right to free movement and has become one of the key objectives of the Lisbon Strategy and one of the recommendations of the *Integrated Guidelines for Growth and Jobs* ⁽⁶⁾.

⁽⁵⁾ EESC opinion on the *Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment* (rapporteur: Mr Pariza Castaños) (OJ C 27, 3.2.2009).

⁽⁶⁾ *Integrated Guidelines for Growth and Jobs (2005-2008)*, Guidelines No 20, (COM(2005) 141, final – 2005/0057 (CNS)).

2.3 This initiative thus builds on and develops a number of earlier EU measures, in particular the *Action Plan for Skills and Mobility* adopted by the EC in 2002 ⁽⁷⁾, and the recent *Mobility, an instrument for more and better jobs: The European Job Mobility Action Plan 2007-2010* ⁽⁸⁾, which reflects the new reality in today's Europe and the challenges it is currently facing.

2.4 In the first half of 2009, the EU Presidency is in the hands of the Czech Republic, whose principal motto is *Europe without barriers*. Accordingly, the Czech Presidency has asked the EESC to draw up four exploratory opinions which will seek to identify the remaining barriers in various areas of the internal market. One such area is the mobility of workers in Europe.

2.5 The Czech Presidency will continue its efforts to increase the mobility of workers in the EU and focus its priorities on promoting the maximum possible freedom of movement for workers within the EU and on facilitating and increasing workers' geographical and job mobility across the whole EU market. It will also seek to complete the work begun on modernising the legal arrangements for coordinating the social security of migrant workers.

2.6 The Czech Presidency draws attention to the negative impact of the current transitional periods on the free movement of workers. It sees unlocking the full potential of workers and making the EU labour market more flexible as a vital part of the Lisbon Strategy.

3. General comments

3.1 The European Commission's *Employment in Europe 2008* report shows that the robust economic performance which began in the EU in 2006 generated a set of promising results in the year 2007 – GDP growth of 3.1 % and the creation of 3.5 million new jobs. With the exception of Hungary, employment increased in all EU Member States, and the average level of employment across the whole EU was 65.4 %

in 2007. In all EU Member States except Slovakia, unemployment had stabilised at below 10 %. Both waves of enlargement – in 2004 and 2007 – have had a positive impact on the EU's economy and have not hampered the EU-15 job market. The statistics point to a synergy between the state of the job market, productivity and the quality of jobs.

3.2 The EU was hard hit by the global financial crisis in 2008. Both businesses and households are under intense pressure, as are the job markets. Economic forecasts show that zero rate growth is expected soon and that the EU economy risks contraction in 2009. The Eurozone and a number of Member States are already in recession. The EU's December Council adopted the *European Economic Recovery Plan* ⁽⁹⁾ presented by the European Commission, which sets out ten measures in four priority areas, including a wide-ranging European initiative promoting employment.

3.3 Current declining demographic trends and an ageing workforce are a constant challenge for both Europe and the EU and will have a significant impact on Europe's competitiveness in the future. Finding a solution to this problem will require an approach that is comprehensive and – in light of the current economic situation – highly sensitive. Individual Member States are creating their own mix of national policies geared towards boosting inclusive job markets. Particular attention is being paid to vulnerable groups on the job market such as older workers, young people, migrants and disabled persons. The EC reports have revealed that the EU still has a lot of work to do as regards implementing the existing legislation on the application of the principle of non-discrimination ⁽¹⁰⁾.

3.4 It is for this reason that the revival of the European job market and the promotion of worker mobility in Europe continue to remain one of the key elements of the European employment strategy. In spite of the various initiatives and campaigns by the EC and the Member States, mobility within the EU continues to fall short of the EU's objective, as established at Lisbon in 2000, of making Europe the most competitive knowledge-based economy in the world.

3.5 The aim of the EC's new mobility action plan for the years 2007–2010 is to analyse the situation in the light of the challenges posed by globalisation, demographic change and the development of new technologies; it will also tackle the existing barriers to mobility in Europe, identify new trends in mobility models and define what action needs to be taken.

⁽⁷⁾ Final Report on the Implementation of the Commission's Action Plan for Skills and Mobility COM(2002) 72 final (COM(2007) 24 final).

⁽⁸⁾ *Mobility, an instrument for more and better jobs: The European Job Mobility Action Plan (2007-2010)* (COM(2007) 773 final).

⁽⁹⁾ A European Economic Recovery Plan, COM(2008) 800 final of 26.11.2008.

⁽¹⁰⁾ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

3.6 The European Commission's plan will concentrate on the following:

- Improving existing legislative and administrative practice. This will, in particular, focus on adapting EU legislation to current needs and conditions, bolstering the status and analytical capacity of the TRESS Network⁽¹¹⁾, and improving administrative cooperation and development between national institutions and state administration.
- Increasing political support for mobility by administrative institutions at all levels, particularly as regards investments in existing schemes at national, regional and local level, and the development of relevant mechanisms for promoting mobility among workers.
- Strengthening, supporting and improving the quality of services provided by EURES⁽¹²⁾ and broadening its strategic scope by bolstering its analytical potential in the field of mobility flows and labour market changes.
- Raising awareness of the advantages of mobility through innovative approaches, changes in information procedures and the introduction of examples of best practice.

3.7 As an EU agency operating on a tripartite basis, EUROFOUND, the European Foundation for the Improvement of Living and Working Conditions, has become a unique platform for analysis and research into supporting mobility in Europe and identifying existing barriers and new challenges posed by changes on the labour market.

3.8 The European Economic and Social Committee has yet to draw up a comprehensive opinion on mobility and barriers to it in Europe. However, in its capacity as an advisory body for the European Commission, it has consistently reacted to the Commission's communications and initiatives on the movement of workers in Europe and has drawn up a number of important opinions⁽¹³⁾.

3.9 Europe's social partners also play an important role. They see mobility in Europe and the removal of all barriers

⁽¹¹⁾ TRESS (Training and Reporting in European Social Security).

⁽¹²⁾ EURES (European Employment Service).

⁽¹³⁾ For example: EESC opinion on *Free movement and residence of workers*, rapporteur: Mr Vinay (OJ C 169 of 16.6.1999), EESC opinion on the *Proposal for a Council Regulation (EC) on coordination of social security systems*, rapporteur: Mr Rodríguez García Caro (OJ C 75 of 15.3.2000), EESC opinion on the *Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*, rapporteur: Mr Rodríguez García Caro (OJ C 149, 21.6.2002), EESC opinion on the *Proposal for a Regulation of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems*, rapporteur: Mr Greif (OJ C 324 of 30.12.2006).

to it as an issue of vital importance and therefore incorporated it into their *Work Programme of the European Social Partners 2003-2005*. Their initiatives and joint texts have helped identify a number of barriers to mobility in the EU.

4. Facts and figures: EUROFOUND study

4.1 The analysis conducted by EUROFOUND on the basis of the EUROBAROMETER findings⁽¹⁴⁾ revealed a series of facts and figures that are vital for gaining an understanding of the patterns of behaviour and attitude of Europeans regarding mobility and migration in Europe:

- Europeans continue to view their 'right to travel and work within the EU' as the EU's greatest benefit and advantage (53 %).
- Although the European institutions and Europeans in general firmly support the principle of mobility in Europe, the Member States continue to harbour fears about the potential effects of economic migration from the new Member States.
- Only around 2 % of EU workers (EU-25) were born in a Member State other than the one in which they currently work.
- Almost 4 % of the EU population have lived in another Member State, while a further 3 % have lived in a country outside the EU.

4.1.1 **On the issue of geographical mobility**, the study revealed that cross-border mobility is not particularly high in Europe. The findings suggest that, on average, Europeans live at the same address for a period of ten years; this figure takes into account the short periods of residence common among young people and the relatively long periods of residence among older sections of the population. The study showed that we should not expect any significant changes in this situation in the near future.

⁽¹⁴⁾ Mobility in Europe: Analysis of the 2005 Eurobarometer survey on geographical and labour market mobility (2006). Office of Official Publications of the European Communities, 2006.

4.1.2 **The driving force for mobility** continues to be a desire to meet new people and discover new places. However, over one third of those who are planning to live abroad (38 %) cite economic reasons (money, quality of employment). In the case of the new Member States, economic reasons dominate – the main driver is a desire to work rather than to use or abuse the benefits of social security systems or better public services. On the contrary, the **principal factor deterring people from moving** is the fear that they will lose their social networks (limited contact with their families and the loss of their support). Further impediments include housing conditions and the standard of healthcare and services.

4.1.3 **Future challenges.** Geographical mobility remains the European Union's principal political task. Inadequate mobility can mean a lower level of adaptability and competitiveness. On the other hand, too much mobility between poorer and richer regions can have an impact on the labour market (shortage of skilled workers, higher unemployment, brain drain).

4.1.4 An important source of information in this context is the study published by the Commission's DG Employment entitled *Geographical mobility within the EU: optimising its economic and social benefits* ⁽¹⁵⁾. The study argues that the role of policies aimed at increasing geographical mobility rates is twofold: 1) extending the expected benefits of mobility and 2) reducing mobility costs for the individual. The study primarily focuses on the economic aspects of geographical mobility and its role in levelling out differences between the regional job markets (employment, actual salaries, shortage of workers).

4.1.5 **On the issue of job mobility**, the study revealed that, on average, Europeans work at 3.9 places of employment over their career; the average period of work at any one employer is 8.3 years. 8 % of respondents had changed jobs in the previous year, 32 % during the previous five years and 50 % in the previous ten years.

4.1.6 Regarding future prospects, the study revealed that 41 % of those surveyed expected to change employers in the next five years, while 54 % of those polled did not plan to change their place of employment, leaving 5 % uncertain. Three main reasons emerged for those who expected to change employers over the next five years: a desire for change and a voluntary decision, an unwilling decision and, lastly, a neutral decision based on the pressure of circumstance.

4.1.7 The study revealed that 65 % of the total number of expected job moves in the next five years would be voluntary. Voluntary job-to-job mobility helps improve and develop the skills of workers and increase their employability, raising both their career prospects and their salaries.

4.1.8 The study on *Job mobility in the EU: Optimising its Social and Economic Benefits* ⁽¹⁶⁾ came to a number of interesting conclusions. The study serves as a basis for the debate among Member States on how to improve the social and economic aspects of job mobility. The study assesses the situation and differences within the EU-27 and monitors the economic factors directly related to productivity, salary levels, innovation and employment, including aspects such as quality of work and social cohesion.

5. Specific comments

5.1 All initiatives and measures aimed at improving and facilitating worker mobility and balancing labour market supply and demand more effectively are important not only because they help the labour market function better and cater to its needs but also because they can greatly contribute to achieving the aims of the European Strategy for Growth and Jobs.

5.2 Although the European public has a firm belief in its right to free movement and the majority of Europeans believe that it is no longer realistic to expect to hold onto the same job for life, the study's findings indicate that there is still a whole range of obstacles preventing workers from moving from one country to another or overcoming the risks involved in finding new and better jobs.

5.3 A number of barriers to mobility exist, for instance:

- Limited language skills
- Poorly or insufficiently developed knowledge and skills
- Shortcomings in recognising education and professional qualifications across the Member States
- Legal and administrative barriers

⁽¹⁵⁾ Study on 'Geographical mobility within the EU: optimising its economic and social benefits' April 2008, EC DG EMPL, Contract VT/2006/042.

⁽¹⁶⁾ Study on 'Job mobility in the EU: Optimising its Social and Economic Benefits' April 2008, Danish Technological Institute, Contract VT/2006/043.

- Difficulties in securing sustainable employment for both partners
- Fragmented information on vacancies or lack of transparency regarding opportunities for education and employment
- Insufficient transport infrastructure
- Lack of housing on the market, prices on the housing market
- Recently, a loss of confidence and xenophobia.

5.4 A whole set of remaining obstacles will have to be removed in order to support mobility in Europe. The EESC believes that **effective policies for strengthening the mobility** of workers should comprise the following components:

5.4.1 Firstly, it is **important to develop a better understanding about the barriers to** geographical and job mobility, as well as the measures which support such mobility. Accordingly, there have been a number of efforts in recent years in Europe to identify and tackle barriers to worker mobility. Nonetheless, it would be useful to have more detailed information from studies conducted at both European and national level about the scope, character and key features of barriers to mobility, as well as their economic impact.

5.4.2 Secondly, it is vital to **apply the concept of flexibility to the European labour markets**. Experience shows that countries which manage to apply this principle effectively enjoy a higher degree of adaptability to global change. In this context, mobility is considered to be one of the means of improving employment, worker adaptability and business competitiveness in the global context. Work organisation methods must be able to cater more effectively to the needs of both businesses and workers, thus also helping significantly to increase new forms of mobility.

5.4.3 Thirdly, there is a need to **adapt the education systems** to the needs of the labour market. People should be given greater access to an effective system of lifelong learning. Today's labour markets are ever more affected by rapid changes

and the demand for new qualifications. More and more people will have to adapt to changes in their jobs and careers by acquiring new and diverse qualifications. Individuals will need to be in a position to increase and improve their skills if they are to be employable and adapt to the changes on the labour market. The priorities should be:

- ensuring that people acquire the necessary knowledge and skills even before they leave the education system;
- motivating people to take personal responsibility for improving their skills over the course of their entire life, while putting in place the conditions enabling them to do so;
- making education more attractive, flexible and in tune with the needs of the labour market;
- Particular attention should be paid in this respect to certain groups of employees – young people and older workers;
- applying the principle of partnership among stakeholders – the state, the social partners, educational institutions and businesses.

5.4.4 Fourthly, there is a need to **develop social protection systems** so that they can support and facilitate transition between various situations on the labour market and do not prevent people from travelling abroad in search of better jobs. In view of this, the EESC would refer to its opinion on flexibility, particularly its emphasis on improving the employment prospects of individual workers, allowing them to adapt more effectively to changes on the labour market and to take advantage of better job opportunities. In essence, this means creating new jobs, helping people as jobs change throughout their career and improving their opportunities on the labour market. Experience shows that the most important objective now is not to take a passive approach such as increasing benefits, but to simplify the recruitment of employees by cutting red-tape, invest in skills and apply active labour market policies.

5.4.5 Fifthly, it is important to tackle the **legislative, administrative and fiscal barriers** restricting geographical and job mobility by:

- precisely applying measures on the free movement of workers to guarantee non-discriminatory access to employment;

- encouraging the Member States to speed up and implement Directive 2005/36/EC on the recognition of professional qualifications⁽¹⁷⁾ and creating a European framework of professional qualifications;
- adopting measures to prevent the double taxation of supplementary pension systems;
- eliminating problems with discrimination on the basis of nationality in the field of taxation (and social benefits);
- ensuring particular attention is paid to removing the barriers to mobility faced by disabled persons;
- taking into account the specific needs of women with children and persons under their care.

5.4.6 Sixthly, Europeans should be given easier access to quality information about employment and education opportunities. While there is a vast amount of information available about living and working conditions, information about employment or education opportunities is a low priority and often lacking or hard to find. An EU-wide information system about employment and education opportunities is vital for people and companies so they can make informed choices about developing their skills, taking advantage of opportunities and thereby increasing their mobility. The **EURES** website **can play an important role** in this respect. Nonetheless, EURES continues to be hampered by the fact that it has a rather low profile and is not well-known by the public and especially the business world. Accordingly, attention should be paid to improving the information provided about certain issues, such as changes or adjustments to social security payments (whether they are statutory or complementary) in the case of professional or job mobility. In the case of employee pension schemes, for example, it would be useful to have information about the level of accrued rights, the taxation regime used, and whether they can be transferred, as well as the costs and benefits of the various approaches⁽¹⁸⁾.

5.4.7 Last but not least, mobility can be facilitated by action to **improve access to housing and the transport infrastructure**. It is extremely important for people to be able to

⁽¹⁷⁾ Directive of the European Parliament and of the Council 2005/36/EC of 7 October 2005 on the recognition of professional qualifications.

⁽¹⁸⁾ The European Commission has already put forward a raft of concrete measures in this field which will raise awareness among the people of Europe and offer them easily comprehensible information (leaflets, handbooks, videos) about their rights and obligations in the area of social security in the EU Member States.

obtain affordable and decent housing in areas where there are employment opportunities. Equally, measures to ensure an efficient and flexible transport infrastructure are also of key importance for improving worker mobility. Member States should work with businesses to look at the cost of relocation and establish and develop systems supporting mobile job seekers.

5.5 **The EU enlargements** in 2004 and 2007, which saw the accession of ten and a further two new Member States, prompted discussion about whether internal borders should be opened up to allow the free movement of workers. While the findings of the EUROFOUND survey confirm that migration between Eastern and Western Europe will continue within the EU, they clearly indicate that the level of geographical mobility is low and temporary in nature.

5.5.1 Member States which are still applying transitional arrangements in respect of countries which joined the EU in 2004 have until 1 May 2009 to state whether they will continue into the third stage and apply transitional arrangements for a further two years. In the case of Bulgaria and Romania, the deadline for the Member States to take a position was 31 December 2008⁽¹⁹⁾. For this reason, the EESC noted with interest the European Commission's second *Report on the Functioning of the Transitional Arrangements set out in the 2003 Accession Treaty*⁽²⁰⁾ of 18 November 2008, which essentially merely confirms the findings of the first evaluation report of 2006⁽²¹⁾. The findings of the second report clearly show that opening up the labour markets to workers from the new Member States has had an unequivocally beneficial impact not only on the economy of the host countries but on the EU as a whole.

5.5.2 Any decision regarding the revision of transitional arrangements should be taken at Member State level and be backed up by analyses founded on facts. Nonetheless, the EESC believes that ending the transitional arrangements in 2009 could help the creation of flexible and inclusive labour markets, reduce undeclared labour and eradicate poverty in Europe.

⁽¹⁹⁾ Greece, Spain, Hungary and Portugal have already lifted the restrictions on the free movement of workers from these countries.

⁽²⁰⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The impact of free movement of workers in the context of EU enlargement. Report on the first phase (1 January 2007 - 31 December 2008) of the Transitional Arrangements set out in the 2005 Accession Treaty and as requested according to the Transitional Arrangement set out in the 2003 Accession Treaty, (COM(2008) 765 final).

⁽²¹⁾ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Report on the Functioning of the Transitional Arrangements set out in the 2003 Accession Treaty (Period from 1 May 2004 to 30 April 2006) (COM(2006) 48 final).

5.5.3 The application of transitional arrangements may, in addition, limit the practical application of Article 69 of Regulation No 1408/71 on the coordination of social security schemes (giving unemployed persons the right to continue to receive unemployment benefits from the Member State that is competent for paying the benefit while looking for employment in another Member State).

5.6 **Posting of workers** in connection with the liberalisation of services in Europe. The advantages which stem from a well-functioning single market are essential for businesses, workers, the people of Europe and the economy in general. They help businesses grow and improve access to a market which now encompasses some 500 million people from thirty countries (EEA). European businesses have become more competitive and have a stronger position on the global market. The new Directive on Services in the Internal Market has become an important tool for the further liberalisation of the single market.

5.6.1 The European Commission has published two Communications⁽²²⁾ dealing with the posting of workers in relation to provisions for services. These aimed to analyse the situation and provide the Member States with certain guidelines on the effective application and interpretation of the ECJ's rulings and explain how the two instruments complemented each other and how their benefits could be maximised while at the same time ensuring the protection of posted workers.

5.6.2 The Committee, in accordance with its opinion of 29 May 2008⁽²³⁾, welcomes Decision EC 2009/17/EC⁽²⁴⁾ to set up a high-level committee of experts to promote the sharing and identification of best practices in the field, detailed research work and the resolution of problems regarding the implementation of the Directive. This process also involves the social partners.

⁽²²⁾ Communication from the Commission – *Guidance on the posting of workers in the framework of the provision of services* (COM(2006) 159 final), *Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers* (COM(2007) 304 final).

⁽²³⁾ EESC opinion of 29 May 2008 on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – *Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers* Rapporteur: Ms Le Nouail Marlière (OJ C 224, 30.8.2008).

⁽²⁴⁾ OJ L 8, 13.1.2009, p. 26-28.

5.6.3 A number of recent ECJ rulings (Laval⁽²⁵⁾, Viking⁽²⁶⁾, Rüffert⁽²⁷⁾) on the Posting of Workers Directive 96/71/EC have prompted controversial discussions on the Posting of Workers Directive. For this reason, the Committee endorses the October 2008 proposal of the European Commission and the French Presidency for the European social partners to conduct a joint analysis to provide a thorough assessment of the legal, economic and social impact of these decisions.

5.7 **Coordination and modernisation of social security systems.** One important instrument for supporting mobility within the EU is the legislative framework ensuring the coordination of the social security systems. The present Regulation No 1408/71⁽²⁸⁾ is to be replaced by Regulation ES 883/2004 of the European Parliament and the Council, which was adopted in April 2004. In accordance with Article 89 of the new Regulation No 883/2004, its implementation must be regulated by another Regulation, COM(2006) 16⁽²⁹⁾, which was not presented until January 2006. The new implementing regulation aims above all to simplify and rationalise the legal and administrative rules, to clarify the rights and obligations of all those involved in coordinating social security systems, including the introduction of better and swifter data exchange and cost-saving procedures.

5.7.1 The EESC's 2006 opinion⁽³⁰⁾ argued that the new proposal was a step towards improving the conditions for the freedom of movement within the EU. The draft regulation includes a host of simplifications, clarifications and improvements. The EESC particularly welcomes its broader range of issues and people covered, as well as all rules for the improvement of cooperation between social security institutions.

⁽²⁵⁾ Case C-341/05: Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet

⁽²⁶⁾ Case C-438/05: International Transport Workers' Federation v. Viking Line ABP.

⁽²⁷⁾ Case C-346/06: Dirk Rüffert, in his capacity as liquidator of the assets of Objekt und Bauregie GmbH & Co. KG v. Land Niedersachsen.

⁽²⁸⁾ OJ L 149, 5.7.1971.

⁽²⁹⁾ Proposal for a Regulation of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (COM (2006) 16 final – 2006/0006 (COD)).

⁽³⁰⁾ EESC opinion of 26.10.2006 on the *Proposal for a Regulation of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems*, rapporteur: Mr Greif (OJ C 324 of 30.12.2006).

5.7.2 In its opinion, the EESC stressed the sensitive nature of the discussions on Annex 11 to Regulation 883/2004, which defined specific procedures for the implementation of certain legal provisions. The Member States are urged in this connection to identify those features of their national systems that they want excluded from the Regulation in order to facilitate smooth coordination of social security. Intensive negotiations between Member States have been taking place on this subject for some time. The EESC has called for a swift conclusion here and noted that the pursuit of subsidiary issues should not, however, impede the entry into force of the new regulation, particularly as they concern the Commission's initiatives for increasing mobility.

5.7.3 As a general rule, the legislative framework coordinating the social protection systems must be capable of reacting smoothly to the changing realities in the world of work, to new forms of employment, to differences in working time arrangements and, above all, to new forms of mobility. Electronic-based administrative cooperation between Member States should be strengthened.

5.8 Generally speaking, benefits are paid to migrants not only on the basis of the coordinating regulation on social security systems but also under **Regulation 1612/68/EEC** and on the basis of the principle of equality enshrined in **Directive 2004/38/EC** ⁽³¹⁾. The principle, therefore, is that everybody who is legally entitled to reside in a host country should have the same rights to all available benefits. Nobody should be excluded from the system.

5.9 The problem is that the broad legal framework is comprised of numerous regulations, all of which have a different legal force (regulations, directives and ECJ decisions). Regulations are implemented directly and uniformly. Directives are implemented differently in every Member State. This is why, in future, it will be necessary to ensure the transparency and, above all, consistency of these regulations. The principle of equality (e.g. equal access to tax benefits) and legal security should be maintained. The legal framework will probably not be simplified; however, it may be possible to remedy a number of shortcomings through cooperation between the Member States – this is still a rich source of potential.

⁽³¹⁾ Directive 2004/58/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance).

5.10 **Mobility in education and professional training** is an intrinsic part of the free movement of persons and a key tool for the creation of a European area of education and training.

5.10.1 The EESC supports the *European Quality Charter for Mobility* ⁽³²⁾ which finds that mobility for education and training purposes is an essential part of the free movement of persons and that strengthening European mobility represents the way forward in achieving the objectives of the Lisbon Strategy. The Charter puts forward a set of principles and measures promoting the mobility of young persons and adults for formal or informal training purposes and for their personal or professional development.

5.10.2 The European Commission has devised a whole raft of effective instruments to promote trans-European mobility for the purposes of education, vocational training and lifelong learning. EUROPASS ⁽³³⁾ provides a coordinated set of documents to help people in Europe gain a better understanding of their qualifications and skills. The most recent evaluation report, published in 2008, confirmed the effectiveness of the national centres and web portals and the overall added value of EUROPASS and also identified a number of shortcomings, especially in those instruments that were only loosely based on educational achievement.

5.10.3 This dimension should be enhanced through the implementation of the European Qualifications Framework for lifelong learning ⁽³⁴⁾, which should be closely linked to the European Credit Transfer and Accumulation System ⁽³⁵⁾.

5.11 However, such an unusually high influx of workers from third countries, taken together with the European Commission's current measures to facilitate legal migration, calls for consideration of the new challenges facing the EU's education systems.

⁽³²⁾ European Quality Charter for Mobility (OJ L 394 of 30.12.2006) (<http://europa.eu/scadplus/leg/en/cha/c11085.htm>).

⁽³³⁾ Decision No 2241/2004/EC of the European Parliament and of the Council of 15 December 2004 on a single Community framework for the transparency of qualifications and competences (Europass).

⁽³⁴⁾ Recommendation of the European Parliament and of the Council (April 2008) on the establishment of the European Qualifications Framework for lifelong learning (2008/C 111/01).

⁽³⁵⁾ Proposal for a Recommendation of the European Parliament and of the Council on the establishment of the European Credit system for Vocational Education and Training (ECVET) COM(2008) 180.

5.11.1 The EESC eagerly awaits the outcome of the discussions begun in July 2008 with the publication by the European Commission of the *Green Paper – Migration & mobility: challenges and opportunities for EU education systems* ⁽³⁶⁾, which calls for reflection on the future and the role of Directive 77/486/EEC, which has hitherto focused solely on the education of the children of migrant workers from other EU countries.

5.12 **Facilitating legal migration and the fight against illegal migration** from third countries, as outlined in the Commission Communication on *The Global Approach to Migration* ⁽³⁷⁾ of November 2006, is the Commission's most

recent step to increase mobility and manage migration in Europe in the face of demographic challenges. In accordance with its legislative plans for the year 2007, the Commission published two legislative proposals ⁽³⁸⁾ facilitating EU entry and residence for economic migrants from third countries and put forward its proposal for a Blue Card system aimed at attracting highly skilled workers from third countries to Europe. The rights and obligations of third country nationals set out in the proposed directive, based on equal treatment in terms of pay, conditions, freedom of association, education and vocational training, are a good basis for migration legislation and should be extended to all categories of migrant workers. 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 ⁽³⁹⁾.

Brussels, 25 March 2009.

The President
of the European Economic and Social Committee
Mario SEPI

⁽³⁶⁾ Green Paper – Migration & mobility: challenges and opportunities for EU education systems (COM(2008) 423 final).

⁽³⁷⁾ The Global Approach to Migration one year on: Towards a comprehensive European migration policy (COM(2006) 735 final).

⁽³⁸⁾ Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment ('EU Blue Card' proposal) (COM(2007) 637 final) and a proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (COM(2007) 638 final).

⁽³⁹⁾ See footnote 5.