Opinion of the European Economic and Social Committee on the ‘Diverse forms of enterprise’
(Own-initiative opinion)
(2009/C 318/05)
Rapporteur: Mr CABRA DE LUNA
Co-rapporteur: Ms ZVOLSKÁ

On 10 July 2008, the European Economic and Social Committee decided to draw up an own-initiative opinion, under Rule 29(2) of its Rules of Procedure, on the
‘Diverse forms of enterprise.’

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 9 September 2009. (The rapporteur was Mr CABRA DE LUNA and the co-rapporteur was Ms ZVOLSKÁ).

At its 456th plenary session, held on 30 September and 1 October 2009 (meeting of 1 October), the European Economic and Social Committee adopted the following opinion by 113 votes to none, with 4 abstentions.

1. Conclusions and recommendations

1.1 The purpose of this opinion is to describe the diversity of forms of enterprise that are found in the European Union (EU). Protecting and preserving this diversity is very important for achieving the single market and maintaining the European social model, as well as for meeting the Lisbon Strategy’s objectives for jobs, competitiveness and social cohesion.

1.2 This opinion centres around the need for the legal framework regulating enterprises, together with competition policy, to promote the diversity and plurality of forms of enterprise, which is one of the main assets of the EU, in a coherent fashion so that a level playing field is created between all different forms of enterprise taking into consideration the characteristics of each form.

1.3 The pluralism and diversity of the various forms of enterprise are recognised in the Treaty and borne out by reality, through the different legal statutes that have been approved or are currently under consideration.

1.4 This diversity contributes to the EU’s wealth and is of key importance to Europe, whose motto is ‘United in Diversity’.

1.5 This diversity is also an essential basis for achieving the Lisbon objectives for growth, jobs, sustainable development and social cohesion based on maintaining and developing the competitiveness of enterprises.

1.6 The aim of competition law should not be to ensure uniformity but to provide a balanced legal framework that can be applied to the different forms of enterprise, which must be able to develop whilst preserving their own aims and working methods.

1.7 The EESC requests that the Commission begin work on approving separate European statutes for associations and mutual societies. It welcomes the start of work on a European Foundations Statute and hopes that this will conclude shortly with the adoption of a statute in this field. The Committee welcomes the simplification of the European Cooperative Society (ECS) regulation, whose complexity is slowing down its development.

All forms of enterprise reflect an aspect of European history and each is a bearer of our collective memory and culture – ‘our cultures’. This diversity is worth preserving.
1.8 Services and networks providing support and information, legal advice, marketing assistance and other services should also cover the whole range of enterprise types.

1.9 The EESC urges the Commission to respect the identity of cooperatives in accounting matters and treat the members' share capital as the cooperatives' shareholders' equity rather than debt as long as the member does not become a creditor by leaving the cooperative.

1.10 Economic statistics on cooperatives, mutual societies, associations, foundations and similar enterprises are very limited and heterogeneous, making it difficult to analyse them and to assess their contribution to major macroeconomic objectives.

1.10.1 For this reason, the EESC calls on the Commission and the Member States to foster the creation of statistical registers of the above-mentioned forms of enterprise. In particular the preparation of satellite accounts, according to the harmonised criteria of the 1995 European Accounting System (ESA) detailed in the Manual for drawing up the satellite accounts of companies in the Social Economy: Cooperatives and Mutual Societies (1) and in the EESC's Report on the Social Economy in the European Union (2).

1.11 The EESC calls on the Commission to encourage Member States to study the possibility of granting compensatory measures to enterprises on the basis of their confirmed social value or of their proven contribution to regional development (3).

1.12 The EESC calls on the European Commission, in conjunction with a monitoring centre for the diverse forms of enterprise, as an essential element for European competitiveness, to further develop the necessary basic instruments that already exist, whose role would be to ensure that enterprises are not discriminated against in any of the policies affecting them and to coordinate with the different Commission departments on this issue.

1.13 Lastly, in cases where they demonstrate their representativeness, the EESC calls for all organisations which are most representative of the diverse forms of enterprise to be involved in the social dialogue.

2. The diverse forms of enterprise and the internal market in the European Union

2.1 The diverse forms of enterprises existing in the European Union derive from our complex and varied historic evolution. Each of them responds to a particular historical, social and economic situation, often different in every European country. Moreover, enterprises have to evolve and be continuously adapted to the changing societies and market trends, even modifying their legal form. Therefore, the pluralism and diversity of the different forms of enterprise are valuable aspects of the European Union's heritage and are crucial to achieving the aims of the Lisbon Strategy for growth, jobs, sustainable development and social cohesion based on maintaining and developing the competitiveness of enterprises. Protecting and preserving this diversity are of the utmost importance to guarantee competitive markets, economic efficiency and the competitiveness of the economic agents, as well as maintaining the EU's social cohesion.

2.2 This is recognised by the European institutions in the provisions of Articles 48, 81 and 82 of the Treaty and in the Lisbon Treaty (4), Article 3.3 of which proposes, as one of the objectives of the Union, a social market economy based on a balance between market rules and the social protection of individuals as workers and as citizens.

2.3 The diverse forms of enterprise can be defined according to different criteria such as their size, legal structure, forms of access to funding, their objectives, financial and political rights assigned to capital (distribution of profits and dividends, voting rights) or the composition of the capital, public or private, the appointment of managers, their importance to the economy (European, national and local), jobs, risk of bankruptcy, etc. All of these create a matrix of diversity that may be observed in simplified form in the following table:


**DIVERSE FORMS OF ENTERPRISE IN THE EUROPEAN UNION**

<table>
<thead>
<tr>
<th>SIZE TYPE</th>
<th>Multinational</th>
<th>Large</th>
<th>Medium and Small</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public sector-owned</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Listed</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Unlisted</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Family</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Partnership</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cooperative</td>
<td>X</td>
<td>X (*)</td>
<td>X (*)</td>
</tr>
<tr>
<td>Mutual society</td>
<td>X (*)</td>
<td>X (*)</td>
<td>X (*)</td>
</tr>
<tr>
<td>Foundation</td>
<td>X (*)</td>
<td>X (*)</td>
<td>X (*)</td>
</tr>
<tr>
<td>Association</td>
<td>X (*)</td>
<td>X (*)</td>
<td>X (*)</td>
</tr>
<tr>
<td>Other non-profit forms that may be found in Member States</td>
<td>X (*)</td>
<td>X (*)</td>
<td></td>
</tr>
</tbody>
</table>

(*) In some Member States, the European Parliament, the European Commission and the EESC, these types of enterprise are known as social economy enterprises (SEEs). This is a sociological category, not a legal term.

According to the case-law of the Court of Justice of the European Communities (5), foundations, associations and other non-profit organisations can be ‘economic operators’ if they carry out ‘economic activities’ within the meaning of Articles 43 and 49 of the EC Treaty, and are therefore included in this classification.

2.4 Even though the common purpose of any type of enterprise is to create value and maximise results, the parameters or concepts for measuring value and results can differ according to the type of enterprise and the objectives pursued by those who control it or benefit from its activity. In some cases, maximising the results consists in achieving the best return on the capital invested by the shareholder members; in others, creating value and optimising the results mean maximising the quality of the services provided to the members or to the general public (e.g. in an educational cooperative where the owner members are the families, or in a mutual provident society or in public service obligations).

2.4.1 It is also possible for some large enterprises not to have shareholder members and to allocate their financial profits to reinvestment or to social objectives of public benefit, as occurs in the savings banks of some European countries (6).

2.4.2 Besides, in many locally based, micro-enterprises and SMEs, the generation of value is not only expressed in financial profit objectives but also in social purposes such as working conditions, or self management, etc.

2.5 There now follows a more detailed description of the diverse forms of enterprise, according to their size and then according to their type of ownership.

2.6 Multinationals and large enterprises, which are usually listed on the stock exchange, due to their size, tend to thrive in the field of productivity and the competitiveness of economic systems and when they post good results, can also keep employment levels high (7).

2.7 Increasingly, the competitive advantages of enterprises are based on competitive strategies in which research, development and technological innovation (R&D&I) occupy a central position. Multinational firms and large enterprises play a leading role in the R&D&I carried out by the private sector of the economy in the EU, although there may still not be enough multinationals or large enterprises in the leading sectors of the global economy. Additionally, as well as large and multinational enterprises themselves being important for the economy and employment, it must be remembered that each one is often the hub of large, world-wide production networks made up of either SMEs with close links to each other (large enterprise in a network) or of independent enterprises (modular production networks). It is precisely the European countries with the greatest proportion of multinationals and large enterprises that are seeing the earliest slowing down of the loss of production and jobs triggered by the current economic situation.

2.8 Because these enterprises have outsourced many stages in their production processes and services infrastructures to SMEs in recent decades, the levels of production and employment in the latter often depend, among many other factors, on demand from the multinationals and large enterprises, which therefore constitute an avenue for positioning Europe in the global market. Although 30% of the 40 largest industrial enterprises in the world are in the EU (8), their market value is only 24% of

(5) See, for example, Cases C-180/98, C-184/98, Pavlov, and Case C-352/85, Bond van Adverteerders.

(6) For the past 50 years the economics literature has been emphasising the diversity of objective functions according to the type of enterprise – cf. B. Ward (1958), E.D. Domar (1967), J. Vanek (1970), J. Meade (1972) and J.L. Monzón (1989), authors cited in the Manual for drawing up the Satellite Accounts of Companies in the Social Economy (footnote 1).

(7) In some cases large companies may not have shareholder members or distribute profits in any way, as in the savings banks of some European countries. There are also large companies, cooperative societies that issue shares, which are not listed on a stock exchange or mutual societies that operate with their own capital and reserves rather than with capital acquired by the members.

the total, and in some cutting-edge technology sectors, such as those based on information and communication technology, the EU share is confined to a single large enterprise.

2.9 SMEs, SME networks, micro-enterprises and independent workers have promoted substantial technological changes in recent decades and form the backbone of the European economy: 99% of EU enterprises are SMEs and they provide 66% of the jobs (9). Although they are not normally listed on any stock exchange, they may use stock market listing to increase their capital or raise venture capital.

2.9.1 As a rule, SMEs should be supported, and not only through the Small Business Act (10). SMEs often offer a way to keep jobs, since the interest groups that start up and control these enterprises are people with strong links to the area in which they operate, having shown great ability to create and sustain employment. SMEs ‘are the natural incubators of enterprise culture’, permanent training grounds for enterprise executives and leaders.

2.10 Depending on their ownership, enterprises of general interest can be public limited companies or joint ventures and can even take the legal form of a private enterprise. In geographical terms, they can be multinational, national, or local, although most operate in the local or regional sphere. Their activities tend to focus on providing services of general interest, such as public transport, energy, water, waste management, communications, social services, healthcare, education, etc. Nevertheless, these enterprises can also be involved in commercial activities, provided that they comply with the directive on transparency (93/84/EEC (11)). Where they operate in the general interest, their profits are reinvested in regional and local activities, thus making a major contribution to social, economic and regional cohesion. Enterprises that provide services of general interest are, as essential service providers, key players in boosting the economy in general, investing in key sectors that act as levers for the rest of the economy (electricity, telecommunications and their infrastructure, transport, etc.).

2.11 The owners of listed enterprises are their registered shareholders. The shareholders buy and sell their shares on the public stock markets.

2.12 Unlisted enterprises can be large or small but their shares (or participation shares or other stock), by definition, are not quoted on the stock market. Nonetheless, in many cases unlisted enterprises are working towards a listing, especially if venture capital or private investors are involved. Even private SMEs can use stock market quotation when increasing their capital to fund business expansion.

2.13 Family enterprises are a powerful tool for disseminating the enterprise culture and remain the best means of enabling millions of people to go into business, not only in SMEs, where they form the majority, but also in large family enterprises, which in countries as important as Germany, the United Kingdom, Italy or France, account for between 12% and 30% of all large enterprises (12). Family enterprises, whether large or small, are defined by the family group’s exercising permanent control of the enterprise, even if it is a public limited enterprise. In these cases there may be no ambition to list.

2.14 Partnerships are typical business enterprises in the Anglo-Saxon world, whilst also existing in other EU Member States, frequently set up by people in the liberal professions. Enterprises taking the form of partnerships between individuals are an efficient tool for professionals (lawyers, accountants and others) to take part in the professional services business world. This type of enterprise is owned by the partners, whose main bond, apart from the capital they put up, is their own work. When partners retire or leave the partnership they transfer their share in it to the partnership.

2.15 Finally, to complete this examination of the varied list of types of enterprise in the EU, a widely diverse range of private enterprises, sharing similar features of organisation and operation, conduct activities with a social purpose with the prime objective of meeting the needs of persons rather than providing returns to investors of capital (13). These enterprises are mainly identified with cooperatives, mutual societies, associations and foundations (14). The documents of the Commission, Parliament and EESC usually group this set of enterprises together under the heading of social economy enterprises (SEE) (15). Although this term is not employed in every EU country and others use the expressions ‘third sector’ (16),

(13) The Social Economy (footnote 2).
(14) European Parliament report on the social economy (2008/2250 (INI)).
(16) For example, the United Kingdom has the Office of the Third Sector (OTS) which covers voluntary and community groups, social enterprises, charities, cooperatives and mutuals’, in other words, the same set of enterprises that is called ‘social economy enterprises’ in this document. The Office of the Third Sector (OTS) is a government organisation which is part of the Cabinet Office (www.cabinetoffice.gov.uk).
'third system', 'solidarity economy', or others, all these terms describe enterprises that 'share the same features in every part of Europe' (7).

3. The social dimension

3.1 Although multinationals, large enterprises and SMEs do not have an explicit social welfare purpose, their operation on the markets makes a decisive contribution to competitiveness and employment and has an overarching social dimension. This general social and regional dimension is very evident in the case of locally-based SMEs and micro-enterprises strongly linked to the territory.

3.2 Cooperatives, mutual societies, associations and foundations are also very important actors in the EU, with considerable economic activity in three of the five institutional sectors in which the European System of Accounts (the 1995 ESA) groups all centres of economic decision-making in each of the national economies (18). The social economy accounts for 10 % of European enterprises as a whole, in other words, two million enterprises (20), and 7 % (21) of total wage-earning employment. The cooperatives have 143 million members, the mutual societies 120 million, and associations bring together 50 % of the EU population (22).

3.2.1 Whether large or small, these enterprises are located in areas and/or social spheres with problems and challenges that jeopardise the internal market and social cohesion, where they internalise social costs and generate positive externalities.

3.2.2 Because they are rooted in the local communities and because their priority aims are to meet people's needs, these enterprises do not relocate, effectively combating the depopulation of rural areas and contributing to the development of disadvantaged regions and municipalities (23).

3.3 Enterprises providing services of general interest are a lynchpin of Europe's social dimension. They have a specific role to play as an integral part of the European social model, because through their service provision activities they observe and promote the principles of high quality, safety and reasonable prices, equal treatment, universal access and users' rights. Consequently, they also have a direct and indirect effect on employment, because sound infrastructure attracts private investment. General interest enterprises form an essential part of the economy, employing between 25 % and 40 % of the workforce and accounting for over 30 % of GDP.

3.4 Social enterprises (social cooperatives and other similar enterprises, under many different legal forms) work in the field of providing services such as healthcare, the environment, social services and education. They frequently bring major resources in the form of altruistic contribution into their production processes, acting as effective instruments of public social welfare policies. Moreover, a large part of social enterprises are WISEs, ('Work Integration Social Enterprises') whose objectives are those of creating employment and integrate persons that are disadvantaged on the labour market.

3.5 A social enterprise is not always a legal category but includes enterprises of social and economic benefit in very diverse sectors. They are not easy to classify. The essential point should be how to support these entrepreneurs by providing conditions that allow them to develop their capacity for innovation, an ability that is particularly valuable at times of crisis (24). The EU Commission should seriously consider drawing up a policy for social enterprises (25).

3.6 In cases where they demonstrate their representativeness, the organisations which are most representative of the diverse forms of enterprise should be involved in the social dialogue.

3.6.1 Some of the sectors mentioned above have already participated in sector talks, such as the Association of European Cooperative and Mutual Insurers (AMICE) in insurance, and some members of Cooperatives Europe (26), and the European Association of Co-operative Banks (EACB) and the European Savings Banks Group (ESBG) in the banking sector (27).

(18) The 1995 ESA groups all the organisations that have a similar economic behaviour (ESA 95,2.18) into 5 large sectors (ESA 95, Table 2.2); a) Non-financial corporations (S.11); b) Financial corporations (S.12); c) General government (S.13); d) Households (S.14) and e) Non-profit institutions serving households (S.15). The 1995 ESA also classifies different producer units into industries, each comprising those engaged in the same, or similar, kind of activity (ESA 95,2.108), and breaks them down into 5 different levels of regrouping containing 60, 31, 17.6 and 3 industries. (ESA 95, Annex IV).
(20) SESs directly provide 11 million Europeans with full-time jobs and can be found in every kind of economic activity, whether in highly competitive sectors such as finance or farming or in innovative sectors such as services to individuals or renewable energies.
(21) EESC (2008), The Social Economy (footnote 2).
(22) COM(2004) 18 final, point 4.3 (Promotion of co-operatives in Europe).
(23) It's time for social enterprise to realise its potential: Trimble, Robert, in The Bridge magazine, p.17. www.ipt.org.uk.
(25) It should be noted that some organisations, such as Cooperatives Europe, are undertaking studies on their representativeness to participate in the consultations on the social dialogue.
4. The legal and regulatory framework of the diverse forms of enterprise

4.1 Introduction: the diverse forms of enterprise and the internal market

4.1.1 The formation and development of the internal market cannot make the ends justify the means and a legal and regulatory framework that reflects the characteristics of the different economic operators in the market should consequently be established so that a level playing field is created between all different forms of enterprise, taking into consideration the characteristics of each form. At present, this framework is generally designed for large listed companies and its application to all types of enterprises creates obstacles for smaller enterprises. This framework should be effective in encouraging operators to behave efficiently, which in turn will help to make the system more equitable. This framework will be applied through company law, accounting, competition and tax law, statistical harmonisation and enterprise policy.

4.2 Company law

4.2.1 European Public Limited Companies and European Cooperatives have their own statutes, but other types of enterprise face various barriers in the internal market owing to the lack of European statutes. European SMEs need flexible European legislation to make it easier for them to operate across national borders. Cooperatives also need the European Cooperative Society (ECS) regulation to be simplified, as its complexity is hampering progress in this field.

4.2.2 The lack of legislative cover prevents foundations that operate at a European level from working on an equal footing with other corporate legal forms. The EESC therefore welcomes the results of the feasibility study for a European Foundation Statute and calls on the Commission to conclude the impact assessment in early 2010 by presenting a proposal for a statutory framework that will enable foundations of European scope to operate on a level playing field in the internal market (27).

4.2.3 For similar reasons, the EESC also requests that the Commission start work on approving European statutes for European associations and European mutual societies.

4.3 Accounting law

4.3.1 Accounting standards should be adapted to different forms of enterprise. The obstacles that introduction of the new International Accounting System (IAS) is causing for listed enterprises are another example of limitations in connection with accounting law. European accounts cannot be harmonised at the expense of abolishing the essential characteristics of some of the different types of enterprise that exist in the European Union.

4.3.2 In the specific case of cooperatives it is obviously difficult to define a concept of shareholders' equity that can be generally and indiscriminately applied, which could have negative and destructive effects on entrepreneurial diversity. The EESC urges the Commission to respect the cooperative identity in accounting matters and treat the members' share capital as shareholders' equity rather than debt as long as the member does not become a creditor by leaving the cooperative (28).

4.3.3 The Committee agrees with the de Larosière Group's (29) recommendation, which argues that accounting standards should not bias business models, promote procyclical behaviour or discourage long-term investment and the stability of enterprises.

4.4 Competition law

4.4.1 Each corporate legal form should be able to conduct its business while preserving its own modus operandi. Consequently, competition law cannot be based on a single, uniform model of entrepreneurship and must avoid discriminatory behaviour and value good practice at the national level. It is not a matter of establishing privileges but of promoting equitable competition law. The EESC, in consonance with previous opinions (30), therefore advocates that the competition and tax rules should provide for the differential costs of enterprises that are not bound to inefficient production processes but to the internalisation social costs to be regulated in a compensatory manner.

4.4.2 Certain competition policy tools are not neutral towards the different types of enterprise, as the EESC has already pointed out: 'The social economy sector needs tailor-made solutions as far as taxation, public procurement and competition rules are concerned' (31). For example, public support for private investment in R&D and R&D is to increase the competitiveness of the production system mainly favours large enterprises, which are

(29) OJ C 117, 26.4.2000, p. 52 (point 8.3.1). Also OJ C 117, 26.4.2000, p. 57. The European Commission makes a distinction between ‘state aids’ and ‘general measures’, including among these last ones the ‘tax incentives for investments in environmental issues, R&D or training, which only benefit the companies that carry out such investments, without this necessarily constituting State aid’ (Commission notice on the application of the rules on State aid to business taxation (OJ C 384, point 14, 10.12.1998, p. 5). In the European Union, large firms are the most active ones in R&D, for example in Spain 27.6 % of large companies invest in R&D, while only 3.7 % of companies with less than 250 employees invested in R&D, according to data from 2007 www.ine.es.
the ones that mostly conduct these activities. Also, since large enterprises have greater freedom of choice in the location of their production facilities they can take better advantage of public investment in infrastructure for the manufacturing sector. This sometimes generates competitive disadvantages for small enterprises which have few real possibilities of choosing between different business location options.

4.4.3 Competition rules should also consider the singularity of social enterprises, which produce and distribute non-market goods and services to marginalised people or those at risk of social exclusion and bring important altruistic resources into their production processes.

4.5 Tax law

4.5.1 Frequently, in some Member States, some enterprises are subjected to situations of competitive inequality for reasons which are unconnected with production processes in themselves but derive from market assignment failures (32), in other words, situations in which the market itself is inefficient, assigning resources in a non-optimum way. The EESC supports the directive on reduced VAT rates for services supplied locally, which essentially involve SMEs and reiterates its agreement with the principle formulated by the Commission whereby the tax advantages granted to a type of enterprise must be proportionate to the legal limitations or proven public value added that are inherent to that form (33). The EESC consequently requests the Commission to encourage Member States to study the possibility of granting compensatory measures to enterprises on the basis of their confirmed public value or their proven contribution to regional development (34). In particular, solutions should be sought to the problem facing not-for-profit organisations arising from the fact that they cannot claim back VAT paid on the acquisition of the goods and services they need to carry out their activities of general interest in those countries where this situation is a problem. The tax regimes applied to NGOs that conduct economic activities unrelated to public benefit purposes should also be mentioned.

4.5.2 At present, SMEs have few real opportunities to invest in R&D&I, which is an important element to make production efficient and keep business competitive. This creates a competitive disadvantage that should be balanced through tax benefits rewarding SMEs investing in this field. The recommendations include a broad range of compensatory measures, varying from state to state, of which the following should be mentioned: special tax concessions for making a number of different investments in R&D, repayments should profits not materialise and lower social security contributions. Taking account of the strategically important role SMEs have in the Community’s economy, the EESC recommends that each Member State use the best possible combination of compensatory measures to assist the survival and growth of SMEs in their economies. By far the greatest impact that these programmes have is seen in their support for the development of specialist R&D SMEs in their early years.

4.6 Harmonisation of statistics

4.6.1 The aggregate figures for the different types of enterprise are drawn up in the Member States and in the EU as a whole according to criteria approved by the European System of National and Regional Accounts (ESA 95). However, economic statistics on cooperatives, mutual societies, associations, foundations and other similar enterprises are very limited and are drawn up according to heterogeneous criteria, making it difficult to analyse and assess their contribution to the great macro-economic objectives. Consequently, the Commission commissioned a Manual (35) which will make it possible to prepare national statistical records of these enterprises based on homogeneous criteria in national accounts terms. The EESC calls for these new analytical instruments to be used to draw up harmonised statistics for the above-mentioned types of enterprise in all the countries of the European Union and for more effective policies to be implemented in this respect.

It would also be advisable to establish the methodology to give impetus to a European observatory for micro-enterprises.

Brussels, 1 October 2009.

The President
of the European Economic and Social Committee

Mario SEPI


(35) Manual (footnote 1).