Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Delivering the benefits of the single market through enhanced administrative cooperation'

COM(2008) 703 final

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On 6 November 2008, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Delivering the benefits of the single market through enhanced administrative cooperation

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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.

At its 457th plenary session, held on 4 and 5 November 2009 (meeting of 5 November), the European Economic and Social Committee adopted the following opinion by 128 votes in favour, with two abstentions.

1. Conclusions

1.1. The EESC supports the more decentralised, network-based approach for cross-border cooperation within the single market that will result from the Internal Market Information System (IMI). The EESC believes that the system will help to guarantee effective compliance with single market rules and to adopt suitable solutions to the problems encountered by the public and businesses.

1.2. In their respective Member States, civil society organisations can play an active, significant role in the operation of IMI, and can also help raise awareness about the system and how it works.

1.3. As IMI will identify national obstacles preventing the Services and Professional Qualifications Directives from being properly implemented, and may extend its scope to other sectors, it would be helpful if the Commission were to define a possible specific warning and/or penalty system to remove these obstacles.

1.4. Insofar as the transmission of data from the IMI system is subject to the scheme to protect the privacy of personal data established by Community law, the Committee recommends the notification of those concerned by the data so that they may exercise the rights established in the scheme, in accordance with ECJ case law.

2. Introduction

2.1. Article 10 TEC broadly establishes the 'principle of Community solidarity' between the Member States and the Community, which has been considerably expanded by ECJ case-law [1], according to which, Member States should:

— adopt all measures of national law necessary to implement legally binding Union acts and

— cooperate with each other and with the Community to fulfil the aims of the Treaty and of secondary legislation.

2.2. Administrative cooperation between the Member States and the Union has to date taken place in specific areas, such as taxation [2] (setting up a central office in each Member State and the obligation for Member States to assist one another), customs, competition (network of national authorities) or even, for example, in policies on asylum, immigration and external affairs (see the ARGO-2002 Programme).

2.3. The EESC has addressed the issue of administrative cooperation between national and Community authorities in an own-initiative opinion [3], which concluded that well-defined and effective national political and administrative procedures, together with better lawmaking and implementation and enforcement, are an integral part of EU good governance.

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[1] Case C-392, judgment of 15.11.2005, and the conclusions of the Advocate-General, Mr Geelhoed.

[2] OJ L 264, 15.10.2003.

[3] OJ C 325, 30.12.2006.

2.4. Decision 2004/387/EC ([4]) of 21 April 2004 created a programme for the interoperable delivery of pan-European eGovernment services to public administrations, Community institutions and other entities and to European businesses and citizens (the IDABC programme). The decision provides for the application of projects of 'common interest' and horizontal measures, for which the implementation costs will be borne by the Community in proportion to its interest (Article 10).

2.5. On 17 March 2006, Member State representatives in the Internal Market Advisory Committee approved the Global Implementation Plan for the Internal Market Information System, hereinafter 'IMI', and its development, aimed at improving communication among Member State administrations. Commission Decision 2008/49/EC ([5]) concerning the implementation of the Internal Market Information System (IMI) as regards the protection of personal data qualifies this system as a project of common interest for the purposes of the IDABC.

2.6. IMI is intended to support legislative acts in the field of the Internal Market that require the exchange of information between Member States' administrations.

3. **The Commission communication**

3.1. Lack of trust and confidence in the legal framework and in supervision in other Member States has resulted in a multiplication of rules and a duplication of controls for cross-border activities. This has been one of the main challenges to the smooth running of the single market to date and, as a consequence, Member States should cooperate closely and build trust in each others' systems.

3.1.1. IMI will enable Member States to fulfil their legal obligations to exchange information. It will also allow new forms of administrative cooperation which would not be possible without the support of an electronic information system.

3.2. IMI makes available to competent authorities in Member States a simple tool to find authorities in other Member States and to send them a request for information through a structured set of questions, which are based on specific areas of EU legislation.

3.2.1. IMI is designed to be an efficient and effective means to lower the unit cost of the communication between Member States which needs to take place in order to implement internal market legislation properly. It has been deemed useful to start implementing the system in two restricted fields: the recognition of professional qualifications, which has already begun, and the Services Directive. The experience acquired in these two fields will be used when the system is later rolled out to other sectors essential to the operation of the internal market.

3.2.2. IMI will thus contribute to creating the environment of trust and confidence needed to ensure that the single market functions smoothly and delivers its benefits.

3.3. IMI is a multilingual tool built for an EU with 27 Member States and 23 official languages, but will be implemented in all 30 EEA countries. Multilingualism can be an enriching process. By using new technologies supported by human and automatic translation services, IMI is a good example of concrete measures that the EU can take to minimise these obstacles and to close the communication gap between administrations in Europe.

3.4. In the context of modernising the governance of the single market, IMI will support a more effective, decentralised, networked-based approach to cross-border cooperation.

3.5. IMI helps Member States to engage in more effective co-operation in the implementation of Internal Market legislation, supporting competent authorities in Member States by helping them overcome important practical barriers to communication such as different languages and a lack of clearly identified partners in other Member States. Its aim is to increase efficiency and effectiveness in day-to-day co-operation between Member States.

3.6. The development of IMI is based on three key principles:

— it does not impose additional administrative cooperation obligations on Member States beyond those already contained in the relevant Internal Market legislation;

— it provides the flexibility to respect the diverse administrative structures and cultures in Europe;

— it is a single system based on reusable building blocks. It is designed to be able to support many pieces of Internal Market legislation and will thus avoid a proliferation of information systems.

3.7. The Communication rightly highlights the relation between the IMI system and the protection of personal data, emphasising that it is fully subject to the relevant legislation in the area, particularly Directive 95/46/EC and Regulation (EC) No 45/2001.

3.7.1. Access to the information managed by IMI is restricted to national bodies and authorities designated as 'competent authorities' in the directives to which the system currently applies.

3.8. Lastly, the Commission believes that the current level of investment in training and awareness needs to be intensified in order to bring about the desired outcomes. The Commission will explore the various options and assess the possibility of a training and exchange programme, if necessary.

([4]) OJ L 181, 18.5.2004.
([5]) OJ L 13, 16.1.2008.

3.9. The Commission published a recommendation on 29 June 2009 ([6]) on measures to improve the functioning of the single market, in which it states that there must be a coordinated and cooperative approach — in partnership between the Commission and Member States — with a common objective of improved transposition, application and enforcement of single market rules. This implies that Member States assume shared responsibility for and therefore a more proactive role in managing the single market.

4. **General comments**

4.1. The more decentralised and network-based approach to cross-border cooperation that setting up the IMI requires will boost the right to sound administration. This will benefit the public, the institutions and businesses. The fundamental principles of flexibility, re-use and not imposing further obligations on Member States should be upheld.

4.1.1. The right to good administration is applied here by providing citizens with accurate, specific information, in a flexible manner, on the requirements of the Member States in which they intend to set up, provide a service or work, and the competent authorities to which they must apply. The system will also indirectly provide information on unjustified national obstacles to the freedoms guaranteed by Community law, which will enable the Commission to react accordingly.

4.2. To ensure the smooth operation of the internal market, Member State authorities need to cooperate closely and to build mutual trust in IMI, thus helping to improve transparency and good governance. For close cross-border cooperation between national authorities with powers in single market issues, Member States should take the necessary steps to guarantee the operation of the cross-border networks or electronic information systems created by the Commission, such as IMI.

4.3. Decision 2004/387/EC (IDABC) provides for a schema to be drawn up which defines an equitable sharing between the Community and the Member States of the operational and maintenance costs of the eGovernment and infrastructure services (Article 7-3). Member State authorities should therefore provide the investment needed to ensure that IMI works properly. The EESC believes that, this being a shared competence and thus a shared responsibility, the Member States should also make additional efforts.

4.4. A successful roll-out of the system will require closer administrative cooperation between Member State authorities and the Commission. In future, the scope of IMI should be expanded, as this is currently confined to the Directive on professional qualifications and the Directive on services in the internal market.

4.4.1. In order to achieve this administrative cooperation, Decision 2008/49/EC establishes a system for information exchange and processing which, owing to its sensitivity, is assigned to the different administrative units involved in a fragmented manner, with each being entrusted with managing a specific part of the system. Therefore, in addition to the Commission, IMI requires the involvement of national participants: namely, the coordinator and the system users. Under the supervision of either the national authority or the coordinator, the system users are identified on the basis of the different roles assigned to them by the request handler, allocator, referral handler and local data administrator.

4.4.2. It will be necessary to coordinate this system with the administrative cooperation mechanisms provided for in the directives to which it will apply, i.e. the information exchange mechanisms, the relevant national authorities, and the Services and Professional Qualifications Directives. In this context, consideration will have to be given to the possible direct or indirect relations between the IMI users and the national authorities designated in the directives, particularly, that have a direct or indirect impact on the internal market.

4.4.3. It would be helpful to cover the following aspects of the Services Directive, for the purposes of coordination with IMI:

a) the broad definition of 'competent authority' (Article 4);

b) the establishment of points of single contact (Article 6) and liaison points (Article 28);

c) the establishment of highly harmonised procedures for authorisation and communication with applicants (Article 13);

d) the establishment of alert mechanisms (Article 32), which could lead to the creation of a European network of authorities in Member States.

4.4.4. Lastly, with regard to the Professional Qualifications Directive, it would be useful to cover the following cooperation mechanisms:

a) the detailed definition of 'competent authority' and the treatment of professional attestations issued by professional organisations (Article 3);

b) administrative cooperation between Member States for the free provision of services (Article 8);

c) harmonisation of the procedure to recognise professional qualifications for the purpose of establishment (Article 51);

d) the specific administrative cooperation system which sets out the terms for the exchange of information on disciplinary action and criminal sanctions, the list of competent authorities and their coordinator (Article 56) and, lastly, the establishment of national contact points with the remit of providing specific information relevant for the application of the Directive (Article 57).

([6]) OJ L 176, 7.7.2009, p. 17.

4.4.5. The EESC believes that if the IMI system is to be introduced promptly, it must include the social aspects (contribution periods, pension rights, etc.) relating to the fields covered by this first phase. The EESC advocates such an approach not only because it is customary for it to do so, but also because there must be a direct link between social and economic concerns and the exercising of professional activity.

4.4.6. This link has been highlighted by the EESC on a number of occasions: for example, in its opinion of 14/01/2009 ([7]) on the Social and environmental dimension of the Single Market, the Committee stated that 'the European institutions must take account of both the legitimate interests of business and the fact that economic freedoms need to be subject to regulation so as to ensure that their exercise does not undermine the fundamental social rights recognised by EU law, international labour standards and the laws of the individual Member States, including the right to negotiate and the right to enter into and implement collective agreements'.

4.4.7. In particular, the EESC has advocated harmonisation measures in this context, such as the coordination of social security schemes and pension 'portability' initiatives ([8]).

4.5. The EESC is in favour of all Community legislation working effectively, the internal market reaching its full potential and the appropriate measures being taken to raise the awareness of the competent authorities and give them appropriate training.

4.6. In order to strengthen administrative cooperation, the operation of IMI should be reinforced, as should the organisations cooperating in it. The EESC and civil society organisations should also play a key role, particularly by mounting awareness campaigns about its importance in the functioning of the internal market.

4.7. The EESC believes that, in the light of experience gained in operating the IMI system and in the development of Community law, it will be possible to extract general principles leading, in the future, to more comprehensive and detailed Community rules on administrative cooperation, through the adoption of a regulation covering the most general aspects.

4.8. IMI therefore constitutes the first phase of this process: as regulated here, it will streamline the Member States' systems for administrative cooperation both with one another and with the Commission in those areas which, based on mutual recognition and the principle of non-discrimination, are essential for the operation of the internal market. Meanwhile, it maintains the protection of personal data, an issue that is crucial for European citizens, given the detailed assignment of roles among those managing IMI that has been established through the Commission's activity in this field.

4.9. Lastly, with regard to the relation between the IMI system and the personal data protection scheme, it is worth noting the recent publication of the Conclusions of the Advocate-General, Mr Ruiz-Jarabo ([9]) Colomer, interpreting some of the provisions of the legislation laying down this system and fully applicable in this context. This interpretation was confirmed in the ECJ judgment of 7 May 2009 regarding the obligation to ensure the right of access to information on the recipients or categories of recipient of personal data and on the content of the data disclosed not only in respect of the present but also in respect of the past, and the establishment of a time-limit for the storage of such information, maintaining a fair balance between the interest of the data subject in protecting his privacy and the burden which the obligation to store that information represents for the controller.

4.10. The Advocate-General's interpretation concerns, in particular, two distinct rights recognised by Directive 95/46 and regulated in such a way that the application of one (the right to deletion of data within one year) appears to make it difficult to apply the other (the right of access to data relating to processing): by deleting data in accordance with Directive 95/46, the right to access becomes impossible, as one cannot request information that no longer exists. It would be advisable to take on board the interpretation of the Advocate-General and of the European Court of Justice so that the two rights, as recognised by Community law, can co-exist: thus, the interested party must be informed of the transfer of data, including the identity of recipients and the existence of a one-year time limit to exercise the right to access, after which time the data will be deleted and will no longer be accessible.

Brussels, 5 November 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([7]) OJ C 182, 4.8.2009, p. 1.
([8]) OJ C 228, 22.9.2009.
([9]) Conclusions of 22.12.2008, case C-553/07.