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### Information and Notices

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II

(Preparatory Acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

420th PLENARY SESSION OF 28/29 SEPTEMBER 2005

Opinion of the European Economic and Social Committee on ‘The contribution of tourism to the socio-economic recovery of areas in decline’

(2006/C 24/01)

On 10 February 2005, the European Economic and Social Committee, under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on: The contribution of tourism to the socio-economic recovery of areas in decline.

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 27 July 2005. The rapporteur was Mr Mendoza.

At its 420th plenary session held on 28 and 29 September 2005 (meeting of 28 September 2005), the European Economic and Social Committee adopted the following opinion by 135 votes to 2 with 2 abstentions.

1. Introduction

1.1 The European Economic and Social Committee has already drawn up various opinions as a contribution to the creation of a European tourism policy. In this context, the drafting of a further opinion is proposed, which would act as a reference point for certain tourism initiatives — backed by the actions of European, national, regional and local institutions, social partners, other civil society organisations and tourism sector players — in a united effort to offer alternatives to areas in decline, particularly to local people and businesses that are financially dependent on these areas, with a view to maintaining economic activity and all the benefits which this brings.

1.2 This document is intended to contribute to the much-needed regeneration of a number of areas throughout the European Union, which are, for various reasons, currently in socio-economic decline. It focuses on the alternatives that the tourism industry can offer these areas.

1.3 The following procedure for the drafting of the final version of the opinion is being followed:

— First study group meeting: drawing up the list of issues to be addressed in the opinion.

— Public hearing held in Córdoba (Spain) and second study group meeting, which enabled the identification and verification of best practice for initiatives aimed at rehabilitating areas in economic decline through tourism, in line with the opinion’s main objective of publicising experiences that can be proved to be effective and serve to boost these initiatives or the development of others in areas that were, are or may in the future be suffering socio-economic decline.

— The third and final meeting: shaping the final document for Section discussion and the EESC plenary session.

1.4 Two situations with mutually complementary features should be taken into account:

— As is apparent throughout this opinion, tourism is a great opportunity and alternative for areas in decline; it can provide them with a source of economic activity with enormous potential for social and business development and job creation. The regeneration of areas in decline can and should bring about the establishment of new industries with better prospects and able to improve the quality of life.
— Some areas in decline may become tourist destinations capable of absorbing the expected increase in global tourism; this should be achieved in a diversified and sustainable manner.

2. Scope and outline of the opinion

2.1 The opinion is not intended to be a review of the processes which have brought these areas to their present situation, nor should it analyse restructuring activities carried out in other sectors (industrial, mining, agricultural, etc.), although such activities may provide pointers for our proposals.

2.2 In our analysis, we will begin by distinguishing whether the area in question has undergone specific restructuring or whether it is a deprived area yet to develop major industries, where tourism can provide a starting point and drive more widespread development.

2.3 Hence, our opinion is set out as follows:

2.3.1 Analysis of the situation of areas in decline and the principal issues — social, labour, business and institutional commitment aspects, etc. — which should be taken into account in future tourism proposals. The precise identification of what is understood by the term ‘areas in decline’ is of utmost importance, since diverse circumstances and conditions can lead to different alternatives.

2.3.2 Therefore, our opinion addresses the following aspects:

2.3.2.1 The situation of areas in decline: identify these areas’ failings from various perspectives, taking account of the following: problems sometimes caused by a history of dependency on one type of industry or business; environmental disadvantages or deterioration; inadequate or ill-suited infrastructures which impede the move into tourism; labour force with a background of skills which cannot be transferred to the tourism sector; social environment unsuitable for integrating new activities such as tourism. The fact that areas in decline are not usually natural tourism areas should be taken into account in particular, since this makes it especially difficult to find the right form of tourism: cultural and archaeological tourism, sport tourism, education and many other alternative forms of tourism. In particular, ‘positive experience’ is recognised as the basis for all tourism products and should be identified and promoted.

2.3.2.2 Institutional commitment: this opinion represents a call for the cooperation which is essential between the different authorities and institutions; it should describe the forms, scenarios and models of interinstitutional cooperation as well as the public resources that can contribute to the launch of tourism. Special reference is made to the role of the European Structural Funds in the regeneration of areas in decline. The institutions have an important role to play in providing the training needed to reskill the labour force from industrial areas in decline for jobs in the services sector.

2.3.2.3 Social roots as an objective: industries in decline have been linked for many years to the areas where they initially developed and subsequently declined. This means that local people have over the years established a bond going back generations from both living and working in these areas. The tourism initiatives that we are setting out should go a long way to maintaining this bond by creating the conditions that make it possible: housing, services, communications, etc. Another way of encouraging this social bond is through the creation of stable jobs. Although tourism is a good source of employment, the serious problem of seasonality can hinder the development of this social bond and cause unwelcome migration at certain times of the year.

2.3.2.4 Social dialogue, vital to the analysis and development of alternatives: we propose that social dialogue through unions and associations be the cornerstone of the establishment of a commitment by workers and employers to carry out projects and initiatives. This bipartite dialogue should lead to a tripartite dialogue involving the authorities in the search for feasible alternatives. Other civil society and tourism sector organisations should also help to bring projects to fruition.

2.3.2.5 Promoting initiatives committed to sustainable tourism: despite the social upheaval that socio-economic decline represents for large areas, it is clear that the approach adopted for new development alternatives can not only correct errors in the way previous measures were planned, but also situate new activities within the socially, economically and environmentally sustainable parameters advocated by the EESC for tourism.

2.3.2.6 The environment as a focus of recovery and planning of tourism activity:

— although this opinion is not intended to examine the origins of an area’s socio-economic decline, it can be seen that due to natural, geographic or geological reasons, many areas in decline have developed a dependency on one type of industry. This has often not only failed to respect the environment, but has caused it real damage. The new environmental criteria and commitments can facilitate the recovery of these areas and help to boost projects’ tourism potential;

— our opinion will establish the priorities for environmental initiatives that should complement the development of tourism projects.
2.3.2.7 *Sustaining and increasing business activity and the promotion of productive investment*: we have tried to draw up as specific a list as possible of initiatives supporting entrepreneurship. Entrepreneurship in areas in decline is rooted in past specialisation, due to entrepreneurs direct involvement in the traditional industry or in ancillary businesses. In this respect, the opinion explores various initiatives for establishing and maintaining businesses, business training and capacity building, developing criteria for competitiveness, research and development, design, marketing, etc. It should also encourage approaches such as promotion, partnership and cooperation between businesses and between businesses and the authorities, and the creation of networks between businesses, areas and sectors. Special attention should be paid to micro, small and medium-sized businesses.

2.3.2.8 *Maintaining and increasing employment levels as a priority*: the process of socio-economic decline in businesses and sectors constitutes the greatest social cost due to the loss of jobs; therefore the main objective of regeneration initiatives should be to maintain and, if possible, increase employment in areas in decline. In order to do this, we propose that, in addition to transitional social protection schemes, the development of tourism initiatives should also aim to promote job-creating investment, vocational training and retraining, promotional measures, a culture of self-employment and a social economy.

2.3.2.9 *Integrating all factors that contribute to a tourism policy*: tourism projects for the socio-economic recovery of areas in decline must provide a boost for all the factors, in addition to those already mentioned, which shape tourism policy. Thus, the contribution of cultural, historical, heritage, natural, sporting and other factors must be established.

2.3.2.10 A significant challenge, already successfully met in certain areas, is that of making good use of aspects of previous activities in the design of new tourism alternatives.

2.3.3 It is very important to analyse in detail the diverse experiences of the EU countries, not only to try to adapt them to other environments, but also to support and reinvigorate them. Since positive experiences do not seem to be very common, it is not easy to come up with a very extensive and diverse range of examples of such initiatives.

2.3.4 In particular, account should be taken of the possibility of different tourism destinations in areas in decline operating as a network, providing a strong base for promotion and mutual support.

2.3.5 Fostering self-employment is undoubtedly an important factor in enabling workers to adapt to a new situation. Indeed, the study of this contribution will greatly benefit areas in decline in their transition to tourism areas and to rural tourism areas particularly. The support that this type of employment needs to be an effective instrument in this difficult adaptation process should be studied.

2.3.5.1 Some initiatives to develop in this field:

2.3.5.1.1 At a European level, self-employment is defined as workers' capacity and decision to practice an activity for their own account, either individually or as a group. A self-employed person is above all a worker who, in undertaking an independent activity, maintains civil and commercial relations with suppliers and clients.

2.3.5.1.2 For years, self-employment has represented an effective form of defence against industrial economic crises, since it has made it possible to maintain employment levels and meet the need to create new jobs.

2.3.5.1.3 Self-employment is currently increasing amongst young working people and women.

2.3.5.1.4 To be effective, tourism services based on self-employment must encourage the development of new professional skills. Some, but by no means all, of the new rural professions that can be created, are as follows:

- Specialised trade in local products
- Traditional crafts and food products
- Sports and environmental leisure services
- Audiovisual and virtual reality facilities
- Cultural promotion
- Childcare, campsites and hostels
- Natural medicine
- Aesthetic enhancement
- Traditional construction and revival of trades
- Internet cafés
- Promotion of local property
- Advice on the new activities
- Production of goods and services usually consumed in tourist accommodation
- Specialised attention for the elderly.
2.3.6 Furthermore, social tourism will certainly play a role in the future as an alternative for numerous areas in decline seeking new economic activity through tourism. Due to its distinct characteristics, social tourism is a particularly useful tool in the fight against seasonality and for the staggering of holidays.

2.3.7 The new European scenario for developing tourism alternatives in areas in decline: the opinion refers to the opportunities that the enlarged Europe provides for establishing general frames of reference for action, exchange of information, inter-project associations, the promotion of best practice, the development of public-private cooperation, etc.

2.3.8 The commitment in the Constitutional Treaty to citizens, their rights and the most deprived regions and areas, enables our opinion, together with the section on tourism in the Constitutional text, to provide a European response more in touch with national, regional and local situations.

2.4 Integration of lines of action that can contribute to an alternative: the EESC’s previous opinions, the Commission’s and European Parliament’s initiatives and the initiatives of institutions such as the World Tourism Organisation and the International Bureau of Social Tourism, are explored in the text of this opinion.

2.5 Experience as a key focus: this opinion is intended to be practical and useful, particularly for areas that we wish to help recover. Therefore, it will set out a list of best practices in the development of this type of initiative.

3. Areas in socio-economic decline

3.1 It is not easy to define exactly what is meant by areas in decline as referred to in this opinion’s title, not only because of the diversity of their characteristics, the origin and cause of their decline and the scale or range of its effects, their geographical spread, but above all because of the gravity of the consequences for local residents and businesses.

3.2 Perhaps the main element that should be studied in order to characterise and distinguish the different kinds of areas in decline is their economic history, in the form of various indicators. This should make it clear whether the situation has arisen recently due to outside technological, social or economic changes, or whether it is a permanent situation and the area has never, at any point in its history, achieved the economic development needed to bring wealth and prosperity to its inhabitants. This difference is undoubtedly very important in identifying the ideal way to tackle the decline and finding valid alternatives. Business experience, the training of the local people and hence the possibility of finding a replacement or new activity all differ greatly from one case to another.

3.3 Where areas have not yet achieved a good level of economic development, the causes of the situation can be very varied: a peripheral location, extreme environmental conditions, insufficient infrastructure, a local population lacking in entrepreneurship and finally a whole group of factors that have caused and continue to cause the local population to migrate to areas with more opportunities for economic development, both in their own country and abroad. In short, the progressive depopulation and subsequent social upheaval of large, mainly rural, areas of Europe is a problem being decisively addressed by EU regional development policies and instruments. Tourism and the development which it brings are the objective of several useful actions in this field.

3.4 Where areas have at some time enjoyed strong economic development based on a number of activities (agriculture, mining, the textile, metal or chemical industries for example) and have for various reasons had to abandon this activity, the problem is basically the breakdown of a social model, with all the repercussions of this for the local population and the fabric of the local economy. In these cases, dependence on one type of industry or lack of economic diversification are additional factors that can hinder the search for an alternative to the job losses that economic decline entails.

3.5 There are many factors that can and do contribute to the decline of a formerly active, profitable and competitive area, which created both employment and wealth. However, on a global scale, it is possible that the globalisation of economic activity and technological change lie at the heart of these factors. Markets are changing rapidly, often very suddenly, and the stability that industry brought to those nations that knew how to properly apply industrial principles in previous centuries has disappeared and been replaced by technological and social change, expanding markets, real-time information on a global scale, worldwide competition and the relocation of manufacturing and services. The cost of labour has been presented as the main factor in the location of industries, but it is research capacity, development and innovation, the proximity and quality of services, management training, and employees’ skills that, together with access to technology, determine the competitiveness of an economic activity. Ending the process of deindustrialisation in Europe and finding alternative ways of creating employment is possibly the biggest challenge facing Europe, as the Lisbon Strategy acknowledges.
3.6 The effects of the decline of an area on the local population and businesses are wide-ranging; job losses, general impoverishment, demographic changes, depopulation and the loss of the industrial fabric. However, it is important to point out that these effects reverberate down the generations in many different forms. Those suffering directly from economic decline often find in social protection schemes a type of replacement that is undesired, but needed insofar as the necessary income is received through social subsidies. This is the case when large industrial and mining businesses close down and young and middle-aged people, potentially capable of the work, are forced into inactivity and reliance on social subsidies. Although this situation is undesirable, the problems of the next generation, who do not have jobs or subsidies, are even more worrying. In situations of this type, entrepreneurship, diversification of activities and training are more than an alternative, they are an absolute necessity.

3.7 In short, it is for these areas in decline, those that have not achieved economic development and those that have lost it, that tourism can represent a viable alternative, moving their economic development towards a strong, stable industry, with good current and future prospects, which creates jobs and is capable of sustaining an economic, social and environmental balance. It is clear that the cultural and economic change that this will in all likelihood entail will not be easy and not all cases will be successful, but there are few alternatives for areas in decline and it is possible that those alternatives available would place demands that would be even harder to meet.

3.8 It should not be forgotten that sometimes within or near large cities, even cities with a thriving economy, marginalised and run-down areas with little or no economic activity can spring up. In these cases, various international events can assist the economic recovery and revitalisation of such areas. Examples such as the World Exhibitions in Seville and Lisbon, the Olympic Games in Barcelona, or more recently, Athens, have proven essential to physical rehabilitation. They have unleashed a new momentum and created conditions conducive to such areas becoming a new tourist destination.

4. Objectives and methods of action

4.1 Having analysed the situation, origins and essential characteristics of areas in decline, it makes sense to define the objectives and methods that will facilitate our study, as indicated in this opinion’s title, of the contribution of tourism to the socio-economic recovery of areas in decline.

4.1.1 First and foremost, it should be pointed out that the main objective of all economic development can only be to provide the population, the people who live locally, with suitable conditions for personal and social development, so they do not feel obliged to emigrate or move. In short, it is to maintain the social fabric that has survived for generations in the area. Therefore, tourism initiatives proposed as alternatives must effectively provide not only the necessary infrastructure, but also stable employment for those people who work in tourism in its widest sense. Establishing tourism products that are sustainable and viable in the long term is vital to offering an alternative to the unemployment brought about by socio-economic decline, if maintaining social roots is to be a primary objective.

4.2 The diversification of economic activity is also an objective of all economic development in areas of decline. Should one of the causes for the decline be technological or market changes in areas where economic activity is characterised by dependence on one type of industry, it seems clear that in order to avoid a repetition of this situation, complementary and diversified activities, capable of sustaining the region’s economy in the future, should be organised. Because of tourism’s cross-sectoral nature involving many players, businesses of all sizes, family and multinational businesses, businesses with wide-ranging social objectives and commercial interests, it effectively diversifies an area’s industries.

4.3 The sustainable balance of activity, economically, socially and in particular environmentally, is another of the objectives of developing areas in decline. Often, declining industrial or mining activity has led to serious deterioration of the area’s environment; obsolete and abandoned buildings, contaminated industrial waste, physical damage and polluted soil are frequently the result of past industrial activity and are evidently not ideal conditions for the development of tourism, which generally seeks conditions where nature is at its most attractive.

4.3.1 In principle, it falls to businesses that have carried out their industrial activity in an area to recapture the original natural conditions or at least rehabilitate them as far as possible. Obviously it is not easy to apply this principle since the very situation of industrial decline inhibits this. Therefore, it is up to the public authorities to provide subsidies and guarantee that the surroundings are suitably maintained. This is particularly important when businesses that are relocating have received public funds on starting up. Businesses’ social responsibility should induce them to meet these additional costs of their activity.

4.4 In order to achieve these difficult objectives, various methods should be used to bring about success. The first step in the process should be social dialogue: this is key to developing alternatives. Social dialogue between social and economic
players, between businessmen and workers through unions and employers’ associations, is the cornerstone to the success of projects and initiatives. Civil society — its various community, consumer and civic associations — can and should participate in the process.

4.4.1 In particular, however, the authorities need to commit themselves and actively participate in the promotion of alternatives for areas in decline, be it tourism or other industries or services. Cooperation between different levels of administration and public institutions should pave the way for the success of the initiatives; they should, if necessary, support the economic viability of the projects. The EU’s Structural Funds are powerful tools for such an action, coordinated at European, national, regional and local levels, for researching and implementing regional development projects and initiatives capable of revitalising areas in decline.

4.5 The training of people in areas in decline is one of the building blocks of this regeneration process. Vocational retraining should be guaranteed for the long-term unemployed, to enable them to find work in alternative activities, which are usually very different in their requirements and skills from previous activities. Past experience shows that this regeneration is a huge challenge and that only through intensive and continuous training is it possible to transform industrial workers into service sector workers. The same can be said for the next generation, those that have not suffered directly from redundancy, but who have no employment prospects in the area’s traditional industry. Only training can enable them to overcome this lack of job opportunities.

4.6 The current process of European enlargement can bring both advantages and disadvantages: on the one hand, there are more areas to be redeveloped with an industrial, mining or agricultural past which is difficult to overcome. On the other hand, it is clear that the demand for mobility in leisure and tourism has been substantially increased, thus strengthening the tourism industry. Activities promoting sustainable tourism throughout Europe, according to the criteria of the European tourism model, can be a valuable tool in the economic development of some areas in decline.

5. Good practice in the use of tourism in the socio-economic regeneration of areas in decline

5.1 One of the main objectives of this opinion is to bring together and study the various good practices in which tourism has proven a successful alternative for areas in decline.

5.1.1 Therefore, as well as the numerous experiences assembled at the hearing held in Córdoba, organised jointly by the EESC and the provincial authority, other instructive initiatives have been brought together and merit study and analysis, so they can potentially serve as examples.

5.2 The experience of Asturias (Spain): this successful case saw the whole region, formerly characterised by mining and industry, react to decline and job losses in these sectors by choosing to intensively develop tourism. Therefore it is developing tourist brands and products strongly connected to the idea of Asturias and nature:

- Tourism and Nature: Asturias Natural Paradise
- Tourism and Culture: Asturias Cultural Treasure
- Tourism and Gastronomy: Tasting Asturias
- Tourism and the City: Cities of Asturias
- Tourism and Quality: Stately Homes of Asturias
- Mesas de Asturias (Restaurants of Asturias)
- Aldeas Asturias Calidad Rural (Villages of Asturias: rural quality)
- Asturias por la Excelencia Turística (Asturias for excellence in tourism).

5.2.1 This new strategy of local development has been very successful — employment in the region has increased by 8% in recent years. It is clear that, in this case, environmental sustainability has been the basis for high-quality tourism, in harmony with nature, and that both economic and social players as well as public institutions have actively chosen to support this strategic change and new regional model.

5.3 The experience of Zabrze (Poland): throughout the region of Silesia, the transformation of the economy and markets has led to the closure of many businesses, causing the loss of tens of thousands of jobs and the creation of a desolate landscape scattered with post-industrial wastelands. Numerous efforts have been made to promote tourism, but the region continues to suffer from its traditional clichéd image as an industrial region of gloomy landscapes and environmental degradation. Although this image seems unattractive to tourists, it may be an asset for the social and economic life of the region if the area’s industrial heritage were exploited for tourism, just as the authorities desire and plan. It is a matter of rehabilitating post-industrial sites by turning them to new uses, which are mainly tourism-oriented and are not seasonal activities. Thus the industrial heritage and unique character of these regions and cities is conserved.

5.3.1 However, this project has a great many obstacles to overcome. Problems relating to the poor technical state and general dilapidation of the sites are compounded by various issues of property ownership, the lack of financial resources and skilled management staff, the under-developed tourism infrastructure and other factors, meaning that only a limited number of industrial heritage sites are able to meet the criteria for becoming successful tourist attractions. The role that the European Structural Funds such as the ERDF and the ESF can play is vital to overcoming the obstacles of capital financing and training the local population.
5.3.2 A regional plan for using post-industrial sites for tourism has been drawn up: ‘The circuit of industrial heritage sites’ comprises some 30 sites, selected on the basis of various criteria, such as accessibility, interest, tourist capacity and visitor security.

5.3.3 In the specific case of the municipality of Zabrze, a medium-sized city situated in southern Poland, the local authorities have learned to appreciate the importance of industrial tourism and since 2003, Zabrze has been a recognised model of industrial tourism and has received various tourism-related awards. Zabrze has learned not only how to implement its alternative to the decline of its mining industry but has also become a centre for discussion and encouragement of future industrial heritage tourism projects in Poland and throughout Europe, holding the International Conferences to study ‘The treasures of industrial heritage for tourism and leisure’ in September 2004 and May 2005. The fruits of these conferences are the Zabrze Resolutions, which offer a valuable insight into the use of industrial heritage in tourism and leisure. The WTO’s willingness to be involved in creating an Industrial Heritage network, which cooperates in product promotion, should be noted.

5.3.4 Overall the experience of Zabrze offers a wealth of knowledge and experiences, which can undoubtedly be useful to other similar places that wish to adapt to tourism. The EESC fully recognises, supports and will promote the value of tourism at every opportunity.

5.4 The experience of the Museo Minero de Río Tinto in Huelva (Spain); the Río Tinto mine used to be a rich source of precious metals that had generated wealth since Roman times. In 1982 the mine closed and became an economically deprived area. The Museo Minero de Río Tinto today protects the legacy of all these ups and downs. It is an information centre for the Parque Minero de Río Tinto, a theme park made up of the villages and landscape of the mining area. The Parque Minero covers an area of 900 hectares and visitors can take a train ride along the former railway that transported the ore to Huelva, visit former mines, a Roman cemetery and the mining district set up by the English company which owned the mine at the end of the 19th century. In short, a previously disused area has been transformed into a place for leisure, heritage and cultural regeneration. In this case, an ‘experience’ based entirely on attracting tourists has enabled operators to profit from areas where the only other alternative would be abandonment.

5.5 The mining and industrial area of Peñarroya-Pueblo-nuevo (Spain) has a valuable industrial heritage and constitutes the remains of a 20th century manufacturing centre. It is recovering by adapting to provide various leisure activities for the local population and visitors. It should be noted that various villages of the Valle del Alto Guadiato in the province of Córdoba, it was possible to form not only the views mentioned above but also valuable conclusions and recommendations.

5.6 The ‘Sistema del Museo de la Ciencia y de la Técnica de Catalunya’ (Spain) is a network covering some 20 points of interest relating to the industrial heritage of the region of Catalonia, including the textile, paper, tanning and transport industries. In centuries gone by, Catalonian industry was undoubtedly of major importance, not only economically but also culturally, architecturally and socially; it forms part of the collective identity of Catalonia. The ‘Sistema’ is intended to promote tourism to all the 20 points of interests and in short, to act as a network of cultural tourist attractions. This model of activity is ideal for other similar projects.

5.7 Another interesting initiative is that of the International Bureau of Social Tourism (BITS), which has contributed to the alternative development of a coal mining area in decline in La Roche-en-Ardenne (Belgium), through the creation of a holiday resort for social tourism that is creating substantial employment in the area.

5.8 Throughout Europe, there are different innovative tourism initiatives that seek, at least partially, an alternative to economic decline. A good example is that of traditional fishermen who offer tourists the opportunity to join them for a working day on board their boat. In this way, tourists experience professional and cultural contact, which has great tourist appeal and increases the income of an activity in decline.

5.9 The EESC supports the joint declaration of the European Federation of Trade Unions in the Food, Agriculture and Tourism Sectors (EFFAT) and the Confederation of National Associations of Hotels, Restaurants and Similar Establishments in the European Union (HOTREC) on Principles and Guidelines for Maintaining and Developing Tourism Jobs in the Rural Areas.

6. Conclusions

6.1 At the numerous meetings of the study group set up to prepare this opinion and the successful hearing held in Córdoba, it was possible to form not only the views mentioned above but also valuable conclusions and recommendations.
6.2 Tourism, as recognised in various Commission and EESC documents and multiple studies, is an economic activity of great importance not only from a strictly economic perspective, but also socially and environmentally. It is especially important to point out that it is a powerful, stable industry with good future prospects, which creates high-quality jobs if developed according to criteria of short-, medium- and long-term sustainability.

6.3 The socio-economic decline of areas in various European countries has different causes and characteristics, but in all these areas the fall in employment and absence of economic alternatives are both the most conspicuous and most distressing consequences for the local people, who are frequently forced to migrate in search of different alternatives to the traditional activities of the area. The depopulation of large agricultural or mining areas is the undesired result of structural economic change.

6.4 Sustaining the social roots of the local community is the main objective of all policies intended to achieve regional balance and therefore provide viable alternatives for these areas in decline. The European Structural Funds are essential instruments in this policy of maintaining social roots. Preserving or creating employment should be the main priority of such a policy of social integration.

6.5 For many different areas in decline, tourism can be a good alternative source of economic activity, with great potential for social, economic and employment development. Numerous experiences at all levels prove and confirm this.

6.6 However, areas in decline in search of a tourism alternative still have formidable long-term difficulties and obstacles to overcome. It should be noted in particular that such areas do not in principle ‘naturally’ lend themselves to tourism, but rather the opposite, since they sometimes lack tourist attractions and have dilapidated surroundings. It is very difficult for these areas to recover or create an environment where tourism can flourish. Therefore it is important to create products and services capable of generating demand.

6.7 Besides this basically unpromising situation, there are many different obstacles to the tourism alternative that areas in decline must face:

— Financially, a lack of capital to create products and tourism infrastructures.
— Culturally, the local population do not normally have the skills needed to work in the tourist services sector.
— With regard to accessibility and mobility, potential tourists must be able to arrive safely to the created or promoted tourist attractions.
— People and their belongings must be safe.
— An absence or lack of coordination in the promotion of the tourist destination.
— A lack of specialised technical advice, which can help to identify those factors which could make the new businesses viable.

6.8 But it is precisely this possibility of a tourism alternative, together with the difficulties inherent in the process, which should motivate public institutions, social players and citizens in general to rise to the challenge of making this possibility a reality. European regional policy and other European policies on tourism, culture, employment, transport and infrastructure should work together to meet this challenge successfully. Ignoring the situation of areas in decline or failing to address the risks and difficulties of the tourism alternative does not seem a valid strategy. Alternatives other than tourism for areas in decline are both rare and difficult.

6.9 In order that the tourism alternative for areas in decline is viable, it should meet numerous conditions:

— It must promote the cultural, heritage and natural values of the area. Local communities, even in areas in decline, are often the guardians of unrivalled cultural wealth.
— It should respond to global issues, using integrated development plans to create a diverse range of products and services required by the tourism sector.
— It should promote tourism products that provide accommodation near a variety of tourist attractions. Tourist accommodation is one of the investments which bring stability to the tourism sector and create additional local business. Hotels and other forms of temporary accommodation are to be preferred to residential tourism, so as to guarantee long-term viability.
— It should develop according to criteria of economic, social and environmental sustainability, so that this activity brings about the creation of many businesses and therefore jobs or self-employment.
— It should foster, through vocational training, quality in all its forms: in customer service, working conditions and respect for the natural world.
— It should form links with other similar destinations in order to create networks that strengthen the promotion of all their products, brands or destinations.

— It should offer innovative products and services. The extensive and thorough incorporation of information and communication technologies (ICTs) will undoubtedly be an important factor in competitiveness. The use of the Internet by large, medium and, in particular, small tourism businesses is an essential tool for promoting their products and positioning themselves on the market.

— It should guarantee the rights of the consumer since tourism cuts across a wide range of sectors and the businesses involved are usually small.

6.10 Clearly, the tourism products chosen in each area will vary according to multiple factors and it is difficult to identify which is ideal in each case, but as an example it is worth citing some activities that are directly or indirectly linked to tourism and can create an alternative tourist area: agri-tourism and rural tourism, complemented by craft industries, the production and sale of local food products, industrial tourism (for which we have described some examples of good practice), health tourism and cultural tourism. Institutional support for rural tourism is essential for its long-term viability.

6.11 The types of businesses developing tourism products and activities in areas in decline are no different to other tourism businesses, but the following should be noted:

— Self-employment, which has been an effective form of defence against industrial crises and which in a situation where new activities are being created can provide business solutions geared to the most entrepreneurial young people. In the case of rural tourism, self-employment and family employment are more common than in other sectors.

— Cooperatives (workers groups, producers, consumers, advisory, etc.) which are responsible for accommodation (small hostels, campsites, lodges), different tourist services or travel arrangements. The possibility of creating and working within a network is an important added benefit that different countries, such as Italy through Legacoop, have used to boost the number of cooperatives in the tourist sector.

— Collective bargaining agreements would have to take account of the particular situation of micro-enterprises so as to ensure quality of employment and meet their diverse, variable and complex needs.

— The organisations that manage social tourism in many countries can collaborate very effectively to make tourism an alternative for areas in economic decline. The number of tourists that they manage annually can be an incentive for establishing tourist itineraries and products in these areas. The experience of BITS (International Bureau of Social Tourism), for example in the holiday resort of Liguerrre de Cinca in Spain, which brings a great economic boost to the region, is very valuable. Furthermore, various holiday resorts in Portugal managed by INATEL provide substantial economic activity for the whole region.

6.12 In order to ensure the viability of tourism businesses set up as alternatives in areas in decline, the creation of diverse and complementary activities, capable of combining for a common goal, is vital; important; this would develop an authentic ‘tourism alliance’ in which each business should see itself as part of an overall tourist product. Thus, the alliance of gastronomy, culture, nature, accommodation and, in short, all those economic activities aimed at attracting tourists, whether public or private, must be coordinated. This type of alliance, that is sometimes, although not always, used in traditional tourism, is invaluable in the case of new developments in areas in decline, because of the extremely difficult and precarious situation for businesses in such areas. The idea of the ‘tourist circuit’, involving a whole range of businesses, is one way of putting such an alliance into practice. At all events, cooperation between businesses should be encouraged by all economic and social operators.

7. Final comments

7.1 The socio-economic recovery of European areas in decline is an important and difficult challenge for public institutions at all levels, socio-economic players and citizens, but it is a challenge that cannot be ignored if we are to avoid abandoning some regions to depopulation and their local communities to poverty or migration. The tourism alternative is only one of the possibilities, but its added value, its capacity to create jobs and its future prospects make it the preferred choice.

7.2 In fact, both European policies and the documents drawn up by the institutions emphasise this: the European Commission, the Parliament and the European Economic and Social Committee encourage and promote this alternative, but financial support from the Structural Funds for initiatives in this field are still insufficient and are increasingly difficult to use as instruments of economic regeneration. It is proposed that the Commission undertake a pilot project, based on successful experiences, to study better ways of using the Structural Funds for the promotion of tourism in areas in socio-economic decline.
7.3 Other institutions such as the World Tourism Organisation (WTO) and the International Bureau of Social Tourism (BITS) are carrying out initiatives of great strategic value in that they strengthen and foster promotion and communication networks, which are vital to the viability of tourism projects in areas in decline.

7.4 Within Member States, coordination of initiatives at different levels of administration — national, regional and local — should be stepped up. Tourism observatories, which analyse the sector’s possibilities and propose different integrated tourism development strategies and policies, are effective instruments for analysis and action.

7.5 The EESC, through various opinions relating to tourism, is promoting European policies focused on the creation of a European tourism model, not necessarily based on regulations but on values and principles of sustainability, environmental protection, quality of services, products and employment, consumer safety, public-private cooperation, accessibility for all and promotion of local heritage, cultural and other values to ensure that tourism in Europe and all countries respects and is underpinned by the principles of short, medium and long-term sustainability. This opinion is an addition to this strategic and policy-oriented body of work and assesses the positive contribution of tourism to the socio-economic recovery of areas in decline as a basic element of the European tourism model.

8. The European Economic and Social Committee will publish and distribute this opinion, which will be the EESC’s contribution, entitled ‘The Córdoba declaration on the contribution of tourism to the socio-economic recovery of areas in decline’, to the European Tourism Forum 2003, to be held in Malta in October 2005.

Brussels, 28 September 2005

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

(COM(2005) 214 final — 2005/0100 (COD))

(2006/C 24/02)

On 8 June 2005 the Council decided, under Article 95 of the Treaty establishing the European Community, to consult the European Economic and Social Committee on the abovementioned proposal.

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 27 July 2005. The rapporteur working alone was Mr Petringa.

At its 420th plenary session, held on 28 and 29 September 2005 (meeting of 28 September 2005), the European Economic and Social Committee adopted the following opinion by 161 votes in favour with three abstentions.

1. Introduction

1.1 Directive 2004/18/EC of 31 March 2004 regulates and guarantees the coordination of the procedures for the award of public works contracts, public supply contracts and public service contracts. This directive consolidated the previous directives on the subject, modifying their content and creating a simplified legal framework.

1.2 In defining its scope, the directive lays down a series of thresholds below which it does not apply; it also provides for a specific procedure through which these thresholds can be periodically realigned.

1.3 The thresholds in the directive are expressed in euro, while those defining the international obligations of the Union on public contracts in WTO terms are expressed in Special Drawing Rights (SDRs). Article 78 of the Directive allows the Commission to check and modify the thresholds if the development of SDR/euro exchange rates makes it necessary. Even when a revision takes place, however, the level of the thresholds should remain essentially the same.

1.4 The Commission had decided in particular to make no change in the thresholds of EUR 249,000 applying to public service contracts subsidised to a level of more than 50 % by the awarding authorities [Article 8b], and to public supply contracts awarded by the awarding authorities non included in Annex IV (that is to say awarding authorities other than central government authorities).

1.5 Owing to a clerical error, Article 78 provides that contracts subsidised to a level of more than 50 % by the awarding authorities, mentioned in Article 8b, shall be realigned on a different value, which in fact reduces their level.

2. Conclusions

2.1 The present draft directive simply calls for the correction of the clerical error. By correcting Article 78, consistency is restored between the threshold given in Article 8, which regulates the scope of the directive, and the mechanism for revising the thresholds provided for in Article 78 itself.

2.2 The EESC can only endorse a modification which restores consistency to the regulatory text.

2.3 The above is particularly important in view of the next deadline for revising the thresholds under Article 78(4), namely November 2005.


The President
of the European Economic and Social Committee
Anne-Marie SIGMUND
Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council concerning the rights of persons with reduced mobility when travelling by air

(COM(2005) 47 final — 07/2005 (COD))

(2006/C 24/03)

On 8 April 2005 the Council decided to consult the European Economic and Social Committee, under Article 71 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 1 September 2005. The rapporteur was Mr Cabra de Luna.

At its 420th plenary session held on 28 and 29 September 2005 (meeting of 28 September), the European Economic and Social Committee adopted the following opinion by 160 votes to 2 with 1 abstention.

1. Introduction

1.1 The Commission has presented a proposal for a regulation concerning the rights of persons with reduced mobility when travelling by air, with the aim of guaranteeing disabled persons and persons with reduced mobility equal opportunities in air travel compared to the rest of the population.

1.2 The Commission considers travelling by air as one of the tools for the integration and the active participation of persons with disabilities in the economic and social life.

1.3 The Commission places the initiative in the context of its non-discrimination policies, expressly confirmed as a general principle in the Article 21 of the Charter of Fundamental Rights of the European Union. Furthermore Article 13 of the EC Treaty enables the European Community to combat discrimination on the grounds of inter alia disability.

1.4 The regulation aims at ensuring that the opportunities opened by the creation of a single market in air transport should equally benefit to all passengers.

1.5 The proposal of the Commission constitutes the first legislation targeting specifically disabled people in the European Community law, although its effects will be positive on many elderly people, and passengers with temporary reduced mobility.

1.6 The proposal, aimed at preventing unfair treatment, is based on some fundamental principles:

— passengers with reduced mobility should be provided seamless high quality service from designated points of arrival to designated points of departure;

— a centralised system of assistance;

— effective sanctions in the case of non-compliance with the regulation.

1.7 Voluntary agreements taken by air carriers and airports in the last years have to be considered as a first positive step towards eliminating unfair treatment and ensuring quality in assistance for people with reduced mobility. Nevertheless these agreements have proven to be insufficient, and there is a need for defining clear responsibilities and rules in this key area.

2. General comments

2.1 The Committee welcomes the initiative of the Commission and fully supports the fundamental principles of the proposal.

2.2 The regulation contributes clearly to removing barriers to air transport for people with reduced mobility. It is also connected to the recent regulation adopted by the EU on compensation and assistance to passengers for denied boarding, cancellation, and long delay of flights (1), which contributes to strengthening passengers’ rights.

2.3 Furthermore the EESC has advocated in its recent opinions (2) for the need of legislation beyond employment, tackling barriers faced by disabled people in other areas of life. Mobility is a key area for social inclusion of people with disabilities.


The Committee regrets that the legislation does not include provisions for accessibility for disabled people of airport infrastructure, vehicles used for transport of passengers, and airplanes. The EESC notes that such measures will ensure equal opportunities in air travel. The EESC invites the European Commission to put forward further legislation in order to ensure that all new infrastructure and transport equipment is accessible, and to ensure that existing barriers are gradually dismantled.

The Committee supports the general framework of the regulation and endorses in particular the provision for one single centralised service managing body at airports, as such a system is the most reliable way to ensure accountability, high quality and consistent assistance for passengers with reduced mobility.

The Committee considers nonetheless that some provisions should be reinforced, in order to best meet the general objective.

The Committee also insists on the need for a wide consultation of representative organisations within civil society, in order to ensure that the rights of all citizens, including those with reduced mobility are guaranteed in the air transport sector. Furthermore in order to ensure the best implementation of the regulation, it is important to ensure that a dialogue — comprising safety standards — is established between airports, service providers, airlines, and representative organisations of disabled people, including people with reduced mobility within the Airport Users Committee.

2.6 The Committee welcomes the fact that assistance will not be charged to people with disabilities, but disagrees with the proposal that assistance should be financed in such a way as to spread the burden equitably over all passengers, as stated in recital 7 of the EC draft regulation. The Committee restates that the charge of assistance must be shared among the air carriers using an airport in proportion to the number of passengers that each carries to and from that airport, and that it should not in any case lead to an increase of air fares paid by passengers.

2.7 The Committee also insists on the need for a wide consultation of representative organisations within civil society, in order to ensure that the rights of all citizens, including those with reduced mobility are guaranteed in the air transport sector. Furthermore in order to ensure the best implementation of the regulation, it is important to ensure that a dialogue — comprising safety standards — is established between airports, service providers, airlines, and representative organisations of disabled people, including people with reduced mobility within the Airport Users Committee.

2.8 The Committee notes that the derogation from the main principle in Article 3 — the prevention of refusal of carriage — provided for in Article 4, by which denied boarding is allowed in order to meet safety requirements, should be further clarified in order to prevent arbitrary denials. A framework should be defined at EU level specifying and defining safety requirements either through an annex attached to this regulation or through an implementing regulation. Currently such rules are defined by carriers or by legislation and as a consequence are very diverse and sometimes contradictory. The proposal by the European Commission to have safety requirements defined by national legislation would not solve this problem. In addition information on safety requirements should be made publicly available to all passengers, and not only upon request.

2.9 The Committee also notes the lack of an explicit provision obliging the airline to reimburse or re-route and take care of a person that has been denied boarding pursuant to the regulation, in a manner similar to the one provided in the regulation on compensation and assistance to passengers for denied boarding, cancellation, and long delay of flights.

2.10 The Committee also highlights the need to reinforce provisions on the obligation to provide assistance mentioned in article 5. The responsibility of the airport managing body should be extended also to passengers transferred or in transit through an airport as long as they have given 24 hours notification. The current wording of the proposal — make all reasonable efforts — is not satisfactory. However, exceptional circumstances, independent of the managing body, can be taken into account.

2.11 The Committee takes the view that all European airports should set consistent, high quality standards, for passengers with reduced mobility beyond those established in annex I of the regulation. The two million passengers threshold in the current proposal would exempt a significant number of European airports from this main obligation. In addition, the Committee believes that for small airports below one million passengers per year quality standards — adapted to their size — have also to be established at local level in close cooperation with organisations of disabled people, including people with reduced mobility.

2.12 The EESC also points out that disability awareness training of adequate staff is necessary in order to ensure adequate assistance to the person’s needs and quality. The application of new technologies (e.g. short message services (SMS) or pagers could also facilitate transfer of passengers with reduced mobility (such as people with hearing and visual disabilities).

2.13 Consideration should be given to the need for a simple procedure for notification of assistance which should be also free of charge. Such notification happens as a general rule when tickets are reserved, and is received by airline companies. It is therefore essential that there is a reliable information transfer from airline companies to airports, in order to ensure the best quality of services. A confirmation code should be given to the passenger when notifying the need for assistance. Moreover, in case of dispute, the burden of proof concerning non-notification should rest with air carriers and/or the tour operator responsible for the reservation.

2.14 Furthermore accessibility requirements should be taken into account in notification procedures. Alternative modes of communication: telephone and internet should be available. Internet web-sites should be WAI-compliant (1) and telephone notification should be free of charge.

(1) The Web Accessibility Initiative (WAI) are internationally accepted guidelines for accessibility of Web sites, browsers, and authoring tools, in order to make it easier for people with disabilities (e.g. physical, visual, hearing, and cognitive or neurological disabilities), to use the Web. For further information see: http://www.w3.org/ WAI and the European Commission Communication on improving the accessibility of public web sites on 25 September 2001.
2.15 The EESC also considers that a reference should be inserted in the text of the regulation to Directive 95/46/EC on the protection of individuals with the regard to the processing of personal data and on free movement of such data, in order to ensure respect to privacy, that the information requested is limited to the purposes of carrying out the obligations of assistance set in the regulation, and that it shall not be used against the passenger requiring the service.

2.16 The Committee is concerned that the designation of different bodies at Member State level responsible for complaints may prevent effective infringement procedures and access by passengers. The EESC highlights the need for an easily accessible body for receiving complaints, monitoring implementation of the regulation and the enforcement. The EESC believes that one single body in each Member State could be responsible for these matters in order to provide for a less complex system than in the current proposal. Given the internationalisation of air travel, and the increasing number of passengers travelling between countries different than their country of residence, the EESC considers appropriate the establishment of a European-level body.

2.17 The EESC argues for the need for persons with reduced mobility being entitled to full compensation in case of damaged or lost mobility equipment. The important consequences to the mobility, autonomy, and security of the passenger must be duly taken into account. The EESC also considers that the responsibility for ground handling of mobility equipment should be attributed to the air carrier, in order to ensure consistency with the International framework for air carriers liability, as established by the Montreal Convention.

2.18 The Committee also would like to point out the need to establish firmly in the regulation clear responsibilities and liabilities in case of accident or mishandling of passengers needing assistance whether at the airport, or when boarding the aircraft in line with the Warsaw Convention as amended by the Hague and Montreal Conventions (4).

2.19 The EESC would also like to address some issues relating to assistance on board aircrafts. The EESC proposes to delete the proposed limitation of carriage of guide dogs to five hours as this limitation does not exist in practice. The regulation should also include a requirement on carriers to inform on restrictions on carriage on board of mobility equipment. Provisions on the accessibility of information concerning flights should be extended to safety measures.

2.20 The EESC is also concerned that the regulation does not tackle all obstacles to air travel. In particular, it is crucial that all new airports are accessible for persons with reduced mobility and that existing airports gradually eliminate barriers to equal access.

2.21 Furthermore the EESC would like to recommend air carriers when buying or chartering new aircrafts to choose those that meet accessibility standards.

3. Conclusion

3.1 The EESC supports strongly the proposal, but recommends a number of changes detailed in Part 2 in order to ensure greater consistency and effectiveness to the need for equal opportunities for disabled passengers and passengers with reduced mobility when travelling by air.

Brussels, 28 September 2005

The President
of the European Economic and Social Committee
Anne Marie SIGMUND

(4) See Article 7 that establishes responsibilities for air carriers in case of accidents, on board the aircraft or when embarking and disembarking a passenger.
Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on the information of air transport passengers on the identity of the operating carrier and on communication of safety information by Member States’

(COM(2005) 48 final — 08/2005 (COD))

(2006/C 24/04)

On 30 March 2005 the Council decided to consult the European Economic and Social Committee, under Article 80 (2) of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 1 September 2005. The rapporteur was Mr McDonogh.

At its 420th plenary session, held on 28 and 29 September 2005 (meeting of 28 September), the European Economic and Social Committee adopted the following opinion by 161 votes with 5 abstentions.

1. Background

1.1 Safety oversight is regulated worldwide in the framework of the 1944 Chicago Convention on International Civil Aviation and is based on standards developed by the International Civil Aviation Organisation created by that Convention. In essence, air carriers are supervised, concerning in particular their compliance with safety requirements, by their home country.

1.2 Outside the EU, safety levels depend on the effectiveness of oversight procedures applicable in third countries. In order to ensure a high level of aviation safety of all aircraft flying into, out or within the Community, the European Parliament and the Council adopted recently Directive 2004/36/EC (1) on the safety of third country aircraft using Community airports, which provides for a harmonised system of inspections of foreign aircraft when they use European airports. Besides, this Directive provides for the exchange of information between the Member States and the possibility to extend to the whole Community measures taken by one Member State against a third country aircraft or operator not complying with international safety standards.

1.3 In summary, the ‘SAFA’ Directive obliges Member States to put in place a mechanism to collect information enabling them to identify potentially unsafe operators.

1.4 The accident in Sharm-el Sheikh and those accidents which occurred in 2005 indicate that stringent rules are needed.

1.5 To make ramp inspections obligatory and to oblige Member States to participate in a wider exchange of information and apply common measures decided on the results of these checks. The Commission should provide a European list of airlines with safety problems.

1.6 To carry out random checks in the simulator of the flight crew, flying into European airspace to see that they are competent flying in congested air spaces.

1.7 Passengers must have access to the name of the operator at the time of booking from an airline website or travel agent and to be informed before travel if there is a change, e.g. wet leased third party aircraft. They should be entitled to a full refund if not satisfied.

1.8 The passenger should have access to the type, model and age of the aircraft, if desired. Also the country of registration.

1.9 Adequate rest periods for crew between flights should be insisted upon.

1.10 Adequate command of English or other European language depending on the destination, among the cabin crew to enable them to deal with passengers or emergencies should be mandatory.

1.11 Aircrafts barred from an EU country for safety reasons should also be barred from all.

2. Conclusions

The Committee agrees with most of the Commission document, but it does not go far enough. In the future, with the increase in air traffic movements, and more crowded skies, air safety will become a greater problem in the years to come. Therefore the period for revision of the regulation can be shorter than five years. There is also a need to tighten up safety on EU airlines, i.e. the amount of hand luggage allowed to carry on board. Also the proficiency of English of the Air Traffic Controllers, and a proper definition of crew rest periods, etc.

Brussels, 28 September 2005

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

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(COM(2005) 171 final — 2005/0062 + 0063 CNS)  
(2006/C 24/05)

On 14 June 2005 the Council decided to consult the European Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the abovementioned proposals.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 7 September 2005. The rapporteur was Mr Donnelly.

At its 420th plenary session, held on 28 and 29 September 2005 (meeting of 28 September), the European Economic and Social Committee adopted the following opinion by 160 votes to one with 5 abstentions.

1. Introduction

1.1 Avian Influenza (AI) is a highly contagious viral disease of poultry, which can also spread to other animals and occasionally to humans. In recent months China has implemented a major vaccination programme after migrating wild geese were found killed by the virus in the western Qinghai province.

1.2 During recent outbreaks of the highly pathogenic form of the disease which occurred in several parts of the world, including some EU Member States, more than 200 million poultry have died or have been killed and destroyed with the aim to control the disease. This mass killing and destruction of animals has raised major ethical, animal welfare, economic, social and environmental concerns particularly among EU citizens.

1.3 The Influenza virus’ ability to rapidly mutate and adapt poses a particular threat to animal and human health. Although current knowledge indicates that the health risks posed by the so-called Low Pathogenic AI (LPAI) viruses are inferior to the ones posed by the Highly Pathogenic AI (HPAI) viruses, the latter originate from a mutation of certain LPAI viruses, namely those of types H5 and H7, and can cause a disease in poultry with a very high mortality rate. Data available indicates that HPAI viruses of types H3 and H7 have been responsible for the vast majority of the cases of AI reported in humans and all cases of human deaths due to AI viruses. Although there is evidence regarding the transmission to humans of LPAI virus of type H9 arising from pigs and poultry, the actual threat to human health remains unclear.

1.4 Uncontrolled Avian Influenza outbreaks have the potential to lead to the emergence of a virus fully adapted to humans and ultimately leading to an Influenza pandemic with devastating health and socio-economic consequences for the world.

2. Gist of Commission proposal

2.1 The first proposal sets out to repeal Directive 92/40/EEC on Avian Influenza and to replace it by a new Directive updating existing provisions.
2.2 The proposal includes a change in the definition of Avian Influenza to encompass LPAI as well as HPAI viruses. Control measures however will vary reflecting the different risks posed by LPAI and HPAI viruses.

2.3 The proposal introduces compulsory surveillance and control measures for LPAI. It is proposed that Member States be required to submit LPAI surveillance plans for early detection of LPAI for Commission approval so that the disease control measures can be rapidly applied and mutation of LPAI to HPAI is prevented.

2.4 It is proposed that positive identification of LPAI would prompt control measures, which would include the option of controlled slaughter when the risks are judged negligible. Stamping out would however not be excluded as a control measure when it would be deemed appropriate.

2.5 New and flexible provisions on the vaccination of poultry and other birds are envisioned. This includes the possibility of the use of both 'emergency' and 'protective' vaccination.

2.6 It is proposed to include domestic birds other than poultry such as those kept in zoos in provisions for the control of both LPAI and HPAI. It is proposed however that it would be a matter for Member States to decide on whether to adopt a vaccination or stamping out approach on the basis of risk analysis.

2.7 Provisions regarding the co-operation between veterinary and public health authorities in the case of detection of AI are proposed as a public health protection measure.

2.8 It is proposed to adopt a provision to introduce a rapid decision-making process by means of the Comitology procedures.

2.9 It is proposed in the second proposal to include the Community financial assistance provision to eradication measures relating to LPAI carried out by Member States.

2.10 It is also proposed that the Commission may examine the possibility of establishing an avian influenza vaccine bank.

3. General comments

3.1 The EESC welcomes this proposal as an important response to increasing outbreaks of Avian Influenza, the presence of the virus in wild birds, experience gained from the management of outbreaks and new knowledge on the ability of the influenza virus to mutate including LPAI virus.

3.2 The EESC is also very conscious of the potential risk to public health and animal health if new measures to control the disease are not adopted.

3.3 The EESC regards the new definition of Avian Influenza and the requirement of surveillance and control of LPAI as an important step in the battle against the virus and its potential negative impacts.

3.4 The EESC accepts the negative public reaction to a policy of mass slaughter of birds as the sole means of controlling Avian Influenza.

3.5 The EESC recognises the knowledge gained in relation to vaccination and welcomes the introduction of an emergency and protective vaccination policy as an additional tool in the control of Avian Influenza.

3.6 The EESC welcomes the proposal for the mandatory notification of Avian Influenza to public health authorities.

4. Specific comments

4.1 The EESC recognises the potential risks in the area of animal health particularly as a consequence of the EU's new borders following enlargement; the EESC therefore recommends that sufficient resources are made available by the Commission for the inspection and auditing of the implementation and transposition of relevant Directives.

4.2 The EESC understands the international dimensions of Avian Influenza and requests the Commission to seek equivalent control worldwide regarding Avian Influenza Controls.

4.3 While the EESC welcomes the financial package and the EU contribution when using stamping out as a means of controlling LPAI, it proposes that the compensation figure should increase from 30% to 50%.

5. Conclusions

5.1 The EESC supports the Commission's proposal, in the interests of the protection of animal and human health arising out of the rapidly mutating and adapting avian influenza virus.


The President of the European Economic and Social Committee
Anne-Marie SIGMUND
On 14 June 2005, the Council decided to consult the European Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the abovementioned proposal. The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee’s work on this subject, adopted its opinion on 7 September 2005. The rapporteur (working without a study group) was Mr Fakas.

At its 420th plenary session of 28/29 September 2005 (meeting of 28 September 2005), the European Economic and Social Committee adopted the following opinion by 151 votes in favour, 3 against and 14 abstentions.

1. Introduction

Regulation (EEC) No 2075/92 on the common organisation of the market in raw tobacco provides for a system of premiums and production quotas in Titles I and II respectively. This support system will be applied for the last time for the 2005 harvest.

Under the second package of the CAP reform agreed in April 2004 for Mediterranean products the premium and production quota system is to be discontinued from the 2006 harvest.

In addition, it is no longer necessary to maintain the provision for the quota buy-back programme in respect of the 2005 harvest. Consequently certain articles and the Annex to Regulation (EEC) 2075/92 will become ineffective and will have to be abolished for reasons of legal clarity and transparency.

On 3 June 2005 the Commission therefore submitted to the Council a proposal for a Regulation adapting Regulation (EEC) No 2075/92 further to the 2004 reform in relation to tobacco.


2. Comments

2.1 The EESC considers the Commission’s proposal to be the corollary of the reform in the tobacco regime adopted in April 2004, which provided for the system of premiums and production quotas to be abandoned and for the new system of decoupled support to be established.

2.2 The EESC believes that for reasons of simplification following the 2004 reform and the discussions ongoing in the ‘direct aid’ management committee, it would be more useful and practical for the Commission to submit a proposal for a consolidated version of Regulation (EEC) No 2075/92 rather than recommending amendments to, and removal of, certain articles.

2.3 The EESC sees the proposal as a formal document, required for reasons of legal clarity and transparency. It is a move in the right direction and is accepted by the Committee.


The President
of the European Economic and Social Committee
Anne-Marie SIGMUND
Opinion of the European Economic and Social Committee on the ‘Proposal for a Council Regulation amending Regulation (EC) No 3317/94 as regards the transmission of applications for fishing licences to third countries’

(COM(2005) 238 final — 2005/0110 (CNS))

(2006/C 24/07)

On 16 June 2005 the Council decided to consult the European Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 7 September 2005. The rapporteur was Mr Sarró Iparraguirre.

At its 420th plenary session, held on 28 and 29 September 2005 (meeting of 28 September), the European Economic and Social Committee adopted the following opinion by 162 votes to two with six abstentions.

1. Under the terms of Community fisheries agreements with third countries, a new protocol is negotiated in good time before the expiry of the existing one so as to avoid any interruption in the fleets’ activities.

2. When the negotiations are completed, the Community and the third country sign the new text of the protocol and the annex thereto, together with an exchange of letters on the provisional application of the new protocol from a specific date. This provisional date is generally the day following the expiry date of the previous protocol.

3. To validate the signing of all these documents, the Commission departments start the procedure for producing a formal proposal which is then submitted to the Council for adoption.

4. This procedure comprises two strands:
— A Council regulation, accompanied by the opinion of the European Parliament;
— A Council decision which
   — allocates fishing opportunities between the Member States
   — approves the exchange of letters on the provisional application of the new protocol.

5. It may be several months before the Council adopts the formal proposal, with the decision being adopted some months after the provisional application date laid down in the exchange of letters, as the date on which negotiations end depends on the third country.

6. In such cases it is not possible, during the intervening period from the provisional application date, to start taking advantage of the fishing opportunities provided for in the new protocol.

7. The procedures and implementing rules which the Commission and the flag Member State are to follow for managing fishing by Community vessels under fisheries agreements, and for handling fishing licences with third countries, are governed by Council Regulation (EC) No. 3317/94 of 22 December 1994 (1).

8. The present proposal seeks to add a subparagraph to Article 5(2) of Regulation 3317/94, which concerns the sending of fishing-licence applications. The new subparagraph would allow the Commission to process licence applications from Member States immediately and send them on to the third country without having to wait for Council adoption of the decision on provisional application of the new protocol.

9. The Committee agrees that it is important to avoid any suspension of fishing activities. Bearing in mind that the method of allocating fishing opportunities used in the previous protocol would continue to apply, that account would be taken of the principle of relative stability, and that this should be without prejudice to the provisions adopted subsequently by the Council, the Committee endorses the Commission proposal.

Brussels, 28 September 2005

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the ‘Green Paper on applicable law and jurisdiction in divorce matters’

(COM(2005) 82 final)

(2006/C 24/08)

On 14 March 2005 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the Green Paper on applicable law and jurisdiction in divorce matters.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 5 September 2005. The rapporteur was Mr Retureau.

At its 420th plenary session, held on 28/29 September 2005 (meeting of 28 September), the European Economic and Social Committee adopted the following opinion by 161 votes to four with eight abstentions.

1. Commentary on the Commission’s proposal

1.1 The Commission has published a Green Paper to launch a consultation on jurisdiction, conflict of law and mutual recognition in international divorce matters. Its proposed scope of application would, however, be restricted to EU Member States (It should be noted that the Green Paper on Succession and wills adopts an approach that also includes persons and assets in third countries).

1.2 A number of international instruments are directly or indirectly relevant:

— The United Nations 1966 Covenant on economic, social and cultural rights and the European Conventions on human rights, recognising the freedom to marry and the requirement for full and free consent, the absence of which would render the marriage voidable.

— The 1970 Hague Convention on the recognition of divorces and legal separations. The following Member States are parties to the Convention: Cyprus, Denmark, Estonia, Finland, Latvia, Lithuania and Luxembourg.

— The Brussels II Regulation No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, which is not applicable in Denmark, and which replaces the aforementioned Hague Convention for all EU Member States except Denmark.

— The Concordats between the Vatican and Portugal, Spain, Malta and Italy respectively on canonical marriages, their dissolution, and the recognition of the decisions of the Vatican Tribunals (The Roman Rota’s jurisdiction over the annulment of canonical marriages — generally indissoluble — for admissible grounds under canon law (!)).

— Bilateral agreements, for instance the agreement between Finland and Sweden, which will remain in force between these two countries. Some Member States have also entered into agreements on applicable law in family matters with third countries, especially with regard to the recognition of foreign marriages and divorces.

— The ‘opt in’ and ‘opt out’ protocols annexed to the Treaties, which exclude Denmark and grant the United Kingdom and Ireland the possibility to opt out of civil law legislation.

1.3 It would be pointless to deny the complexity of an issue that involves particularities specific to different religions and cultures that are deeply embedded in the collective consciousness but which have also undergone, as is the case for family law in general, profound changes over several decades. Nevertheless, within the European legal area and common area of freedom, and bearing in mind the free movement of persons, the European legislative authorities cannot ignore the fact that a significant percentage of marriages end in divorce, and that a growing number of them have an international character.

(!) It should be noted that, in December 2004, the Spanish parliament deliberated draft legislation amending national law on marriage and divorce. Although strongly opposed by the Church, same-sex marriages have recently been approved in Spain (already legal in a number of EU Member States). In France, a civil contract may be signed between two people who cannot marry legally: a PACS – civil solidarity pact – is registered by a court and is a kind of substitute for marriage. Whether it be regarded as an institution and/or contract, the marriage or quasi-marriage is still limited to two people of legal age and incest is still prohibited; it should be considered whether termination of a civil agreement such as the French PACS should be included in the draft legislation on divorce proposed by the Green Paper or whether it should merely be governed by law on contractual obligations.
1.4 Ongoing developments in national family law stem mainly from the principles of democracy (parliament’s right to enact laws), individual freedom and equality, and are matters of public policy at Community level and in all Member States. Thus there is a trend towards contractualisation in family law (same-sex marriages or civil contracts, divorce by consent, succession agreements, etc.).

1.5 These developments seem irreversible although their pace may vary. The cultural prevalence of religious ideas which may be deep rooted appears to affect the pace and substance of changes which may clash with ideas and rules that stem from long traditions, as well as with legal and social concepts and principles that reflect them.

1.6 At all events the Member States’ national laws vary considerably in divorce and legal separation matters and with regard to the conditions for annulling a marriage and the consequences arising therefrom; one Member State does not recognise divorce (Malta). For this reason, the Green Paper (wisely) does not propose to harmonise substantive law.

1.7 Instead it recommends that legislation in divorce matters with an international (European) dimension be developed in two directions:

— jurisdiction (establishing the court with jurisdiction and ensuring recognition of its decisions in all Member States);

— choice of law to be applied by the court of jurisdiction.

1.8 The provisions of the Brussels II Regulation on the choice of national jurisdiction and the mutual recognition of court decisions without exequatur are already applicable in divorce matters. The question is whether they suffice in their present form, and to what extent a State would be able to set domestic public policy provisions against the enforcement of a ruling delivered by a court of jurisdiction in another Member State applying different substantive law to that specific case (not necessarily its national ordinary law).

1.9 One major problem is the substantial differences between domestic rules on the admissibility of divorce applications with an international dimension. Cases might arise that were not admissible in any court in a given Member State. Such a situation would deprive the parties of their right of access to a court, which contravenes a fundamental right and is therefore unacceptable.

1.10 A rule on the attribution of jurisdiction is required to guarantee access to a court — but what form should it take?

1.11 The applicable law sometimes facilitates procedures, but it may also prolong and complicate them. It may impose restrictions on the grounds or conditions that may be invoked. If lex fori is to be the only applicable law then this could result in a ‘rush to court’. The initiating petitioner could choose the court and national law most favourable to his/her claim, while the other party might consider his/her rights to be vitiated by a system of law which did not necessarily satisfy his/her expectations if, for example, it had little or no connection with the matrimonial law or nationality of the spouses.

1.12 Should it be permissible to transfer the case to another jurisdiction if the respondent alleges that there are stronger or equally valid factors connecting the case with another court, or if there are few or no objective factors connecting the case with the court first petitioned and the substantive provisions it applies to such a case?

1.13 The transfer option should be allowed (but avoiding a case being referred back and forth between different jurisdictions) and should be decided within a reasonable timeframe (urgency/procedure) to prevent tactics designed to postpone an examination of the facts. The parties are entitled to a final decision within a reasonable period of time even in contentious divorce cases.

1.14 The national court will apply either its domestic common law or national rules of international private law. The question (not broached in the Green Paper) of applying the rules of a third State (the law of the spouses’ nationality for instance) is nevertheless important in cases where one or both spouses are third-country nationals — a common enough occurrence in the European Union.

1.15 The Committee welcomes the Green Paper’s guidelines for future work and would recommend preventing the transfer of legal proceedings to a third country if one of the spouses is a Member State national, irrespective of the law of the marriage contract.

1.16 In addition to the recognition of divorces, the question of recognising annulments and legal separation should also be considered. National systems of law differ regarding the conditions for annulments and their consequences (especially for putative marriages). Moreover, even where a national legal system does not provide for divorce, all Member States must recognise on their territory not just the validity of a divorce obtained in another Member State but also all the legal, property and status consequences thereof.
1.17 The Hague Convention criteria for attributing jurisdiction are in order of importance: the place of habitual residence (domicile in common law) of the petitioner, or the continuous residence of the petitioner for at least one year in the country where he/she institutes proceedings (1), the last place where the spouses habitually resided together prior to the institution of proceedings, and the nationality of either or both of the spouses.

1.18 Regulation 2201/2003 (8th Recital) provides that ‘As regards judgements on divorce, legal separation or marriage annulment, this Regulation should apply only to the dissolution of matrimonial ties and should not deal with issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures.’ Nevertheless, it cannot be denied that the financial and other consequences of divorce may vary according to which court has jurisdiction or which law applies, and that couples will be able to take this into account when they choose a court.

1.19 Furthermore, national courts’ final judgements should be automatically recognised throughout the European Union without the need for any further validation procedure or appeal against enforcement (2). The certificate issued to facilitate enforcement should not, therefore, be subject to appeal.

1.20 General jurisdiction lies with the territory (the Member State or part of the Member State in the case of the United Kingdom, where different rules apply in England and Wales, Scotland, Northern Ireland, and Gibraltar). The Regulation takes up the Hague criteria in practically the same order and adds a further criterion: in the event of a joint application, either of the spouses’ habitual places of residence. With regard to nationality, it should be the same for both spouses if the application is filed in the country of origin, irrespective of the actual place of residence or domicile of either spouse. The required length of residence is reduced to six months if the petitioner’s nationality is that of the State of residence.

1.21 With regard to residual jurisdiction, Article 7(2) provides that a petitioner who is a national of a Member State may file his/her petition in his/her Member State of residence in accordance with the rules of jurisdiction applicable in that State if his/her spouse is a national of a third State or does not have his/her habitual residence (domicile in common law) in a Member State. However, this could give rise to a positive conflict of jurisdiction with a court in a third country petitioned by the other spouse. Furthermore, if no Member State court was competent, but that of a third country was, and one or both of the ex-spouses were nationals of a Member State or had established their habitual residence there and wished to have the foreign judgement recognised by all the Member States or at the very least in their respective countries of nationality or residence, they would be subject in these countries to the law applicable to foreign judgements or the mutual recognition provisions of any international agreements: should Brussels II be reviewed in this respect for nationals of a Member State?

1.22 Thus the Community Regulation under consideration lays down criteria for attributing jurisdiction that are more numerous and explicit than the provisions of the Hague Convention, and the criteria set out in the Regulation should therefore form the basis for the criteria to be laid down in the specific regulation on divorce (e.g. reference to these provisions and to those on mutual recognition of judgements).

1.23 However, neither the Hague Convention nor the Brussels II Regulation lay down provisions for the law applicable to divorce: the Regulation’s scope of application is restricted to divorce, legal separation and annulment proper, and it does not address the grounds for dissolving a marriage or the consequences thereof. The latter remain within the scope of the applicable national law.

1.24 It should be noted, for instance, that approximately 15% of applications for divorce, legal separation, or annulment in Germany have an international dimension. The number of divorces with a European dimension in the Member States is not known.

2. The Committee’s proposals and additional considerations

2.1 At present, the conflict-of-law rules applied are the national rules of the Member State of the court petitioned. As a result, the law applied in identical circumstances may differ considerably, depending on the country where proceedings have been instituted.

2.2 The Green Paper gives a number of well-chosen examples on this subject. Some of these examples concern jurisdiction — cases where negative conflicts and consequent denial of rights could arise — whereas others deal with the diversity of the approaches adopted. The outcome might fail to meet the expectations of either or both of the spouses. In any case, this leads to a certain degree of legal uncertainty and lack of predictability, and in some cases, could result in ‘forum shopping’ and ‘a rush to court’ due to the litis pendens rule of the Brussels II Regulation (the first forum before which a case is brought will have jurisdiction provided there is a connecting factor).

2.3 The problem arises mainly when the spouses share neither nationality nor residence, or if they have the same nationality but reside in States of which they are not nationals.
2.4 The Committee agrees that, in such situations, the parties should be granted a degree of latitude in choosing the applicable law. Alternatively, respondents should be allowed to invoke their expectations regarding applicable law or request that the case be transferred to another jurisdiction that has the most objective links with the marriage. Where the petitioner chooses a jurisdiction and the ordinary national law that it applies, and where the defendant chooses another competent jurisdiction or another applicable law, the preliminary ruling on jurisdiction or relevant law should be given by the court of first instance before which the petitioner first brought the proceedings and be dealt with as a matter of urgency.

2.5 In cases where the only connecting factor is the nationality of one of the parties, the regulation requires jurisdiction to be assigned to the courts of the country of habitual residence, where the applicable law might not, however, correspond to the parties’ shared expectations (for instance, they might wish to apply the law of a country which has closer links with the marriage).

2.6 The parties’ freedom of choice should therefore play a role, and the rules should not be based exclusively on mechanical application of connecting factors. For instance, a choice between the law of nationality and the lex fori could be allowed, but without the right of transfer.

2.7 Regarding canonical annulments granted by ecclesiastical courts, some Member States have declared that they submit such decisions for recognition to their civil courts on the basis of a concordat or convention with the Holy See (Italy, Portugal, Spain, Malta (4)). Canonical annulments could come into conflict with the domestic laws of other Member States because these countries do not recognise the canonical grounds for annulment, or for procedural reasons (5).

2.8 Where such annulments come into procedural or substantive conflict with domestic public policy or with the European Convention on the Protection of Human Rights and Fundamental Freedoms, the State where proceedings have been instituted must refuse exequatur or recognition of the ecclesiastical decision. The petitioner should then be able to institute standard civil annulment, separation or divorce proceedings. Otherwise, the only remedy available would be to appeal to the European Court of Human Rights in Strasbourg, which would unduly prolong procedures.

2.9 Although the number of cases of negative conflict of jurisdiction may be relatively low, the Committee considers that a Community initiative is justified if such instances would result in the violation of a fundamental right, i.e. the right of access to a court with jurisdiction to grant and settle divorce, legal separation or annulment.

2.10 This should therefore lead to an acknowledgement of the need to harmonise rules on conflict of law and jurisdiction in order to prevent such denial of a right.

2.11 However, these rules should include a public policy reservation with regard to the recognition or exequatur of a court judgement with a European interest delivered in a third country if that judgement adversely affects a fundamental right of one of the parties recognised under European law or breaches other imperative provisions of domestic public policy that the court is automatically bound to invoke.

2.12 Nor should Community law require all Member States to recognise a divorce, annulment or legal separation granted in a third country and concerning residents of the Union who do not have the nationality of a Member State without prior exequatur procedure if another Member State has already accepted such a judgement on the basis of a bilateral agreement with that third country (6).

2.13 The Committee believes that prorogation of jurisdiction should be allowed in cases of joint petitions for divorce, provided that there is a link with the court of choice. A notarial act could be required for the joint application for prorogation.

2.14 The Committee considers that a comparative country-by-country study should be carried out into the actual consequences of divorce, as regards parental rights, custody of minors and assets; these factors should not be overlooked if there is a possibility of a ‘rush to court’. In any case, it would be difficult to do as the Green Paper does and address the issue of divorce without any consideration of the family and property consequences thereof, which can differ from one country to another depending on the applicable law or the prevailing case law of national courts (e.g. in the area of custody and parental responsibility).

(*) Poland has not reported its concordat with the Vatican.
(1) See the European Court of Human Rights, Application No 30882/96, (20 July 2001) Pellegrini v. Italy: the ECHR overturned the Italian Court's ruling enforcing the decision delivered by the court of the Roman Rota on appeal on the grounds that the latter had violated the right to adversarial proceedings.

(5) See the European Court of Human Rights, Application No 30882/96, (20 July 2001) Pellegrini v. Italy: the ECHR overturned the Italian Court's ruling enforcing the decision delivered by the court of the Roman Rota on appeal on the grounds that the latter had violated the right to adversarial proceedings.
2.15 If they have not already done so, the Member States should be asked to consider all available opportunities for introducing alternative methods of conflict resolution, such as mediation (7), in the area of divorce, separation and annulment with a European dimension. This would facilitate access to justice, and would help shorten the proceedings for the parties involved.

2.16 The Committee is keeping an open mind on an issue that is important for citizens and their mobility; it will follow the result of the consultations undertaken by the Commission and any more specific proposals for regulations that may emerge afterwards; a revamp of the New Regulation Brussels II or a specific divorce regulation are possibilities. The Committee would also like to know more precisely, broken down by country, the number of applications for divorce with a Community dimension, the number of cases of negative conflicts of jurisdiction and other relevant information. In this way it will be able to examine more thoroughly the problems surrounding any future proposals for legislation on the competence and applicable law in divorce matters.


The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

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On 14 January 2005, the Council decided to consult the European Economic and Social Committee, under Article 251 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for the Committee’s work on the subject, adopted its opinion on 5 September 2005 (Rapporteur: Mr Rodríguez García-Caro).

At its 420th plenary session held on 28 and 29 September 2005 (meeting of 28 September), the European Economic and Social Committee adopted the following opinion with 171 votes in favour and four abstentions.

1. Introduction

1.1 Since their adoption, Regulations Nos. 1408/71 and 574/72 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community have been successively amended to accommodate the changes that these schemes and the benefits they provide have undergone in the course of time.

1.2 These changes basically consist of bringing the Regulations into line with the legislative amendments that have been made in the Member States and adapting them to the successive rulings of the European Court of Justice. Consequently, the proposed Regulation now submitted for the Committee’s consideration aims to reflect the changes that have taken place in national legislation, principally in the new Member States, and to complete the simplification of procedures on receiving medical treatment abroad, extending this modification to the procedures regarding benefits for eventualities arising from accidents at work and occupational diseases.

1.3 The last modification made to the two Regulations was produced by Regulation 631/2004 (1), which introduced the aforementioned changes to the procedures for receiving medical treatment in another Member State. The Committee delivered an opinion (2) on the regulation at the draft stage.

1.4 Nevertheless, the most substantial change to the coordination of social security schemes in the EU Member States was made by Regulation 883/2004 (3) of the European Parliament and of the Council which, after six years of discussion in the Union’s institutions, has been adopted and published in the Official Journal of the European Union. This Regulation, replacing Regulation No 1408/71, has not yet entered into force, pending adoption of its Implementing Regulation, which will in turn replace the current Regulation No 574/72.

The EESC delivered an opinion (4) on the proposal for a Regulation on the coordination of social security schemes when it was presented by the Commission.

2. Content of the proposal

2.1 The proposal presents modifications to two Regulations, firstly Regulation No 1408/71 and secondly Regulation No 574/72, establishing the implementing procedures of the former. The two sets of amendments are not related to one another, because they arise from different legal aspects, as stated in point 1.2 of this Opinion.

2.1.1 As regards Regulation No 1408/71, modifications are made to several of its annexes. These address particular situations in the different Member States, which must be referred to specifically in these annexes if the citizens of those countries are to benefit accordingly.

2.1.2 As regards Regulation No 574/72, the modifications simplify the text and reduce the current administrative burden when healthcare is received for accidents at work or occupational diseases in another Member State, applying the same criteria for simplifying procedures for receiving general healthcare as set out in Regulation No 631/2004.

3. General comments

3.1 The Committee welcomes the content of the proposal because it considers that this approach of improving and simplifying the procedures aimed at better coordination of social security schemes in the European Union. Any change that benefits EU citizens and improves their relationship with the public authorities in the Member States will always be welcomed by this Committee.

3.2 We also welcome the proposed regulation because it specifically promotes one of the four freedoms on which the European Union was originally founded — the free movement of workers and now, and by extension of this right, the free movement of those persons affected by these rules. The Committee must therefore once again call for the various Union and Member State bodies to move ahead with eliminating all existing obstacles, in order to create both a genuine area of free movement for persons within the Union’s borders, and a real social right. We welcome the content of the proposal, because it constitutes a new means of promoting a fundamental right, which applies to all citizens.

3.3 The co-decision procedure, because of its lengthy nature, may result in significant changes to the content of the proposals. In an earlier Committee opinion (1), on a proposal for partial amendments to the two regulations, we expressed our views on the need to participate and to give our opinion in real time, especially when dealing with this type of proposal, which relates to changes in socio-occupational legislation. This view was ratified in another later EESC opinion (2), which argued that we should have the opportunity to comment on any changes made to texts during the decision-making procedure. For these reasons, we would restate the need to take account of the EESC’s role in this type of procedure.

3.4 The situation described in point 3.3 has become even clearer with the adoption and publication of Regulation 883/2004 (3) on the coordination of social security schemes. The opinion (4) delivered by the Committee stated the need to monitor the progress of the proposal, given its complexity and the certainty of changes to the text during the legislative process. Four years after the opinion was delivered, the Regulation has been adopted without the EESC having again stated its views on the text.

Given the importance of these types of rules and the crucial importance of the EESC’s opinion being heard in good time, the Committee calls for the consultation procedure to be adapted to make the role played by organised civil society in the Union’s legislative procedure more effective.

Equally, and in order to explain the view expressed by the Committee in the aforementioned opinion, we believe an own-initiative opinion should be drawn up on the new Regulation No 883/2004 on the coordination of social security schemes, which will eventually replace the current Regulation 1408/71.

3.5 Similarly, the Committee considers that the consultative role of the Advisory Committee on Social Security for Migrant Workers, set up by Title V of Regulation No 1408/71 should be performed in exact compliance with the provisions of that regulation. This committee, formed principally of trade union and employers’ representatives, is the forum through which socio-economic agents convey their views directly to the institutions, in the form of opinions or proposals, on the changes that need to be made to social security at Community level.

3.6 Article 90 of Regulation No 883/2004 states that Regulation No 1408/71 shall be repealed, except under certain circumstances, and Article 91 states that this Regulation shall enter into force on the twentieth day after its publication in the Official Journal. The second paragraph of the latter article states, however, that it shall apply from the date of entry into force of the Implementing Regulation.

For this reason, and given the forthcoming launch, in 2006, of the European Year of Workers’ Mobility, the Committee calls on the Union’s institutions and the Member States to ensure that the procedure for drawing up and adopting the future implementing Regulation is as speedy and effective as possible so that the provisions of the new coordinating Regulation can enter into force to replace the complex provisions that make up the current Regulation No 1408/71 at the earliest opportunity.

4. Specific comments

4.1 Regulation No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.

4.1.1 Article 1 of the proposal amends annexes I, II, III, IV and VI of the Regulation.

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4.1.2 In order to incorporate the changes that have taken place in Slovak legislation, an amendment is made to Annex I, section II, which refers to the personal scope of the regulation as regards the meaning of the term 'member of the family'.

4.1.3 Due to changes in French legislation, an amendment is made to Annex II, section I, on special schemes for self-employed persons which are excluded from the scope of the Regulation.

4.1.4 In order to reflect changes to legislation in Estonia, Latvia and Poland respectively, amendments are made to Annex II, section II on special childbirth or adoption allowances that are excluded from the scope of the Regulation. This annex is also amended as regards Luxembourg, as a consequence of a ECJ ruling stipulating that special allowances for childbirth or adoption cannot be excluded from the Regulation and are exportable family benefits.

4.1.5 Due to various updates and adaptations to the corresponding legislation in Germany, Latvia, Poland and Slovakia, amendments are made to Annex IIa of the Regulation, concerning special non-contributory benefits.

4.1.6 In order to eliminate unnecessary points and thus simplify its content, amendments are made to Annex III.A concerning provisions for social security agreements that continue to apply despite the Regulation’s provision on deleting them.

Amendments are also made for the same purpose to Annex III.B on the provisions of social security agreements which do not apply to all persons to whom the Regulation applies. The numbering is adjusted, and bilateral agreements that fulfill the conditions for being listed in the annex are included.

4.1.7 Due to an incorporation into the legislation of the Czech Republic, amendments are made to Annex IV.A covering national legislation under which the amount of invalidity benefits is independent of the length of periods of insurance.

For the same reason and with regard to the Czech Republic and Estonia, amendments are made to Annex IV.C, on cases where the double pension calculation may be waived as it will never lead to a higher result.

As a result of changes to legislation in Slovakia, an amendment is made to Annex IV.D on the benefits and agreements regarding the overlapping of benefits of the same kind to which persons are entitled under legislation in two or more Member States.

4.1.8 As a result of changes to legislation in the Netherlands, amendments are made to Annex VI on particular methods for applying the legislation of certain Member States.

4.1.9 The changes made to the various annexes to Regulation No 1408/71 serve a number of purposes that the Committee wishes to highlight.

Firstly, they simplify the wording of the text, thereby making it easier to implement and to understand. Progress is thus made along the lines laid down by Regulation No 883/2004 on the coordination of social security schemes, the aim of which is to simplify and update this coordination whilst complying with national social security legislation. The Committee therefore supports these amendments.

Secondly, some national laws have introduced new allowances for certain circumstances, reflecting advances in the social regulations of these States. The Committee therefore wishes to express its satisfaction at any advances made in social rights in the different Member States, but regrets that citizens of the countries involved in the most recent enlargement should be subjected to specific administrative obstacles.

Lastly, the Committee is of the view that Annex II, Section II of the Regulation should be deleted. Member States should take account of the case-law of the Court of Justice stating that childbirth and adoption allowances are not special allowances but family benefits and thus exportable. We would like to see the Member States accepting this legal reality, before the Court of Justice extends it to the Union as a whole, by means of judgments.


4.2.1 Article 2 of the proposal amends four articles of the Regulation, all referring to healthcare in the event of accidents at work or occupational diseases.

4.2.2 Article 60(4) and (5) on benefits in kind in the case of a stay in a Member State other than the competent State are deleted. Notification procedures that are not in practical use are deleted.

The Committee agrees with any measure that simplifies or eliminates pointless bureaucracy.

4.2.3 Article 62, on benefits in kind in the case of a stay in a Member State other than the competent State, is replaced. The introduction of the European Health Insurance Card eliminates unnecessary procedures which would in any event be resolved between the competent Member State institutions and not by the individual, and the wording remains the same as Article 21 of the Regulation as amended by Regulation No 631/2004.

The Committee supports any amendment that improves citizens' access to the benefits to which they are entitled.
4.2.4 Article 63(2) on benefits in kind for workers who transfer their residence or return to their country of residence, and for workers authorised to go to another Member State for medical treatment, is amended. The amendment is required because of the reference made in this article to Article 60(5) and (6), deleted by this proposed Regulation itself.

4.2.5 Article 66(1) on disputes concerning the occupational nature of the accident or disease is amended to delete the reference to Article 20 of the Regulation, which was itself deleted by Regulation No 631/2004.

4.2.6 The Committee supports all the amendments made, because they improve the Regulation by simplifying its content and cutting through red tape, insofar as these changes facilitate citizens’ contacts with public administrations.

5. Conclusions

5.1 The Committee broadly welcomes the proposed Regulation, subject to the comments made in this opinion. We feel that simplifying and improving the text of Regulations Nos. 1408/71 and 574/72 to encourage the freedom of movement of persons within the Union’s borders is to be welcomed, but believe it would be even more useful for Regulation No 883/2004 to enter into force, because in itself it brings comprehensive and far-reaching simplification to the way Social Security Schemes are coordinated.

5.2 Since the Committee has not been able to consider the final wording of the lengthy legislative process leading to Regulation No 883/2004 referred to above, we believe that an own-initiative opinion on the matter should be drawn up forthwith, before the legislative process for the new implementing regulation that the Commission is now completing gets underway.

5.3 We in the Committee wish to urge the Commission to conclude its proposal for an implementing regulation as swiftly as possible, and the Council and the European Parliament to take rapid action on the legislative process for adopting the regulation, in order to prevent any repetition of the delay experienced during the processing of Regulation No 883/2004, especially given that 2006 is to be designated Year of Mobility for Workers.

5.4 As regards the envisaged reforms to the different annexes to Regulation No 1408/71, the Committee calls for the reform referring to Section II of Annex II on special child-birth and adoption allowances to be deleted as soon as possible by agreement with the Member States, which still retain the right to derogate.


The President
of the European Economic and Social Committee
Anne-Marie SIGMUND
Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council establishing a European Institute for Gender Equality’

(COM(2005) 81 final — 2005/0017 (COD))

(2006/C 24/10)

On 22 March 2005 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 5 September 2005. The rapporteur was Ms Stechová.

At its 420th plenary session, held on 28 and 29 September 2005 (meeting of 28 September 2005), the European Economic and Social Committee adopted the following opinion by 166 votes to 5, with 7 abstentions.

1. Committee’s Conclusions and Recommendations

1.1 The European Economic and Social Committee reaffirms its keen interest in seeing much more tangible progress in the promotion of gender equality, as it has repeatedly stressed in its recent Opinions on this issue (1). Gender equality is — and must remain — a priority in the European Union’s policies. Although more effort has been invested into promoting gender equality in the EU in recent years, women remain disadvantaged in most areas of activity (2) — this must change. Gender discrimination against men also exists, although to a lesser degree, and this must also be resolved. A series of problems rooted in discrimination (on grounds of sexual orientation, age, health, disability, ethnicity and so on) and exacerbated by the gender dimension also fall within this area.

1.1.1 Many different types of gender inequality exist; they occur throughout the EU and it is vital that they are recognised, documented, collected and analysed, that lessons are drawn from them at the Community level and that solutions are sought.

1.1.2 The EESC, therefore, welcomes every effective instrument which helps to ensure that gender equality will become a reality.

1.1.3 The EESC supports the proposal to establish a European Institute for Gender Equality, (hereinafter ‘the Institute’) believing it will become an effective instrument — with great potential — for supporting the efforts of the EU and the Member States to make progress in promoting gender equality in both laws and in practice.

1.2 The EESC agrees with the reasons behind the creation of an independent institute and with the decision that the Institute must not replace or weaken the present tried and tested specialised agencies, or those in the process of being established, at Community level (3). Nor must establishment of the Institute weaken application of the gender mainstreaming principle in all the bodies, policies and programmes of the Community: the EESC is convinced that it will, on the contrary, reinforce this principle.

1.3 The EESC thinks that the Institute will derive authority from its objectivity, neutrality, independence, expert experience and ability to concentrate relevant information in one place and could become an important instrument for a wide spectrum of users. Assuming gender mainstreaming is applied comprehensively, the Institute will serve a most varied ‘clientele’ — from the most diverse strata of civil society to the EU’s policy-making bodies.

1.3.1 Moreover, the Institute will operate not only within the EU, but within a broader European context, including preparation for further EU enlargements, and internationally. It will also serve, therefore, to cultivate multicultural links and exchanges.

(2) COM(2005) 44.
1.4 The EESC thinks that in view of the ambitious goal and tasks that await the Institute, its powers and responsibilities should be more clearly defined in relation to its functions of research, information, public education and so on. The goals of data collection and processing need to be specified so that the Institute can play its full part in the EU policy-making process. In this context, it should be pointed out that all the Community's bodies have to rely on the statistical resources of the individual Member States. The Institute should be able to put forward its views on planned projects. The Institute should also have an educational role in issues of gender mainstreaming and have the possibility to submit its views on Community initiatives and activities in the field of gender equality.

1.4.1 The EESC takes the view that specifying the Institute's goals and tasks would substantiate its importance and demonstrate the need for it to have the necessary resources to fulfil these aims.

1.5 The Institute must have a strong moral authority and it is absolutely essential that it operate transparently and have truly effective links with relevant groups in civil society (set out in Article 10(1)a-c)) which have a wealth of analytical experience and expertise on gender equality and can also directly reflect the needs of the EU's citizens. The EESC strongly recommends, therefore, that civil society representatives have more places on the Institute's Management Board (see points 3.7.2 and 3.7.3 below). In this context, the EESC once again highlights the important role of the social partners at various levels in solving the problems of gender equality in the labour market.

1.6 At the same time, the EESC strongly urges that representatives of Europe's social partners and the relevant representative NGO have the same standing on the Management Board as the other members — i.e. that they have the right to vote (see also point 3.7.4).

1.7 The EESC considers it essential that funding for the Institute should be sufficient for it to fully carry out its mission alongside other Community agencies or programmes also dealing with gender equality, and not at the expense of these.

1.8 The Proposal for a Regulation does not state where the Institute will be based. The EESC, however, favours it being set up in one of the countries that joined the EU in 2004. Some of these countries have already expressed an interest in hosting the Institute, and this would also satisfy the need for a balanced decentralisation of institutions around the EU and would offer the opportunity for more direct contact with citizens of one of those countries and for learning more about its experience in the field of equal opportunities for men and women.

1.9 The EESC is convinced that close cooperation with the Institute will be of benefit to both parties and declares its readiness to collaborate with the institute on the basis of Community rules.

2. Introduction and general remarks

2.1 The European Commission issued its Proposal for a Regulation of the European Parliament and of the Council establishing a European Institute for Gender Equality on 8 May 2005, and stated, inter alia, in its press release (\(^1\)) that:

> ‘The Institute will be an independent centre of excellence at European level. It will gather, analyse and disseminate reliable and comparable research data and information needed by policy-makers in Brussels and in the Member States. It will have a documentation centre and a library which will be open to the public.

> The Institute will stimulate research and exchanges of experience by organising meetings between policy-makers, experts and stakeholders and it will raise awareness of gender equality policies with events including conferences, campaigns and seminars. Another vital task will be to develop tools for supporting the integration of gender equality into all Community policies’.

2.2 The substantial period of time that separated the first impulse to create a European Institute in 1995 (\(^5\)) and promulgation of the proposal for a regulation in May 2005 allowed expert and policy research to be conducted which has enabled a considered step to be prepared.

2.3 At its meeting of 1 and 2 June 2004, the European Employment, Social Policy, Health and Consumer Affairs Council unanimously declared its support for the establishment of the European Institute (\(^6\)):

> ‘Delegations fully supported in principle the setting-up of such an Institute, while stressing the importance of a structure that would bring added value but which would not duplicate existing activities in this area. The need for budget-neutrality was also mentioned’.

The Council mandated the Institute with:

— questions of coordination;

— centralisation and dissemination of information;

(\(^1\)) European Commission Press Release IP/05/266 8.3.2005, available in English, French and German.


the raising of gender visibility; and

the provision of tools for gender mainstreaming.

2.3.1 The European Council subsequently invited the Commission to submit its proposal (7).

2.4 The decision to establish the Institute thus came after the EU’s enlargement to include ten new countries and the EESC considers it important that it operate, from the outset, in the enlarged EU, which will enable it to take into account a greater variety of experiences, situations and know-how.

2.5 In its Opinion Beijing +10: Review of progress achieved in the field of gender equality in Europe and in developing countries (8), the EESC recently summarised the history and range of activities in the EU on gender equality. It draws attention to that Opinion and stresses the importance of realising that the need for expert reports, analyses and information and the quality demanded of these is growing due to broader application of the principle of gender mainstreaming, which the EESC warmly welcomes.

2.6 Practical experience reveals new and existing problems, directly related to gender issues, which the EU and its Member States face and which the Institute must address:

— inequality in the labour market, particularly segregation in professions, differences in wages, hazards in the labour market,

— the career progression of women and their rise to supervisory or management positions, monitoring the situation of women in management and executive positions,

— reconciling professional and private life,

— access to life-long learning, monitoring the improvement of women’s professional qualification,

— demographic trends in the EU,

— the trade in woman (and children) and their exploitation for sexual purposes,

— all forms of violence on the basis of gender,

— the insufficient participation of women in decision-making,

— the generally insufficient attention given to gender issues and continuing inadequate application of the gender mainstreaming principle,

— stereotypical presentation of gender roles of men and women (in education, the media, public life and the world of work),

— women’s own lack of awareness of the position they could have in society,

— intercultural issues,

— gender equality within different civil society organisations and their representative institutions, particularly European institutions,

— etc.

2.6.1 The EESC has already drawn attention in some detail in its Beijing +10 Opinion, to which it refers the reader, to a raft of areas where action should be taken (9).

2.7 As has been stressed above, the EESC is aware that gender mainstreaming is being applied more widely and continues to develop. For this reason, the EESC agrees that the task of concentrating the efforts of Member States and civil society stakeholders so that they can help Community bodies in these matters has to be conferred on an independent institution, which will increase the effect of synergy. The EESC also considers it important to ensure that the Institute and Community agencies complement one another and that the principle of gender mainstreaming will continue to develop within the agencies in close collaboration with the Institute. In the same way, cooperation with institutional mechanisms for gender equality must be the norm.

2.8 The EESC recalls that while the establishment of the Institute is a step forward, this does not rule out the need for further measures aimed at making progress in implementing equality of opportunity while meeting all the goals adopted in Community documents. It will be of the utmost important that the Institute actively contributes to the fulfilment of the Lisbon objectives on promoting growth and job creation.

2.9 The EESC is in favour of the Institute being established. However, it needs to get the best possible reception from civil society at European, national and local levels, without whose support it could not get off to a good start. The necessary resources must therefore be invested in this new institution to make it credible and trusted. This will enable it to successfully pursue activities of all kinds and attract the interest it deserves.

3. Specific remarks

3.1 The EESC approves the legal basis on which the Institute is to be established, namely Article 141(3) and Article 13(2) of the Treaty establishing the European Union. It agrees with the reasons set out in the recitals, which also explain that the Proposal conforms to Article 5 of the Treaty.

3.2 The EESC also agrees that working with the existing infrastructure — foundations and other bodies — is consistent with the Council’s desire to avoid duplication. The EESC notes that Recital 12 implicitly includes other institutions and authorities working within the EU, such as Eurostat. The EESC draws attention to the Communication from the Commission on the operating framework for the European Regulatory Agencies and the Draft Interinstitutional Agreement on the operating framework and notes that the Institute’s place among existing institutions will also be defined in this context.

3.3 The EESC points out that the English title of the Institute (Art. 1) — The European Institute for Gender Equality — reflects its mission unambiguously and is open to the widest connotations (ethical, moral, aesthetic, sexual, etc.). However, we know from experience that the word ‘gender’ has no precise equivalent in a number of EU languages. Translations should therefore be worded to come as close as feasible to the original.

3.4 As far as the Institute’s goals are concerned, the EESC thinks Article 2 should include a clear reference to promoting the principle of gender mainstreaming.

3.4.1 The EESC also considers that the Institute should be tasked with helping employers’ and workers’ organisations and other elements of organised civil society in their work on gender equality. This aim should be clearly stated and taken into account.

3.5 The EESC thinks the tasks in Article 3 are just as important as the goals and should be expanded as set out in point 1.4 of this opinion.

3.5.1 The EESC asks for social partners to be explicitly mentioned in Art. 3(1a). In this context it should be noted that the European social partners have recently adopted a Framework of Actions on Gender Equality.

3.5.2 The EESC stresses that the Institute’s benefits will be more apparent if it regularly issues, in addition to the annual report, information related to achievements made under, for example, the Framework Strategy on Gender Equality. It should also publish, amongst other things, its work programme as well as its annual report (Art. 3(1e)).

3.5.3 The issues that the Institute deals with will also require appropriate working methods. These should be tailored to different types of gender inequality and discrimination, and so should use comparative methods (benchmarking), case studies, vertical (sectoral) data collection, gender budgeting, monitoring, etc. It goes without saying that the Institute must also collaborate with specialised agencies and institutions in this regard.

3.5.4 The EESC notes that (1d) of the same Article states that the Institute will conduct research in ‘Europe’, a reference to its broader operation within the EEA, as part of future enlargement and in the countries of the Council of Europe.

3.5.5 The EESC would want — in keeping with the objectives set out in Article 2 and the Recital — to add the national or regional level to Art. 3 (1g). This would make it possible to involve other stakeholders, such as local and regional governments, which have an important role to play in spreading awareness of gender equality issues among the public at large.

3.6 The EESC agrees with the Institute being independent of national bodies and civil society (Art. 5). It considers, however, that it should also be independent of the Community’s institutions, which will enable it to take a more objective approach towards them. Not least for this reason, the EESC proposes increasing the number of civil society representatives on the Management Board to ensure the Institute’s greater independence.

3.6.1 The EESC agrees with and supports the principle that the Institute will work freely and independently with institutions in the Member States. It thinks members of the Advisory Forum should be made responsible for obtaining and delivering information in time (see point 3.8.2 below). This could be a suitable role for bodies which are to operate in the Member States under the Directive to consolidate directives on equal opportunities.

3.7 As far as the Institute’s bodies are concerned, the EESC appreciates the efforts to make the Management Board an operational body that can ensure the Institute reacts flexibly to changes and demands.

3.7.1 The EESC takes the view, however, that the Commission must only appoint members of the Management Board who are to represent the groups mentioned on a proposal from those organisations. This should be stated in Article 10.

3.7.2 The EESC stresses that if the Management Board is to be able to respond appropriately to needs — i.e. to reflect its responsibilities to the European Commission and the Member States — and if it is to receive appropriate feedback from civil society, Europe’s social partners and the relevant NGO need to be effectively and visibly represented at the Community level, which has — as the Regulation puts it — a ‘legitimate interest in contributing to the fight against discrimination on grounds of gender and the promotion of gender equality’. Moreover, there is no reason why such an involvement of civil society

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representatives could not be proposed. Given that the national level of social partners will not be represented here, unlike in the Community’s tripartite bodies, it is desirable at least in this way to guarantee the active involvement of social partners and the relevant NGO.

3.7.3 The EESC, therefore, urges that the number of members on the Management Board be increased. It would suggest raising the number to six members from each party (Council, Commission, social partners and relevant NGO at Community level), which would also enable the organisations mentioned in Art. 10(1) a)-c) to ensure equal representation of men and women when selecting candidates. It follows, therefore, that these organisations would have two seats each.

3.7.4 There is no reason why representatives of the social partners and the NGO should not have the right to vote. In order to better ensure independence, autonomy and objectivity of proceedings, the EESC appeals to the Commission to incorporate full voting rights for all representatives of employers, workers and the relevant NGO. This is consistent with paragraph 4, which states that ‘Each member of the Management Board, or in his/her absence his/her deputy, shall have one vote’.

3.7.5 The EESC considers that the directors of the European Foundation for the Improvement of Living and Working Conditions, the European Agency for Safety and Health at Work, the European Centre for the Development of Vocational Training and the EU Agency for fundamental rights might perhaps also be able to participate directly in the meetings of the Institute’s Management Board as observers (Article 10(11)). The director of the Institute should likewise be able (on behalf of the Management Board and/or on the basis of a ‘memorandum of understanding’) to take part in the proceedings of these institutions.

3.8 The EESC respects the fact that the Advisory Forum’s role will enable Member States to involve relevant bodies and create a network of experts. Under Article 12, this body will not have decision-making rights within the Institute and it is unnecessary, therefore, to state that the three members who represent interested parties at European level do not have the right to vote. One might also ask why they are appointed by the Commission: they should be directly appointed by the organisations set out in Article 10(1) a)-c).


3.8.1 A way must be found to ensure equal representation of men and women in the Advisory Forum.

3.8.2 As stated in point 3.6.1, members of the Advisory Forum should have responsibility for ensuring cooperation between institutions in their countries and the Institute (Art 12(4)).

3.9 The EESC has reservations concerning the Institute’s planned funding. It detects contradictions in what the Council press release (quoted above in point 2.3 of this opinion) says it should achieve, namely provide added value by meeting demanding goals, while at the same time maintaining budget neutrality.

3.9.1 It is assumed that funding for the Institute will be partially deducted from the PROGRESS programme funds. Paragraph 3.6 of the Draft Proposal’s Explanatory Memorandum states that: ‘The Institute’s activities will be distinct from those proposed under the gender equality strand of the PROGRESS programme (2007-2013)’. The EESC sees this as an argument supporting the position expressed in its Opinion on the PROGRESS programme:

We therefore urge that the funding earmarked for the Gender Institute should not be deducted from the total PROGRESS financial framework, as the current proposal evidently intends, but that separate funding be provided for’ (13).

3.9.2 The EESC recommends, therefore, that the necessary funding for the running and sound operation of the Institute should be taken into consideration when the EU’s Financial Perspectives are being discussed and should be allocated, at least in stages, so that the Institute can have the legal and financial security needed to meet the demands which will be placed upon it.

3.9.3 The EESC thinks that concentrating work on gender equality in one place will bring savings at the Community and national levels. The PROGRESS programme draft budget should not, therefore, be reduced but, on the contrary, increased by this amount if there is no decision on separate funding for the Institute.

3.9.4 On no account must the establishment of the Institute be an excuse for reducing funding of other institutions — for example, the Dublin Foundation — whose remit also includes issues such as equal opportunities.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on 'the Northern Dimension and its Action Plan'

(2006/C 24/11)

On 10 February 2005, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on: Northern Dimension and its Action Plan.

The Section which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 8 September 2005. The rapporteur was Mr Hamro-Drotz.

At its 420th plenary session, held on 28 and 29 September 2005 (meeting of 28 September), the European Economic and Social Committee adopted the following opinion by 163 votes to 2 with 9 abstentions.

The European Union’s Northern Dimension Policy (ND) was established in 1999. ND is part of the EU’s external relations policy, whose objective is to improve welfare of the northern part of Europe through regional and cross-border cooperation. ND covers the Baltic Sea Region and the Arctic area. The ND is implemented within the framework of the Partnership and Cooperation Agreement (PCA) with Russia, as well as the Agreement on the European Economic Area (EEA — Norway, Iceland). ND has, after the enlargement of the EU, enhanced activities with Russia, especially towards the north-western regions.

The EU-Russia relations have been strengthened by the adoption of the ‘Four Common Spaces’. In May 2005 an understanding was reached (the Road Maps) on how to proceed with the establishment of the common spaces. Russia is also negotiating accession to the World Trade Organization (WTO), which would facilitate trade and economic cooperation between the EU and Russia. The general development in the EU-Russia relations brings also an impetus to the Northern Dimension.

Linking the ND tighter to the cooperation between the EU and Russia is foreseen. This aspect is noted in the Conclusions of the European Council’s meeting on June 16-17, 2005: ‘The European Council expresses its satisfaction at the outcome of the 15th EU-Russia Summit, which was held on the 10 May 2005, and, particularly, at the adoption of the road maps for the creation of four common spaces… Their implementation will strengthen the strategic partnership between the EU and Russia, as well as regional cooperation, in particular in the framework of the Northern Dimension’.

ND is also referred to in the EU-Russia Road Maps for the Common Spaces, particularly under the heading of Common Economic Space: ‘... The implementation of actions under the CES, priorities jointly identified in the framework of regional organisations and initiatives, such as the Council of Baltic Sea States, the Northern Dimension etc., will be taken into consideration’.

The EESC decided in spring 2005 to prepare, as a continuation of the Committee’s previous ND work, an opinion about the Northern Dimension. The opinion will be the EESC’s contribution to the ND Ministerial Conference, which will take place in November 2005.

1. The objectives and priority sectors of the NDAP II, 2004-2006


1.2 The NDAPII covers five priority sectors:

— economy, business and infrastructure;

— human resources, education, scientific research and health;

— environment, nuclear safety and natural resources;

— cross-border cooperation and regional development;

— justice and home affairs.

1.3 The NDAPII also pays attention to specific regions: Kalingrad and the Arctic region. It encourages concerted actions by all partners involved to reinforce economic, employment and social policies.

1.4 The NDAPII describes different possibilities for action in these sectors, leaving the practical conduct of actions to interested stakeholders. The ND has no separate budget, but is financed from various EU programmes (i.e. Tacis), the governments concerned, and the International Financing Institutions (NIB-Nordic Investment Bank, EBRD-European Bank for Reconstruction and Development, etc.).

1.5 The European Commission prepares annual progress reports on the implementation of the NDAPII. The 2004 Annual Progress Report refers to a vast number of activities in the five priority sectors. The report also makes reference to the EESC’s conclusion that civil society organizations are poorly aware of the ND activities and calls for enhanced public information and further involvement of regional organizations in the implementing and monitoring of the ND activities.

1.6 The implementation of the NDAPII is monitored annually: a meeting of Senior Officials took place in 2004; the Ministerial Conference in 2005, and a Senior Officials’ meeting scheduled to take place in the second half of 2006.

2. The Northern Dimension and the European Economic and Social Committee (EESC)

2.1 The NDAPII requests a contribution of the European Economic and Social Committee (EESC) in the implementation of the NDAP: ‘To provide for the broad participation of civil society groups in reviewing progress under the Action Plan, it would also be helpful if the EESC would be able to organise annual Forums on the implementation of the Action Plan, bringing together representatives from the social and economic organisations represented in the Committee’ (2).

2.2 The request was based on the EESC’s contributions in previous years: the opinions on relations between the European Union and the countries bordering the Baltic Sea (3), on the EU’s Northern dimension including relations with Russia (4), on Northern Dimension: Action plan for the Northern Dimension in the external and cross-border policies of the European Union 2000-2003 (5) and on the EU/Russia strategic partnership: What are the next steps? (6); the statements to the ND Ministerial meetings in 1999, 2001 and 2002; the conclusions from the two ND Conferences (Forums) arranged by the EESC in 2001 and 2003.

2.3 The EESC responded positively to the Commission’s request and decided to gather information about the CSO’s views on:

— the awareness and involvement of civil society organisations in the implementation of NDAPII, either through requested or own initiative activities;

— the civil society organisations’ opinions and recommendations, regarding the contents and the implementation of the NDAPII.

2.4 The CSOs’ views were in 2004 collected with a questionnaire, which was widely distributed to civil society organisations in all the countries concerned, and through fact-finding missions to Gdansk, Kaliningrad and Riga.

3. The conclusions and recommendations by the EESC in 2004

3.1 The EESC was represented in the Senior Officials’ meeting in October 2004, and it presented conclusions and recommendations in a report to the meeting (7).

3.2 The general conclusion about the CSOs involvement in the Northern Dimension Action Plan II was that:

— they are generally poorly aware of the ND;

— they are only marginally engaged in the implementation of the NDAP II;

— they have no role (except the EESC’s activity) in the monitoring of the implementation.

The situation in these three aspects seemed to be more positive in ‘the old’ EU-Member States in the region than in the other states.

There was a general interest among the CSOs, which were contacted, to get more information about the ND and the NDAPII, to be engaged in projects and to participate in the monitoring, both at national and European level.

The EESC proposed that spreading of information to the CSOs about the NDAPII, as well as engaging them in the implementation and the monitoring, should be improved.

The EESC offered assistance in information and monitoring activities at European level, but, at the same time, underlined that the ND activities should be, primarily, at sub-regional, national and local levels, with the intention to involve the authorities and interested CSOs in a constructive interaction.

The EESC supported the principle stated in the NDAPII (8), that representatives of civil society should be encouraged to participate in the annual meetings of the Senior Officials.

It was also proposed that the EU should consider some additional aspects during the NDAPII:

— raising the ND profile in the EU-Russia relations and in the development of the EU Neighbourhood policy;

— arranging a ND meeting in the region, including Kaliningrad (the CSOs in the region would highly benefit from this);

— improving the arrangements to facilitate the funding of small projects with the intention to encourage cross-border contacts between the CSOs in the region;

— clarifying the available EU resources for financing of ND projects (CSOs have difficulties to find funding sources);

(5) OJ C 139, 11.5.2001, p. 42.
(7) The EESC report 2004 concerning the EESC findings under the EU’s NDAPII.
— spreading information in the region, including Kaliningrad, about the EIB and other financial resources, which may be partners in potential ND projects:

— considering an appropriate handling of the ND in the preparation of the EU’s new financial framework 2007-2013.

3.3 These recommendations are still relevant.

4. The EESC’s continued contacts with the ND-related CSOs

4.1 The EESC expressed in the 2004 report its intention to provide a contribution to the Ministerial Conference in 2005, as well as to the Senior Officials’ meeting in 2006, based on the same criteria as in 2004.

4.2 The EESC has in the context of the newly established Eastern Europe Contact Group (EECG) carried on its activities in the field of the Northern Dimension. The EECG is composed by members of the EESC and handles the Committee’s activities towards the Eastern European countries. The aim of these activities is to support the EU’s policies to improve relations with the East-European countries, to contribute with the views of the civil society organisations in this context, and to establish direct contacts with CS actors in these countries.

4.3 The EESC has spread information about the Northern Dimension through own contacts and by referring to the Commission’s Northern Dimension Information System (NDIS).

4.4 The EESC has, as part of the preparation of the opinion, distributed a questionnaire to approximately 100 civil society organisations. The Committee has also discussed ND with Russian CSOs during the preparation of the EU-Russia opinion. The conclusions in this opinion, therefore, also reflect views of CSOs in Partner Countries.

5. Conclusions based on the EESC’s survey in 2005

5.1 General knowledge on Northern Dimension

5.1.1 The survey on general public awareness of the ND was conducted in June 2005. The questionnaires were sent out to various civil society organizations in the countries that are mainly covered by the activities of the Action Plan (the Baltic and Nordic countries, Germany, Russia, including Kaliningrad and Poland). The questionnaire asked for information and views about the same aspects as it did in the previous year: a) the awareness of civil society actors about the ND and the NDAPII. b) the opinion of the CSOs about the ND, and c) the involvement of CSOs in the implementation and monitoring of the NDAPII.

5.1.2 Only 20 responses were received — an indicator that general awareness about the ND and the NDAPII is still very low. This was further supported by the results of the questionnaire — while most of the CSOs answered that they had some awareness of the ND&NDAPII, only in some cases it was obvious that the CSOs had real knowledge about the NDAPII. A third of the CSOs replied that they had heard something about the ND&NDAPII, but, clearly, they had little idea about the aims and contents of it.

5.1.3 Some actors seem to be aware of the few public private partnerships (PPP) in the ND, above all the environmental partnership (NDEP). Several CSOs have, in addition, noted the ND through various regional organisations in the Baltic Sea Region, above all the Council of Baltic Sea States (CBSS). The employers’ (BAC-Business Advisory Council) and the trade unions’ networks (BASTUN-Baltic Sea Trade Union Network) have also promoted awareness on ND among their members.

5.1.4 NDAPII is seen by some actors as a programme, which is not concerning CSOs, but rather intended as a political project for regional cooperation between the governments and relevant authorities. This seems to be the case, regardless the Commission’s efforts to improve public information through the NDIS-initiative.

5.2 Information and involvement of CSOs in ND activities by local authorities

5.2.1 Results of the questionnaires clearly show that there have been very few initiatives by the governments, authorities or other associations to inform and involve the CSOs in NDAPII. There were only a few responses that confirmed such an engagement. Relevant authorities have, however, in some countries initiated seminars and workshops, which have addressed the implementation of the NDAPII. This is also the case with regional bodies.

5.2.2 Only a few CSOs have been involved in NDAPII by own initiative. This concerns activities related to strengthening investment conditions in the ND area, cooperation with other associations in the ND countries, debate on future of ND, and generally following the ND developments.
Overall, the opinion on the ND&NDAPII is rather positive, albeit with some exceptions. A majority of the CSOs had either a positive or fairly positive opinion of the ND&NDAPII, while a few of the CSOs had negative evaluation, and some CSOs had no opinion, primarily, due to lack of knowledge about the activities of the ND and NDAPII.

There seems to be a general convergence of views on the most important fields of NDAPII for the CSOs’ countries. The fields of economy, business, infrastructure; environment, nuclear safety, and natural resources; cross-border cooperation and regional development were mentioned by the CSOs as having the greatest importance within the NDAPII. The fields of justice and home affairs, Kaliningrad, and the Arctic cooperation seems to be of less concern to the CSOs.

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<tr>
<th>Fields of NDAPII</th>
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<td>Economy, business, infrastructure</td>
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<td>Human resources, education, scientific research, and health</td>
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<td>Environment, nuclear safety, and natural resources</td>
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The CSOs, in addition, underlined the need for other complementary measures:

— Actions to involve civil society actors in the implementation of NDAPII
— Establishment of structures for implementation of the NDAPII
— Allocation of sufficient resources for NDAPII
— Distribution of progress reports on implementation of NDAPII.

6. Recommendations on the Northern Dimension

6.1 The EESC supports the continuation of regional cooperation in the northern part of Europe through structured, multilateral, cross-border cooperation, which also includes non-EU states in the region. The Northern Dimension seems to be well suited for this aim.

6.2 The EESC supports intentions to link the ND to the EU-Russia cooperation and the Four Common Spaces. The EESC has in its recent opinion ‘The contribution of civil society to EU-Russia relations’ (9), para 3.2.5. stated: ‘The EU and Russia should also work together to revamp regional cooperation — the Northern Dimension… The EESC is pleased to note that this aspect has also been duly taken into account in the Road Maps and encourages further measures to develop regional cooperation as part of the EU-Russia relations’.

6.3 Successful regional ND cooperation would require that Russia properly participate in the preparation and implementation of future ND policy. Mechanisms for cooperation in this context, for instance a joint steering council should be considered, also taking into account the other non-EU countries in the region.

6.4 The EESC underlines the recommendations in its opinion on EU-Russia relations that civil society matters should be upgraded in the EU-Russia Road Maps, and that civil society actors should be involved in the EU-Russia cooperation. One should among others consider ways to establish a structured consultation of CSOs in the future ND mechanisms.

6.5 The five sectors of ND cooperation are relevant for the future. One should, above all, take advantage of the positive experiences of the concept of ND partnerships (environmental, social and health, information-technology). Serious consideration should, in this respect, be given to the creation of partnerships in the following areas:

— infrastructure and logistics
— employment, human resources and social issues, including civil dialogue
— cross-border and people-to-people cooperation, including youth, education and culture.

6.6 Existing regional bodies in the Baltic Sea Region, above all the CBSS, should have a central role in the forthcoming ND exercise. The civil society organisations would in this context have a fair opportunity to be involved in and to contribute to the ND through their own regional cooperation networks and their established links to the aforementioned bodies.

6.7 The EESC reiterates its recommendation from 2004 that spreading of public information about the ND should be strengthened. Upgrading of the NDIS is needed for this purpose. The EESC also stresses that information should, above all, be spread nationally and locally, as it is the responsibility of the governments and relevant authorities in the states concerned. Better information would stimulate broader interest in the ND and encourage civil society actors to increase their participation and contribution.

6.8 The financing of ND-partnerships should be determined on case by case basis, and also the governments and the International Financing Institutions (IFIs) should have a central role in this respect. The Norwegian and EEA financial mechanisms would as well be beneficial in spurring above all joint cross-border ND-actions. The European Neighbourhood and Partnership Instrument (ENPI) should become topical from beginning of 2007.

6.9 The EESC will carry on its ND-related activities and has the intention to contribute to the Senior Officials’ meeting in 2006. The contribution may reflect also conclusions, based on the Committee’s discussions with CSOs in the partner countries. The EESC would be prepared to contribute to further considerations on the future implementation of the Northern Dimension.


The President
of the European Economic and Social Committee
Anne-Marie SIGMUND
Opinion of the European Economic and Social Committee on 'Better lawmaking'  
(2006/C 24/12)

On 7 February 2005, Denis McShane, the United Kingdom Minister of State for Europe, on behalf of the UK presidency of the EU Council, asked the European Economic and Social Committee to draw up an exploratory opinion on: Better Lawmaking.

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 27 July 2005 (rapporteur: Mr Daniel Retureau).

At its 420th plenary session, held on 28 and 29 September 2005 (meeting of 28 September), the European Economic and Social Committee adopted the following opinion by 103 votes to three with eight abstentions.

1. Summary of the opinion

1.1 What is meant by ‘Better lawmaking’?

1.1.1 Better lawmaking is a real social requirement, and the EESC will relay to the European institutions and governments the needs of civil society and users of the law in this regard.

1.1.2 Better lawmaking means, primarily, looking at a situation from the viewpoint of the user of the legal instrument. This explains the importance of a participatory approach, involving preliminary consultation and taking account of the representative nature of civil society organisations and social partners — the groups directly affected by legislation — and constructively employing the resources and expertise of consultative institutions.

1.1.3 It also means less lawmaking, combating legislative inflation and simplifying the acquis since too much legislation makes the law difficult to understand, thus creating barriers to trade; it also means ensuring that implementation of the rules will be effective and simple.

1.1.4 Better lawmaking means reducing legislation to its essentials and concentrating on the objectives. It also means designing flexible, adaptable legislation that is sufficiently durable and that also requires a disciplined approach and, above all, consistency in drafting and implementation.

1.1.5 Simplifying means reducing the complexity of the law as much as possible, but it does not necessarily have to mean a drastic cut-back in the body of Community law or deregulation, which would run counter to civil society’s expectations regarding security and the need, voiced by business, particularly SMEs, for legal certainty and stability.

1.1.6 All laws or parts of laws that are obsolete must be explicitly repealed.

1.2 How to improve the quality of Community legislation

1.2.1 Every DG of the Commission, in proportion to the number of texts falling within its remit and their complexity (measurable, for example, by the total number of lines and references to other previous legislation and the attendant administrative obligations), should propose a simplification programme to be included in the Commission’s overall programme, explaining the need for and the foreseeable impact of its proposals on users of the proposed simplifying legislation. This programme will propose measures for each group of adopted texts (repeal, revision, coordination, ...), as well as the estimated resources necessary for its implementation.

1.2.2 An annual consolidated report by the Commission on Simplifying the acquis and better lawmaking will report on the programme adopted for the year and on the effective implementation of the previous year’s programme, as well as the situation resulting from its rolling mid-term simplification programme and its work programme. EU and national developments in simplification and better legislation will be analysed and accompanied by new proposals and recommendations, if necessary. A proliferation of reports and communications that coincide or overlap — that coincide or overlap — should be avoided.

1.2.3 The power of initiative is not neutral; it has a determining influence on the choice of priorities and purposes of the legislation, its preparation and adoption, its reformulation if the legislative authorities put forward amendments; the quality and relevance of the legislative proposals have direct consequences on the duration and outcome of the adoption procedure. If an initiative is badly prepared, it entails a significant waste of time and resources for all the institutions concerned, as well as the organisations consulted.

1.2.4 The quality of the adopted text at the end of the legislative procedure and that of the transposition of directives also have consequences in terms of disputes and the need for the intervention of national and Community judicial authorities, additional costs for national administrations and parties to the proceedings, if there are deficiencies or lead to difficulties of interpretation.
1.2.5 The Commission and the legislative authorities are not omniscient; the social, economic and technological situation is complex and changing. Furthermore, radically changing a law or making it more flexible, where its practical effects differ from the desired objectives or where the cost of implementation is excessive for administration or users, does not mean weakening the legislative authority; quite the opposite — it demonstrates political intelligence likely to build confidence among users and foster respect for the law.

1.2.6 Assessment, launched ahead of the legislative process, must therefore come to a close with an impact assessment or study, which assesses how the legislation can actually be received, how it fits in with the existing body of law, and any potential implementation difficulties.

1.2.7 Where the European Commission withdraws legislative proposals that are already being examined, it should justify its decision to end the legislative procedure already underway and consult legislative and consultative institutions as well as the civil society organisations involved in the process or whose interests are affected by withdrawal.

1.2.8 Legislative assessment, both ex ante and ex post, must be an inclusive and participatory exercise if it is to have undisputed political and practical legitimacy. While ex ante assessment precedes, then accompanies the drafting process, ex post assessment takes place in two stages: first during the transposition of directives or enforcement of regulations, during which the first acceptance and enforcement difficulties become apparent; then during the actual impact assessment which takes place after a predetermined period of implementation on the ground and which may highlight unforeseeable or undesirable consequences. Impact assessments may involve feedback on legislation and the ways in which it is implemented (1).

1.2.9 Negative or unforeseen consequences can differ widely; their evaluation in terms of excessive costs on the part of administration or users must be complemented by a study of their social, economic and environmental impact, or in the light of fundamental rights.

1.2.10 It is necessary to evaluate the exercise of implementing powers: both Community (direct application, comitology of regulation, regulatory agencies) and national (ministries, devolved authorities, independent administrative authorities), their impact (administrative formalities required of users, cost, complexity) and the effectiveness of monitoring or any sanctions. The legislative authorities must be able to carry out a follow-up to this exercise which combines regulation and implementation.

1.2.11 Member States must also develop and perfect their own instruments for evaluation, and then report to the Commission and the national legislative authority on the results, highlighting the successes and problems encountered.

1.2.12 A policy for coordination, information and exchange of national best practice, the regular publication of transposition tables, as stipulated in the Commission decision, as well as the scoreboard showing the progress of the internal market, will permit effective follow-up and corrections.

1.2.13 The European Economic and Social Committee, as it undertook in October 2000 (Code of Conduct), will continue to issue an annual opinion to the Commission on the global report Simplifying the acquis and better lawmaking as well as on the communications and various sectoral reports presented by the Commission on simplifying the acquis and the quality of legislation.

1.3 Conclusion

1.3.1 The EESC considers the task of simplifying the Community body of law and making it more consistent and relevant not only to be a matter of methods and techniques, but a deeply political issue that requires intense interinstitutional involvement, with just as high a degree of participation and support from organised civil society.

2. Introduction

2.1 The European Economic and Social Committee (EESC) has been asked by the UK EU Presidency for an opinion on Better Lawmaking; it has also been asked to issue an opinion on the Commission’s 12th report on simplifying Community law, and it has taken into account the Communication on Better Lawmaking, Growth and Employment which followed on from the European Council on the review of the Lisbon Strategy, as well as the recent Commission decision on the transposition of Directives.

2.2 The EESC’s suggestions do not call into question the Community method, based on the rule of law; this method has been reaffirmed and consolidated in the draft Constitutional Treaty, in addition to being enhanced by the addition of a procedure for the direct involvement of civil society in the power of initiative. The suggestions are essentially based on the Conclusions of 1992 Edinburgh European Council, the White Paper on Governance and the Lisbon Strategy (2000-2001), and the interinstitutional agreement of 16 December 2003 and they take into account the work done on the initiative of six presidencies and the Council.
2.3 However, the suggestions stress participation by civil society in the process of drawing up, assessing and subsequently revising legislation. The EESC’s views and proposals on the subject and the quality of draft legislation seek to contribute constructively to the improvement of the legal and administrative environment for business and the general public.

2.4 The EESC recognises the need for better lawmaking and welcomes every initiative to this end. It stresses, however, that not all legislation should be considered pointless or an impediment to the EU adapting to the challenges that face it. Moreover, the Commission is the guardian of the Community’s interest and the engine of European integration, and the EESC could not support any process which would result in the Commission renouncing the right of initiative which it uses to promote an ‘ever closer union among the peoples of Europe’.

I. BETTER LAWMAKING: WHAT DOES IT INVOLVE?

3. Better lawmaking: a priority Community strategy

3.1 Better lawmaking means contributing to better governance and simpler, more understandable legislation, that gives the European institutions a better image in the eyes of civil society in terms of their ability to act effectively; it thus means re-establishing civil society’s confidence in those institutions that make the rules.

3.2 The principle of equality before the law is at present under threat from the complexity and number of rules in force and difficult access to applicable law and law in preparation; however, the need for legislation to be intelligible and accessible must be the guiding principle in both simplifying the acquis and drafting new legislative proposals.

3.3 The EU Charter of Fundamental Rights, as solemnly proclaimed in Nice in 2000, asserts the right of European citizens to good administration; provision of information to, and participation of, end-users, ensuring that the legislative proposal is needed, recourse to independent and reliable experts, implementation of the principles of proportionality and subsidiarity, quality of the legislation, its implementation or execution, and administrative simplification — these are vital prerequisites if a law is to be effective in the eyes of those affected by it.

3.4 The two priorities — simplification of the acquis and better lawmaking — alongside the EU actions undertaken to this end, share the same objective — good governance — and require sufficient resources; they should be integrated into the law-making process and implementation of the law. Once the process is well-established, it must be supported politically with adequate resources.

3.5 Simplification of the acquis and improvement of the quality and effectiveness of legislation have become a top Community priority for competitiveness, growth and employment, sustainable development, quality of life for the people of the European Union and in order to facilitate the activities of European businesses in the internal market and in trade with third countries.

3.6 However, the work and the initiatives undertaken are still far from bearing full fruit; the lack of success of the Lisbon Strategy up till now, the acknowledgements and proposals of the Wim Kok report, and its revival on the part of the European Council have necessarily led to a re-assessment of the strategy followed since 1992, which has been enhanced since 2001 by the institutions and Member States in order to improve legislation and its execution.

3.7 The EESC shares the Commission’s opinion that an overall re-assessment of needs and available resources is required. This also applies at national level.

3.8 Europe’s difficulties in terms of competitiveness, achieving a knowledge-based economy and on the political front in terms of transparency, participation, effectiveness and acceptance of legislation at grass-roots level and by businesses require decisive strengthening, even — in some aspects — a redefinition of the methods used alongside a reallocation of resources earmarked for better lawmaking in the Europe of 25, which will, incidentally, continue to enlarge in the future.

3.9 The Commission’s current strategy is clearly based on two communications published in March 2005 (4) and should be completed over the current year by the proposal for an operating framework for agencies. This framework should, in the EESC’s view, be limited to issuing guidelines, without impinging on the autonomy of agencies which are already monitored by the Court of Auditors in implementing their budgets and by the courts in the event of disputes.

3.10 The 12th report on Better lawmaking 2004 (5) refers to: the Commission’s action plan on simplifying and improving the regulatory environment, the interinstitutional agreement on better law-making of December 2003 (6) and the Member States’ strategy set out in the intergovernmental action programme adopted in May 2002 by ministers of public administration. In its 11th report Better lawmaking 2003 (7), the Commission stated its aims, which — moreover — are given in detail in eight thematic communications (8).

3.11 The Commission’s action plan stems from experts’ preparatory work and the 2001 White Paper on European governance, and the group’s work on the quality of the regulation implemented in 2000 by the ministers of public administration; a sufficiently broad consensus now exists.

3.12 Improvement of the Community acquis through simplification is an essential objective for the Commission, which has adopted a methodology and the means to achieve it.

3.13 Since the process launched by the 1992 Edinburgh Council on simplification and observance of the proportionality and subsidiarity principles began, the follow-up and progress of which have already been recorded in twelve annual reports, the Commission has also made outline provisions for prior consultation procedures, the management of impact assessments and the quality and procedures for drafting new legislation. Yet progress — however real — is still felt to be far from sufficient for users of the law.

3.14 The Council’s initiative for better lawmaking, underway since the Irish presidency, was addressed in the 2004 declaration by the six presidencies on better lawmaking (8). November 2004’s Competitiveness Council identified twenty or so legislative acts (split into 15 priorities) for simplification and continued its work on this in February 2005; the Commission undertook the task of fleshing out these guidelines; success is essential.

3.15 In its communication Better Regulation for Growth and Jobs in the European Union (9) the Commission redefined its 2002 approach in connection with the revision of the Lisbon Strategy.

3.16 The EESC — as institutional representative of organised civil society — is also determined to contribute from the outset and much more actively to the initiative to give Europe better, clearer, more coherent and effective legislation in order to respond to the legitimate expectations of the general public and businesses. The protocol (9) concluded with the Commission enabling it to hold consultations on legislative proposals. In this respect its opinions must be more incisive and primarily adopt the perspective of those affected by legislation.

4. Basis for a strategy for better lawmaking in Europe

4.1 Legislation is the main means of Community action, under the legal framework set out by the Treaties, unlike Member States, which can make use of a greater variety of measures.

4.2 Improvements in legislation (both existing and future) should focus not only on simplification, but also the consistent use of legal concepts and clarity of drafting, particularly in areas where the law is developing most rapidly, and in heavily legislated or complex areas, for example internal market and environmental legislation, transport policy and statistics.

4.3 The Lisbon Strategy, particularly the need to improve competitiveness and the objective of better European governance (10), makes it necessary to examine the regulatory function and its exercise as well as the impact of European legislation on Member States (legislation and administration), in order to ensure more uniform application of the law and legislative consistency, in turn ensuring a level playing field for the internal market. For this to happen, transpositions must not add unnecessary provisions or complicate directives.

4.4 The Lisbon European Council had already asked the Commission, the Council and the Member States to draw up for 2001 a strategy aiming — by coordinated action — to simplify the regulatory environment (11). It also highlighted the need for new, more flexible methods of regulation.

4.5 The EESC believes that these new methods of regulation — which it supports (12) — will entail more direct and more permanent participation by civil society in legislative action, either in cooperation with the institutions, or more autonomously (co-regulation and self-regulation), as provided for in the interinstitutional agreement of December 2003.

4.6 Since the economy is becoming more globalised and less dependent on manufacturing (the digital economy and knowledge-based society, patent and copyright issues, company audits and new financial instruments and services) (13), new partnerships will be needed with social and economic players (better use of employment committees, social dialogue, but also perhaps to set up sectoral committees, or thematic working groups, for instance), which would make it necessary to reconsider traditional procedures and instruments, or would imply their simplification and adaptation to rapid market change and needs in terms of innovation and investment and training and research.

(13) Example of the Lamfalussy procedure in the regulation of financial markets.
4.7 The Commission already practises consultation procedures and impact assessments, for which a road-map is published annually, with the emphasis on costs/benefit analysis, but also including other methods, such as multi-criteria analysis. The EESC feels that cost/benefit analysis alone is not really an ideal tool for all areas and all consequences of legislation (e.g. public health, the environment). Indeed, the implementation of fundamental rights or general interest considerations which by definition are difficult to assess in terms of cost/benefit, is to be included in the analysis for certain projects.

4.8 In addition to the Communication on Updating and simplifying the Community acquis (15) which sets the framework for action, two more specific initiatives have been launched on agricultural (16) and fisheries (2004) (17) legislation respectively, which are particularly complex and undergoing rapid development, also the Simplification of Legislation in the Internal Market programme (SLIM) which has been in operation since 1996 and has yielded incomplete but encouraging results, although rarely monitored by the Council and the Parliament, to the point of seeming to have since been abandoned (18).

4.9 The interinstitutional agreement of 16 December 2003 between the Commission, the Parliament and the Council (19), sets out to establish a new approach to the legislative function among the institutions which opens up increased possibilities in support of contract, co-regulation and self-regulation. Arising from this agreement, the EESC has adopted an opinion on simplification (20), and the above-mentioned information report on alternative forms of regulation (21). Previously, the EESC had particularly concentrated its attention on SLIM. The implementation of the interinstitutional agreement should take place, according to the Committee, by paying particular attention towards SMEs and by putting into practice the European Charter for Small Enterprises.

4.10 It is sometimes claimed that more than half of the legislation applicable in the Member States is of EU origin. In 2000, when preparatory work on governance was underway, it was suggested that the acquis communautaire totalled 80,000 pages; today, other studies show a more moderate development of the order of 10% of new domestic legislation.

4.11 In any case, this legislation carries a cost in terms of preparation, adaptation and implementation, not only for the Union and its Member States, but also for businesses and individuals who are expected to know the law, to obey it, and to follow specific administrative procedures (implementation costs).

4.12 It is difficult to estimate the costs of producing and enforcing legislation, as well as its administrative and bureaucratic implications, but there is growing criticism, especially from business, of the resulting — sometimes unnecessary — requirements, difficulties, obstacles and procedures, which some see as a serious hindrance to European competitiveness, which thus echo the concerns of the Council and the Commission. These costs should be assessed for an objective approach to the quality of legislation. The OECD estimates the cost of implementing the law as between three and four per cent of European GDP (22).

4.13 But focussing solely on compliance costs and the impact on competitiveness touches on only one aspect, a significant one admittedly, but not the only one or even the most important (23). Nevertheless, it would be possible to envisage an approach based on the best legislation; this would entail minimal implementation and compliance costs for the achievement of its objectives; this is a suggestion from the Mandelkern report that the EESC would like to see applied, on an experimental basis, to proposals with an impact on businesses, in particular SMEs. The Commission is already including the issue of administrative costs in its approach and is currently working on a pilot project to model such costs (EU Net Admin. Costs model).

4.14 Legislating is a political action which — beyond the EU institutions and governments — also affects organised civil society and all Europeans. There is a great deal of criticism of the opaqueness and complexity of procedures for drawing up European law and their lack of transparency, as well as the useless, unnecessary introduction of requirements or procedures during the transposition of a directive (gold-plating). These are convoluted administrative procedures which multiply the obstacles, paperwork and costs for law end-users (red tape). Moreover, NGOs and the social partners often complain about the formal nature and the limitations of prior consultation procedures, even though these require large-scale and costly investment in terms of both time and expertise.

4.15 There are problems of institutional profile, governance and democracy — as much for the institutions as for the Member States; Europe’s image and that of its institutions is at stake; the institutions need to find quick and effective solutions; at the same time the task is better to meet the challenges of growth, employment and competitiveness in Europe. The Member States must also consider a reform of the state and its administration, as they are also the target of criticism, and as their active contribution to better global governance is vital.

(18) SLIM deals with the internal market only: the Commission plans to define a horizontal methodology for all sectors; the publication of new indications is planned for October 2005.
(21) CESE 1182/2004 fin.
(22) The IMF estimates it as 3% of GDP; a study carried out by the Federal Planning Bureau in 2000 put it at 2.6% for Belgium. But the Loes is More report (8 March 2003) of the Better Regulation Task Force puts it at 10 to 12% of UK GDP, of which approx. 30% of the total cost of regulation of administrative costs.
(23) Choosing not to legislate could also come at a cost, but this could not be examined by an impact assessment. A recent Commission document (staff paper) assesses the cost of the non-implementation of the guidelines of the Lisbon Strategy.
4.16 This has a direct effect on the progress of the European idea and EU integration, especially at a moment when the political debate on the Constitutional Treaty is at the forefront of public attention; we need to meet people's and civil society's wish for clearer, higher-quality EU legislation and to strive to make it simpler, while assessing of the bureaucratic burden of implementation of the law on both administrations and business.

II. IMPROVING THE QUALITY OF EU LEGISLATION

5. Simplifying the acquis

5.1 In February 2003, the Commission launched a framework of actions to reduce the volume of the Community acquis, to improve the accessibility of legislation and to simplify existing legislation. On this basis, the Commission has developed a rolling programme for simplification and presented about 30 initiatives which have simplification impacts for economic operators, citizens and national administrations. Today, 15 legislative proposals are still being considered for adoption.

5.2 The EESC looks forward to the start of a new phase of the Commission's simplification programme in October 2005. This new phase should take account into the opinions of interested parties (see the public consultation opened on 1 June 2005 on the EUROPA website) and take a sectoral approach.

5.3 The EESC notes the importance of the implementation of the Interinstitutional agreement on better law-making adopted in December 2003, in particular paragraph 36 concerning the working methods used by the Council and the European Parliament in the discussion of proposals for simplified acts.

5.4 Consolidation, essential to simplification, should legally replace the scattered laws, assembling and harmonising them. These previous laws should be explicitly repealed in order to give the consolidated version undoubted legal force, as expected by those affected by the law. This requires formal adoption of the consolidated texts by the legislative authorities, unlike the consolidation carried out by the European Official Publications Office, which is technical in nature and does not offer the same guarantees of legal security, although it does make the law easier to understand. Technical consolidation is in fact preparation for legal consolidation.

5.5 The area of the law consolidated needs to be fairly complete and stable, if it is carried out without any change to the law; in some areas another form of consolidation can be carried out when a partial recasting of the law in question has become necessary.

5.6 If a legal provision appears in more than one text, that it appears in the main piece of legislation and — in a specific typographic format — in subsidiary texts, with reference to the main text.

5.7 If consolidation reveals internal contradictions, such as definitions or wording that differ from one text to another, an overall reformulation replacing the consolidated text should therefore be submitted to the legislative authorities as quickly as possible.

5.8 Any repeal or consolidation errors must be corrected and published as rapidly as possible.

5.9 Routine use of consolidation is a continuous and effective means of simplification that can highlight the need to consolidate or revise legislation to make it clearer and more consistent: this greatly facilitates access to the law in force.

5.10 The EURlex and PRElex websites should allow access to all applicable law; all consolidated texts with current force of law must continue to be permanently included in EURlex.

5.11 However, after a certain time, legal texts in force become difficult to consult, because of the method of accessing the Official Journals; this can hinder a thorough knowledge of the acquis: this technical problem must be solved.

6. The EESC’s proposals for better lawmaking

6.1 The PRElex website should allow access to all law in preparation, while also placing the latter in its appropriate context (the text of the law should be accompanied by assessments, consultations, studies and explanations); when legislation in preparation refers to other directives or rules, a hyperlink should be provided, irrespective of the publication date of the Official Journal.

6.2 All prior provisions which are in contradiction with new legislation must be explicitly repealed or amended.

6.3 Most of the methods for improving lawmaking already exist and are in use, but some of them need to be furthered developed. Other methods or adjustments could be envisaged, but their overall implementation should not unduly overburden or delay already complicated drafting procedures, particularly as the Constitutional Treaty makes co-decision the ordinary legislative procedure.

6.4 Thus, the Commission proposes (COM 2005/097) to set up two working bodies:

— a high-level group of national regulatory experts, helping to implement the Better lawmaking process;

— a network of scientific experts providing opinions on selected methodology (impact assessments, in particular), on a case-by-case basis.
6.5 The Commission already has access to this kind of expertise, in terms of draft legislation; experience will show whether formalising the access to expertise will bring added value, compared to current practices.

7. Before legislation is drafted:

a) defining the objectives of the legislation, on the basis of its origin and existing law, including case-law of the European Court of Justice (ECJ) in the relevant area; examining ways of best achieving the planned objectives, while avoiding legislative inflation and respecting the principles of proportionality and subsidiarity;

b) prioritising the objectives and defining priorities via sectoral or horizontal measures; the role of the Council in this process; examining the need to legislate if the Treaties or derived law do not provide the means to achieve the same objectives;

c) a medium-term plan (timetable, work plan) for achieving the objectives set, using new partnerships;

d) deciding on the most appropriate legal act or acts for achieving the objectives: directive (framework-law), regulation (law), simplification (integrating new and existing law, unifying legal concepts and definitions, systematic consolidation of changes with the previous text, consolidation, restatement: merging fragmented legislation in a revised and simplified instrument), or regulation by alternative methods (co-decision, coregulation, supervised or non-supervised self-regulation, contractual regulation); integrating the aim of simplification and clarification into every new legislative procedure;

e) preliminary impact studies going beyond the cost/benefit method in purely financial terms, particularly in those areas difficult to quantify in this way (e.g. environmental measures: the impact on public health, biodiversity, air or water quality; social measures: participation, living and working conditions and their foreseeable impact on economic productivity and efficiency and social welfare); the overall impact must be positive in terms of public or general interest (effectiveness of economic and social entitlements, for example), but the implementing procedures should as far as possible avoid excessive constraints, disproportionate costs (compliance costs) or controls and provisions disproportionate to the goals set; although the financial calculation remains essential, it can in some cases be reconsidered from the point of view of certain key political objectives;

f) participatory democracy; alternative forms of regulation that directly involve those affected by legislation; for legal instruments, consultation mainly involving those civil society stakeholders most directly concerned, effectively and to a sufficient extent, both directly and via their representative organisations, possibly requesting exploratory opinions from the European Economic and Social Committee and/or the Committee of the Regions; using green and white papers as preparatory tools, and using widespread consultation of civil society and the institutions; creating partnerships with civil society organisations; using methods of communication to explain the objectives and the content of the planned instruments.

8. Drawing up the draft legislation — the EESC’s view

8.1 Impact assessments:

8.1.1 The EESC notes the adoption of new internal impact analysis guidelines at the Commission, in force since 15 June 2005.

8.1.2 Preliminary impact assessments, in line with the scope and complexity of the objectives pursued, should first be tackled using the human resources and existing competences of the DG or DGs carrying forward an initiative, as soon as the objectives to be achieved by the legislation have been determined politically. This then would constitute the first approach of the assessment.

8.1.3 The methodology and criteria used may reflect a predefined standard, but which is also adapted to the requirements of each DG and of the draft in question. Informal consultations — on rules of application, objectives, the nature of the instrument and its foreseeable impact — with some of the most representative or affected organisations and national experts can be considered at this stage, without jeopardising the principle of open consultation as much.

8.1.4 What the EESC describes as a ‘preliminary impact assessment’ (23) could then be fine-tuned, either in-house or by resorting to independent external expertise or national experts according to the model proposed by the Commission (24).

8.1.5 The Committee insists that impact analyses should give equal weight to the three dimensions of the Lisbon Strategy — economic, social and environmental.

(23) The difference between the EESC’s terminology (‘preliminary impact assessment’) and that of the Commission (‘impact assessment’) illustrates the different methodology proposed by the EESC.

8.1.6 The EESC believes that in the process of drawing up and applying legislation, core importance should be attached to impact studies; these studies must no longer serve as necessary administrative exercises, or having no added value.

8.1.7 It insists on the need for an impact assessment at least for all draft legislation affecting businesses or workers in various economic sectors, and for all proposals relating to codecision. It is necessary to substantiate the choice of legislative instrument or potential alternative to legislation (co-regulation, contracts, self-regulation) as stipulated in the interinstitutional agreement of December 2003 on Better lawmaking, and from the viewpoint of its contribution to legal or administrative simplification for end-users. Nevertheless, the results of impact analyses are not in themselves sufficient to justify instigating a proposal for legislation.

8.2 Consultation and drafting:

8.2.1 The next stage, the actual drafting of the legislation, would also initially be carried out in-house, in accordance with the Commission’s working methods, in particular its drafting guide, which could be fine-tuned with the help of the Commission’s committees of legal experts. The drafting stage should leave certain options open; the aim of the consultation stage, is not to produce a definitive text, but interested parties should be consulted on various possible political options.

8.2.2 From this point forward, drafts of a certain importance should be submitted to the EU’s consultative bodies, or they should do this on their own initiative; for example, as in the case of green and white papers, it should be possible to ask the Committee of the Regions, representing local administrations and authorities, and the EESC, representing organised civil society, to produce exploratory opinions on legislative proposals concerning, for example, the internal market, the economy, businesses, world trade, external relations, the environment, social issues and immigration, consumption and the reform of agricultural law. The opinion should focus on the preliminary impact study, the objectives set and the ways to achieve them.

8.2.3 Opinions on texts that have already been drawn up in detail and have been the subject of initial negotiations are produced too late to have any significant effect on the texts’ general structure; the Committees’ expertise could therefore be used upstream much more constructively to promote better lawmaking and to make the law easier to understand and more acceptable to those to whom it is addressed.

8.2.4 During this stage interested parties, institutions and organisations and national and local institutions should be consulted directly through traditional hearings, conferences, requests for opinions and electronic means (e-mail, questionnaire on the website of the relevant DG). Under protocols concluded with them, consultative bodies could organise certain consultation procedures: this practice should be developed.

8.2.5 Launching an open consultation procedure via a Community website requires the use of appropriate means of communication and publicity to ensure that the draft legislation, its nature, its outline content and the site itself are familiar to the largest possible number of people, socio-economic players, businesses and local authorities affected by the draft legislation; a register of European and national organisations, local authorities, national and regional ESCs, could be set up in order to notify by email when a consultation procedure is initiated; relevant communication bodies could also be alerted (the general, specialised and trade press…) in order to distribute information.

8.2.6 An objective summary of any outcomes from consultations must be published at the end of the process, together with the outcomes themselves, on the Commission website. This will have to be unbiased and avoid leaning towards the Commission’s original plans or yielding to the pressure of lobbies, to ensure that the general interest prevails over individual interests, and that practical considerations prevail over ideological approaches.

8.2.7 Otherwise, there would be difficult obstacles to overcome later, such as those surrounding the two ports package proposals (no impact assessment, lack of references to ILO international maritime conventions ratified by the Member States), the proposal for a directive on services in the internal market (abandonment of harmonisation) or the proposed directive on patents on computer-implemented inventions (which was causing serious legal confusion and uncertainty and on which the EESC had expressed strong reservations, it was eventually rejected at the second reading by the Parliament) (25).

8.2.8 As regards the impact on national authorities, to which the main responsibility for implementing Community legislation falls, it would be advisable to use the methods already in place in many countries by setting up links between the relevant DG and the appropriate national authorities, legal services and technical services concerned. Cooperation and evaluations of in-house impact assessment procedures (benchmarking should be envisaged in order to establish comparable criteria while taking account of those to whom the legislation is addressed.

8.2.9 Criteria to establish the quality and impact of legislation will have to be simple, such as those proposed in the Mandelkern report (26), and make the best use of existing European and national statistical resources and the expertise of the supervisory or inspection services. Staff involved in the enforcement and monitoring of legislation, those who will be responsible for ensuring that it will be applied in practice, will also have to be consulted. Information needs and, where necessary, additional training or recruitment/redeployment requirements will also be considered for effective on-the-ground implementation.

8.2.10 It will be a matter of establishing, at each level, the cost of implementation and the technical prerequisites as accurately as possible, in the light of existing law in the area in question. In this way it will be possible to gain a better understanding of the various aspects of the impact of the planned legislation and thus minimise implementation costs.

8.2.11 The scientific expert network set up at the Commission could fine-tune the current method followed by the Commission in order to enhance its effectiveness. It might also need to analyse specific impact assessments related to a proposal and any amendments tabled to it.

8.2.12 Planning is necessary for each project to establish the various phases and establish the time-frame which must allow a reasonable time for preparing the legislation, taking account of any imperatives and time constraints.

8.2.13 It should be possible to revise impact assessments which are incomplete or insufficient, by resorting to external experts, if necessary. The European Parliament has just added a new section to its ŒIL (27) webpage on the evaluation of impact assessments, which could complement, and where necessary criticise Commission publications (roadmap and specific evaluations of all co-decision proposals to be submitted by the Commission from 2005).

8.2.14 Once these stages are complete, it would thus be possible to finalise the legislative proposal, the impact assessment (28), financial statement and explanations so that users, practitioners and Community and national legislative authorities will be able to familiarise themselves — in as simple terms as possible — with the objectives, scope and practical consequences of the legislative proposal. ‘Quality control’ of the legislation, should take action particularly during this stage; it only remains to determine the practical arrangements.

8.2.15 The Commission communication to the legislative authorities, the Community and national advisory bodies and local bodies responsible for applying and monitoring legislation should incorporate all these elements.

8.2.16 Once the instrument has been chosen, it will be important to define its scope of application in detail by distinguishing matters that can best be dealt with by the proposed instrument (directive) from matters that could be dealt with in a different instrument (regulation), or via an alternative method of regulation.

8.2.17 The wording will have to be clear, unambiguous and must, apart from stating the legal basis, make explicit reference to other relevant articles of the Treaties and to previous legislation: simply quoting EU Official Journal reference will not be enough. Quite the opposite, in fact — the complete title of the instruments referred to will have to be quoted and their content briefly summarised, to make the law easier to understand for its users, and not only for specialised lawyers. A well drafted preamble without unnecessary verbiage will be particularly important in making the content and objectives of the legislation clear.

8.2.18 Subsequent changes to the legislation could be incorporated into the legislation itself (a Commission report after the new law has been in force for a certain time — already common practice — or, better still, a standard revision (‘sunset’) clause — applicable after a certain time period, e.g. three years) (29), which will require an information or feedback system, based on information and suggestions from civil society, which would need an EU contact for this purpose (a single EU contact point at the EU representative offices in the Member States, or the Commission department responsible for the legislation itself).

8.2.19 The Commission should then, in applying the revision clause, either propose changes or an initiative within a set deadline, or — within the same deadline — explain why, in its opinion, no changes are necessary.

8.2.20 Certain think tanks’ recommend establishing a European agency to monitor quality or to determine the relevance of legislation. It would be disproportionate, and against the letter and spirit of the Treaties, to create a superior authority to supervise legislation with the power to make changes. This would undermine the Commission’s power — and duty — of initiative. At all events, the Committee is not in favour of setting up this kind of ‘super-agency’ to monitor the exercise of the Commission’s power of initiative. The Committee would instead stress the ex ante consultation procedures, the quality of preliminary impact assessments and the ex post assessments and consultation procedures.

(26) Drawing up cost indicators for users and administrations in respect of homogeneous bodies of regulations; using a small number of headings: complexity; length of texts; referrals to other texts; number and importance of declaration obligations for users and third parties making declarations; number of staff required to administer the arrangements, volume of litigation generated.

(27) Legislative observatory (http://www.europarl.eu.int/œil/); the ‘impact assessment’ page is at present still under construction.

(28) Since the 2002 presentation of the Action plan on improving the regulatory environment [COM (2002) 278], the Commission has included, where appropriate, a revision/review clause in its legislative proposals. The legislative authorities should ensure this provision is kept when legislative texts are adopted.
8.2.21 Since, in comparison with ordinary legislative procedures, the working methods of legislative committees and regulatory agencies are relatively opaque, autonomous and delegated regulatory powers must also be subject to assessment. The legislative authorities need to be able to monitor the exercise of these powers. Furthermore, the social partners should be equally represented on the executive bodies of the agencies.

8.2.22 Occasionally, the quality of translation into the official EU languages is a problem: the number and skills of the Commission’s lawyer-linguists must be increased to take account of enlargements. Expertise in drafting and evaluating legislation will have to be developed internally for officials involved in drawing up legislative proposals and in the drive for simplification, and it must be enhanced within national university legal training in order to allow the recruitment of future European and national officials. Certain universities already provide this kind of training and carry out research in these areas; their expertise can be put to good use.

8.2.23 Ad hoc expert committees, at or attached to the Commission, must make suggestions — before an initiative is published — concerning the clarity, consistency and relevance of the content and wording of documents, as well as the consistency of the legal concepts used, also in the light of laws already in force. The Commission has already devised a joint practical guide for persons contributing to the drafting of legislative proposals, in order to maintain the uniformity of the legal ideas and concepts used and consistency of the law: these drafting standards need to be implemented correctly.

8.2.24 The quality of the legislation will therefore also depend heavily on impact assessments and preliminary consultation procedures which are likely to prevent amendments that are too numerous or have too wide a scope in comparison with the initial draft; the quality of amendments is also liable to influence the quality of the final text. If amendments are deliberately vague so as to keep everyone happy, the law’s effectiveness and clarity could be adversely affected. A terminology committee (lawyer-linguists and experts) could help the Commission reformulate proposed changes in order to maintain clarity and consistency within modifications, so that it is able to accept them following a re-reading.

8.2.25 The Committee notes with interest that the Commission is revamping its guidelines for impact assessment by setting clearer pointers for the economy and competitiveness, and moreover that it is making arrangements for examining compatibility with the Charter of Fundamental Rights (30). The revised approach meets some of the suggestions in this opinion, and the Committee will follow up their implementation.

8.2.26 Impact assessments on the amendments put forward by the European legislature should also be considered when the amendments are substantial in nature — by making use of the method drawn up by the Commission — but without unduly extending adjustment procedures. In this context, the EESC hopes that the three institutions will be able to find a common approach to impact assessments of the implementation of the Interinstitutional agreement on better law-making.

9. Contribution of the European Court of Justice

9.1 The need for analysis in order to understand legislation should be limited as much as possible, although analysis by the court, together with legal literature and legal practitioners, is still vital for applying the law in specific cases. But vague or unclear legislation does not bode well for legal security, increases implementation costs (because of constantly having to resort to legal, technical and expert opinion or even the court), and causes delays and incorrect implementation. The court is obliged to do the job of the legislature, while cases mount up to a point where the effectiveness of right of access to the court, or at least to a fair trial within a reasonable timeframe, is harmed.

9.2 In its responses to requests for preliminary rulings, the Court of Justice promotes the standardisation of national laws. However, the court is compelled by poor-quality legislation to clarify the meaning and legal scope of unclear provisions, by thus making up for legislative failings.

9.3 Lastly, specialised courts of first instance should be set up to enable the ECJ to give an initial ruling to the optimal extent as quickly as possible and then act (in the second instance) rapidly and effectively to perform its function of standardising case law and clarifying primary and secondary Community law.

10. The role of Member States

10.1 Governments and their representatives on COREPER, the Council in its various formations and legislative committees have a particular responsibility for drawing up and applying legislation, as both legislative authority and joint executive authority with the Commission.

10.2 The negotiating parties and ministerial departments involved in implementing and applying legislation should cooperate more closely starting from the proposal assessment stage in order to anticipate and better prepare the implementing provisions and reduce completion time.

10.3 Apart from its inclusion in the Community institutional system and transfers of responsibility or arrangements for joint exercise of these responsibilities — the Member State has also developed internally; it has seen the emergence of multiple decision-making centres, through devolution or the dispersal of state administrations and departments, the transfer
of responsibilities to local or regional authorities or independent administrative bodies and agencies with regulatory and administrative powers, with the budgetary consequences that this entails. Outside the European Union the State is also subject to supra-national legal orders (accepted and obligatory according to the pacta sunt servanda rule), and its authority over economic governance has also been weakened in certain areas (globalisation and WTO, single market, privatisation).

10.4 However, state and administrative reform does not always proceed at the desired pace, and overlapping responsibilities create uncertainty or adverse legal difficulties for business and for state and local authority departments responsible for implementing the law.

10.5 The state is no longer the only source of law; it incorporates Community law according to its application and monitoring rules, not always sharing them clearly with local or devolved authorities. This sometimes leads to major divergences from one country to another in application of the law and Community administrative requirements, to the detriment of necessary harmonisation, in the internal market which risks creating distortions of competition.

10.6 Without the active and resolute participation of Member States in the process of simplifying and improving European legislation, on both a political and practical level, this process will not take the general public’s concerns sufficiently into consideration, and efforts will be ultimately in vain. The principles of a one-stop shop, of e-administration, simplification and unification of forms are progressing, e.g. for customs issues, but too slowly. The digital divide in the way information is disseminated to users of the legal provisions must also be borne in mind.

10.7 Nevertheless, a significant number of governments and national parliaments have recognised the need for better lawmaking and better administration, often by creating specialised bodies in touch with certain sectors of civil society and responsible for ensuring the quality of legislation being drawn up or implemented. It would be worth taking stock of these experiments which should give rise to an exchange of experience and better harmonisation of the criteria and methods used.

10.8 The role of the national courts and their requests for preliminary rulings must also be considered and, on the whole, the justice system must generally be improved in terms of the length of proceedings and, in certain cases, in terms of the costs incurred by those seeking access to the courts.

10.9 The remit of experts (the group of national experts and the network of independent experts proposed by the Commission (31)) which are to be set up within the Commission to help improve the quality of legislation could potentially extend, on a consultative basis, to checking the quality of implementation. An early warning system involving national civil society organisations and those affected could be set up (specific point of contact, Info-Eurocentres …).

10.10 The EESC could also consider setting up a contact point for civil society organisations in the EESC’s specialised sections (primarily the Section for Agriculture, Rural Development and the Environment and the Section for the Single Market, Production and Consumption, for example, via its Single Market Observatory and its updated PRISM database). It could thus assess Commission reports on simplification and better lawmaking, remaining as faithful as possible to the needs expressed by those affected, and put forward more effective suggestions for improvement.

11. Final considerations

11.1 The Member States will also be engaged in improving lawmaking with a view to greater competitiveness within the OECD. Various OECD reports show that in most cases the results attained fall short of the objectives pursued; but some even overlap with Community requirements (quality of regulation, simplifying relations with administrative departments and initiatives (one-stop shops), establishing new decision-support tools and more open decision-making procedures (transparency, participation) e-administration, devolution …).

11.2 The OECD is promoting the establishment of a unit responsible for assessing the cost, quality and impact of new regulations in each Member State. Although the initiatives and criteria to be promoted in connection with Community legislation may not entirely tally with those of the OECD, owing to the diversity of the powers pooled by the EU-25 and the objectives of Community legislation, the two approaches (32) are nevertheless mutually reinforcing.

11.2.1 An EU-OECD project on incorporating EU legislation in the ten new Member States is being prepared. Greater synergy between the EU and the OECD should therefore be considered.

11.3 The problems of incorporation emanate essentially from national governments and central administration. In this area, quality should be the overriding priority. Meeting deadlines appears just as important in order to avoid temporary disruptions of the internal market.

(32) The OECD calls for the privatisation of public services and the reform of the state (less administration). These recommendations are often ideological rather than practical; national administration must indeed become more efficient, but reform must not aim to substitute the market for the state, which must still be able to fulfil its responsibilities.
11.4 The extension of the co-decision procedure, as provided for in the Constitutional Treaty, is significant in democratic terms: the consultation and assessment procedures carried out at different times and levels mean that procedures risk becoming longer and complex. Furthermore, the initial quality of proposals and of the implementation of directives can justify this potential time extension. The drawing-up of quality indicators for legislation is therefore vitally important (33).

11.5 The most difficult issue is simplification of the acquis. The task is considerable and the EESC doubts that the necessary resources can be allocated unless the relevant political decisions and their financial consequences enjoy the full support of the Member States. The EESC appeals for this support.

11.6 It is worth stressing that the participatory approach places significant demands on civil society organisations, institutions and their agents, and on governments and their administrations. Formal or technocratic methods alone cannot possibly work, even if the technical drafting instruments and impact assessment indicators are perfectly developed.

11.7 When the Commission has the authority to conclude international treaties on behalf of the Community (WTO, …), the consultation and participation of socio-economic organisations and other components of civil society must also be able to practice, at both national and Community level. Principles and methods to this end need to be considered.

11.8 Simplifying the acquis and improving the quality of legislation should not be confused with any economic and social deregulation ideology; they contribute to a strategy of good governance, which aims to better overcome, both technically and politically, the complexity of drafting legislation for a Union of states, according to democratic, participatory and rational procedures.

11.9 The problems and prospects for a solution have been clearly stated; the action taken is suitable for the achievement of the objectives set. So why has so little practical progress been made? Do all the interested parties have the political will to succeed? Can the obstacles be overcome? These questions remain open but if the overall task of ‘Simplifying the acquis and better lawmaking in Europe’ is to be successfully achieved, a firm political will, backed up by action in the long term, appear to be essential requirements.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

Brussels, 28 September 2005

(33) The Commission has funded a study on these indicators by the University of Bradford; the EESC is awaiting its publication with interest. A draft is available on the university’s website (http://www.bradford.ac.uk).
APPENDIX

to the opinion of the European Economic and Social Committee

The following amendment, which received at least a quarter of the votes cast, was defeated in the course of the debates:

Point 8.2.7
Delete.

Reason
The fact that these proposals have not been adopted has nothing to do with any shortcomings in the comments made in the previous paragraphs. In my view — a view shared by many — it is not a lack of impact assessments or objective summaries of consultations that have created these problems. In the case of the port directives it is small, but extremely powerful vested interests that have so far managed to prevent the directives from being adopted. Failure to adopt the services directive is also due to the fact that powerful vested interests have formed protectionist, unholy alliances and are trying to thwart the public interest (free movement). The difficulties the Commission is experiencing with its proposals on patents can be said to stem from the fact that it underestimated the risk of a limited vested interest interfering in the political process and exploiting the fact that the legislative proposal (which was put forward in order to harmonise and determine existing law) is very technical and complicated.

Others may take a different view of why different interests managed to delay or block these legislative proposals. In all these cases, when the EESC has addressed them it has discovered that the proposals were highly controversial.

The highly controversial wording of point 8.2.7 adds nothing of value to the opinion, which is in all other respects balanced, good and in some parts excellent. Consequently, the point should be deleted. This would enable more people to endorse the opinion.

Voting
For: 31
Against: 61
Abstentions: 13
Opinion of the European Economic and Social Committee on 'How to improve the implementation and enforcement of EU legislation' (2006/C 24/13)

On 10 February 2005, the European Economic and Social Committee, acting under the second paragraph of Rule 29 of its Rules of Procedure, decided to draw up an opinion on How to improve the implementation and enforcement of EU legislation.

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 27 July 2005. The rapporteur was Mr Joost van Iersel.

At its 420th plenary session, held on 28-29 September 2005 (meeting of 28 September), the European Economic and Social Committee adopted the following opinion by 90 votes to six with 12 abstentions.

Implementation and enforcement

Executive summary

In this opinion the EESC argues that better lawmaking and implementation and enforcement are closely linked: a good law is an enforceable and enforced law. The Commission, the Council and the Court of Justice regularly address application problems. The follow-up, however, is limited. This has to do with different cultures and responsibilities and varying degrees of involvement in effective implementation across Europe. The EESC distinguishes different sets of actions to be taken by the Member States and the Commission. For the Member States it is primarily a matter of political will. The attitude of national administrations has to reflect that they themselves are the EU and that they invest accordingly in the Union's decisions. This implies changes in specific approaches such as guaranteeing administrative capacity, screening domestic rules and procedures, abstention from gold-plating and cherry-picking and improvement of information. As for the Member States, a systematic discussion between relevant authorities across the EU is desirable, as well as ex-post evaluations and accountability of national administrations towards counterpart authorities in other Member States. Involvement of subnational authorities with autonomous legislative powers is also required. The EESC advocates an active role of the Commission in promoting confidence between enforcement authorities in supporting networks of public authorities, the systematic assessment of their performance and the identification and spread of best practices. Extension of existing training programmes for judges and public administrations is to be considered. Some of the proposals discussed in this opinion are under discussion within the Commission and some changes are in the process of being put into practice by Member States. Currently, however, the overall picture of implementation and enforcement shows serious deficiencies. The European Parliament and the national Parliaments should be committed as well. In the EESC's view a cultural change is required, including a shift from increasing new EU law to an emphasis on effective application, thus ensuring that agreed EU law and policy attains its full effect. This will contribute to a well functioning EU of 25 Member States and beyond, ensuring its necessary cohesion.

1. EU law as basis of European integration

1.1 A well-functioning internal market with appropriate standards of social — and in particular worker — protection, consumer protection and environmental protection is at the core of European integration. It legitimises integration by generating significant benefits for citizens and businesses.

1.2 The EU is based on the rule of law. It strengthens the foundations of the internal market and prevents any discrimination on the basis of origin or nationality of products, persons or companies. Effective application of EU law boosts public confidence in European policies and processes and makes the EU more relevant to the concerns of citizens and businesses. This implies however a timely and correct transposition of EU law at national level.

1.3 Moreover, European legislation that aims to remove barriers of any kind to creating a level playing field, must be applied promptly and coherently across the EU and enforced effectively by all relevant authorities: national and regional.

1.4 The internal market functions properly and becomes a source of growth and prosperity only when there are no discriminatory or covert barriers to citizens or businesses, including cumbersome or lengthy administrative procedures. Numerous complaints lodged by citizens and businesses every year result from national measures which often tend to be too restrictive, or too complex and disproportional (1). This is partly due to so-called gold-plating, which takes place during transposition of EU law into national law. Gold-plating adds national regulations which may obfuscate the objectives of the EU.

(1) The results of a questionnaire on possible shortcomings and deficiencies in implementation and enforcement in the Member States, carried out by the EESC, are summarised in Appendix B.
1.5 Better lawmaking is an integral part of the Lisbon Agenda. The European Council Conclusions of 22-23 March 2005 acknowledged explicitly the positive contribution of an improved regulatory environment to competitiveness. So did the Competitiveness Council on 6-7 June 2005 (1). In this respect it must be underlined that better lawmaking and implementation and enforcement are closely linked: a good law is an enforceable and enforced law.

1.6 For a law to be enforceable it must be sufficiently clear, and to be effective it must provide an appropriate response to specific problems. Where the law is too complex and too vague, for example, because there has not been a proper impact assessment, implementation problems inevitably arise. As a result, additional laws have to be drafted to address these problems. Bad laws lead to a proliferation of laws and excessive amounts of rules that impose an unnecessary compliance burden on businesses and confuse citizens (2).

1.7 In order to ensure that the law is effectively implemented, the authorities must have the essential administrative capacity. Otherwise administrative weaknesses result in implementation and enforcement problems.

1.8 At the same time, effective application of EU law improves competitiveness and facilitates cross-border cooperation, which are two fundamental aims of the Lisbon Agenda.

1.9 The EESC considers that the EU has an implementation and compliance problem. Statistics on the state of implementation of EU law show that Member States experience delays in the timely transposition of directives. Statistics of infringement proceedings reveal that often transposition is incorrect or incomplete. Indeed, 78% of the cases initiated by the European Commission against Member States during 2002-5 concern transposition and application of directives. This suggests that Member States experience problems in determining the national method of implementation to give effect to directives.

1.10 In various Resolutions the Council has addressed implementation and enforcement problems (3). The Interinstitutional Agreement of 2003 on Better Lawmaking also referred to ‘better transposition and application’.

1.11 In a number of cases the EU Court of Justice has ruled on the obligation of Member States to ensure effective implementation and enforcement (4).

1.12 The Commission has produced several documents elaborating how the Member States could improve their transposition and application performance (5). In its White Paper on Governance, the Commission states: ‘ultimately the impact of European Union rules depends on the willingness and capacity of Member State authorities to ensure that they are transposed and enforced effectively, fully and on time’ (6). Most recently, its Communication of 16 March 2005 on Better Regulation for Growth and Jobs in the European Union outlined a course of action for improving the Community regulatory framework without excessive administrative costs.

1.13 Since 1985 the New Approach has been increasingly, a very useful tool in enhancing effective harmonisation of standards and regulatory approaches. It creates a stable, lean and transparent legal framework with a system of checks and balances for the authorities by using a great variety of instruments defined in directives, and a major responsibility for manufacturers and third parties. As regards implementation the Commission concludes in particular on the basis of an in depth analysis that ‘experience has also demonstrated that implementation of these directives can be further improved in a number of ways’ (7). This document reveals serious shortcomings.

1.14 In its Second Implementation Report of the Internal Market Strategy 2003-2006 (8) the Commission analyses deficiencies in implementing and enforcing in a great number of fields. It defines also intentions and aims for improvement. Among other things this implies more direct commitment by the Member States and thus political will. The Commission Recommendation on the transposition into national law of directives affecting the internal market (9) identifies certain practices that Member States are urged to adopt. Chief among such practices are the assignment of monitoring and coordinating responsibility to a single Minister and Ministry, the establishment of a national data-base on transposed directives and the encouragement of close cooperation between national officials who negotiate in Brussels and officials who implement national measures.

1.15 ‘Scoreboards’ on implementation show shortcomings in formal transposition. But, notwithstanding these signs of attention by the respective European Institutions, the way in which agreed rules are implemented in national legislation and/or regulation has not received systematic scrutiny

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(1) In point 11 of the Conclusions the Council ‘invites Member States to redouble efforts to reduce transposition deficits and to consider to undertake a screening of domestic legislation for compatibility with EU rules ...’.
(2) It is quite justified to refer here to the British Better Regulation Task Force which has published three valuable documents in 2003 and 2004 on national and European law making, including implementation. The analyses and the recommendations underline amongst other things the need of clarity and effectiveness of law making in order to make the necessary interaction between the various processes successful.
(8) Ibid. p. 21.
and follow-up discussion in the Council. Whilst different implementation in different parts of a Member State would quickly give rise to public calls for action, different implementation from one Member State to the next is not even on the political agenda.

1.16 Undoubtedly 'Scoreboards' have made the transposition record of Member States more transparent. There are not yet equivalent 'Scoreboards' on application in order to enhance transparency in how national authorities apply EU law and policies.

1.17 Although improvements are discussed, there is still too little awareness and too little commitment by the public stakeholders across Europe in guaranteeing that EU law as the basis for European integration functions correctly. This will only happen if the whole process is duly respected: adoption of directives, transposition, implementation, enforcement. In many cases, the will to implement the whole process consistently may well be lacking, too. The Commission documents, numerous rulings of the Court of Justice and relevant academic literature provide sufficient sources for the Member States to draw on in improving the fulfilment of their legal obligations.

1.18 Effective application of EU law requires special attention and safeguards in an EU with an increasing number of Member States. The EU's integration process must not be jeopardised by dilution of the effectiveness of EU rules.

2. Context and developments

2.1 While the EC Treaty provides for a variety of approximation and harmonisation measures to complete the internal market (11), experience in the 1970s and early 1980s has shown that complete harmonisation is a slow, cumbersome and, in certain cases, unnecessary process. Measures based on mutual recognition and home-country control have been easier to negotiate and implement. They have also been more effective in freeing up trade and investment without imposing an excessive compliance burden. However, it has to be noted that the EU has entered a new stage that is characterised by increasing differences in governmental cultures. This may lead to a renewed desirability of regulations in order to attain convergence and the promotion of good practices.

2.2 Despite the shift to new policy instruments, the growth in Community legislation has partly been the natural outcome of the deepening and widening of integration but also partly the result of incomplete or defective implementation by the Member States. New rules have been added to prevent Member States from non-fulfilling their obligations or from making national rules overly complex (12). An illustrative example is the liberalisation directives adopted by the Commission on the basis of Article 86 (3) in such fields as telecommunication services and telecommunications equipment.

2.3 Given the implementation difficulties experienced in many Member States (13), improvement in the application of EU law requires also concerted efforts by Member State authorities. These have been lacking until now, just as desirable shifts to less interventionist and lighter instruments of policy implementation and regulation are taking place in the Member States.

2.4 The Lisbon European Council in 2000, that launched the process to raise the competitiveness of the Union, introduced the open method of coordination for the purpose of improving implementation and delivery using qualitative and quantitative indicators, benchmarking and best practices. Member States have not yet drawn more systematically and extensively on such best practices in order to improve their own record of policy implementation.

2.5 At the beginning the open method of coordination raised high expectations. So did the aims of benchmarking and best practices. Experience does not justify a positive conclusion. Without binding commitments Member States appear to be unwilling to adapt legislation, not to mention implementation and enforcement.

2.6 By 2004 the ten candidate Member States had integrated the acquis communautaire into their national legislation. This deadline has therefore formally been respected. But changing law does not by itself imply correct transposition. In addition, implementation and enforcement require satisfactory administrative authorities and procedures, which in a number of cases had to be set up on a new footing, because there is a lack of the necessary experience to apply EU rules effectively. Greater cooperation between national authorities and with Community institutions should facilitate uniform application of EU rules across the Union (14).

2.7 Although EU regulation and legislation is directed towards creating common conditions in an open European market, the tools can differ considerably between one area and another. The principle may be the same in all areas, but the degree of integration that is aimed at can differ greatly. This leads to less or more strictly Community-based rules and consequently to different outlooks and legal approaches.

2.8 These differences arise from the different objectives of integration between for instance areas such as the internal market and environmental policies, and areas such as social policy and health which are primarily national. The Treaty itself also uses words which are less ambigious as regards public health or education. In these policy areas the role of the EU is to 'coordinate' and 'encourage' rather than integrate.

(11) Articles 94-97 of the EC Treaty.
2.9 Consequently, the current developments provide a picture of a colourful diversity, in which various legislative instruments at EU level exist alongside each other, in their turn affecting national approaches. Among these are the following:

— EU instruments providing for full harmonisation of legislation;

— EU instruments providing for minimum harmonisation, enabling Member States to adopt stricter rules (which in a cross-border context can be applied only subject to a mutual recognition test);

— ‘new approach’ directives, aiming at establishing essential requirements that must be met by products in the EU market;

— EU legislation based on a ‘country of origin’ principle;

— framework directives, leaving considerable discretion to Member States as regards implementation;

— recommendations which can be translated into Member States’ law;

— decisions.

2.10 This broad set of Community-based instruments that require transposition, implementation and enforcement in the Member States often gives cause to national and thus different interpretations of what is to be implemented and enforced at national level and how this is to be done.

2.11 The practical impact of the model as it operates at present takes into account in varying degrees the following elements as far as the Member States are concerned:

— different national legal cultures and systems;

— diverging responsibilities within national administrations and within ministries;

— specific regional and local competences in the Member States;

— influence of national lobbies — political, socio-economic and societal;

— domestic needs/desirabilities, leading to gold-plating and cherry picking;

— financial and organisational resources to implement correctly.

2.12 The EU approach, of course, respects the diversity of Member States and their rich administrative traditions, legal cultures and political systems. This is even a question of principle. However, the varying traditions and cultures must be able to guarantee effective application of EU legislation so that distortions or discrimination are avoided. The extension of competences of the Union and the ongoing enlargement underline the complexity of this task.

2.13 As for the Commission, some specific compelling elements which have effects on the final outcome include:

— imprecise use of technical and legal language (including translation problems) when legislation is drawn up;

— varying degrees of using more or less binding legal instruments, as a consequence of decisions by the Council;

— varying degrees of involvement in implementation and enforcement within the Commission; there are important differences between the DGs;

— sometimes a lack of clarity about the prerogatives of the Member States and/or the prerogatives of the Commission because of the impact of subsidiarity;

— sometimes a lack of sufficient personnel in the Commission;

— linguistic problems (in carrying out surveillance in the new Member States);

— significance and impact of infringement procedures.

2.14 Together with the growth in Community legislation there has been a corresponding increase in non-legal instruments and processes whose aim is to induce Member States to implement EU law in a timely and correct manner, such as the regular reports and Scoreboards on the transposition record of Member States.

2.15 In addition, the Commission has undertaken several actions to inform citizens and business of their rights and encourage them to exercise those rights before national authorities and in national courts. For example, the contact points for citizens and businesses and SOLVIT Centres aim to identify and resolve difficulties experienced by persons and companies that move to or operate in Member States other than their own.

2.16 The latest report on the cases dealt with by SOLVIT Centres shows that over 50 % of all problems concern recognition of professional qualifications, market access for products, motor vehicle registration and residence permits. Although 80 % of cases are resolved successfully, these statistics also indicate that the problems are not new or novel. Citizens and companies experience difficulties largely because of bureaucratic procedures and the unwillingness of national administrations to streamline their requirements. Moreover, despite the success of SOLVIT Centres, 20 % of the problems are not solved. The Member States should act in such a way that this percentage goes down and that the national SOLVIT offices and the European SOLVIT network become better known to the public — businesses and citizens alike.

2.17 The enlargement of the Union is also a challenge. Increase in membership cannot be managed without a corresponding strengthening of consultation and surveillance procedures.
2.18 This strengthening of consultation and surveillance procedures has been most evident in the most recent enlargement and in the parameters agreed at the Brussels European Council of December 2004 concerning the forthcoming enlargements. Prospective Member States will be subject to closer scrutiny by the Commission and will be expected to have implemented a larger proportion of the acquis communautaire before they enter the EU. They will also be expected to complete more quickly any transitional arrangements they may be granted.

3. Need for reflection

3.1 Effective implementation and enforcement are of crucial importance to citizens and companies. They are an integral part of the rule of law. The often diverging interpretations of commonly adopted legislation raise questions among businesses and citizens, such as: where to go to complain? Who is in charge? what to do in the short term? More fundamental is the question: to what extent does ineffective implementation lead to delay or change of investment patterns and to lack of trust among citizens? These questions have to do with legitimacy, coherence and predictability of EU policies. Continuation of the present unsatisfactory pace of transposition and implementation can no longer be tolerated.

3.2 The great complexity and the confusing developments in carrying out correctly approved directives at EU level demand an overall SWOT-analysis of the system as it functions: Where do we stand? What about the causes of the problems? What challenges are Member States facing? What are the Member States aiming at: what is the desirable relation and interaction between subsidiarity and EU monitoring? In other words: who is in charge of measuring what, and what are the criteria? To what extent do the legal instruments and the current practices correspond with the objectives of European integration? How are the EU and the Member States going to respond to the complaints of companies and citizens about the incomplete and sometimes counter-productive way of transposing, implementing and enforcing EU rules in national regulations and practices?

3.3 In addition to discussions on improvements in Member States, these intriguing questions have to be put to endorse a broad and open debate between policy makers and officials as well as the private sector and civil society on desirable adaptations in procedures and practices in the EU and in the Member States. It must raise awareness about the impact of correct transposition, implementation and enforcement for all agreed EU policies.

3.4 It is necessary to reflect on the impact that future enlargements will have on the coherence and uniform application of Community law across the EU. The EU should also consider how to avoid a situation whereby a Union of 27 or more Member States with ever greater diversity may itself lead to certain barriers to trade, investment and establishment.

3.5 There are various views on the problem of solving misapplication of EU law which, from a political perspective, is related to tensions between subsidiarity and a Community approach. There is the view that, while fully accepting the responsibility of Member States to implement EU law, the Commission should keep a close eye on it. A second approach is based on subsidiarity: give free room to the Member States and let everybody deal with their own problems. A third possibility is that Member States take greater ownership and more responsibility, with Member States holding each other to account and the Commission keeping a close eye on compliance, and assertively using its legal powers, when necessary.

3.6 As the guardian of the Treaties and as the initiator of legislation, the Commission plays an important role in ensuring the proper functioning of the internal market. It has a responsibility to propose simple and enforceable legislation that remedies problems in the internal market without imposing excessive costs on the Member States and businesses. Indeed the Commission has made serious efforts during the past couple of years to simplify legislation and to measure the impact of proposed legislation. At the same time, the Commission needs to act quickly and resolutely to end infringements. The Commission should consider how to expand the recommendations it made in 2004 (see above) on timely and correct transposition to also cover the stage of implementation and enforcement.

3.7 As co-owners of the Union, Member States have a duty to act loyally towards the Union, fulfill their obligations, facilitate the achievement of the tasks of the Community and refrain from jeopardising the objectives of Article 10 of the EC Treaty. To be clear: the attitude of the Member States has to reflect that they themselves are the European Union, and that they invest accordingly in the Union's decisions (15).

3.8 The European Court of Justice has clearly ruled in numerous cases that Member States may not plead in their defence the existence of any internal administrative difficulties in order to justify incomplete or improper implementation of Community legislation. These rulings may help to improve proceedings to be foreseen for the future.

3.9 It will also be necessary to reflect on the kind of legal and non-legal instruments and procedures that will be the most appropriate in guaranteeing effective policy implementation in a Union with more than 30 members.

3.10 The results from the use of non-legal instruments and procedures have been rather mixed. Despite its promising start, the open method of coordination does not appear to have been successful. By contrast, SOLVIT Centres have resolved 80% of the problems they have had to deal with.

(15) An analysis of the negative outcome of the referenda in France and the Netherlands shows to what deceiving extent public opinion and some politicians (!) still qualify the relationship between a Member State and 'Brussels' in terms of 'we' and 'they'.
3.11 The Competitiveness Council, in its March 2005 Conclusions, invited the Member States to screen domestic legislation for compatibility with EU rules in order to remove market barriers and open up competition. The European Parliament has also recognised the merits of having national administrations monitor compliance with EU rules in their countries. Screening is a practical way to identify, and remove, barriers to trade, whether they stem from incorrect implementation, a lack of proper enforcement of EU law, or simply an administrative practice that is not in line with EU requirements.

4. Conclusions and recommendations

4.1 General

4.1.1 The EESC considers implementation and enforcement of legislation to be inextricable elements of better lawmaking, and therefore a political priority (*). This is as yet not the case, notwithstanding a changing approach in some Member States and within the Commission that paves the way to the future. Legislators have often insufficiently taken into account the implementation and enforcement requirements. Consistent impact assessments for better lawmaking have also to take into consideration how legislation should be developed and how it has to be enforced. The whole process is a prerequisite for a level playing field and for the legitimacy of the EU.

4.1.2 As a matter of principle, it falls primarily to the Member States to ensure proper implementation and enforcement of EU law. The Commission’s role, as guardian of the Treaties, is to make sure that Member States actually fulfil their responsibilities. Any shortcoming can be addressed by the Commission through infringement procedures or other means deemed appropriate to solve a problem of misapplication of EU law.

4.1.3 As a consequence of the Interinstitutional Agreement of 2003 the Council is currently deliberating better regulation and legislative simplification. The EESC considers that sufficient attention should be given to improved application of all EU rules, not just directives, to be enforced by Member States.

4.1.4 The EESC considers that the Competitiveness Council with its commitment to the Internal market, core of the integration process, should be the natural partner of the Commission at EU level, in discussing implementation and enforcement.

4.1.5 A very important and often decisive aspect is that the domestic administrative arrangements of the Member States are outside the scope of the Treaties. Nonetheless, it follows from Article 10 of the EC Treaty and the case law that national authorities must ensure a proper implementation and enforcement. In this respect the EESC stresses the co-ownership of the Member States of the EU and, of course, their co-responsibility.

4.1.6 For too long the emphasis has laid on introducing new EU regulation. The EESC agrees with the Commission that in an EU of 25 Member States the focus ought to be on implementation and enforcement of existing legislation rather than on adding new regulation. New Community legislation will not be an attractive option because it will require considerable investment in time and resources. Similarly, exclusive reliance on legal proceedings to force Member States to remedy problems will also take much time and will absorb scarce resources. What is needed, rather, is a change of culture, whereby the focus within the Member States and in the Commission shifts from new regulation to implementation and enforcement, thus ensuring that agreed EU law and policy attains its full effect. This is not to say, of course, that the emphasis on implementation and enforcement can serve as an alibi for not legislating in areas in which new legislation is still required.

4.1.7 Screening of existing and already implemented EU law — see also experience in Denmark — will be helpful in the process of better lawmaking. This is an illustrative example of the interaction between simplification and improving implementation and enforcement.

4.1.8 As regards alternatives, i.e. self-regulation and co-regulation (*), there has to be a case-by-case examination of where these would work and where they would not. Notwithstanding the need to encourage self-regulation and co-regulation initiatives, their viability must be tested in the process of concrete application.

4.1.9 In the EESC’s view it is also obvious that the increasing difficulties with implementation and enforcement processes at national level have to be addressed and resolved through closer cooperation between national and Community authorities.

4.1.10 The EESC considers that such an intensified cooperation also serves the objective of avoiding superfluous Community legislation which is unlikely to be the right course of action towards national implementation procedures. These are too slow and cumbersome and often seek to apply national policy objectives through disproportional means.

4.2 Member States

4.2.1 The EESC considers that Member States should continue to enjoy discretion in determining their own implementation methods and procedures. These methods and procedures could also be addressed by the Member States and the Commission in their impact assessments.

(*) This consideration is perfectly in line with remarks in EESC’s Opinions since 2000 on updating, simplifying and improving the acquis communautaire and the regulatory environment.

4.2.2 In the view of the EESC and irrespective of the methods or procedures Member States choose to implement EU law or national law that affects the functioning of the internal market, the results must be similar across the EU. Moreover, the results must give real effect to EU primary and secondary law.

4.2.3 When speaking about Member States, the EESC view is that involvement is also required of sub-national authorities with autonomous legislative powers and/or implementing responsibilities (e.g. Länder, provinces, regions).

4.2.4 The EESC considers that the next step in the cooperation between EU institutions and national authorities in the implementation of EU law and policies is strengthening or streamlining of national administrative capacity for policy application, as is currently being discussed in some Member States.

4.2.5 Administrative capacity is a matter of ‘common concern’ and Member States must make clear that implementing and enforcing authorities possess such capacity at high level. For the EESC this implies amongst other things a close cooperation between the negotiators in Brussels and the legislative bodies within the national administrations.

4.2.6 One specific approach which the EESC has noted is the practice of national regulators in certain areas such as telecommunications. National regulators respect at the same time common European rules and national surveillance. These practices have also to be scrutinised.

4.2.7 Member States are to be stimulated to screen domestic rules and procedures (as some Member States, such as Denmark, are presently doing). Implementation problems often arise because national rules and procedures are not sufficiently attuned to the large European market.

4.2.8 A particular way of implementing EU law is gold-plating and cherry picking. The EESC considers that a general rule could be introduced whereby Member States, in notifying national implementing measures, justify formally with transposition tables to the Commission that these are in complete and full conformity with Community law.

4.2.9 It may be desirable that Member States provide more and better information about rights and obligations both within their own administrations and to the general public. Lack of adequate information is often a reason for non-compliance. The EESC considers that national sanctions for non-compliance by citizens or companies might be considered.

4.2.10 At the moment, consultations on transposition and application are essentially limited to bilateral contacts between governments and the Commission. More interaction and flexibility are required. The impact of multilateral discussions in groups of national experts which are already taking place in view of transposition and implementation should be reinforced. Systematic and deliberate discussion between all relevant authorities across the EU in any given policy field is needed on the results that are achieved and on the experience of Member States. Ex-post evaluations are desirable.

4.2.11 In bilateral contacts between Member States, consideration should be given to exchange of officials along the lines of the successful ‘twinning projects’ that greatly assist new Member States and candidate countries.

4.2.12 Ex-post evaluation of directives and applied EU law has to be carried out systematically. As consultation is crucial for better lawmaking, similar procedures have to be foreseen for the process of ex-post evaluation (19). The original legislative bodies should not be responsible for such evaluations, which may also include the future need and relevance of certain rules.

4.2.13 The EESC considers that discussions will lead to systematic identification of best practices that can be adopted by authorities across the EU. Where legal or administrative differences between Member States prevent adoption of identified best practices, national authorities should have to demonstrate how their own method or procedure leads to similar results as in other Member States with best practices. One such good practice pursued in some Member States consists in a ‘priority rule’. As a basic working principle, the transposition of EU legislation has priority over the implementation of legislation of a national nature.

4.2.14 National authorities are normally accountable to governments or ministers and eventually to parliament. Since the mis- or non-implementation of EU law also adversely affects the interests of the citizens and businesses in other Member States, the EESC considers that the EU may have to develop a new concept of reciprocal responsibility towards counterpart authorities in other Member States (19).

4.2.15 Member State authorities must explain to their counterparts their administrative practices, formal decisions and other actions related to the implementation and enforcement of EU law, when such practices, decisions and actions are perceived by counterpart authorities in other Member States as preventing the smooth functioning of the internal market.

4.2.16 For the EESC it is important that Member States regularly review the capacity of their implementing and enforcing authorities and the compatibility of domestic rules and regulations as well as administrative practices with the requirements of EU law.

(19) The outcome of the EESC questionnaire – see Appendix B – contains examples that stress the need for such ex post evaluations. The UK government has recently established a Panel for Regulatory Accountability. This panel may also contain useful elements for the EU level.
4.2.17 In the process of further enlargement, candidate countries must have transposed the whole of the Community ‘acquis’. For the EESC it is desirable that they have adequate administrative capacity at their disposal to implement it correctly before they are able to join the EU.

4.2.18 The EESC considers that Member States must be prepared to devote greater human and financial resources to promote implementation and enforcement seriously. The Committee points to the striking contrast between the resources devoted to the open method of coordination (officials, meetings, documents) and the difficulties in terms of finances and manpower in many Member States in supporting an important network such as SOLVIT. A positive exception in this respect is for instance Sweden.

4.2.19 There must be particular focus on the operation of the courts, which are specifically responsible for interpreting and directly implementing Community legislation (regulations) and the legislation resulting from its transposition (directives). Substantial difficulties have been encountered in standardising interpretation of these instruments and implementing them rapidly in practical cases. There is therefore a particular need for judges and lawyers to receive training in Community law, especially in the fields of competition, health and consumer protection.

4.3 Commission

4.3.1 The EESC considers that the Commission, apart from its efforts to get better lawmaking within its own services on the right track, also has a role in promoting confidence between enforcement authorities in supporting the networks of national authorities, the systematic assessment of their performance and the identification and spread of best practices. It can contribute through particular tools, such as information systems, to facilitate day-to-day administrative cooperation between officials. In this respect the ‘Internal market Advisory Committee’ presents a useful platform to the Commission and the Member States. The same goes for an information service on the Internal Market that is planned by the Commission in order to promote cooperation between the Member States.

4.3.2 In addition to the instruments that the Commission has identified in its Communication on Better Monitoring of the Application of Community Law (20) for preventing infringements, the EESC’s view is that it is also important to develop further cooperation between national authorities. The Commission can be helpful in reviewing national practices — even when these have not given rise to formal infringement proceedings — by facilitating problem-solving and by promoting best application practices between Member States.

4.3.3 The EESC recommends that the Commission be invited to conduct audits of enforcement structures in the Member States — possibly relying on a neutral partner — and to report regularly on implementation and enforcement in the form of Scoreboards.

4.3.4 EU-funded training programmes based on national studies and experiences, bringing together practitioners from across Europe, need to be stimulated. The recent Commission-sponsored training of judges in the field of competition has yielded positive results. Such training programmes for judges in the lower and regional courts as well as for public administrations must be extended to all relevant fields, as required knowledge is still often lacking. Attention could also be given to the role of the Ombudsmen.

4.3.5 The Commission should actively look for alternatives to formal legal action, which often tends to be too slow for the complainant. 50 % of the infringement procedures last more than four years! Alternatives include package meetings and instruments such as SOLVIT. The Commission might consider making the outcome of package meetings public.

4.3.6 The preoccupation should be to identify the most appropriate measure to achieve the policy outcome desired. In specific cases and to serve reliable outcomes in the Member States, the Commission might consider presenting proposals for a regulation instead of proposals for a directive. More generally, the Commission should take into account problems that may arise from diverse national implementing procedures.

4.3.7 In the Committee’s view, the Commission must be equipped with the necessary competences and resources to carry out its traditional task of overseeing implementation of EU law and its new tasks of facilitating the identification and spread of best practices. The EESC welcomes the internal audit the Commission intends to carry out in 2006 in order to assess its existing procedures and working methods in this field.

4.3.8 The Commission should be encouraged to streamline its surveillance efforts of implementation and enforcement. This may require more resources within the Commission as well. In this respect a greater coherence between the approach of the different DGs is needed.

4.4 Good governance and society

4.4.1 For the EESC, reporting, consulting and surveillance of implementation and enforcement must not be limited to administrations and officials. The European Parliament and also the national Parliaments should be committed to the same processes. The EESC welcomes the initiative, recently taken by the European Parliament, to put implementation and enforcement on its agenda. This initiative will certainly contribute to raise badly needed political attention for this subject.
4.4.2 As part of the better governance initiative, the Commission undertook to consult widely (21). The same was expected from the Member States. Certain secondary legislation such as regulations on competition or directives on telecommunications requires that national authorities consult interested parties before they adopt any measures. Some Member States have a tradition of public inquiries as a means of supporting their policy formulation and assessment. Most Member States carry out some form of impact assessment concerning financial or environmental effects. Impact assessment has both a consultation stage and an evaluation component. In the EESC’s view, such consultations and evaluations, which in essence identify the needs of citizens and businesses and then the policy effects on them, improve understanding of policies, strengthen their legitimacy and prepare the ground for policy improvements.

4.4.3 Because of the complexity of these processes good governance implies explaining across the whole of Europe that, notwithstanding ‘subsidiarity’ and specific administrative traditions, governments are bound to carry out what they have agreed upon at EU level. This means also that besides the Commission and the Member States, input from the private sector and civil society is most welcome to promote improvement and best practices.

4.4.4 In the EESC’s view, a well balanced publicity is required as soon as the Commission and the Member States have developed concrete ideas about presenting implementation and enforcement as an integral part of better lawmaking.

Brussels, 28 September 2005

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

APPENDIX
to the opinion of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate:

**Point 1.2**

Amend as follows:

‘The EU is based on the rule of law. It strengthens the foundations of the internal market and prevents any discrimination on the basis of origin or nationality of products, persons or companies. Effective application of EU law under strict compliance with existing social, consumer and environmental protection standards boosts public confidence in European policies and processes and makes the EU more relevant to the concerns of citizens and businesses. This implies however a timely and correct transposition of EU law at national level.’

**Reason**

Only an internal market governed by the above principles will ensure the desired outcome for the majority of the population. Recent referendums (on the EU treaty in France and the Netherlands) and surveys (Eurobarometer) have shown that people clearly want policies that they can broadly identify with.

**Voting:**

For: 43
Against: 45
Abstentions: 7

**Point 2.1**

Amend as follows:

‘2.1 While the EC Treaty provides for a variety of approximation and harmonisation measures to complete the internal market (1), experience in the 1970s and early 1980s has shown that complete harmonisation is a slow, cumbersome and unnecessary process. Measures based on mutual recognition and home-country control have, in some cases, been easier to negotiate and implement. They have also been more effective in freeing up trade and investment without imposing an excessive compliance burden, but the universal application of the country-of-origin principle requires first of all that the proper conditions be put in place for that purpose by pursuing a differentiated approach in each individual sector, with priority given to the harmonisation of employment, consumer protection and environmental standards at a high level. This is the only way to ensure that the internal market as a whole — when completed — is of an appropriate standard, and also reflects the call made by the EESC in its February 2005 opinion on the services directive (2). However, it also has to be noted that the EU has entered a new stage that is characterised by increasing differences in governmental cultures. This may lead to a renewed desirability of regulations in order to attain convergence and the promotion of good practices.’

**Reason**

After the long discussion when drawing up the opinion on the services directive, which eventually resulted in the above consensus, it would be inappropriate to query the harmonisation of provisions in relation to this one. Incorporating the results of that discussion here not only improves consistency between the EESC opinions, but is also a useful factual addition to the current theme of harmonisation.

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(1) Articles 94-97 of the EC Treaty
(2) CESE 137/2005.
Voting:
For: 44
Against: 48
Abstentions: 9

The following text of the section opinion was rejected in favour of an amendment but received at least a quarter of the votes cast.

Point 1.1

‘1.1 A well-functioning internal market is at the core of European integration. It legitimises integration by generating significant benefits for citizens and businesses.’

Voting:
For: 38
Against: 44
Abstentions: 10
Opinion of the European Economic and Social Committee on Obesity in Europe — role and responsibilities of civil society partners

(2006/C 24/14)

On 18 February 2005, the European Economic and Social Committee, acting in accordance with Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on: Obesity in Europe — role and responsibilities of civil society partners.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 September 2005. The rapporteur was Mrs Sharma.

At its 420th plenary session, held on 28 and 29 September 2005 (meeting of 28 September 2005), the European Economic and Social Committee adopted the following opinion by 83 votes to 4 with 10 abstentions:

1. Obesity — The Responsibility of Society

1.1 It is a very sad fact that the two major nutritional problems presently facing the world are that 600 million people face starvation whilst at the same time 310 million people face a problem of obesity.

1.2 The endless documents, surveys and reports from experts, round table meetings and prominent international organizations around the subjects of diet, physical activity and obesity have failed to produce solutions or ACTION to stop this societal and economically crippling disease.

1.3 Excessive food energy intake plus low energy expenditure equals energy surplus, stored in the form of body fat. This is the mechanism generating, obesity, which has accelerated over recent decades under the impact of a series of economic, social and psychological factors, to the point where obesity is becoming a priority health issue.

1.4 The prevalence of obese people has increased dramatically in the last 30 years. In 2000 the WHO declared it ‘the greatest health threat facing the West’.

— 14 million overweight children including 3 million obese rising at more than 400,000 a year, affecting almost 1 in 4 across the EU 25.

— 10-20% of children in northern Europe are overweight, in southern Europe and Ireland and UK the number is 20-35%.

— In many EU countries more than half the adult population is overweight, with 20-30% of adults categorised as obese.

— Obesity in middle age increases the risk of future dementia.

— 6 out of 7 of the most important risk factors for premature death relate to how we eat, drink and move (the odd one out being tobacco).

— Obesity accounts for 2-7% of a developed country’s total health care costs.

1.5 The upward trend in obesity, with all its negative personal and social repercussions, now demands a multi-disciplinary and multi-facted approach, in turn requiring interdependent action by nations, communities and individuals. Governments having a central role, in cooperation with other stakeholders, to create an environment that empowers and encourages individuals, families and communities to make positive, life-enhancing decisions on a healthy lifestyle.

2. Contributing factors

The rise of sedentary pursuits, an increase in the use of motorised transport, a decrease in physical activity, and an increase in the consumption of high-energy foods and drinks which do not have balanced ingredients are likely to be the major factors in the current epidemic of obesity.

2.1 General factors

Cultural and behavioural models intrinsic to the ‘comfort-oriented civilisation’ are the primary factor in the explosion of obesity, which can only be remedied by means of coordinated information and prevention initiatives (at national, local and even personal level) which alter the most harmful cultural attitudes and models of behaviour, without making the mistake of ‘over-medicalising’ obesity.

2.2 The main areas for action therefore include a closely-connected series of sectors or activities, which may be summarised as follows:

— society: nutritional education (tackling the issue of the overall nutritional value of foodstuffs, and not only the quantitative aspects) and education for healthier lifestyles, particularly regarding physical exercise;
— education: lessons on the value of food, the causes and effects of obesity, reinvigorated teaching of domestic science designed to disseminate healthier lifestyles, and greater appreciation of physical, including recreational, activity;

— industry: encouraging ethical practices within the food industry, especially in marketing and mass media advertising, and fostering personnel policies which support a sound diet and appropriate physical exercise;

— transport: countering over-use of modes of transport which replace physical activity, and identifying policies which do not increase the distribution costs of fresh foodstuffs in particular;

— media: ensuring that advertising practices do not generate excessive or unbalanced consumption, and alerting parents to the physical risks to their children arising from excessive and prolonged use of television, video games and internet;

— health services: supplying robust information services for all individuals, and arranging information and prevention campaigns rather than frequently unsuccessful treatment which comes too late;

— policy: responsible and appropriate investment for practical initiatives from national down to local level, targeting all sectors of the population and particularly those groups who are most vulnerable on account of education and income.

3. Stop the ‘Blame Culture’

3.1 The current industrialised world provides an environment highly conducive to obesity. Some causes are obvious, many less understood and most not viewed by society as detrimental. Of concern is the lack of foresight for future generations and the desire of no one to take ownership or responsibility, but instead to blame others.

3.2 The underlying obesity determinants are elevated consumption of energy-dense, nutrient-poor foods that are high in fat, sugar and salt; reduced levels of physical activity at home, at school, at work and for recreation and transport. Variations in risk levels and related health outcomes can be attributed, in part, to the variability in timing and intensity of economic, demographic and social changes at national and global levels.

3.3 Bringing about changes in dietary habits, patterns of physical activity and a healthy lifestyle will require the combined efforts of many stakeholders, public and private, over several decades. A change in mentality, awareness raising and education via a combination of sound and effective actions are needed at all levels, with psychological support, close monitoring and evaluation of their impact. Additionally, individuals will have to take ownership and responsibility for change.

4. Obesity Check

4.1 The EESC proposal will reduce obesity through the promotion, across Europe, of an obesity-proofing campaign — Obesity Check — raising awareness of the benefits of a healthy lifestyle and the responsibility of all parties in preventing obesity. The campaign will have one simple message that overcomes ten challenges and involves public and private sector, civil society and citizens via their commitments to support the campaign. The point is to promote the habits of a healthy lifestyle without interfering with a citizen’s personal choices.

4.2 The ten challenges are to:

— continue and improve the education process across the population;

— work together for efficient communication and ownership;

— ensure EVERY individual across Europe is reached;

— get everyone to take responsibility and retain the momentum;

— convince individuals and organisations that they can influence others;

— accept that all actions have to be integrated into a wide range of EU and national policies;

— accept this is a ‘Corporate Social Responsibility’;

— ensure a multilayered, horizontal and vertical approach at all levels;

— ensure transparency, selflessness and remove hidden agendas;

— raise awareness that the effects of obesity on health are reversible through healthy eating and physical exercise.

4.3 The Obesity Check campaign, to be clearly defined by policy makers and stakeholders, led by DG SANCO, would be a simple message clearly demonstrating to the European public a need to eat healthily and take more physical exercise, expressed through a commitment to ‘obesity-proof’ all parties’ policies and practices. Every relevant organisation, from the European Commission to the individual family member, can be asked to join the campaign to look at their own activities and see how these could be modified to prevent the risk of obesity.
4.4 Previous campaigns such as ‘clunk-click’ seat belts, tobacco control, breast feeding and no drugs in sport have been simple yet effective and supported by all layers in society. All have involved a successful combination of consumer education, legislation, policy changes and community-based programmes.

5. **Obesity Check Campaign**

A questionnaire has been produced asking individuals to commit a personally selected amount of time to spend within their organisations, or external bodies, supporting the work of DG SANCO in promoting the idea of obesity-proofing through the Obesity Check campaign. (The questionnaire is attached at the back of the opinion. It can be amended to be used by any organisation).

**Objective** — to produce targeted outcomes and monitor progress.

**Short term** — completed questionnaires prove a commitment and willingness of individuals and organisations to raise awareness, educate and inform others of the need for lifestyle changes. The target can be measured by the amount of time, or resources pledged to the campaign. Examples of best practice can also be collected.

**Medium term** — actual action. Time commitments and resources pledges followed through, including organisations ‘obesity — proofing’. This would also include the publishing and dissemination of examples of best practice collected in the short-term. Targets can be measured by positive feedback and follow-up on all original questionnaires, as well as monitoring progress of the EU Platform.

**Long term** — assess via an opinion from EESC actual progress in the form of a report to other EU institutions. This facilitates the processes of feedback and additionally continued momentum.

5.1 **EESC**

5.1.1 The EESC has a mandate to work with the Commission, Parliament and Council bringing civil society closer to the decision making process. With such a mandate, EESC along with all stakeholders can commit time to initiating effective change through the voluntary action of its members to promote healthier lifestyles. EESC members have been requested to complete the Obesity Check and lead by example in the following suggested ways:

— Employers could consider healthier lifestyles within the workplace, including encouraging choices of healthy foods by adopting consistent nutrition policies, and the introduction of sports facilities or gyms. For smaller companies this could be supporting employees to consider healthier lifestyles. Working outside of their companies, particularly in education would also be valuable. The United Nations Millennium Declaration (September 2000) recognises that economic growth is limited unless people are healthy.

— Employee organisations could disseminate a similar message to their members, for example: to empower employees to integrate physical activity, walking or cycling, into their daily routine. They could also be encouraged to take the advice back to their families and communities as a process of continued education.

— NGOs and particularly consumer organisations could commit time with their members and possibly help spread the message further a field to other institutions and communities. Youth and family organisations are valuable in promoting balanced diets and exercise. All can promote the affordability of healthy eating and healthy options, together with the know-how.

5.1.2 The EESC works across all 25 Member States at all levels of civil society. This makes a significant impact in the transmission of the ‘campaign’ message and sets the standard for others to follow.

5.2 **EU Commission and Parliament**

Members of the Commission DGs and the Parliament would be asked to complete the Obesity Check to ‘lead from the front’.

5.2.1 DG SANCO is to be congratulated on the launch of the newly established ‘European Platform for Action’ in the field of obesity. It is hoped that Platform members could devise a simple slogan/campaign message that would be used across Europe to promote a healthy lifestyle. Consistent, coherent and clear messages should be prepared and conveyed by government, NGOs, grass-roots organizations, and industry. They should be communicated through many channels and in forms appropriate to local culture, age and gender. Behaviour can be influenced especially in schools, workplaces, educational and faith communities, by local leaders, and mass media.

5.2.2 The platform chairman, Robert Madelin, underlined that ‘to be successful in its fight against obesity all actions had to be integrated into a wide range of EU policies’. Importantly, from all global reports, this is a long-term issue and must have short, medium and long-term sustainable effective strategies with actions, and a multisectional, multidisciplinary and multifactor involvement, that means it must include consultation with those most affected — families, parents and children.
5.2.3 DG SANCO is arranging for the platform to engage in dialogue with officials from other policy areas in the Commission: DG Agriculture, Enterprise, Education, Research and Transport. It is vital that all interested parties are involved at the inception stage of any strategy and once produced, a consultative Impact Assessment should be conducted to ensure that the strategy blames and penalises no specific institutions but communicates clearly its proposals to involve all.

5.2.4 Based on the principles of subsidiarity and complementarity, Community-level promotional measures can reinforce the effect of initiatives taken by the national authorities, private sector and NGOs. Various sources of funding, in addition to national budgets, should be identified to assist in the implementation of a strategy and the Obesity Check campaign.

5.2.5 DG Education and Culture, especially Sport will have requirements for funding to develop key strategies with national governments. However, their messages should recognise that financial resources are not always required to increase levels of physical activity, i.e. schools do not always need new gym equipment, and many trained athletes are seeking employment and could be encouraged to work in education. Bodies responsible for sports promotion could persuade sporting heroes to project positive messages.

5.2.6 Extensive research has been conducted by DG EAC in the area of youth physical activity. However, research should also be conducted into adult recreational activity. Consideration needs to be made in term of ‘family cross referencing’, e.g. parents involved in sport at the weekend would take and encourage the children to participate, making it a family experience, and changing cultural trends.

5.2.7 DG Agriculture have a promotion budget which could be used as an investment towards the promotion of fresh fruit and vegetables, and this could be positively used in helping fulfil its part in the Obesity Check campaign, similarly to previous assistance to national bodies for local promotional campaigns for nutritional agricultural products.

5.2.8 Consideration should also be made of the role of international partners in achieving the objectives. Coordinated work is needed among the organisations of the United Nations system, intergovernmental bodies, NGOs, professional associations, research institutions and private sector entities.

5.3 Member States

Governments have a ‘joined up’ approach considering economic, social and environmental factors.

5.3.1 All partners, especially governments, need to address simultaneously a number of issues. In relation to diet, these include all aspects of nutrition, food security (accessibility, availability and affordability of healthy food); and food safety. Physical activity must be promoted in working, home and school life, with consideration for city planning, transportation, safety and access to physical activity during leisure time. National circumstances will determine priorities in the development of obesity-proofing governmental activities as part of the Obesity Check campaign. There are great variations in and between different countries and regional bodies should collaborate in formulating regional strategies.

5.3.2 Support should be provided by appropriate infrastructure, implementation programmes, adequate funding, monitoring and evaluation, and continuing research. Strategies need to be based on the best available scientific research and evidence, incorporating policies, action and time scales.

5.3.3 Priority should be given to activities that have a positive impact on the poorest population communities. Such activities will generally require community-based action with strong government support and oversight.

5.3.4 Similar to the ‘European Platform’ national governments should establish communication channels and ‘Round Tables’ involving ministries, institutions responsible for policies on food, agriculture, youth, recreation, sports, education, commerce and industry, finance, transportation, media and communication, social affairs and environmental and urban planning to consider combating obesity. They could include ‘parent’ and youth round tables, to include contributions from the individuals most affected. They must have cooperation and ‘buy-in’ from all stakeholders with no hidden agendas. The International Obesity Task Force is a research-based think-tank with an advisory and catalytic role offering relevant data for such discussions. These communication channels should be extended to cover public private sector partnerships. They must NOT waste resources by extending administrative costs or duplicating already established bodies.

5.3.5 Governments need to consider actions that will result in the provision of simple balanced information for consumers to enable them easily to make informed choices, and to ensure the availability of appropriate health promotion and education programmes. Information for consumers should be sensitive to literacy levels, communication barriers and local culture, and understood by all segments of the population.
5.3.6 Governments, in the full application of the principle of subsidiarity, have a central role, in cooperation with other stakeholders, to create an environment that empowers and encourages behaviour changes by individuals, families and communities, to make positive, life-enhancing decisions on healthy lifestyle.

5.4 Education

Across every educational establishment individuals would be asked to complete the Obesity Checklist. Educational departments could be asked if they could commit specific resources towards promoting the campaign among their constituent bodies across the full education spectrum.

5.4.1 A life-course perspective is essential for the prevention and control of obesity. A simple Obesity Checklist that can be understood by minors and the elderly alike. This approach starts with maternal health and prenatal nutrition, pregnancy outcomes, breastfeeding and child and adolescent health; reaches children at schools, adults at worksites and other settings, and the elderly, encouraging a healthier lifestyle from youth into old age.

5.4.2 Health literacy should be incorporated into adult education programmes. Such programmes provide an opportunity for health professionals and service providers to enhance knowledge about diet and physical activity and to reach marginalized populations. Media literacy can also be offered, to help equip consumers to understand labels and advertisements when making choices, as well as providing practical experience in preparing meals.

5.4.3 Schools influence the lives of most children. They should protect their health by providing health information, improving health literacy, developing education in food tastes, and promoting a healthy lifestyle. Schools must provide students with minimum daily physical education (min. 2 hours a week), as well as a balanced diet education, and should be equipped with appropriate facilities and equipment. They should recognise that even with budgetary constraints, action can still occur with current facilities.

Expenditure on sports facilities must be carefully monitored to ensure that the activities benefit both girls and boys, especially as obesity rates amongst girls are rising faster than for boys.

5.4.4 Governments are encouraged to adopt policies that support balanced diets at school and limit the availability of products high in salt, sugar and fats. Schools, together with parents and responsible authorities, should consider issuing contracts for school lunches to local food growers in order to ensure a local market for healthy foods. A consistent food and nutrition policy should be adopted following consultations with staff, pupils, parents and relevant authorities.

5.4.5 Where entrepreneurial activity is encouraged between pupils in schools this should not be in the form of ‘tuck’ shops where traditionally crisps and confectionery are sold. Healthy foods could be considered as alternates.

5.4.6 Special consideration must also be made for the elderly as those over 60 are affected by obesity. Additionally, the elderly have a wealth of information and experience on traditional diets and cooking methods and can contribute to the education of their families.

5.5 Health Services

Across every public health body individuals would be asked to complete the Obesity Checklist. Departments could be asked if they could commit specific resources towards promoting the campaign to their constituent bodies (e.g. clinics, hospitals, staff canteens, patient groups).

5.5.1 The role of government is crucial in achieving lasting change in public health. Governments have a primary role in initiating and developing a strategy to reduce obesity as part of a broader, comprehensive and coordinated public health effort. Simple, direct messages need to be communicated on the quantity and quality of physical activity sufficient to provide substantial health benefits. Local and regional authorities must also be involved and participate actively in this information process.

5.5.2 Routine contacts with health-service staff should include practical advice to patients on the benefits of healthy diet and increased levels of physical activity, combined with support to help patients initiate and maintain healthy behaviour, via an Obesity Checklist. Authorities should consider incentives to encourage preventive services and identify opportunities within existing clinical services, including an improved financing structure to support and enable health professionals, especially for primary health care, but also other services (such as social services and pharmacy), to dedicate more time to prevention. This could be a simple positive proactive message suggesting ‘walk more-eat less’.

5.5.3 Support and information measures should begin with promotion of appropriate infant feeding.

5.5.4 Governments, in the full application of the principle of subsidiarity, have a central role, in cooperation with other stakeholders, to create an environment that empowers and encourages behaviour changes by individuals, families and communities, to make positive, life-enhancing decisions on healthy lifestyle.
5.5.4 Support and information measures should also target the elderly, particularly those living alone or those who are poor or marginalised, so as to avoid the widespread unhealthy food practices which often go hand-in-hand with these kinds of hardship.

5.6 Local Government

Obesity Check would be completed across every regional and local government, suggesting actions to obesity-proof their activities and support the Obesity Check campaign. Offices and departments could be asked if they had specific resources towards promoting the campaign.

5.6.1 Local authorities should encourage multisectoral and multidisciplinary expert advisory boards to be established, including technical experts and representatives of government agencies. They must have an independent chair to ensure scientific evidence is interpreted without any conflict of interest.

5.6.2 National, regional and local governments should provide incentives to ensure that walking, cycling and other forms of physical activity are accessible and safe; transport policies must include non-motorised modes of transportation; labour and workplace policies should encourage physical activity; and sport and recreation facilities should embody the concept of sports for all.

5.7 Industry

'Industry' includes both employers and employees, working together for the benefit of each other.

Across industry employers and employees would be asked to complete the Obesity Check to support the Obesity Check campaign. Additionally companies and trade unions could be asked if they could commit specific resources or capital towards promoting the Obesity Check campaign as part of their corporate social responsibility.

5.7.1 The private sector can be a significant player, especially as many companies operate globally and can transfer policies at all levels and across nations within one company. Corporate social responsibility could integrate a variety of partners in working with local schools to support the educational strategy to raise awareness of healthy eating or increase physical exercise. As a safeguard, consultation must initially take place to discuss potential conflicts of interests.

5.7.2 The food industry, retailers, catering companies, sporting-goods manufacturers, advertising and recreation businesses, insurance and banking groups, pharmaceutical companies and the media all have important parts to play as responsible employers and as advocates for healthy lifestyles. All could become partners with governments and NGOs in implementing measures aimed at sending positive and consistent messages to facilitate and enable integrated efforts to encourage a healthy lifestyle.

5.8 Food Industry

5.8.1 Food manufacturers have proactively worked to create many initiatives to reduce the fat, sugar and salt content of processed foods, to reduce portion sizes and to increase the introduction of innovative, healthy, and nutritious choices.

5.8.2 The industry is aware food advertising affects choices and influences dietary habits and it must ensure advertisements do not exploit children's inexperience or credulity. Governments should work with consumer groups and the private sector to develop appropriate multisectoral approaches to deal with the marketing of food to children, with such issues as sponsorship, promotion and advertising. Together, an agreement on socially responsible practices should be developed that does not eliminate freedom of choice but accepts that children cannot identify nutritional content.

5.8.3 Current plans to discuss rapid simplistic measures such as 'traffic light' indicators on food should be discouraged. Recommendations must be consulted with the food industry and consumers before implementation. This can be supported with media literacy inputs, including information on understanding food labels and advertising messages provided at the point of sale and through schools and adult education organisations.

5.8.4 Consumers require accurate, standardized and comprehensible information on the content of food items in order to make healthy choices. Governments may require information to be provided on key nutritional aspects, as proposed in the Codex Guidelines on Nutrition Labelling.

5.8.5 As consumers' interest in health grows, and increasing attention is paid to the nutritional aspects of food, producers increasingly use health-related messages. Such messages must not mislead the public about benefits or risks.

5.8.6 Recommendations to the food industry, which could be supported by civil society organisations, include:

— promote healthy lifestyles in accordance with European guidelines and the overall aims of the global strategy;

— limit the levels of saturated fats, trans-fatty acids, free sugars and salt in products;

— continue to develop and provide affordable, healthy and nutritious choices to consumers;

— provide consumers with adequate and understandable product and nutrition information;
— practise responsible marketing that supports Obesity Check, particularly with regard to the promotion and marketing of foods high in saturated fats, sugars, or salt, especially to children;

— issue simple, consistent food labels and evidence-based health claims that help consumers to make informed and healthy choices;

— provide information on food composition to national authorities;

— assist in developing and implementing healthy eating and physical activity programmes.

5.9 Agriculture

5.9.1 National food and agricultural policies should be consistent with the protection and promotion of public health. Policies should be considered that facilitate the adoption of a healthy diet covering food safety and sustainable food security.

5.9.2 Prices influence consumption choices. Public policies can influence prices through taxation, subsidies or direct pricing in ways that encourage the consumption of health-enhancing foods.

5.10 Media

5.10.1 The media industry has one of the most influential roles to play as it filters into everyday life, often subliminally. A commitment from all media channels to work together on a single European ‘campaign’ and promote it to their audiences simply and consistently over a sustained period would ensure that campaign message would eventually reach every individual in Europe.

5.10.2 In a society where celebrities are hailed as role models, including Olympic champions, more can be done to involve them in conveying the ‘campaign’ message.

5.10.3 New media, including computer games and the internet, have crucial roles with young audiences especially as their use is correlated to obesity increase.

5.10.4 Product placement and product promotion in relation to movies should be carefully considered in relation to the likely audience. This is particularly essential in children’s viewing.

5.11 Society

5.11.1 NGOs and civil society organisations would be asked to complete the Obesity Check. Organisations could be asked if they could commit specific resources, including in kind, towards promoting the campaign to their members and constituent organisations. The valuable work of such organisations at community level is recognised and essential for any initiative to succeed.

5.11.2 Many people believe that dealing with obesity is a personal responsibility. In part they are right, but it is additionally a society responsibility, especially at the grass-roots community level. Civil society and NGOs have an important role to play to motivate a proactive attitude and influence action through joined up thinking and local initiatives. These could simply include schools using sport association facilities, local media promoting local campaigns, local manufactures working with local authorities to provide education support, local farmers providing fresh produce for schools. Their aim can be to ensure that healthy foods are Available, Affordable, Appropriate and Sustainable.

5.11.3 NGOs can support the strategy effectively if they collaborate with national and international partners, particularly in:

— leading grass-roots mobilisation and advocating that healthy lifestyles should be placed on the public agenda;

— supporting the wide dissemination of information on prevention of obesity through balanced, healthy diets and physical activity;

— forming networks and action groups to promoting the availability of healthy foods and possibilities for physical activity, and advocate health-promoting programmes and education campaigns;

— organising campaigns and events that stimulate action;

— emphasising the role of governments in promoting healthy lifestyle, monitoring progress in achieving objectives and working with other stakeholders such as private sector entities;

— playing an active role in fostering implementation of the EU Obesity Check campaign;

— contributing to putting knowledge and evidence into practice;

— promoting role models and best practice particularly in relation to the role of families and parents. It is essential that role models focus on positive health and not body image.

5.11.4 Patterns of physical activity and diets differ according to sex, culture and age. Decisions about food and nutrition are often made by women and are based on culture and traditional diets. National strategies and action plans should thus be sensitive to such differences.
6. A Future without Action

6.1 The Human Cost

6.1.1 Childhood obesity is one of the most serious public health problems facing the developed and, increasingly, the developing world. The obesity prevalence is increasing in children of all ages.

6.1.2 Obese children suffer from a host of comorbidities, some are immediately apparent and others serve as warning signs of future disease. Although primary prevention is ultimately the most effective strategy in curbing the epidemic, treatment of those children who are currently obese is needed to improve both their immediate and long-term health outcomes.

6.1.3 Obesity in youth is associated with a range of psychosocial and medical complications. The most common consequences are those related to psychosocial dysfunction and social isolation. Cross-sectional studies show an inverse relationship between weight and both self-esteem and body image, particularly in adolescents. In adolescent girls, fear of excess weight is related to body dissatisfaction, drive for thinness, and bulimia.

6.1.4 The most important disease is type 2 diabetes — causing circulatory disorders, kidney failure and blindness. Some cancers (particularly breast cancer), cardiovascular disorders including hypertension, respiratory disorders including sleep apnoea, liver disease, depression, joint and skin problems are all resultants of increased body fatness.

6.1.5 Some effects of obesity on health outcome appear to be reversible if the person loses weight.

6.2 The Financial Cost

6.2.1 Obesity imposes a significant economic burden on already strained health systems, and inflicts great costs on society. Health is a key determinant of development and a precursor of economic growth. The UK National Audit Office quantifies the economic consequences to be circa £500m annually in direct health costs and a further £2billion in wider costs to the economy.

6.2.2 Obesity is widespread across the social classes, but is especially common among socially disadvantaged groups, who may have the least access to safe streets and parks, and who may eat the lowest cost food products, which are often foods with the most fats and sugars.

6.2.3 In developed societies, women who were overweight in late adolescence and early adulthood are more likely to have lower family incomes and lower rates of marriage. Furthermore, obese individuals may experience social rejection and discrimination in the workplace.

6.2.4 Proactive actions and education now can ensure the financial costs are reduced in later years to be invested for the sustainable development of Europe.

6.3 Moving towards social responsibility

Anti-obesity measures are part of a move towards accepting different levels of society share responsibility with due respect for individual freedom. For example:

6.3.1 At a political level

— An EU Commission and Member State governments with bilateral communication strategies, responsible investment or action-focused initiatives to discourage obesity.

— Education systems promoting healthy lifestyles.

— Health Services with resources to promote good health.

— Planning authorities promoting cycle route, green parks and sports facilities.

6.3.2 In industry

— A food industry driven by consumers’ need for affordable nutritious foods.

— Retail trends which ensure good food is available to all, even in deprived communities.

— Agriculture which provides abundant, affordable fresh and wholesome produce.

— A transport industry which discourages excessive car use and encourages safe walking and cycling.

— A media culture which discourages passive consumption and promotes physical activity.

6.3.3 In society

— A family-oriented culture where meals can be cooked and shared at home, along with healthier meals in schools, hospitals, social service establishments and workplace canteens.

— A change to sustainable consumption patterns, conserving natural resources and promoting physical activity.
— Safer urban environments with less crime and controlled traffic.

— Greater equality and social inclusion to ensure every home has access to healthy foods and safe leisure resources.

— Support for parents and carers to ensure they can make healthy choices for themselves and their children.

6.3.4 Governments are elected by the people; people are major influencers in societies, as individuals, groups or organisations, and can make a difference. The costs do not always have to be financial. Together change can be made once the blame stops and responsibility is accepted.

7. Conclusion

Obesity is a ‘Gordian knot’ mixing psychological, sociological, economical, cultural, historical aspects and individual behaviours.

In 1997 the WHO declared morbid obesity a disease and in 2005 classed obesity as a disease. Morbid obesity and obesity are associated with increased mortality due to comorbidities like type II diabetes, hypertension and heart disease.

7.1 A unique opportunity exists to formulate and implement an effective strategy for substantially reducing deaths and disease by improving diet and promoting physical activity. Evidence for the links between these health behaviours and later disease and ill-health is strong. Effective interventions to enable people to live longer and healthier lives, reduce inequalities, and enhance development can be designed and implemented through a simple and clear campaign that involves, and includes, everyone, and which will be subject to a posteriori assessment.

7.2 Bringing about changes in dietary habits, patterns of physical activity and a healthy lifestyle will require the combined efforts of many stakeholders, public and private, over several decades. A change in mentality, awareness raising and education via a combination of sound and effective actions are needed at all levels, with psychological support, close monitoring and evaluation of their impact. Additionally, individuals will have to take ownership and responsibility for change.

7.3 By mobilising the full potential of civil society together with the major stakeholders, this vision can become a reality. ‘You must be the change you want to see’ Gandhi.

8. Questionnaire — Supporting EESC Own Initiative Opinion

Obesity — A Society Responsibility

This questionnaire is currently for research purposes only but completion and its return is appreciated.

The industrialised world in the twenty-first century provides an environment highly conducive to obesity. Some causes are obvious, many are less understood, most are not viewed by society as detrimental. Of greatest concern is the lack of foresight for future generations and the desire of no one to take ownership or responsibility, but instead to blame others.

— 14 million overweight children including 3 million obese in EU25

— In many EU countries more than half the adult population is overweight, 20-30 % of adults are categorised as obese

— The number of EU children affected by overweight and obesity is rising at more than 400,000 a year and affects almost 1 in 4 across the entire EU25

— 10-20 % of children in northern Europe are overweight, in southern Europe and the UK the prevalence is 20-35 %

In the short term — completed questionnaires prove a commitment and willingness of individuals and organisations to raise awareness, educate and inform others of the need for lifestyle changes. Targets can be measured by the amount of time, or resources pledged to the campaign. Examples of best practice can be forwarded to the rapporteur.

The EESC opinion takes an approach to ‘include all’ in a strategy to combat the problem together. To take ‘top down’ policies, accompanied with bottom up strategies, creating action horizontally and vertically, with everyone making a commitment, financially, in time or in kind.

I would like to gauge your commitment, and that of your organisation’s and would welcome you forwarding this to others who may wish to comment/commit.

Please return the questionnaire to madi.sharma@esc.eu.int or fax to 0115 9799333, or mail Madi Sharma, EESC, c/o 40 Ridge Hill, Lowdham, Notts. NG14 7EL, UK.

The following questionnaire has been produced to ask individuals and organisations to commit a personally selected amount of time, or resource, to spend within their organisations, or external bodies, supporting the work of DG SANCO in promoting a campaign to raise the awareness of a healthy lifestyle. It is important that this can be quantified to monitor progress.
For example:
— Employers and employer organisations could consider healthier lifestyles within the workplace, including encouraging choice of healthy foods, especially for vending machine produce, and the introduction of sports facilities or gyms. For smaller companies this could be supporting and encouraging employees to consider healthier lifestyles. Working outside of their companies, particularly in education would also be valuable. A time commitment of x hours per month.
— Trade unions and employee organisations could disseminate a similar message to their members, to empower employees to integrate physical activity, walking or cycling, into their daily routine. Additionally, they could take advice back to their families and communities.
— NGOs and particularly consumer organisations could commit time with their members and help spread the message further a field into other institutions and communities.
— Individuals can commit to lifestyle changes as role models via increased physical exercise, or healthier eating options. This can be promoted by word of mouth and encouraging others to also try changes. This would be particularly beneficial within the family environment. Dedicate 15 minutes a month to sharing your changes with others.

I am committing 30 minutes a month to work with schools to raise the awareness of a healthy lifestyle and with women’s organisations to help spread the message to parents. I am also promoting my lifestyle changes having lost 10kg through walking and nutritional monitoring.


The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

What can you offer:

Please note all this information is confidential and will not be forwarded without your permission; at this stage it is only a pledge.

Name ........................................................................................................................................................................
Organisation ....................................................................................................................................................................
Contact Details Phone .................................................................................................................................email

Commitment to offer:

Time: No of hours ................................................................................................................................. Per week/month
To perform the tasks of ............................................................................................................................
........................................................................................................................................................................
Capital resources:
To be used towards ...........................................................................................................................................
........................................................................................................................................................................
Resources of ........................................................................................................................................................
To support ...........................................................................................................................................................
........................................................................................................................................................................

Additional Comments/best practice models ...........................................................................................................

If a logo/slogan promoting lifestyle changes is designed would your organisation promote it i.e. on marketing materials? ............................. Yes/No

Opinion of the European Economic and Social Committee on ‘Social policy within a pan-European system for regulating inland-waterway transport’

(2006/C 24/15)

On 1 July 2004, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on Social policy within a pan-European system for regulating inland-waterway transport.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 15 June 2005. The rapporteur was Mr Etty, the co-rapporteur Mr Simons.

At its 420th plenary session, held on 28 and 29 September 2005 (meeting of 29 September 2005), the Committee adopted the following opinion by 92 votes to 7 with 12 abstentions:

1. Introduction

1.1 Taking the ambition of the European Commission to develop the large potential of IWT as a point of departure, the 2004 own-initiative opinion (1) concentrated on the current fragmentary legal regime. The opinion stated that legislation should be harmonised and unified, in particular now that enlargement of the EU would cause even more complications than before (reconciling and drawing together the Rhine/EU and the Danube regimes). As part of the new policy of the European Commission the aim was to strike a new balance between the various modes of transport. IWT was named as one way of establishing a more balanced transport market. In order to be able to make full use of the strengths of this mode, a number of obstacles had to be removed which currently hindered the full development of this sector.

1.2 As regards social policy issues and the labour market situation, the opinion noted, i.a.:

— the principle of freedom of movement of workers and the related coordination of social security;

— the lack of skilled IWT workers in the 15 ‘old’ EU Member States versus a big surplus in the ‘new’ and future member states;

— discrepancies in qualifications and examination requirements and resulting difficulties in the recruitment and free movement of workers in IWT, differences in the Rhine and Danube regimes as regards manning regulations for vessels (including differences between binding legislation and recommendations);

— the linkage of crew legislation with technical requirements which vessels must comply with;

— the need for harmonisation of training as an important element of a harmonised European crew legislation;

— potential communication problems between crew members and between the various participants in shipping on European waterways and the desirability to address these problems in order to contribute to increased safety;

— the Rhine regulations apply to all members of crew (employees as well as self-employed) and contains no specific conditions for employees, whereas the EU regulations concentrate on the protection of employees and do not take into consideration the specific circumstances and legislation on crews in IWT. A social dialogue at Community level is necessary in order to attune these two regimes to one another.

2. General observations

2.1 Traditionally, technical and social regulations for IWT have been intimately intertwined. This regards in particular crew regulations which, in close connection with technical requirements concerning the ship, address both overall safety and protection of the workforce.

2.2 Technical regulations for the Rhine have been laid down in the Mannheim Act, on which the authority of the Strasbourg based Central Commission for Navigation on the Rhine (CCNR) rests. Some member states apply the Rhine regulations on all their waterways.

Furthermore, for navigation on the Danube, the Belgrade Convention also exists. As the latter has a different structure (the Danube Commission issues recommendations instead of regulations) and, moreover, limited EU legislation also applies, this constitutes a complicated patchwork regulation in Europe.

(1) This own-initiative opinion is a follow-up of the own-initiative opinion Towards a Pan-European system of Inland Waterway Transport (IWT)- OJ C 10, 14.01.2004, p. 49.
The Mannheim Act can become one of the technical cornerstones for fully-fledged EU legislation on IWT.

2.3 In addition to crew regulations, the major social aspects of IWT dealt with by CCNR are the regulations in hours of navigation for the ships and rest for the crew members.

2.4 The Danube countries are currently in the process of revising the Belgrade Convention with a view to granting the Danube Commission comparable powers to the CCNR. The revised Convention should be adopted in the very near future. It should be open to all interested countries.

2.4.1 With a view to growing economic interests (Traffic on the Danube is expanding at a high pace) the Danube countries consider this to be a priority issue. Four main goals are being pursued by the Danube Commission:

a) mutual recognition of patents, professional qualifications and technical certificates;

b) equivalence of the parameters for IWT;

c) opening of the European IWT market;

d) integration of social policies;

2.4.2 A major problem for navigation on the Danube is the relatively poor technical state of maintenance of the Danube fleet. This is a consequence of, among other things, out-of-date construction and equipment, and of long-term under use because of the blockade at Novi Sad.

IWT in the Rhine states faces a considerable lack of personnel from these countries.

2.4.3 According to the DC, apart from the recommendatory character of the Belgrade Convention, there are no major discrepancies as regards technical requirements and social regulations between the Rhine and the Danube regimes. To a large degree, social policy in IWT on the Danube is left to national legislation and to collective negotiations.

The main problem in the social field, in the view of the Danube Commission, is the severe limitation of access of captains from the Danube States to the Rhine.

2.4.4 A comparative study of IWT social legislation and regulation in the Member States has never been made by the DC. Interest in this aspect of IWT has apparently been lacking so far, in spite of it being a factor in competition.

2.5 Major social problems facing workers in IWT in both the Rhine and the Danube Member States as identified by the trade unions are, in addition to those related to manning rules and working/rest time, differences between national social security provisions, insufficient knowledge of different relevant national legislations and regulations, as well as collective agreements.

Employers in the Rhine States consider that the main problems in the social field for them have to do with the rigidity and complexity of regulations, and differences between national legislations. This has a strong impact on their competitive position, leading companies to shop for the most favourable law and/or transfer personnel with the purpose of circumventing labour and social obligations. In this way, they try to take advantage of differences in wage and social security costs.

2.6 Approximately 40,000 people find employment in the sector; 30,000 in the ‘old’ Member States of the EU and 10,000 in the ‘new’ ones. Of the latter, some 1,000 are currently working on the Rhine. Roughly half of those working in IWT in the ‘old’ Member States are wage earners, the other half are independent.

2.7 In the CCNR, social partners are consulted on issues which concern social policy. However, the trade union movement considers these consultations to be insufficient.

In the Danube countries there is no such consultations. A majority of workers is organised in trade unions, but on the employers’ side there is a transitional situation due to the process of privatisation.

2.7.1 Social dialogue between workers and employers in the IWT sector is poorly developed in the ‘old’ and not at all in the ‘new’ EU Member States, as well as in the candidate member states. It is of great importance for a genuine social dialogue that there be independent and representative employers’ and employees’ organisations. This must be a matter for attention in the Danube countries.

2.7.2 This, in combination with the long standing dominance of technical legislation/regulation, explains why the human factor in IWT has been underrated for a long time. Shipowners have the following point of view on this matter. Most IWT ships being privately owned it has always been in the owners’ interest to control all operational risks including the human factor. Therefore, compared to other transport sectors, the need for legislation relating to the required qualifications has been relatively low.

2.8 Is there a potential for positive change as far as this is concerned, following the growing interest in strengthening the part IWT can play in the future EU transport policy and in increasing coherence between the different IWT regimes? Three recently published reports and an important European conference, all dealing with the future of this sector, suggest that this is not the case.
2.8.1 The CCNR report 'Ships of the Future' (2) explores the future of IWT mainly from a technological perspective.

2.8.1.1 As regards social issues, it focuses almost exclusively on the future captain, who is pictured as an 'operator' and for whom very few physical tasks will be left but who must be able to act adequately in the case of emergencies. For the time being, this is not a realistic picture, but it draws the attention to the strong influence of technological developments on the social context of IWT. On the basis of this thesis, the report advocates an active social policy for the sector.

2.8.1.2 In the scenario presented by the report, the sector's needs seem to be restricted to highly educated personnel. That, too, is not realistic. Employment opportunities for lowly skilled workers may decrease, but IWT will not be able to do without this category of workers altogether.

2.8.1.3 With respect to the labour market, the report mentions the importance of regular leisure time, broadening of the supply of functions and mobility of labour.

2.8.2 The PINE-report (3) sketches the future of IWT mainly from an economic point of view. The main social policy issue it addresses is the effect of free movement of labour within the EU on the financial and economic parameters of the sector.

Some additional attention is paid to the problem of current and future lack of personnel in IWT.

2.8.3 The EFIn-report (4) explores the potential for a principal framework of cooperation, including the States and institutions concerned. The EESC will deal with the proposals developed in this report in a separate opinion in the near future. The role of social partners is not at all addressed which suggests that it is considered irrelevant for the issues discussed in the report.

2.8.4 At the Congress The Power of Inland Navigation (10-12 November 2004, The Hague), organised by the Netherlands' Presidency of the EU in order to highlight the contribution of IWT to economic growth and to progress of society at large, social aspects were, once more, hardly considered.

2.9 The content of the three studies and the discussions at the conference mentioned here seem to illustrate that Governments and many who are active in the sector are still considering social policy issues of only marginal interest for IWT.

The same is suggested by the fact that social partners in the sector, were in no way involved by the authors and the organisers. The PINE Report was the exception. That is to say, the European Commission did involve the social partners in the drafting of the report, although, as noted above, relatively little attention was paid to social issues which are considered to be of great importance by them (and certainly by the trade union movement).

2.10 The Committee's earlier opinion Towards a Pan-European system of IWT left out a detailed discussion of the sector's social policy with a view to its complex architecture but referred to this follow-up opinion. The points made above supply additional arguments for taking a closer look at this. It is about time to emancipate social policy from the long standing dominance of technical issues and to deal with it in a more balanced way, fully involving all the parties concerned, both in the Rhine and the Danube states, in the 'old' and the 'new' as well as in the candidate member states, and -where relevant — also in other countries concerned.

3. Specific observations

3.1 What the EESC has in mind is a social policy based on a broad uniform blueprint, in which there is room for regional as well as local distinctions. Social partners must be involved as closely as possible with this policy.

3.2 Crew regulations

3.2.1 The core of the crew legislation in the Member States of the CCNR is in Chapter 23 of the Regulations for the inspection of ships on the Rhine. This means that the classification of the ship and the daily navigation hours determine the size and the composition of the crew. It is most important that compliance with these crew regulations is properly monitored, because it appears that in practice they are quite frequently contravened.

3.2.2 The European Commission started work as long as two decades ago on a European instrument. However, work has not progressed very much during this period. Partially, this can be explained by the long-standing wish of the Member States concerned to await the review of Chapter 23. The envisaged European instrument should have to deal with rules for the composition of crews, operating hours of ships, and compulsory periods of rest for crew members.
3.2.3 In the Rhine States, crew regulations are an area of controversy between Governments and employers/self-employed on the one hand and the trade unions on the other. The revised crew regulation of July 2002, drawn up by the CCNR, is inadequate according to the trade unions. They think that minimum manning provisions are too low and professional training and qualification requirements unsatisfactory. In combination with the prevailing hours of work and rest these regulations put the safety of inland navigation in jeopardy in their view.

The employers’ organisations maintain that the existing crew regulation fully contributes to safety in the sector. They think that further flexibility is desirable. This could simplify the intake of workers from other maritime sectors. Crew requirements for ships with state-of-the-art equipment could be relaxed.

3.2.4 Under the Danube-regime, minimum manning rules are apparently not a problem. Relevant texts in the Belgrade Act mainly deal with captains and engineers and do not have much to say on lower ranking crew. Compared to corresponding categories of crew members in the Rhine States, the level of education of captains and engineers is high.

The Danube States intend to start working on unification of their national crew regulations as from 2005. They intend to involve employers’ organisations as observers. According to the DC ‘the employers will represent their workers’. That is certainly not the point of view of the trade union movement in the countries concerned.

3.2.5 Manning regulations are not infrequently disregarded in the Rhine States which underscores, according to IWT trade unions, their concerns about safety. Monitoring of compliance with these rules in practice is weak in the sector.

The organisations of employers and of the self-employed declare that adequate enforcement of manning rules is important, not only with a view to safety but also to fair competition. They also stress that these rules must be formulated in such a way that innovation in IWT is not impeded but rather stimulated.

3.3 Hours of work and rest

3.3.1 As stated above, hours of navigation for the ships and rest for the crew members is the major social policy issue in the Rhine regime. Existing rules only take into account the hours worked when the ship is operational and not the hours actually worked. Consequently, inspection disregards the latter.

3.3.2 The sector is characterised by work schedules with very long daily working hours. Usually, the crew stays on board a vessel during fixed periods — for example, 14 days — but some live on board permanently. While relevant regulations specify hours of rest, the crew has to be available (incidentally) during rest periods.

3.3.3 When consulted by the CNNR, trade unions have objected against the fact that only the sailing time of ships is monitored and not the actual hours worked. However, these objections have so far been ignored by the treaty states.

3.3.4 Hours of work are not defined in existing IWT legislation and regulations (which apply to both the self-employed and to workers). Legislation in the Rhine States deals with the operational time of the ship, the composition of the crew and the compulsory hours of rest for the crew in an interconnected way.

3.3.4.1 According to parties concerned, the EU Directive on the Organisation of working time (which is currently under revision) is insufficiently adapted to the specific conditions prevailing in IWT. Therefore, they have raised objections. Social partners in the sector at the EU level have committed themselves to finding an agreement on the issue as a matter of priority in the social dialogue, which has recently restarted after a dormant period.

3.3.5 On the Rhine, as well as on some other waterways in the Rhine States, the minimum period of rest in 24 hours is eight hours, six of which must be without interruption.

3.3.6 On the Danube, no regulation exists for the operational time of the ship or for manning. In practice, a minimum crew of four is maintained. With this crew, the ship can be operational for 24 hours; no compulsory rules for hours of rest exist.

3.3.7 The differences between the various regulations on the European waterways call for common minimum standards. The agreement sought by social partners referred to in paragraph 3.2.4.1 can also be of great importance for that endeavour.

In order to create a level playing field, similar regulations are urgently needed on the Rhine, Danube and other waterways. Moreover, these regulations should be mutually compatible and transparent.

3.4 Occupational health and safety

3.4.1 Like other elements of current social policy in IWT, occupational health and safety rules are intimately linked to technical requirements of ships. Largely, regulations in this area have been laid down in the Regulations for Inspection of Ships on the Rhine and related national legislation in the form of rules for the construction and equipment of ships.
3.4.2 For the protection of workers in the EU, Directives dealing with health and safety issues exist. These instruments oblige employers to engage in risk assessment and evaluation. This is not always the practice in IWT.

3.4.3 European health and safety legislation is criticised by some in the sector who complain that it does not take into account important realities and specific circumstances in IWT, and does not link up to existing IWT legislation which covers all crew members: the Directives are limited to the protection of wage-earning workers and do not cover the self-employed. It should, of course, be noted here that this situation also exists in other sectors of economic activity. For road transport, for instance, a specific Directive was adopted on the organisation of working time on the basis of Articles 71 and 137 (2) of the Treaty (5).

3.5 Labour inspection

3.5.1 In addition to uniform and enforceable regulation, serious, regular and competent inspection is of great importance in a sector where many self-employed (or semi- or quasi-self-employed) work side by side with employers with a wage-earning workforce and with the inherent risk of downgrading protection of the latter and/or unfair competition.

3.5.2 However, labour inspection in IWT is weak and is facing particular difficulties specific for the sector. A special problem for inspection is the rather unique situation on board of vessels where, unlike what is usual in most other economic activities, private life and working life is difficult to separate. It is not uncommon in this situation that inspectors are treated unpleasantly.

3.5.3 In many countries, inspection shows serious shortcomings (Germany and Switzerland are relatively positive exceptions as far as the Rhine countries are concerned). Inspection services are struggling with lack of personnel. In the Netherlands and in Belgium, in particular, this leads to very sparse activities by the labour inspectorate (in practice one inspection per ship every two/three years). It should be further noted that the construction and equipment of ships is subject to supervision by the national shipping inspectorate and that implementation of legislation is enforced by the river police.

On the Danube, there is hardly any inspection at all.

3.5.4 Not only legal requirements are frequently being disregarded in the sector. There are also problems concerning compliance with collective labour agreements.

3.5.5 Whenever large scale inspection takes place, in a large number of inspected vessels violations of regulations are being registered.

3.5.6 Despite the reputation of relative safety of IWT as a mode of transport, accidents do of course occur. However, registration of accidents is limited to fatalities and other catastrophes. There is no clear-cut definition of what an accident is in IWT. With a view to the intensification of IWT and against the background of earlier observations on the compliance in practice with crew regulations, these are matters which will require serious attention of all who have an interest in the promotion of this mode of transport in the future.

3.6 Education/training/examinations

3.6.1 For the future of employment in the sector, as well as for the preservation of its reputation of relative safety, good education and training is important. This will require clear and common educational standards, coupled with strong enforcement of such standards.

In the Danube States, the level of education (in particular of captains) is relatively high. In the Rhine States, there are significant differences in quality between individual countries.

The situation calls for the introduction of common minimum standards, preferably on a Pan-European scale.

3.6.2 The Central Commission for the Navigation on the Rhine (CCNR) has undertaken to do the groundwork for drawing up harmonised career profiles for the positions of crew member and boatmaster. The social partners are involved in this matter. These profiles, which are expected in 2005, can serve as a basis for the harmonisation of vocational training in the European IWT countries. The mutual recognition of qualifications can thereby be promoted as well.

3.6.3 Within the framework of the sectoral social dialogue, information on IWT education was recently obtained from the new EU Member States.

3.6.4 Harmonising education must go hand in hand with promotion of inland navigation as an interesting sector to be employed in for young people.

3.7 Communication

3.7.1 The PINE report observes correctly that shortcomings, caused by migration of workers and the increasing share of international traffic between east and west, exist in linguistic skills and in the knowledge of foreign waterways. These may lead to increased safety risks in inland waterway traffic.

3.7.2 The time may be ripe for the introduction of a common inland navigation language in international transport on the Rhine and the Danube for communication between ships as well as between ship and shore.

3.8 Social dialogue

3.8.1 The input of social partners in the formulation of social policy in IWT by the CCNR and the DC has been very limited. This is an unsatisfactory situation which, in the first place, the social partners themselves should try to change. However, Governments of Member States, who have so far been less than eager to listen to what social partners have to say, will have to reconsider this position.

3.8.2 In developing the social dimension of an IWT policy for the enlarged EU, which tries to strike a new balance in transport by enhancing IWT, the European Commission, with its tried and tested tradition of consultation with social partners and of social dialogue, could do better than the CCNR and the DC.

3.8.3 In this connection, it is a welcome development that the social partners have opened their social dialogue, which has been dormant for some years in the sector. This is taking place in the Committee for social dialogue in IWT, in accordance with a decision taken by the European Commission at the request of the social partners.

Unfortunately, progress in this Committee has been slow so far. In Spring 2004 work started on the subject of the organisation of working time and in June 2005 the first plenary meeting took place.

3.8.4 Another subject, identified as a priority in the social dialogue, is the functioning of the EU labour market in IWT, including the free movement of workers.

3.8.5 The social dialogue is entirely a matter for the social partners themselves. With due respect to this principle, however, some encouragement of social dialogue by the European Commission is desirable. Requests for detailed opinions from the social partners come to mind and also encouraging opinions to be issued within a reasonable period of time, for instance by setting clearly defined deadlines.

3.8.6 Agreements between social partners at Community level on the basis of Article 139 of the EU Treaty can lead to specific regulations to meet the special needs of IWT. Such agreements, based on the minimum provisions laid down by the Council under Article 137, are appropriate, however, only when social partners agree that the additional specific rules are desirable.

4. Conclusions and recommendations

4.1 The EESC is of the opinion that the time is ripe to establish a Community social policy for IWT, preferably in a pan-European context. Such a policy would have to apply on all European waterways. It must have a broad European basis and provide scope for regional as well as local distinctions. The social partners must be closely involved in this policy.

4.2 What the EESC has said earlier in general terms with respect to the IWT legal regime in Europe must be said a fortiori for social legislation and regulations in the sector: it is badly fragmented and it should be harmonised and unified along the lines stated above, in particular now that enlargement of the EU would cause even more complications than before May 2004.

4.3 Social policy has, so far, always been a point of secondary interest in IWT. It is, in essence, part and parcel of technical legislation and regulation for ships. It is time that the human factor in IWT is emancipated from this second class status.

4.4 This will require a significant change of attitude of all parties concerned, in particular as regards the role of social partners in the development of a modern social policy, at par with efforts to modernise other aspects of IWT in Europe.

4.5 Many aspects will require careful analysis and well prepared and balanced decision-making. Presently, crew regulations and hours of work and rest appear to be priority areas, as well as the establishment of genuine and active social dialogue.

4.6 The European Commission is well placed to drive this process forward, building on the long tradition, the experience and the expertise of the CCNR and the DC. Looking at the way these two commissions have functioned through the decades, the place they have given to social policy in their work and the way they have so far involved social partners, it is nevertheless clear that reconciling and drawing together the Rhine and the Danube regimes would not be sufficient to create the optimal conditions for the development of modern social policies in IWT.

4.7 In drafting a new design for social policy in EU IWT, the European Commission should cooperate closely with the social partners, the CCNR and the DC. This approach requires that the CCNR and DC Member States enable their institutions to broaden their scope towards social policy issues and consequently extend their capacity in order to cooperate as fruitfully as possible with the European Commission. On the other hand, the European Commission will also have to make a greater effort to build up expertise with regard to IWT.

4.8 If the current problems in social policy in EU IWT will be addressed in this way, it will be possible to create a regime in this policy area that can balance the specific characteristics and problems of the sector and the interests of all who are working in it.

4.9 Maintaining a level playing field and increasing the attractiveness of the sector for those working in it as well as for those interested to work in it in the future during this process of review and revision is of the greatest importance, in particular with a view to the expected increase of competition — both within the IWT sector and between IWT and other modes of transport.
4.10 This process of change will take considerable time and will require full involvement and commitment of the social partners. Social dialogue at the sectoral level (at the national as well as at the European level) is the most important instrument to construct a bridge between the views of employers, self-employed and workers and the goals of EU policy. This is particularly true for legislation and regulation pertaining to manning of ships and hours of work and rest for crew members.

Brussels, 29 September 2005

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on the ‘Proposal for a Joint Declaration by the Council, the European Parliament and the Commission on the European Union Development Policy — The European Consensus’

(COM(2005) 311 final)

(2006/C 24/16)

On 29 July 2005, the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for External Relations, which was responsible for the Committee's work on the subject, adopted its opinion on 8 September 2005. The rapporteur was Mr Zufiaur.

At its 420th plenary session, held on 28 and 29 September 2005 (meeting of 29 September), the European Economic and Social Committee adopted the following opinion by 84 votes to five, with six abstentions.

1. Introduction

1.1 The initiative of the Commission and the Council to revise the Declaration on Development Policy adopted in 2000 and, in general, to reshape the future of this policy is, from all points of view, extremely important. Developments on the international stage, new standpoints and consensuses on development policy in the international community and changes within the Union itself suggest that this revision is needed. Likewise, the growing problems of under-development, particularly in Africa, and the increasing differences between countries brought about by globalisation underscore the need for a revision of the Community's development policy.

1.2 Some of the changes that have taken place at international level, and which have in one way or another affected development policies, are: increased security-related concerns following 9/11; the results of the 2001 WTO meeting in Doha and the subsequent process which forms part of the Development Agenda; the new international consensus on development


reached at the Millennium Summit and echoed at the Monterrey, Johannesburg, Cairo and other conferences, on such issues as funding, the environment, gender mainstreaming and HIV/AIDS; the process of harmonising the development policies of donors launched by the OECD's Development Assistance Committee (DAC); and the consolidation of a number of new instruments for planning and implementing aid, such as Poverty Reduction Strategy Papers (PRSP), Sector-wide Approaches (SWAP) and budgetary support. More recently, the High Level Forum on Aid Effectiveness, held in Paris in March 2005, made progress on this matter, with donors signing up to a number of commitments on ownership, results-based management and shared responsibility.

1.3 These changes have also been affected by the scant progress achieved, according to most indicators, towards the targets set five years ago for the Millennium Development Goals (MDGs). To ensure that these targets are not missed by the 2015 deadline, the international community must review
its policies and come up with a genuine emergency plan. This plan
must be capable of generating additional resources for public
development aid and must cover economic aid, trade policy,
debt, intellectual property, taking account of the effects of
migration and strengthening civil society organisations.

1.4 During the same period, important issues have arisen in
the Community which also affect development cooperation; the
reform of external aid started in 2000 with the consolidation of
EuropeAid and the process of deconcentration and decentralisa-
tion in Commission delegations; the entry into force of the
Cotonou Agreement in 2003 (the revised version of the agree-
ment has just been signed, under which the ACP countries will
benefit from a guaranteed minimum amount, irrespective of
the outcome of the negotiations on the financial perspectives
2007-2013) and the process underway to include the European
Development Fund (EDF) in the budget. On the wider stage, the
EU’s enlargement to 25 Members, the implementation of the
European Security Strategy and the Common Foreign and
Security Policy (CFSP), and the discussion of the Constitu-
tional Treaty incorporating development policy into the EU external
relations ‘policy mix’, give a new dimension to development aid, requiring a new approach. Lastly, the discussions on the
Financial Perspectives 2007-2013 could provide an opportunity
to translate the implications of all the above issues into
concrete commitments.

1.5 The consultation process launched for this revision of
development policy is also to be welcomed as it boosts the
democratic participation of all the actors involved.

1.6 At the beginning of this reflection process in January
2005, it was envisaged that a Commission Communication
would be drawn up in the first quarter of the year. This
Communication was finally published in July of this year and
the Commission asked the EESC for its views on the document.
This opinion is a response to this request. Given that the
United Nations conference reviewing the progress made on the
Millennium Goals will be held in September, the EESC
considers that it would be appropriate if, once the conclusions
of this conference are known, the Commission reopened the
consultation process before finalising the Declaration, which is
to be presented at the November Council. Furthermore, the fact
that this process coincided with the drafting of other Com-
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munity development policy and external aid and the Commission’s
accompanies the Commission proposal, the Annual Report on Com-
unity development policy and external aid and the Commission’s
thematic and geographical evaluations that systematically include
the practical implementation of development policy.
(7) General Assembly Resolution A/RES/55/2, of 8 September 2000.
Reducing and, in the long term, eradicating poverty must be the guiding principle for all development policies. This consensus on the MDGs sometimes becomes overly rhetorical, overlooking the fact that they comprise eight goals for social, economic and environmental development with, at the top of the list, reducing extreme poverty by 50% by 2015 and that the goals are given practical form in 18 quantifiable targets with one or more indicators for each of them. The European commitment to each of the MDGs must be in line with their practical and operational dimension. The existence of practical targets and indicators for the MDGs can also help to increase the much-needed accountability and transparency of cooperation in general and of European aid in particular (5).

2.2 For the first time in decades, developed countries and poor countries now have a common development agenda for managing globalisation, in an attempt to make it more inclusive and more conducive to social cohesion. Development must in any event be addressed in an integrated and all-embracing way, so as to take account, in the fight against poverty, of the influence of various policies, from trade-related policies to environmental policies, including migration and security policies. A gender focus must be incorporated in any initiative to combat poverty.

3. Guidelines and channels for European development policy

3.1 The underlying causes of poverty are many and varied and differ according to context. Nor is poverty defined by a given level of income. It is a situation of extreme vulnerability, resulting from a lack of physical, financial and human resources. Combating poverty is not simply a question of increasing the overall volume of aid. Conditions must therefore be put in place for the increase and correct distribution of wealth; developed countries must revise their trade and economic policies; the local markets of the poor countries must be expanded; democratic institutions must be promoted; and civil society organisations must be strengthened. There must also be an effective and fair relationship between the role played by the State and that of the market. Experience in recent decades has shown that unless States are able to provide hard and soft infrastructure, it is impossible to promote development.

3.2 Schemes to formalise property rights for the poorest sectors (involving property of little apparent value, such as the shanty towns in some Latin American countries), have shown that these legal property rights can have positive effects on development and in the EESC’s view, should be taken into account in European development policy.

3.3 The EESC also wishes to emphasise the importance of education and training as a public asset. Education provides benefits for society as a whole and not only for those who are learning. Education, in all its forms, represents an increase in human capital, which makes for improved growth, employment and incomes. Starting with achieving universal primary education, as set out in the second MDG, we must move towards other aspects of secondary and vocational education as quickly as possible. Cooperation between Community institutions and those in the Member States on educational matters should be stepped up.

3.4 Economic growth and more jobs are prerequisites for development in poor countries. Growth cannot take place, however, without a minimum level of infrastructure, income distribution systems, access to education and health, high-quality institutions and social consensus. Unless this social capital is in place, economic development with social cohesion is impossible. Poverty is, in turn, an insurmountable obstacle to growth. Establishing a culture of production, measures to assist the regularisation of the informal economy (promoting self-employment and the social economy, developing SMEs, adequate social protection systems) and developing a significant local and regional market, are, the EESC believes, some measures that could contribute to economic development in poor countries.

3.5 Opening up international trade provides major opportunities for helping the least-developed countries to emerge from poverty and underdevelopment. Nevertheless, current world trade regulations favour the most highly developed countries to the detriment of the poorest. The EESC has stressed this in various opinions, most recently in its opinion on the social dimension of globalisation (6). It would therefore be appropriate, in the current round of WTO negotiations, the next ministerial meeting for which will be held in December in Hong Kong, and as part of the Union’s bilateral relations, to improve developing countries’ access to the markets of developed countries, to reduce or eliminate all of those subsidies – including subsidies for farming – which distort trade, to remove most obstacles to exports from developing countries and to reform the agreement on trade-related intellectual property (TRIPs). It would appear advisable, therefore, to avoid making EU development aid dependent on the positions developing countries adopt in multilateral trade negotiations, which is precisely how some international financial institutions act.


(6) Opinion on The Social Dimension of Globalisation – the EU’s policy contribution on extending the benefits to all, OJ C 234 of 22.9.2005.
3.6 The poorest and least-developed countries are also highly vulnerable to integration in external markets and do not have the resources to cope with the various stages of economic transformation. As a consequence, development policy should be geared towards a gradual integration into global markets, providing investment in infrastructure, education and health, developing democratic institutions and the emergence, in these countries, of their own, efficient internal markets, together with regional markets.

3.7 The EESC has on a number of occasions stated its support for incorporating a social dimension into EU trade, political and cooperation association agreements (7). This minimum social dimension should include promoting decent work, developing public and private social protection systems and fully respecting employment rights (the eight fundamental ILO conventions (8) and Conventions Nos. 168 on Employment Promotion, 183 on Maternity Protection and 155 on Occupational Safety and Health).

3.8 Given the importance of decent work (i.e. work in decent conditions, both in terms of contractual obligations and the conditions in which work is carried out) for development, the EESC considers that, in order to ensure that these human rights are observed in the workplace, a social chapter should be incorporated into WTO rules.

3.9 The MDGs for their part do not take sufficient account of this fundamental dimension in a context in which the effects of globalisation on social conditions in general and on working conditions in particular are clear to see. The EESC proposes that the mid-term review of the MDGs currently underway incorporate an analysis of the economic, social and employment rights situation and that, in future, decent work is made a key priority for EU development policy, paying particular attention to the importance of women's rights in combating poverty. It will make a substantial contribution to reducing poverty and to making the world a safer place.

3.10 Development and human security should be complementary concepts and should strengthen EU development policy. It is true that security and ensuring a conflict-free environment are prerequisites for a development strategy based on eradicating poverty. On the other hand, however, economic and social development constitute an essential guarantee for security. The EESC believes that respect for human rights must be a key priority for EU development policy, paying particular attention to the importance of women's rights in combating poverty. It will make a substantial contribution to reducing poverty and to making the world a safer place.

3.11 The EESC thus reiterates (9) the need for EU development policy to incorporate measures geared towards protecting defenders of human rights, including human rights in the workplace (10), throughout the world.

3.12 The extreme vulnerability of many communities and the existence of new and long-standing threats have heightened the risk of both natural and man-made disasters. Development policy must bear this in mind and adopt a more preventive approach. In areas susceptible to violence, the planning of development policy measures should incorporate a rigorous analysis of the factors triggering conflict and target many of these measures at supporting civil society organisations in their efforts to consolidate peace and resolve and prevent new conflicts and threats.

3.13 The EESC considers that, because environmental protection is one of the three pillars of sustainable development, it must be given the same priority as the economic and social dimensions. The EESC therefore stresses the need to add the environmental dimension as an indicator of effectiveness in the implementation of development strategies. Furthermore, carrying out environmental impact studies should be made a prerequisite for projects and actions of a certain scale.

3.14 The EESC also believes that national strategies in the beneficiary countries alone are not enough to overcome global environmental challenges. Developed countries must shoulder their responsibilities and contribute the lion's share of costs inherent in solving global environmental problems. The EU should make additional financial resources available to programmes designed to solve problems of this nature.

3.15 Simply absorbing developing countries into international trade is not likely to be enough to lift them out of poverty and inequality. This would require creating in these countries conditions conducive to development, making economic and political progress and implementing a policy of wealth redistribution from the rich countries to the poor. At the same time donor countries need to understand that development aid is not intended only to benefit poor countries — it is also crucial to the future of rich countries as poverty and inequality constitute a threat to the security and development potential of these countries. This last point, the EESC believes, is one of the tasks best performed by organised civil society.

3.16 EU development policy can therefore make a positive contribution to integrating migratory flows and to boosting a policy of co-development with the sending countries (11). Cooperation with the countries of origin is crucial to managing legal migratory flows and for migrants to be admitted with complete respect for their rights, as full citizens (12). Migration must also...


(8) Conventions on Freedom of Association and Protection of the Right to Organise (No 87); Right to Organise and Collective Bargaining (No 98); Forced Labour (No 29); Abolition of Forced Labour (No 100); Discrimination (Employment and Occupation) (No 111); Equal Remuneration (No 100); Minimum Age (No 138); Worst Forms of Child Labour (No 182).

(9) Opinion on Social cohesion in Latin America and the Caribbean, OJ C 110 of 30.4.2004, p. 55.

(10) A particularly relevant issue is the infringement of trade union rights in many parts of the world, such as Latin America, where trade union activists are persecuted, imprisoned and, in many cases, murdered.


Contribute to the development of migrants’ countries of origin (\(^\text{13}\)). Policies compensating for the brain drain must therefore be put in place, the abusive rates applied to remittances that migrants send to their families in their countries of origin must be stopped and these individuals must be helped to return to their countries to boost development and, for example, to set up productive businesses.

4. Criteria for mobilising European development policy

4.1 The issue of consistency between policies — already a long-standing issue in Community aid and which has its legal base in the Treaties — takes on renewed importance in the new international context, which is marked by the security agenda and by the effects of globalisation on trade, agriculture, employment, migration, etc. The recent Commission Communication clearly demonstrates the relevance of this issue and the EU’s determination to provide an appropriate response. The EBA (Everything But Arms) initiative represented a new approach to consistency as regards trade policy towards poor countries.

4.2 EU development policy is not designed to be a remedial instrument, geared to reducing possible damage to the development of poor countries caused by other policies, such as trade or security. The EESC believes that better coordination between the various Commission directorates (between the trade and employment directorates, for example) would help to make this approach more effective, as would a periodic evaluation, in which organised civil society would play a leading role, of the impact of Community policy on social cohesion in developing countries.

4.3 This consistency across all EU policies, should not be used, however, to water down the content of development policy, putting it at the service of other Community actions and ignoring the specific characteristics and objectives of development measures. By the same token, in a Union which is increasingly involved in external action and which is constantly changing, development policy must retain some independence from the other strands of external action if it is to be able to achieve its aims and goals.

4.4 The EESC considers that Community development policy and the policies of the 25 Member States must be brought further into line with one another. The support of all Member States for the MDGs and for the positions of the OECD’s Development Assistance Committee (DAC) should make this easier. Donor country policies, which often clash, should be more consistent with one another. This lack of consistency leads to high transaction costs, wastage, duplication of work, an unfocused approach and considerable complications for the recipient countries. At the Barcelona European Summit of March 2002, the EU gave a commitment to adopt practical measures on coordinating policies and aligning procedures before 2004, both within the European Commission and in the Member States. Nevertheless, the recommendations arising from those commitments have not really been put into practice. The EESC believes that effectively bringing EU and Member States’ development policies closer into line with one another is crucial to the future of Community development policy. As far as it can, the EESC will stimulate a discussion with European civil society organisations, in order to create a common European platform for development policy. The EESC also supports the Commission’s position on the need for a Europe-level development policy that involves both the Member States and the Commission itself.

4.5 The main added value of a Community development policy should be to enhance coordination and complementarity with Member State policies. The EU does have some comparative advantages, such as its size, its image of neutrality and its contribution to World Funds. All of these advantages should be used.

4.6 At the same time, the EESC supports the idea of moving ahead on the EU’s participating with its own voice in all multilateral forums touching on development. The EU must play an active role in reforming the multilateral system, adopting a common position. This should apply to the United Nations system, as part of the process opened by its Secretary-General, and to the international financial institutions and other multilateral forums such as the DAC, the Paris Club, the G8 and the WTO. The EU’s ability to wield influence as an international actor with real power depends on its ability to maintain a united front in multilateral bodies. Similarly, the EU must strengthen mechanisms for consultation and coordination on the ground with the UN specialised agencies and other donors.

4.7 The institutional dimension of development and enhancing local institutions’ capacities in the recipient countries is crucial. Stronger institutions are the key to achieving good governance, which allows resources to be allocated and managed in such a way that they meet needs whilst adhering to the criteria of participation, transparency, accountability, combating corruption, fairness and the rule of law. Increasing the capacities and resources of CSOs is also crucial to ensuring that these countries can take charge of the development process themselves.

\(^\text{13}\) Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Migration and Development: Some concrete orientations (COM (2005) 390 final.)
4.8 In this connection, the EU should capitalise on and learn from the cooperation programmes with the new Member States, which have in a short space of time progressed from being recipients of aid to members of a community of donors. Their appreciation of the standpoint of the receiving partner could prove extremely useful in passing on innovative methods for managing aid.

4.9 The high degree of decentralisation in those countries which are the recipients of Community cooperation means that mechanisms for the participation of the various partners must be improved and that forms of coordination that apply this 'bottom-up' approach to cooperation must be implemented on the ground.

4.10 Improving coordination and consultation mechanisms should result in greater efficiency and effectiveness in aid because transaction costs will diminish. Efficiency is affected by many other factors, however, and monitoring this must form an integral part of all Community cooperation. The Commission has put in place rigorous systems for evaluating and monitoring the quality of aid; these should be used more extensively, not only because they offer the necessary accountability but above all because of the lessons they can teach us. Other more general issues, such as studying the fungibility of aid, should be incorporated into aid assessments carried out by the Community institutions.

4.11 The principle of ownership, which has to date been applied differently in different geographical contexts, should be harmonised, taking advantage of existing good practices and learning lessons from their implementation. Participation and ownership should mark every phase of the planning of activities, programmes or projects; from discussing indicative national programmes to ex-post evaluations of actions.

5. Stakeholders in development policy

5.1 Community development policy is a public policy involving many stakeholders. This fact should be given greater recognition by the Community institutions by making it easier for the various European organisations to participate in this policy. Cooperation between the various stakeholders, both public and private, is a prerequisite for development policy to be effective and consistent.

5.2 Implementing the principles of association, participation and ownership has resulted in improved cooperation on development, which must be maintained and extended, with greater involvement by other social actors, and not only governmental actors.

5.3 Drawing up long-term policies to combat poverty and making better use of development aid transfers require an effective pact between the democratic authorities of the recipient countries and the economic and social powers in those countries.

5.4 The EESC believes that strengthening civil society organisations (workers, employers, consumers, human rights organisations, etc.) in the southern hemisphere should become one of the main priorities of EU development policy. Reducing poverty and inequality involve to a large extent increasing civil society organisations' capacity for making demands, for negotiating, for achieving compromises and for participating. EU development policy should, accordingly, not only promote their genuine participation in actions arising from development aid but should also strengthen genuine civil society organisations and boost their recognition within their own societies as fundamental stakeholders in development. To this end, specific funding lines should be set up.

5.5 Furthermore, EU development policy should promote a legal framework in recipient countries which will enable civil society organisations to become involved in their country's development: making financial resources available for capacity building, consolidating arrangements for ongoing participation and dialogue, setting up procedures for consulting these organisations at all stages of national and regional indicative programmes, and disseminating good practice. European organisations should equally be consulted on EU-supported actions.

5.6 To date, only the ACP countries recognise formal involvement of CSO actors at all stages of development cooperation. This obligation, set out in the Cotonou Agreement, does not exist in cooperation with other regions, where only informal consultation takes place. The EESC calls for any future EU development policy to extend this initiative to other regions, establishing formal mechanisms for involving civil society organisations in planning, implementing and evaluating development policies.

(14) Term denoting the inappropriate use of aid resources by the beneficiary.
5.7 The Cotonou Agreement offers a unique opportunity to non-state actors to access a percentage of the EU funds allocated to each country (EDF funds for the National and Regional Indicative Programmes). The aim of these funds is to strengthen the capacity of civil society and enable it to become actively involved in implementing regional or national strategies to alleviate poverty.

The EESC calls for the civil society consultation model to be employed in the EU’s relations with other regions, such as Latin America and the Euro-Mediterranean Partnership countries.

5.8 Furthermore, this review of EU development policy must strive to ensure that rights to participate are not only recognised but also implemented. In practice, there are serious loopholes in the implementation of what has been agreed, which makes it difficult for CSO representatives to fully understand the agreements and for effective consultation to take place. Criteria for the representativeness of civil society organisations also need to be defined and obstacles to access to Community funding removed.

5.9 Establishing stable and democratic frameworks for labour relations is key to promoting the objective of decent employment. It is also, however, the cornerstone of economic development. The EESC therefore considers that promoting balanced social dialogue should be made an objective of European development policy. Given the wealth of European experience in this field, the EESC considers that European unions and employers’ organisations must be involved in this task.

5.10 Businesses must play a more proactive role in making sustainable development possible, as acknowledged by the OECD in its codes of conduct for multinational enterprises (18). EU development policy should, the EESC believes, contribute to encouraging Corporate Social Responsibility, particularly in those countries to which it gives aid. The EESC, as expressed in previous statements (19), believes that if businesses act in countries benefiting from aid at least in the same way that they (generally) do in Europe, in accordance with the same labour, social and environmental criteria, they will be making a major contribution to the economic and social development of those countries.

5.11 Development policy can only remain successful and grow if it enjoys adequate backing from society as a whole.

The EESC considers that a substantial effort is required to raise people’s awareness about development aid. The emergence of a degree of ‘global citizen’s consciousness’, which is evident primarily in environmental issues, should be consolidated and extended to the issues of poverty, inequality and world public assets. The EESC believes that schools, the media and, of course, civil society organisations must be involved in this task. The EESC would be happy to act as an instrument for furthering this policy, in cooperation with the European institutions.

6. Priorities: concentration and differentiation in EU development policy

6.1 In order to ensure that aid is more effective and has a greater impact, it would appear reasonable to concentrate on certain sectors to which the EU can bring greater added value or where this is something that other donors cannot provide. Nevertheless, experience tells us that it is difficult and sometimes inappropriate to set such priorities or to determine in advance what the Community added value might be. At all events, country programming should be used as an instrument for negotiations between partners. Poverty Reduction Strategy Papers (PRSP) should be the cornerstone of this work.

6.2 The EESC is of the view that the motives underpinning development policy must be political as well as ethical: unless today’s inequalities are remedied, globalisation will not work. We therefore believe that EU development policy cannot simply aim to solve the problems of underdevelopment. Part of the added value that the EU should provide is its action on global multi-sectoral strategic objectives, such as health (including reproductive health), education, gender equality, environmental protection, the creation of productive enterprises and employment, and decent jobs. Crucial to this is providing development cooperation with additional financial resources from new funding instruments.

6.3 Community cooperation has, since its inception, been highly concentrated in geographical terms, which becomes extremely complex where the ACP countries are concerned, as demonstrated by the Cotonou Agreement. The experience of the successive Lomé and Cotonou Conventions should benefit other regions, particularly in Asia, or countries that are committed to achieving the MDGs. Consequently, there is a need to promote more flexible, permanent and structured mechanisms with other parts of the world receiving Community aid; they must go beyond the traditional pattern of summits and agreements and provide a more strategic vision of cooperation. Furthermore, Community aid should reach all poor countries.

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6.4 The EESC shares the desire to make sub-Saharan Africa a priority zone for EU development aid. Nevertheless, to be effective, this project must be matched by better governance in Africa, at both national and regional level, which involves African Inter-State organisations, States and civil society organisations. The latter, because they are independent, close to the people and are able to react, can ensure that the citizens take genuine responsibility for the development policies that affect them directly.

6.5 Accordingly, the EESC proposes that it should be made easier for African CSOs to access Community funding, guaranteeing them direct access at national level. A horizontal programme to fund non-State actors should also be put in place and civil society should be increasingly and systematically involved in drawing up and implementing cooperation policies and strategies.

6.6 To ensure that economic development benefits as many people as possible and does not lead to abuses, the EESC would like EU development aid activities to take account of the principles of social cohesion and decent employment for all. These principles will be better protected if genuine social dialogue takes place and, more generally, dialogue with organisations representing civil society. To this end, the EESC will work together, as recommended in the Commission Communication (3), with the African Economic, Social and Cultural Committee, exchanging experiences and knowledge in the relevant spheres.

6.7 Community development policy must pay greater attention to middle-income countries which nonetheless face major domestic problems of poverty and inequality. We should thus focus on the constant decrease in the percentages of EU aid to Latin America, the region in which the greatest inequalities can be seen and where middle-income countries, such as Brazil, Uruguay and Mexico, have vast pockets of poverty. A system of indicators should be set up in order to monitor the situation in countries like these. The EESC calls on the EU to attach greater priority to Latin America in its development policy.

6.8 We welcome the Commission proposal to create specific measures for transitional situations, which will make it easier to develop the links between aid, reconstruction and development, adapting to the reality of changing situations and fragile States, allowing for differences where appropriate. By the same token, we would have to strengthen the preventive and early-warning components for cooperation in such situations.

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7. Funding

7.1 The Union has given a commitment to achieving at least what was agreed at Monterrey and all the indications are that this commitment needs to be stepped up if the MDGs are to be achieved. The Barcelona European Council of March 2002 agreed to increase Official Development Assistance (ODA) to 0.39 % of GDP in 2006 which, whilst appearing to be a significant commitment in comparison to the current average of 0.22 %, is far from the level EU Member States provided in 1990, which stood at 0.44 %. The Council of 23-24 May 2005 sets new, more demanding targets and gives a commitment to ensuring that the EU average reaches 0.56 % of GDP by 2010 and the package also differentiates between the 15 old Member States and the 10 new ones. It seems clear, however, that an ongoing and sustained commitment is needed if the MDGs are to be achieved.

7.2 The commitment made by the G8 countries in July 2005 regarding the writing-off of the entire multilateral debt of the world’s 18 poorest countries is a significant step forward, which must be supported. We will have to wait until this is definitely confirmed and, as announced, to see whether a further 20 countries will benefit from similar measures. The EESC believes that these measures should be extended to cover all least-developed countries and should be funded with genuinely additional resources and not simply by redirecting funds intended for public development aid.

7.3 As a consequence of this, the Financial Perspectives for 2007-2013 will need to find a clearer and more specific way of incorporating the necessary financial commitments to reach the MDGs.

7.4 The ways of funding development have changed over time, gradually adjusting to the necessary ownership by the partners. Community cooperation must make progress on long-term predictability, and on multiannual planning mechanisms which minimise the detrimental effects that changes to budget allocations and aid ‘volatility’ can have.

7.5 The need for aid that is predictable and stable conflicts with the principle of national budgets being adjusted annually. This is one of the reasons underpinning the need for additional sources of funding. The other fundamental reason is the need to secure additional funds for development, to be added to the traditional sources of financing. The lack of agreement between the Member States on new sources of additional funding to complement (ODA), as a means of channelling new resources into achieving the MDGs, is delaying their implementation. There are basically two possible innovations for additional mechanisms for funding development aid. First, there is the International Finance Facility (IFF) and second, there is the imposition of international taxes. Apart from the difficulties of obtaining the political commitment to set these instruments in motion, in the case of the first approach, serious questions remain as to the management and use of the funds. As regards

(3) Speeding up progress towards the Millennium Development Goals (COM (2005) 132 final).
the second approach, the main difficulty lies in achieving an international consensus on its application. The EESC considers that both mechanisms have the potential to be viable and to complement one another. It is crucial that they are set in motion, whilst at the same time ensuring that they remain genuinely additional.

7.6 Ensuring the total decoupling of aid must be an ongoing aim for development in coming years. Following the many proposals on this matter (20), the EESC urges the Council to push ahead with the Regulation on decoupling aid and ensure that the Member States follow up this issue, even going further than the DAC recommendations.

7.7 The current position of the donor countries and of EU policy in particular is geared towards reducing aid for projects and towards funding the budgets of recipient-country governments, in order to give them the means to develop their own policies. The EESC considers that this should never be done at the expense of achieving the aims for which EU aid is provided. Furthermore, this form of funding can promote the principle of ownership, provided that it does not replace old-style project monitoring with a new — political — system of setting conditions for the direction that economic and social policies should take.

7.8 Instruments for funding development must be consistent with the aims that they wish to achieve. Greater flexibility in Community cooperation appears to be necessary given the long timescales for managing the cycle of projects or actions that have to date received European aid. Furthermore, it would not be appropriate to mix instruments for general economic cooperation with those for development cooperation. Development policy is relatively independent in terms of its aims, which also requires its instruments to be tailor-made to some extent, both as regards planning and delivery mechanisms.

7.9 Flexibility is even more important where reconstruction in the wake of a war or disaster is taking place or in crisis situations where slowness and inflexibility make action totally impossible. Initiatives such as the Peace Fund for Africa are better attuned to the realities of such situations.

7.10 The EU as a whole has complied quite well with the enhanced Heavily Indebted Poor Countries (HIPC) Initiative to reduce external debt. In the short term, however, this initiative cannot solve long-term debt and debt-servicing problems, which means that alternatives must be considered. The Commission has proposed short-term measures for countries recovering from war or serious disaster, but the long-term problem remains to be solved. The EESC proposes more proactive measures on debt, such as exchanging debt for education or social investment or looking at debt cancellation in regions affected by major disasters.

7.11 Increased concern about what are known as International Public Goods should mean that specific funding can be allocated to protect them. To this end, the EU should put together an Action Plan on the importance of protection and means of funding it, and be flexible in allocating resources. Global funds and initiatives implemented in recent years for specific cases, such as AIDS, water, vaccines, etc., appear to provide this element of flexibility, and Community support for this type of initiative — already launched by some Member States (21) — should therefore continue.

7.12 As we have already stated, the EESC proposes that the specific problems facing middle-income countries which also contain pockets of poverty and where many sections of the population live in destitution must be incorporated into EU development strategy; although the appropriate forms of aid in this case are loans or other combined forms of aid rather than just non-repayable aid. In these cases, the parameters must complement the MDGs by setting social cohesion as an objective (22), in line with the EU-Latin America and Caribbean Summit held in Guadalajara in 2004. Achieving social cohesion requires, amongst other things, the reform of budget management and a progressive tax system.

8. Proposals

8.1 The EESC believes that combating poverty must be a key factor in EU initiatives for fairer, safer and more ecologically responsible globalisation. It must therefore be the logical extension of its internal model for economic development and social harmony (23).

8.2 The EESC considers that EU development policy must play a key role both in disseminating the EU’s fundamental values and preventing the adverse consequences of poverty and inequality (insecurity, draining of natural resources, uncontrollable migration). The EESC therefore proposes that EU development policy have equivalent status to security policy.

(20) The European Commission draw up a study on the issue of additional funding for development in April 2005: Commission Staff Working Paper, New Sources of Financing for Development: A Review of Options (SEC(2005) 467) and a Communication on Accelerating Progress Towards achieving the MDGs. Financing for Development and Aid Effectiveness COM(2005) 133 final. These set out various initiatives and Member States’ positions on these. Although the positions are not definitive, some Member States have already adopted more proactive stances on these new sources of financing from global funds.

(21) See OJ C 112 of 30.4.2004 on Social Cohesion in Latin America and the Caribbean.

(22) In this regard, see the opinion currently being drawn up in the EESC on External action of the Union: the role of organised civil society (Rapporteur: Mr Koryfis – OJ C 74 of 23.3.2005).

In view of the above, the EESC believes that, in the new context of globalisation, the promotion of the European social model (social regulation, arrangements for reaching agreement between the social partners, universal social protection systems) should form a central pillar of EU development policy.

The EESC considers that the reduction of tariff barriers for exports from developing countries and of subsidies (including subsidies for farming) linked to export prices could help to reduce poverty, even if the short-term effects are ambivalent (given that developing countries that are net importers might be affected by price increases). Likewise, it calls for the reform of the agreement on trade-related intellectual property. The EESC therefore recommends that the opening-up of trade in the developing countries be geared towards their gradual integration into the world markets, and be accompanied by programmes for structural reinforcement in these countries.

The EESC proposes that the Association Agreements between the EU and various countries and regions in the world incorporate a social dimension which should include, at the very least, promoting decent work, developing public and private social protection systems, and fully respecting the employment rights enshrined in the ILO fundamental conventions. The EESC also proposes that these Agreements include mechanisms for the involvement of organised civil society.

Decent work, as defined by the International Labour Organisation (ILO), is an essential factor in eradicating poverty and improving social cohesion. The EESC therefore proposes that decent work be made the 9th Millennium Development Goal.

The defence of human rights is one of the cornerstones of EU development policy. Hence the EESC proposes that the policy incorporate measures geared towards protecting defenders of human rights, including human rights in the workplace, in the regions with which there is cooperation.

The EESC considers that an environmental dimension should be added as an indicator of effectiveness in the implementation of development strategies. It also believes that carrying out environmental impact studies should be made a prerequisite for projects and actions of a certain scale.

The EESC believes that EU development policy should contribute to the integration of migratory flows, including regularisation and rights. Likewise, it should favour a policy of co-development with the countries of origin by compensating for the brain drain, eliminating obstacles to the transfer of remittances from migrants, and helping migrants to return in order to set up productive businesses. At all events, migration policies must not become a new source of conditionality in development policy.

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The EESC believes that the added value of Community action should be geared towards global multi-sectoral strategic objectives. It also shares the desire to make sub-Saharan Africa a priority, as long as the conditions are established for improved governance in this area. The EESC also calls for Community aid to reach all poor countries.

The EESC considers that EU development policy should pay greater attention to middle-income countries which face major domestic problems of poverty and inequality. This definition includes certain Latin American countries with which the EU is aiming to set up a strategic partnership, along with some Asian countries.

The EESC proposes that the debt cancellation measures approved by the G8 countries be extended to cover all poor countries and be funded with genuinely additional resources.

The EESC believes that the implementation of additional sources of funding is necessary in order to achieve the development objectives and preserve world public assets. It believes that both the International Finance Facility (IFF) and the imposition of dedicated international taxes—which, in order to be effective, will have to obtain a broad political consensus—could be viable and could complement one another.

The EESC believes that the decoupling of aid must be one of the central aims of the EU development strategy. It urges the Council to push ahead with the Regulation on decoupling aid, even going further than the recommendations of the Development Assistance Committee (DAC).

The EESC proposes using new debt exchange measures, such as those focusing on education or social investment (return of migrants, strengthening of social organisations, etc.).

Achieving greater efficiency in aid remains a challenge for all those involved. The EESC considers that efforts should be pursued and extended in order to meet the development objectives more effectively.

The EESC believes that it is essential to set up a policy designed to increase backing from society for the development policy and raise awareness among citizens worldwide. The EESC would be happy to act as an instrument for furthering this policy, in cooperation with the European institutions.


The President
of the European Economic and Social Committee
Anne-Marie SIGMUND
Opinion of the European Economic and Social Committee on Social dialogue and employee participation, essential for anticipating and managing industrial change

(2006/C 24/17)

On 1 July 2004 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on Social dialogue and employee participation, essential for anticipating and managing industrial change.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 12 September 2005. The rapporteur was Mr Zöhrer.

At its 420th plenary session, held on 28 and 29 September 2005 (meeting of 29 September), the European Economic and Social Committee adopted the following opinion by 138 votes to two with seven abstentions:

1. Introduction and objectives

1.1 Industrial change is a constant process in which an industrial sector adapts to changing conditions in its economic environment in order to remain competitive and create growth opportunities.

1.2 Thus, industrial change is a necessary adaptation to shifts in markets, technologies, legal or social conditions, economic policy, and society in general. Ideally, such shifts are anticipated or deliberately brought about so that the sector concerned can take a proactive position, effect a gradual process of adaptation and minimise the negative impacts of the adaptation process.

1.3 If there is no response to change, or the response comes too late, this will generally lead to a loss of competitiveness and the threat of job cuts. Restructuring that is carried out only in response to change usually has painful effects, especially for employment and working conditions. Poorly managed restructuring may result in a loss of image for the company or for an entire sector, and create a general mood of resistance to change.

1.4 Whatever form it takes, industrial change is an ongoing process in the economy, but one which can and must essentially be shaped by stakeholders. It takes place in companies, affecting everyone connected with them (workers, employers, regions, etc.)

1.5 The success of this process can be measured by the competitiveness and ability to innovate of the companies or sector concerned on the one hand, and the safeguarding of jobs and the social management of adverse repercussions on the other.

1.6 Certainly, this can work most effectively if those affected are involved in managing change. The fact that change is managed at every level of sectors and companies, not just at management level, is not only significant in terms of a successful consensus-based adaptation process, but is also an important condition for competitiveness. Both social dialogue and worker involvement and participation are thus important elements of the European social model.

1.7 A review of recent European Commission initiatives relating to industrial policy demonstrates the increasing importance it attaches to identifying synergies and involving stakeholders in achieving structural change. Such measures can allow industrial change to be managed in a socially acceptable way if the social partners are systematically involved in anticipating and managing change, and the dual objective of making businesses competitive and minimising the negative social impact is consistently pursued.

1.8 In its opinion on Industrial change: current situation and prospects (1), the Committee recommended that the future work of the CCMI should include the following areas:

— seeking positive common approaches to anticipating and managing industrial change and seeking ways in which the EU and the Member States can improve firms’ competitiveness and profitability, encouraged by social dialogue and cooperation between all the parties concerned;

— seeking common approaches to promoting sustainable development and improving social and territorial cohesion, in order to give an impetus to the Lisbon strategy, and promoting a framework and conditions allowing industrial change to take place in a way compatible both with firms’ need for competitiveness and with economic, social and territorial cohesion (2).

1.9 Of course, managing change successfully involves numerous measures at various levels. At Community level, change must be approached from a horizontal perspective and flanked by a range of measures (for example, relating to macro-economic conditions, employment and social policy, financial support instruments, industrial policy etc.).

(1) Rapporteur: Mr Van Iersel; co-rapporteur: Mr Varea Nieto.

(2) Ibid, point 1.7.
The contribution of social dialogue to managing industrial change

Social dialogue takes place at various different levels and involves various different players. Each level, whether national, regional, European, company, sectoral or cross-sectoral, can make an important contribution of its own to preparing for change and managing its impact in a socially acceptable way. However, in order to fulfil its function, social dialogue must meet certain conditions, and there must be coordination between the various levels on which action takes place.

To manage change with foresight, the social partners must develop joint long-term objectives. This requires a consolidated and trust-based partnership and culture of dialogue, on the basis of which long-term approaches as well as consensual solutions can be achieved in times of crisis. The existence of representative and stable structures in the organisations of the social partners is an important prerequisite for action.

It is thus also of crucial importance to support the new Member States in developing and strengthening the machinery of social dialogue, in order to jointly meet the challenges of industrial change resulting from the integration process.

In order to promote a positive attitude to change, it is important at an early stage to come to a shared understanding of what change actually means and of social partners’ scope to shape it by creating a business culture geared to participation. At the same time, long-term preparations for change can be made through measures such as basic training, multi-skilling and lifelong learning. These measures should also specifically pursue the goal of worker employability.

At a hearing held by the Commission in January 2002, the social partners discussed the issue of restructuring, its consequences and how to manage them. Case studies were used to demonstrate best practice. The social partners then produced 'reference guidelines for managing change'. The Committee would like to see this work being continued and put into practice.

In order to anticipate change, information is required about its causes and correlations. Regular exchanges between the social partners on the outlook for their sectors and companies are therefore essential. The European Monitoring Centre on Change of the Dublin-based Foundation for the Improve-
3.4 Given that business decisions are increasingly taken in a global business context, and often within multinational companies, transnational channels of worker representation are becoming much more important as an adjunct to the opportunities and facilities for worker involvement available at national level.

3.5 European works councils have a special role to play here. There are already some examples of agreements on restructuring measures reached by companies with European works councils. There are also examples of agreements reached with European trade union federations. This experience can certainly be considered positive, since there is a risk especially in international companies that reducing the social impact in one place will have an adverse effect on another.

3.6 Clearly, transnational social dialogue is continuing to forge ahead at company level. However, the Committee has to say that this trend does raise certain issues for those involved. Agreements reached in this way lack a watertight legal framework to settle questions of legal enforceability and pay due regard to the rights and traditional roles of the social partners, i.e. employers and authorised employee representatives. The same also applies to the proposal to provide an optional framework for transnational collective bargaining announced by the Commission in its Communication on the Social Agenda for the 2005-2010 period.

3.7 The Committee is aware that instruments and systems for employee participation among SMEs are not as well developed as those in larger companies. However, we believe that even if conditions are not the same, a partnership-based approach is very important for managing change in these smaller companies as well.

4. Community policy with regard to industrial change

4.1 Legislation

4.1.1 A great deal of Community legislation already has a direct or indirect bearing on industrial change and restructuring, and the impact thereof. There are various directives on information and consultation rights, the protection of workers from the consequences of restructuring (European works councils, European companies, legislative frameworks for informing and consulting employees at national level, employer insolvency, transfer of undertakings, collective redundancies, the right to be consulted in competition proceedings).

4.1.2 All of this legislation relates either to a very general framework for informing and consulting employees or to specific consequences of change or restructuring, and, to a large extent, the individual provisions can be applied independently of one another. Building on these foundations, the Committee feels that Community law must be assessed, consolidated and, if need be, further developed in order to anticipate change.

4.2 Industrial policy

4.2.1 The Commission launched a new era in European industrial policy with its Communication on Fostering structural change: an industrial policy for an enlarged Europe of April 2004 (1). In its opinion of December 2004, the Committee welcomed the Commission’s strategy. Once again, it should be emphasised that the Commission has brought about a paradigm shift, putting industrial policy back right at the top of the European agenda.

4.2.2 The Committee’s main concern now is to deepen the sectoral approach, enabling tailor-made solutions for individual sectors to be found. It is important not only to look at sectors which are in crisis, but also to analyse as many sectors of European relevance as possible, in order to respond to change at an early stage and manage it proactively. Social dialogue has a special role to play here.

4.3 Social dialogue

4.3.1 At its spring summit in 2004, the European Council called on the Member States to build ‘partnerships for change’ involving the social partners, civil society and public authorities.

4.3.2 In view of this and of the mid-term review of the Lisbon strategy, the Commission has published a Communication entitled Partnership for change in an enlarged Europe — Enhancing the contribution of European social dialogue (4).

4.3.3 The purpose of this Communication is to promote awareness and understanding of the results of the European social dialogue, to improve their impact, and to promote further developments based on effective interaction between different levels of industrial relations.

4.3.4 In its Communication, the Commission demands that social dialogue should yield tangible results. It therefore recommends that social partners should publicise texts issued by them more forcefully, make them clearer and more effective (for example by using easily comprehensible language), ensure that they are followed up, and standardise categories of text. In this connection it should be pointed out that the effectiveness of European social dialogue is increasingly dependent on the quality of labour relations at national level.

4.3.5 In its Communication, the Commission puts forward a series of proposals to enhance synergies at different levels (European, national, sectoral, company) and to strengthen the structures of social dialogue while boosting its effectiveness and impact.

4.3.6 The Committee does not at this time intend to comment on the Commission’s proposals in any more detail, since the initial response should come from the social partners, as autonomous agents.

4.3.6.1 However, it does welcome all efforts to promote social dialogue, particularly in the new Member States, where there is still significant ground to make up. The Committee notes that in relation to training, for example, a great deal of work still needs to be done to strengthen infrastructure and provide technical support, particularly in terms of funding. Hence, the Commission’s proposal to allocate a part of the resources in the Structural Funds for this purpose seems both logical and coherent.

In the new Member States, restructuring processes result in considerable job losses and largely involve privatisation. Effective social dialogue is needed to negotiate appropriate and legally enforceable social packages before these processes begin.

4.3.6.2 The Committee also supports the Commission’s intention to encourage new sectors to launch a social dialogue and to contribute to the achievement of the Lisbon objectives.

4.4 Restructuring and employment

4.4.1 Both the Social Agenda adopted on 9 February 2005, and the Communication on the review of the sustainable development strategy envisage that the Commission will develop a strategy for managing restructuring operations focused on improved interaction between the relevant European policies, greater involvement of the social partners, enhanced synergy between policies and financial levers and the adaptation of the frameworks of legislation and wage agreements.

4.4.2 The Commission’s Communication of 31 March 2005 on Restructuring and employment (1) sets out the measures to be developed or strengthened in relation to the various means that the Union can mobilise to this end through cross-cutting and sectoral action. It also proposes a range of measures in various EU policy areas.

4.4.3 The Committee will draw up a separate opinion on this Communication. At all events, it welcomes the broad multidisciplinary approach chosen by the Commission. From the perspective of the current opinion, several of the Commission’s proposals are of particular relevance.

4.4.3.1 Particular emphasis should be placed on strengthening sectoral social dialogue. The Committee shares the Commission’s view that the social partners, given their special knowledge of the sectors concerned, have a role to play in alerting the authorities. However, this option should not be restricted to times of crises nor to ‘particularly worrying developments’, but should apply to any situation in which the social partners consider that there is a need for action. This would be more in keeping with the objective of anticipating and accompanying restructuring.

4.4.3.2 The Committee awaits with interest the planned Communication on corporate social responsibility which will focus in particular on positive initiatives being taken by firms and the various stakeholders to address restructuring. After all, it is a matter not only of developing the legal foundations, but also going beyond that, of publicising and promoting good practice in the management of change. In particular, the Committee would point out that those indirectly affected by the restructuring of individual undertakings (e.g. suppliers, service providers, etc.) should also be taken into consideration.

4.4.3.3 The Committee also welcomes the establishment of a ‘restructuring’ forum, whose mission is to monitor the relevant changes and to ensure that the various initiatives are properly dovetailed. The forum brings together the Commission, the other European institutions, the social partners and outside specialists. This is consistent with the cross-cutting approach followed in the Communication. The Committee is happy to work with this forum and will bring its expertise to bear.

4.4.3.4 The Commission is also planning a second phase of consultation of the European social partners on company restructuring and European works councils. As mentioned in points 2.2, 3.5 and 3.6 above, the Committee feels there is a need for action on these issues.

5. Conclusions

5.1 Europe needs to face up to the key challenge of successfully managing industrial change while at the same time maintaining and restoring competitiveness to businesses and sectors; this in turn makes a decisive contribution to achieving the objectives of the Lisbon process.

The success of this process of change is measured not only in terms of the competitiveness of a company or sector, but also of safeguarding jobs and managing the adverse social impact.

5.2 Alongside a range of measures at various levels, social dialogue and the inclusion and involvement of workers are crucial to the successful management of industrial change.

5.3 Social dialogue needs to build on consolidated, trust-based partnerships and a culture of dialogue, marked by effective representation and stable structures. The Committee welcomes all efforts to promote social dialogue, particularly in the new Member States, where there is still significant ground to make up.

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(1) COM(2005) 120 final.
5.4 The social partners need to be given stronger analytical tools. The European Monitoring Centre on Change of the Dublin-based Foundation for the Improvement of Living and Working Conditions has an important role to play here.

5.5 Sector-specific EU initiatives are of great importance; these make specific recommendations for measures to achieve and maintain competitiveness, based on an analysis of the current position and future prospects of a particular sector through an extensive consultation process involving the social partners. The Committee therefore supports the Commission’s intention to encourage new sectors to launch a social dialogue and to contribute to achievement of the Lisbon objectives.

5.5.1 It is important, however, not only to look at sectors which are in crisis, but also to analyse as many sectors of European relevance as possible, in order to respond to change at an early stage and manage it proactively.

5.6 The inclusion and involvement of workers and their representatives and trade unions is therefore crucial to managing change in a socially acceptable way at company level. Among other things, this promotes a company’s innovation and, ultimately, its competitiveness as well.

5.7 European works councils have a special role to play here. Transnational social dialogue at company level is clearly forging ahead, as shown by the example of agreements on restructuring measures reached by companies with European works councils and/or European trade union federations. The same also applies to the proposal to provide an optional framework for trans-national collective bargaining announced by the Commission in its Communication on the Social Agenda for the 2005-2010 period.

5.8 The Committee welcomes the broad, multidisciplinary approach chosen by the Commission in its Communication of 31 March 2005 on Restructuring and employment (6). Particular emphasis should be placed on strengthening the sectoral social dialogue, which can do much to anticipate and accompany restructuring processes.

5.8.1 The Committee awaits with interest the planned Communication on corporate social responsibility.

5.8.2 The Committee is happy to work with the restructuring forum and will bring its expertise to bear.


The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on Poverty among women in Europe

(2006/C 24/18)

On 28 April 2005 the European Parliament decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on Poverty among women in Europe.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 5 September 2005. The rapporteur was Mrs King.

At its 420th plenary session, held on 28 and 29 September 2005 (meeting of 29 September 2005), the European Economic and Social Committee adopted the following opinion with 79 votes in favour, no votes against and two abstentions.

1. Background

1.1 International Day for the Eradication of Poverty

The UN General Assembly has designated 17 October as International Day of Eradication of Poverty to promote awareness of the need to eradicate poverty and destitution in all countries.

1.2 Women and Poverty in the EU

The Committee of the Regions, the EESC and the European Parliament are each producing a paper on Women and Poverty in the EU to coincide with this day to contribute to the wider debate about the nature of poverty in the EU today. There has been a high level of coordination between these EU institutions although each paper is written from a different perspective.

1.3 Definition of At-Risk-of-Poverty

This is defined as the share of persons with an income below 60 % of national median income. Income is defined as the household’s total disposable income divided and attributed to each household member.

1.4 Framework for Combating Poverty and Social Exclusion in the EU

In 2000, the Member States agreed to establish a European strategy to combat social exclusion and poverty (2000) using the open method of coordination. This strategy includes agreed objectives and the obligation for each Member State to present biennial National Action Plans in accordance with these objectives. The indicators include four dimensions of social inclusion — financial poverty, employment, health and education. Equality between women and men is not included as an overarching objective of this EU strategy.

In 1999, the Council adopted a concerted strategy for modernising social protection. Social protection is one of the important means to fight poverty and social exclusion in EU Member States. The strategy focuses on three themes — social inclusion policies, reform of the pension system and reform of healthcare systems. Gender equality is not included.

Given the results of the recent referendums on the EU Constitution, the UK Presidency has announced a communication on social protection systems to take place in October 2005.

1.5 Legal framework

Most policies addressing poverty and social exclusion remain within the competence of each Member State. However, under Articles 136 and 137 EC of the Treaty, the EU has an active role in supporting and complementing the activities of Member States in order to combat social exclusion.

Article 13 of the Treaty gives the EU competence to take actions, including legislative measures, to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

1.6 Level of poverty in the EU

In 2001, the numbers affected by relative income poverty is very significant with more than 55 million people or 15 % of the EU population living at risk of poverty (1). More than half of them lived persistently on low relative income. This proportion varies considerably across Member States, with the share of the population at risk of poverty ranging from 9 % in Sweden to 21 % in Ireland. Generally speaking, this affects women to a significantly greater degree.

(1) Indicators of poverty risk are derived from European Community Household Survey.
1.7 Level of social exclusion

The longer the length of time someone has to live on low income the greater the risk of deprivation and exclusion from social, cultural and economic activity. In all Member States, half or more of those at risk of poverty in 2001 have been living on low income for an extended period of time, that is, they had an equalised income below the 60% threshold in the current year and at least two of the preceding three years (i.e. 1998-2000). On average in the EU, 9% of the population have been persistently poor in 2001. Here too, this affects women to a significantly greater degree.

1.8 Demographic and societal context in the EU

The demographic context in the EU is changing dramatically with the century-long growth in the size of Europe's working age population soon going into decline. People aged 65 and over represent 16% of the total population while those below 15 represent 17% and life expectancy is growing. Over the next 15 years, the number of people aged over 80 will rise by almost 50% (2).

At the same time, developments in household structures are changing. There are fewer and later marriages, more marital breakdowns and also a fall in the number of couples with children. These developments have led to a trend towards smaller households, across all age ranges. Nobel Prize winner economist, Gary Becker and his colleague Judge Richard Posner, state that these changes can largely be explained in economic terms (3). They state that the increase in women's financial independence through job opportunities outside the home means that there is a move from the 'patriarchal marriage' — with the male as earner and the women as dependent — towards 'marriage as a partnership'. There is also an increase in the opportunity costs of childbearing: the higher a woman's income and job status, the more she gives up, in terms of potential career progression and income, if she leaves the labour force, whether temporarily or permanently, to have children.

The other major change is the phenomenal rise in the number of children living with one adult. In 2000, 10% of children aged 0-14 years were living with just one adult compared with 6% in 1990. This is the result of the rise in the number of marital and relationship breakdowns and in unplanned pregnancies.

2. General comments

2.1 The EESC welcomes the opportunity to present its views on this topic but feels that the focus should have been 'Gender and Poverty' as opposed to 'Women and Poverty' because this would focus attention on the relationship and differences between men and women with regards to the causes of poverty.

The Committee strongly recommends that the Commission revisits the definition of poverty as it only highlights the overt causes of poverty and underestimates the level the poverty of women and the impact of that poverty. The definition assumes that household resources are shared equally within the family but it can be argued that poverty is experienced at an individual level and should be analysed at that level if the gender dimension is to be understood.

2.2 The EESC welcomes the UK Presidency’s announcement to relaunch a debate on the social protection systems and strongly recommends a gender impact analysis is done to ensure that these system takes account of the needs of women and men. There is an implicit assumption that women have a man's income to fall back on. This assumption, which is out of touch with the reality of today’s society, is a key reason for the greater risk of poverty faced by women.

3. Specific comments

3.1 The Incidence of Poverty Risk

Women are generally at greater risk of living in a poor household: in 2001, 16% of adult women (aged 16 years or more) had an income below the threshold, against 14% of men in the same age group (4). This pattern is consistent across all Member States. The risk of poverty is highest among single parent households (35% of the EU average), 85% of which are headed by women. Female heads of household who are 18 and under are particularly at risk of poverty.

People aged 65 years and over suffer from relatively high risk of poverty. Two-thirds of the over 65s are women. Single female pensioners, especially those over 80 or without an occupational pension have a much higher poverty rate. A key reason for this is that the older a pensioner becomes, the greater his or her expenses, mainly relating to increased healthcare costs with regards to disability and mobility needs.

(*) Joint report by the Commission and the Council on social inclusion – 5 March 2004.
(4) Eurostat 2001; except for single households, gender gaps in poverty risk need to be interpreted with caution, since they rely on the assumption of equal sharing of income within the household.
Research shows that women who face multiple discrimination — for example, older women, women belonging to ethnic minority or migrant groups, women with disabilities, lesbians — are at even higher risk of social exclusion and poverty.

3.2 The labour market dimension of poverty and social exclusion among women

Employment is seen as a key factor for social inclusion and considered the single most effective route out of poverty, not only because it generates income but also because it can promote social participation and personal development. This is reflected in the objectives of the Lisbon Strategy which states that by 2010 'The European economy will be the most competitive and dynamic of all the economies based on knowledge in the world, with a sustainable economic growth capacity, with more and better jobs and greater social cohesion.' and, for this, the participation of women in the labour market will be necessary and essential, with a concrete objective to achieve in 2010: a female employment rate of 60 %. Although women's participation levels in the labour market are moving closer to those of men, women in paid labour are not free from the risk of poverty. This is because the participation of women in the labour market is accompanied by important difficulties such as the high unemployment rate of women in the EU25 (6) as well as a difficulty in balancing domestic and work responsibilities, the tendencies toward segregation and sectorisation of female employment, the prevalence of precarious forms of employment with limited social protection and the pay gap between men and women that exists in all European countries.

3.2.1 Pay gap

Thirty years after the 1975 Directive on Equal Pay women in the EU still earn on average only 85 % of men's wages, hour for hour (6). In many countries, the discrepancy is much wider, and can reach up to 33 %. The EESC concurs with the EP FEMM Committee's indignation that this gap still exists and agrees with its recommendation that the Council and Commission take appropriate steps 'to put an end to this iniquity'.

3.2.1.1 Opportunity Cost of Childbearing

Many studies have attributed this to the fact that women bear children and disproportionately spend more time than men in caring for those children. Most women will break from the labour market for at least some part of their life. In contrast, the male pattern has generally been a continuous and full-time labour market attachment from leaving full-time education until retirement. The break from the labour market, can have a detrimental effect on earnings. The interruption for childcare can mean shorter job tenure, less accumulated experience and less access to training. This is because pay increases are often awarded to those who stay in continuous employment for many years. Indeed, the more lengthy the break, the greater the cash penalty.

3.2.2 Mother's level of education

The employment profile of a lengthy break whilst caring for young children is more likely for mothers with low educational qualifications. Whilst graduate mothers have shortened the length of time they break from the labour market, the behaviour of women with no qualifications has not changed. Mothers with no qualifications are more likely to break from the labour market until the child goes to school whereas those with a degree are more likely to only take maternity leave and pay for their child to be looked after by someone else.

Therefore, women with lower educational qualifications, who are more likely to take longer breaks (and who also have the lowest earning potential before having children), are most heavily penalised financially.

3.2.3 Lone parenthood

As mentioned in paragraph 1.8, the number of lone parents has been increasing and the data shows that lone parents have a particular risk of suffering from poverty. Because 85 % of lone parents are women this risk of poverty is gender specific. Much of the risk can be attributed to low participation in the work force: only 50 % are in work compared with 68 % of married women (7). In contrast to mothers' increasing employment rates, lone mothers' employment rates have hardly changed.

Studies suggest that the lack of affordable childcare is not the only barrier to work for lone parents. Others include:

— Lone parents out of work generally lack marketable qualifications (8). The fewer qualifications they have, the weaker their chances to get back into the labour market. These depend crucially on the availability of affordable options for further training during time out from employment for parenting.

Lone parents tend to be concentrated in the geographical areas which experience lack of labour demand.

Lone parents out of work are more likely to be in ill-health and they are more likely to have a child or someone else in the house whose illness or disability restricts opportunities to work (one in ten of all out-of-work lone parents).

Lone parents in severe hardship are more likely to experience low morale, which in turn become a barrier to work.

Also many lone parents have to look after their children themselves and look for jobs with hours that enable them to spend as much time with their children as possible, and thus to combine parenting with employment. As a result, many of them are forced to settle for precarious, low-paid employment with a lower level of social protection.

3.2.3.1 Teenage pregnancy

Female heads of lone parent household who are 18 and under are particularly at risk of poverty. In the EU, 6% of young women were parents by the age of 18, although this varies from 3% in Italy, the Netherlands, Spain and Sweden to 12% in Hungary and the Slovak Republic and 13% in the UK (9).

Teenage parents are more likely than their peers to be living in poverty and unemployment and have difficulty escaping mainly due to the lack of education and the other reasons given above. For example 45% of women in the EU-15 who were teenage mothers are in households with income in the lowest 20%, while only 21% of women who had their first child in their 20s are in this income group. 90% of teenage parents receive welfare support and teenage mothers are more likely than other lone mothers to rely on benefits alone and to be on benefits for longer spells.

Member States have made reducing the incidence of teenage parenthood a priority as it offers an opportunity to reduce the likelihood of poverty and of its perpetuation from one generation to the next. How to reduce teenage births is subject to much debate with a broad range of solutions: from more sex education to less sex education; from abstinence education to free contraceptives in schools; from dispensing morning-after pills to reviewing the welfare benefits to encourage co-habiting and marriage among teenage parents.

The four EU Member States with the lowest teenage birth rates could be used as a benchmark for the other Member States tackling this issue.


3.2.4 In-work poverty

The increase in women’s participation in the labour market is a result of the increase in non-standard types of work, such as part-time, flexible hours, shift work and term time. Part-time employment among women is 27% on average against just 4% for men (10). In fact, the part-time gender wage gap is greater than the full-time one: the female part-time average hourly wage is close to 60% of the male full-time wage compared with the 82% for the female full-time hourly wage.

Those who have low educational qualifications, undeclared workers, minorities or migrants with little or no independent legal status are particularly at risk of poverty because the jobs they have tend to be low paying and low status with no job security. Research shows that in extreme cases these women face the risk of trafficking, prostitution and violence.

3.2.5 Unpaid work

Women remain unpaid for the work in the home. Even for the enormous number of women who are in paid employment, shopping, eldercare and childcare is still perceived as their responsibility as men do less than 40% of all domestic work and only 25% to 35% of childcare work (11). This unpaid work is not systematically recorded in national statistics, which means it is invisible to policy makers.

It should be stressed that balancing family and employment responsibilities is a real challenge for men and women. Women with children under 12 show employment rates over 15 points lower than childless women — 60% versus 75%. For men with children under 12, however, the employment rate is 91%, five points above the rate for men without children.

3.2.6 Long-term unemployment

This is very closely associated with social distress, as people who have been jobless for a long time tend to lose the skills and the self-esteem necessary to regain a foothold in the labour market, unless appropriate and timely support is provided. For

the EU as a whole, long-term unemployment rates are higher for women (4.5 %) than for men (3.6 %) (12). Despite this, programmes aimed at getting the long-term unemployed into paid work tend to benefit men as women are offered more restricted training and gender-stereotyped, and therefore lower waged, employment.

3.2.7 Pensions

3.2.7.1 Women’s disadvantages in the labour market and the resultant pay gap extends into retirement. This is because the pension model in many Member States was developed from a male perspective, discriminating against women as many take career breaks, work in non-standard employment or have periods of unpaid work. As a result many face disadvantage in building up the necessary rights and savings to enjoy security in older age. Two-thirds of pensioners are women, and their average income is 53 % of that of a man, which can impact on their health, housing and quality of life. 75 % of pensioners receiving income related welfare payments are women. The result is older women, including widows and divorcees, make up the poorest pensioners and with the long-term societal consequences of aging of the EU population this trend will continue to rise unless it is addressed.

In an earlier opinion (13) the EESC recommended adapting pension systems to ensure gender equality with the long-term goal being the individualisation of pensions. The EESC further recommended that the experience of Member States should be shared so that certain women, namely those with career breaks, were not left with inadequate pensions.

This earlier opinion also noted that some Member States support their elderly people in other ways in addition to the provision of a pension. This includes, for example, more favourable taxation, free electricity, free or reduced fares for public transport and tax relief for rent. This recommendation is welcomed as women are more likely to be older (due to greater longevity) and to live alone (they outlive their partners) than men which means that they are more likely to face the problems encountered by older pensioners. Generally, older pensioners’ incomes from earnings and investments are lower while at the same time they may be facing greater expenses, related to disability, mobility needs and depreciation of assets.

3.2.7.2 Women, including minorities, legally resident and undocumented immigrants, who are in non-standard type of employment are further disadvantaged because these are less likely to be in an occupational pension scheme. As men earn a greater income than women during their working lives, their final pension will be higher for men than for women. Moreover, pension assets have previously been linked to the principle wage earner, the one who has accrued the asset, who is usually the man. Increasing divorce rates have called this into question, with the woman usually disadvantaged in the event of a partnership breakdown. However, a number of member states have introduced legislation in which courts are now able to split assets at the point of divorce in whichever way they deem appropriate.

3.3 The education dimension of poverty and social exclusion among women

3.3.1 Job choices and entry into employment are controlled by qualifications. The data shows this is especially the case for women. Women who are better qualified (defined as having a level of education ISCED 5 and 6) more often have a job than those who are less well qualified (having a level of education ISCED less than 2) (14). In the EU-25, 49 % of women aged 20-49 who are less well qualified have a job compared with 84 % of better qualified women. It should be pointed out that this difference of 30 percentage points in the case of women is only 10 points (83 % compared with 93 %) in the case of men. Better qualified women with children generally remain in employment. In the EU-25 the comparison between these two groups of women is as follows: no children (88 % vs. 57 %): 1 or 2 children (80 % vs. 43 %): 3 or more children (63 % vs. 22 %).

3.3.2 The curriculum encourages subject choices that are heavily gendered with girls choosing subject courses and careers that are poorly paid with teachers and career advisers not trained to consider or acknowledge the importance of gender issues. Those most at risk from this segregation are girls within households already at risk of poverty as research (15) this group are disproportionately represented in low status jobs due to their low educational attainment. Part-time manual work is the most disadvantaged employment category for women, more so than other part-time and manual full-time jobs, because these women have very low levels of education. These women are constrained in their job choices due to the intersection of poverty and gender throughout their educational careers, which not only impacts on their working lives and retirement but can result in a cycle of intergenerational poverty.

3.3.3 The EESC welcomes the focus on jobs, and in particular women’s employment, in the objectives of the Lisbon Strategy but notes that for women at risk of poverty this is insufficient. Member States have the opportunity to work with civil society, and NGOs, especially those who work in the area of gender equality and poverty eradication, to break this lifelong and intergenerational poverty by addressing the stereotyping in educational institutions with regards to girls’ and boys’ career choices and by developing effective adult educational courses that are accessible, develop marketable skills and meet the needs of these women.

3.4 Criminal justice dimension of poverty and social exclusion among women

3.4.1 Women are a minority of those accused or convicted of criminal offences, representing around one in five known offenders and only 6% of the prison population. The last decade, however, has seen a steep rise in the number of women in prison, although there is no equivalent rise in women offending (17). Most women are sent to prison for non-violent offences and they go for less than a year. Almost a quarter of women in prison are on remand, not convicted of any offence.

3.4.2 The same research indicates that a high proportion of women sent to prison have no financial security prior to their imprisonment, have either never worked or have only worked in low-paid jobs with no job security, have no secure accommodation, very little education and have been victims of either physical and/or sexual violence from family members or non-family male predators. Therefore women’s imprisonment further excludes those who are already socially excluded.

3.4.3 The steep rise in the number of women in prison could be explained by the sentencing studies in some of the Member States covered by the research which suggest that women are often sent to prison because they are already socially excluded (e.g. homeless, unemployed, drug users); and that judges and magistrates think that because they are already socially excluded they are more at risk of committing a crime in the future and that imprisonment can and will, through its rehabilitative regimes and programmes, reduce the likelihood of already excluded women returning to crime (or drugs) once they are released from prison.

3.4.4 The research reveals the impossibility of rehabilitation and reintegration of women prisoners given the adverse employment and educational backgrounds of these women, the high proportions (50% in England and Wales) (17) of whom are mentally ill, combined with the relatively short sentence lengths of most female prison populations. It is debatable whether prisons are institutions of rehabilitation but even if this was the case, as the research findings show, it is difficult to see how prisons alone can be expected ever to provide the majority of prisoners with effective training, sustainable drugs rehabilitation, emotional support or marketable skills after release.

3.4.5 Prisons are primarily for punishment. The research found that prisons exclude women who were not excluded prior to their incarceration, and it excludes the socially excluded still further. Imprisonment is even more costly for women than it is for men as the damage done to children when their mothers go to prison. For example, in the UK 25% of imprisoned women declared that the father of their children, their husband or partner, was taking care of their children. For imprisoned men this proportion rose to 92%. This well outweighs any gains thought to have been made in terms of criminal justice, deterrence or diminution of risk.

3.4.6 Foreign women and women from minority groups are doubly discriminated against and as a result there is a disproportionately high ratio of them within the criminal justice system.

3.4.7 The EESC agrees with the recommendations of the report that action should be taken to drastically reduce the number of women who are sent to prison especially as many are in prison on remand and have not been convicted of any crime, and where a crime has been committed it is usually for a non-violent offence. Some Member States have introduced less damaging alternatives to imprisonment and with the right kind of care and support, women lawbreakers with many problems can achieve rehabilitative integration into the community.

3.5 Combating Trafficking in Women and Children

Trafficicking in women and children is a consequence of structured gender inequality and is a form of violence. Trafficking thrives on poverty and victims suffer from multiple forms of poverty resulting in forced labour, sex slavery, physical and mental health problems, social exclusion among others. Prevention strategies of countries of origin must reflect and be reflected in poverty reduction and social development strategies with specific reference to economic opportunities for women. Long term prevention strategies must address the root causes of trafficking and these include poverty, discrimination, racism, patriarchal structures, violence against women, fundamentalisms, gender inequality, lack of social safety nets, money laundering, corruption, political instability, conflicts and uncontrolled zones, barriers and disparities between countries. All governments must introduce measures that recognise the unequal power relations between women and men and must introduce positive measures to promote the empowerment of women in all areas of life.

(16) Comparative Report based on National Reports’ Fieldwork Findings prepared by the Central European University Team. Data is from six EU Countries: Spain, Germany, England & Wales, Italy, France and Hungary.
4. Recommendations

4.1 The EESC welcomes the Joint report by the Commission and the Council on social inclusion dated 5 March 2004. It commends the six key policy priorities they have urged member states to give particular attention in their National Action Plans (see Appendix). However the EESC believes there is a glaring policy omission, namely the identification and monitoring of gender-specific indicators. The EESC strongly recommends that these are included as there are significant differences between men and women with regards to poverty, and without addressing the gendered nature of poverty or monitoring the impact of policies upon women and men alike, it is possible that many policies designed to alleviate poverty will meet with only partial success. Addressing the gendered nature of poverty will be in keeping with the commitment on poverty eradication made at the World Summit for Social Development held in Copenhagen in 1995 where it was agreed that special priority will be given to the needs and rights of women and children, who often bear the greatest burden of poverty.

4.2 Many Member States have significantly strengthened their institutional arrangements for mainstreaming poverty and social inclusion into their national policy making. However more should be done by including social partners, including NGOs, at a local, national and regional level into policy development and implementation, especially in the area of education, employment and pensions.

4.3 The EESC strongly recommends that the Lisbon Strategy objectives on increased employment for women is accompanied by strategies to ensure that women at risk of poverty develop marketable skills which lead to their financial independence. In addition, initiatives and measures must be stepped up to ensure women’s livelihoods throughout their lives; these should aim to raise the quality of employment and close the earnings gap. In a recent opinion on the integrated guidelines for growth and jobs, the EESC expressed its surprise that the current package of employment policy guidelines does not include specific guidelines on female employment.

4.4 The EESC believes that there is much to be gained by Member States sharing experiences in the areas that impact on women and poverty — pension provision, social protection systems, teenage pregnancies, eliminating violence against women, including trafficking, and female imprisonment.

4.5 Many Member States have signed up to the Beijing Platform for Action (September 1995), which called for governments to assess the value to the economy of unpaid work. However 10 years on Member States have not yet developed the measurement and monitoring systems to do this. They should be encouraged to do so and record it as part of their national statistics.

4.6 The European Institute for Gender Equality is to be opened in 2007. As gender is neglected in policies aimed at addressing poverty in the EU, it follows that the relationship between gender and poverty has been relatively neglected in research and statistical literature. The Institute can only bring about change if it is equipped with adequate budgetary resources. In a separate opinion on the Institute for Gender Equality, the EESC has already expressed its concern that these are not fully provided for in the relevant proposal for a regulation.

4.7 The EESC therefore suggests a few areas of priority. The new institute should conduct an in-depth analysis of existing data sets from a gender perspective.

4.8 Another area of gender and poverty that calls for special attention is the issue of the impact of poverty on women’s physical and mental health.

4.9 Thirdly there also appears to be little research on what women think and feel about being poor and whether they experience poverty differently from men.


The President
of the European Economic and Social Committee
Anne-Marie SIGMUND