

**Opinion of the Economic and Social Committee on the 'Freedom to set up a business (SMO)'**

(98/C 235/03)

On 18 March 1997 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an opinion on 'Freedom to set up a business (SMO)'.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 May 1998. The rapporteur was Mr Folias.

At its 355th plenary session (meeting of 27 May 1998) the Economic and Social Committee adopted the following opinion by 88 votes, with one abstention.

**1. Introduction**

1.1. In its work in recent months on the functioning of the Single Market, the Single Market Standing Study Group has frequently identified problems related to the opportunity to set up businesses and operate branches of existing companies in other EU countries.

1.2. The progress thus far achieved in creating a Single Market, with the many new opportunities it offers SMEs and the self-employed to operate in Member States other than their own, cannot be denied.

At the same time, however, the continuing existence of numerous obstacles to the freedom to establish businesses in other Member States is also undeniable.

1.3. It should be borne in mind, in the interests of accuracy, that points relevant to the 15 Member States also apply to the three EFTA/EEA countries (Norway, Iceland and Liechtenstein) which, under the EEA agreement, are also considered to belong to the Single Market.

1.4. The purpose of the present opinion is to show that much remains to be done in completing the Single Market, to call upon all those concerned to make efforts in the right direction, to provide practical examples of both real and artificially erected barriers, and to put forward proposals to overcome such obstacles.

1.5. In order to achieve these aims, use will be made of the findings of the questionnaires which were drawn up, distributed and returned complete, the information recorded at the hearing in Nice (France), and a sample

of specific obstacles which have been reported or identified.

1.6. 'Freedom to set up a business' must not be seen as a way of exempting a company from the rules of the host country. The purpose is to help individuals or companies wishing to set up business in a Member State and not to demand that they meet more rigorous or different conditions from local businesses. In this case 'more rigorous conditions' means any unfair treatment that creates obstacles or prevents a business from setting up.

1.7. It is not easy to separate the problem of setting up business from other aspects of the Single Market, e.g. freedom to provide services. Since the ESC has already produced several opinions on the various types of obstacles that affect the functioning of the free market<sup>(1)</sup>, this opinion focuses on practical suggestions to help individuals and firms set up business.

**2. Findings**

2.1. Numerous and varied problems persist in setting up businesses in other EU Member States, constituting a whole range of 'obstacles' to the freedom of establishment. Beyond these, however, there are others facing

<sup>(1)</sup> Impact and effectiveness of the Single Market — OJ C 206, 7.7.1997, p. 65; SME's — Cross-border relations — OJ C 206, 7.7.1997, p. 70; The Single Market and the protection of the environment: coherence or conflict — OJ C 19 of 21.1.1998, p. 95; Preventing new barriers from arising in the Single Market — CES 453 of 25.3.1998, p. 98; Removal of certain obstacles to trade — CES 643 of 29.4.1998, p. 98.

companies or independent professionals after they have set up, which prevent them from offering their services.

2.2. Many national restrictions are due to the particular care that certain Member States take to protect their own consumers. Governments' entirely legitimate interest in protecting their consumers — a central task of theirs — should not be to justify making it difficult for businesses to set up.

### 3. Identified obstacles

3.1. Obstacles to free establishment have been found to be multiple and varied, national and regional, subjective and objective; some can be removed while others are insuperable without individual or collective efforts.

#### 3.2. *Legal obstacles*

The following is a brief list of those occurring most frequently in a number of different countries:

- Recognition of qualifications;
- Recognition of requirements for practising a profession;
- Obtaining permission to exercise a profession;
- Requirements for establishing a business;
- Official red tape;
- Ban on entry to certain professions (dispensing chemists, notaries, engineers, etc.);
- Legal form of companies.

In countries with decentralized administrations, specific regional conditions exist that create additional obstacles.

#### 3.3. *Subjective obstacles*

- Lack of information on national laws;
- Linguistic difficulties;
- Lack of data on target markets;
- Unfamiliarity with local rules and principles;
- Different culture, way of thinking;
- Different patterns of consumer behaviour.

### 4. Examples of specific obstacles

A series of actual obstacles which have been reported or recorded is set out below, highlighting the problems faced by businesses.

4.1. The labour codes of one Member State require local modelling agencies to set up a guarantee fund of at least ECU 15 000. This means that modelling agencies from other Member States cannot operate in the country concerned, even occasionally, without setting up the type of same fund.

4.2. Artisans avoid being employed in another Member State, as they must have a tax representative — whose services come very dear — to deal with payment of their indirect tax charges.

4.3. 7 000 estate agents fulfilling all the necessary conditions are officially licensed by the national authorities of one Member State. Under these conditions, only four(!) non-local agents have succeeded in obtaining a licence.

4.4. The relevant department of a Member State's Finance Ministry requires a written statement in cases where travellers have more than ECU 7 500 in cash on their person when entering or leaving the country. As enforcement, officials search travellers' luggage, regardless of nationality.

4.5. For years the relevant administration in a Member State has been dealing unsympathetically with requests for VAT refunds to companies of another Member State who have paid the tax in that country when taking part in international trade fairs and are entitled to a refund. Similarly, the terms and procedures required make requests impracticable.

4.6. The Member State's authorities restrict the right to payment for services of non-resident intermediaries (insurance agents, estate agents, etc.).

4.7. In order to work in a given Member State, security companies must have their head offices in that country, and both members of the board and employees must be residents. Public order and security are the reasons invoked for this.

4.8. A company from an EFTA country was unable to fulfil a contract for construction work in a Member State, because the local authorities would not allow it to be placed on the local construction register on the grounds that it did not belong to a Member State.

## 5. Proposals

The proposals set out here come from businesses which have suffered the practical consequences of these obstacles, from exchanges of views, and are, of course, made with a view to helping to remove such obstacles.

5.1. The ESC calls for the creation of an environment in the EU where the setting up of companies and individuals in other Member States is seen as a means of creating jobs and boosting economic activity. Cultural exchange, above all, is at the heart of this dynamic vision. In this spirit, the Commission must launch a publicity campaign to provide information about the rights of companies and individuals to set up business in the country of their choice, provided they comply with its basic legislation.

### 5.2. General proposals

- to create data-banks listing the appropriate authorities, and channels through which information can be obtained;
- to promote development and better use of the Euro Info Centres, which could play a decisive role in providing information and explanations to companies, and to organize bilateral or multilateral meetings to exchange views, as well as to publish a yearly report describing the problems most commonly encountered when setting up a business;
- to set up national 'one-stop shops' as part of the professional chambers (of commerce, crafts, ...) providing standardized services;
- to draw up a comparative table on the individual legislation of each Member State;
- the preparation by each Member State of Internet sites, in the 11 languages, containing comprehensive guidelines about the conditions and legislation in effect for setting up on the markets, for each sector; the Commission can also provide information centrally on its existing Internet pages (EUROPA, ISPO, etc.);
- further improvement in the use of 'Europartenariat';
- best possible use of the Community's new Joint European Ventures programme;

- allocation of more resources for venture capital and seed capital;
- a Community initiative seeking to harmonize individual laws in specific areas;
- the final conclusion of the Commission's efforts to determine a form for the European company, so that businesses can choose a legal basis whereby they can expect to be treated in the same way throughout Europe<sup>(1)</sup>;
- priority access to sources of funding at both European ('growth and employment') and national level, for the purpose of setting up business activities.

### 5.3. Specific proposals

- direct negotiations between those concerned and national and regional authorities to settle specific issues;
- cooperation between professional chambers (of commerce, crafts, ...) to exchange views and experiences which will be communicated to national administrations and the competent Community bodies;
- alerting and informing MEPs, and possible lodging of proposals and/or questions in the European Parliament, also on the initiative of representatives from business entities;
- freedom of establishment uninfluenced by company size;
- equal opportunities regardless of company size;
- special provisions for non-profit enterprises and charitable bodies.

## 6. Post script

6.1. Through its Single Market Observatory and the present opinion, the Economic and Social Committee seeks to define a substantial and documented approach to the major problem of obstacles to the freedom to set up a business, which is seriously hampering the completion of the internal market.

6.2. In order to achieve this aim, the ESC would appeal to the parties concerned who are both responsible for creating, and capable of effectively tackling, these problems, albeit to varying degrees.

<sup>(1)</sup> European Company Statute — OJ C 129, 27.4.1998, p. 1.

6.2.1. Firstly, it calls upon the Commission to make concerted practical efforts to explain the workings of the Single Market, and so produce specific findings based on regularly documenting the practical consequences of EU measures.

6.2.2. Lastly, the Committee urges those Member State companies and entrepreneurs who consider it in their interest to establish themselves and operate in another market to roll up their sleeves, harness all their undoubted dynamism and exploit every opportunity they have to overcome by their own efforts as many obstacles as they can.

Brussels, 27 May 1998.

*The President*  
*of the Economic and Social Committee*  
Tom JENKINS

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**Opinion of the Economic and Social Committee on the 'Communication from the Commission — European capital markets for Small and Medium-sized Enterprises: prospects and potential obstacles to progress'**

(98/C 235/04)

On 13 May 1998 the European Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 May 1998. The rapporteur was Mr Pezzini.

At its 355th plenary session (meeting of 27 May 1998) the Economic and Social Committee adopted the following opinion by 101 votes to one, with one abstention.

**1. Overall remarks**

1.1. The European Commission is to be congratulated on its positive and sustained efforts to stimulate the creation of European capital markets suitable for small and medium-sized enterprises (SMEs). Its actions were described in an earlier Communication 'Reporting on the feasibility of the creation of a European Capital Market for smaller entrepreneurially managed growing companies' <sup>(1)</sup>, on which the ESC did not deliver an opinion. These endeavours by the Commission responded to an earlier request by the Committee to 'carry out a feasibility study on the establishment of a recognized European capital market giving European firms, especially small firms, access to capital.'

1.2. In this follow-up communication the Commission has produced a constructive document. Nevertheless, there are certain points, such as the manner in

which EU securities legislation operates in practice, which have not received the detailed examination they deserve. There are others in which factors other than those put forward by the Commission are significant.

1.3. There are a whole range of other factors besides the adequate provision of finance which determine whether firms will grow to a significant size. It was decided that the most significant of these deserved examination in this opinion in order that a better overall assessment of the problems might be made. A number of the recommendations made arise from a fact-finding mission by the ESC to the USA made in November 1997. This was largely inspired by the reference to the US capital markets in the introduction to the Commission communication and by the encouragement to examine the US situation given by Commission President Santer in his speech at the Economic and Social Committee on 28 October 1997. As a result, this opinion covers a much wider field than the Commission communication, which merely deals with capital markets for SMEs.

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<sup>(1)</sup> COM(95) 498 final, 25.10.1995 .