

3.2. The Committee especially welcomes the objective of greater transparency and certainty and would stress the fact that the Member States themselves view the *a posteriori* control system to be a highly important tool for the harmonisation of marketing procedures.

Brussels, 11 December 2002.

4. Conclusion

4.1. The Committee welcomes the Commission's proposal to amend the ten directives concerned with a view to establishing a clear legal basis for the Community's financial contribution to comparative tests and trials on seed and propagating material.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council setting standards of quality and safety for the donation, procurement, testing, processing, storage, and distribution of human tissues and cells'

(COM(2002) 319 *final* — 2002/0128 (COD))

(2003/C 85/14)

On 2 July 2002, the Council decided to consult the European Economic and Social Committee, under Article 152 of the Treaty establishing the European Community, on the above-mentioned 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 25 November 2002. The rapporteur was Mr Bedossa.

At its 395th plenary session (meeting of 11 December 2002), the European Economic and Social Committee adopted the following opinion by 97 votes to one with seven abstentions.

1. Background

1.1. Each year in Europe, thousands of patients (over 500 000) receive human tissue and cell grafts.

These include both 'traditional' grafts, whose therapeutic benefits have been recognised for decades (corneas, bone, skin, arteries, heart valves, haematopoietic cells), and rapidly developing biotechnological methods.

1.2. Despite the various recommendations of the World Health Organisation and the Council of Europe, and the publication of rules for good practice by various European

academic groups, the regulatory situation in Europe is far from uniform, and it is high time it was clarified. Where health authorities have not arranged for controls, it is basically up to the users of materials of human origin to choose, depending on the product concerned, the organisations responsible for retrieving, processing and supplying it. The user has no control over them and has to rely on the results of the grafts and feedback from peers. There is no organised monitoring system. Safety levels are improving in countries where regulations are in place, but consequently rules differ from one country to another.

1.3. On the eve of enlargement, and in the context of globalisation, it is time to put this state of affairs in order.

1.4. *The need for a European approach*

1.4.1. *The ever-increasing volume of products in circulation*

Trade in the EU and with third countries, in both traditional graft materials and the products of biotechnology, is flourishing. The share of imported graft materials can, for instance, be as high as 25 %, as is the case for corneas in France.

1.4.1.1. The diversity of national standards makes it more difficult to carry out proper checks on imported products that may enter the EU through a Member State where rules are lacking and then begin to circulate within the EU without all of the appropriate safety guarantees. Harmonised standards would, however, make for safer and more controllable trade.

1.4.2. — The diversity of national regulations makes it more difficult for producers and tissue banks to export outside the Member States of the European Union. The industry will inevitably demand harmonisation on a par with that which applies to medicines and medical devices, such as in vitro diagnostic devices.

If the EU does not rationalise in this area, it will suffer from the growing contrast with other developed countries.

1.4.3. *Products requiring a high level of safety and giving rise to major ethical considerations*

As with any activity involving products of human origin, these techniques carry a risk of specific complications, linked in particular to the transmission of infectious diseases. They also raise certain ethical questions relating to the origin of grafts and, in particular, donor consent, anonymity, and the free nature of the donation.

1.4.4. On the subject of safety the following comments should be made:

- The incidence of reported cases cannot be ignored. Although the risk is residual for other diseases, it is comparable to the level that has led to the recall or withdrawal of blood derivatives.

- As the new biotechnologies take off, trade grows but so do the serial risks. Barriers are increasing as a result of Member State regulations.

- Following the blood contamination case and Creutzfeldt-Jakob disease, the public has become more aware and much more demanding, in particular owing to heightened media interest in health issues.

2. **Regulatory structure**

2.1. The European Economic and Social Committee (EESC) welcomes the Commission's move, outlined in the introduction to the Explanatory Memorandum, to introduce specific Community legislation — stringent yet flexible — to cover all the areas concerned. The main aim is to secure a high level of health protection, in terms of quality and safety, as provided for in Treaty Article 152, not least given the very wide-ranging ethical issues involved.

2.2. The EESC notes with concern the following aspects defined by the European Group on Ethics in Science and New Technologies (EGE), which stressed the urgent need to regulate the conditions under which human tissues circulate within the European market:

- the ethical imperative to protect health;
- respect for the integrity of the human body;
- the prior, informed and free consent of the living donor;
- protection of identity through guaranteed anonymity.

In addition, more should be done to promote the donation of organs, tissues and cells.

2.3. Donation must be free as it is an act of solidarity, promoting shared aims and increasing the availability of substances of human origin.

2.4. The EESC notes that currently there is a major divergence between Member States, and even more so among the applicant countries, on the issues surrounding donor protection, procedures for obtaining tissues, the activities of tissue banks, the suitability of donors, and the importation of human substances, etc.

2.5. Since the Porto conference in 2000 and, above all, the conference of experts held in Malaga in March 2002, it would seem that these experts are at last in agreement on the need for this directive: i.e. a Community directive to set 'high standards of safety and quality for the procurement, testing, processing, storage, and distribution of human tissues and cells'.

The scope may broaden as the demarcation lines for these measures have still to be defined in detail.

3. Rules applicable to the field as a whole

3.1. General, common, compulsory and organic rules

3.1.1. Safety rules are defined on the basis of existing rules for good practice. These include compulsory criteria for the ethical and biological selection of donors.

3.1.2. Traceability is a must, while donor anonymity is maintained for labelling and accompanying documents, reflecting recommendations for blood donation safety.

3.1.3. Where national rules on ethical matters apply, they may refer to:

- the Bioethics Convention of the Council of Europe (surgical residues and living donors);
- Council of Europe Resolution (78)29 on the harmonisation of legislation of member States relating to removal, grafting and transplantation of human substances;
- Opinion No 16 of 7 May 2002 of the European Group on Ethics in Science and New Technologies on the patenting of human cells.

3.2. *Establishment of a system for the authorisation and inspection of organisations that store and process (their legal status being public)*

- The system will be the Member States' responsibility.
- Authorisation for these bodies must be granted on the basis of a common frame of reference established at Community level and in line with Community rules. It is up to each Member State to ensure this happens.

- An inspection system for all establishments is essential.
- European databases will monitor the introduction of products in the Member States.
- Member States will be responsible for monitoring, with centralisation at Community level.

3.2.1. Penalties

There should be a system of penalties to impose on organisations that do not comply with the standards; these could extend to closing down an establishment on grounds of public health.

4. General comments

The EESC welcomes the precise and detailed way in which the Commission has defined the scope of the directive.

Such demarcation lines are necessary as the definitions are precise and it is important not to step outside the sphere of public health. This directive concerns applications to the human body only.

Donation, procurement and testing are specified as it is essential to secure a high level of quality and safety in these areas.

The EESC therefore welcomes the fact that:

- blood, blood products and human organs are excluded from this directive;
- a different strategy will apply for the transplantation of human organs;
- organs, tissue and cells for xenotransplantation are not covered by this text as much more research is required;
- specific measures will apply for tissue and grafts for autologous purposes, as the rules on quality and safety are different;
- in the case of stem cells and embryonic or foetal cells and tissue, the ethical questions are vast and as yet there is no consensus or harmonisation of decisions; if, however, a particular application of these cells is accepted in a Member State, the relevant provisions of this directive will apply.

4.1. Scope

The EESC is more than aware that this directive is important and necessary.

As the scope is extremely vast and difficult to grasp, clearer definitions are needed, to lessen confusion between homologous (allogeneic) and autologous origins, and mention should be made of certain special measures or exceptions.

Certain types of product should be included, others should be the subject of special measures.

Reproductive cells should not fall within the scope of this directive owing to the highly specific qualification procedures that apply to them in the context of medically assisted reproduction. Provision should possibly be made for a specific directive to cover this area.

4.2. Processing, preservation, storage and distribution of tissue and cells for use in human transplantation

4.2.1. The EESC welcomes at least two provisions:

When tissue and cells for human transplantation have to undergo preparation or differentiation, additional quality measures must apply.

When tissue or cells have to undergo highly technical modifications, such as 'tissue engineering processes', this will be covered by further specific legislation.

4.3. Obligation of Member State authorities

4.3.1. The EESC warmly welcomes the highly detailed description of the obligations of Member State authorities.

4.3.2. The proposal does not interfere with decisions made by the Member States concerning the use or non-use of any particular type of cell or tissue; if, however, any particular use of such cells is authorised in a Member State, this proposal will require the application of all provisions necessary to protect public health and guarantee respect for fundamental rights.

— Every Member State maintains responsibility for the organisation and supply of health services and medical care.

— The directive respects all existing national organisations, procurement centres and/or tissue banks.

— The establishment of high quality and safety standards will reassure the public in the Member States, smoothing the path for donations from other Member States.

— The inspection and accreditation of national structures is a means of securing high safety and quality standards. The same is true for the training levels of the staff concerned.

— Traceability of all tissue and cells from the donor to the recipient is essential, as is the monitoring of reactions and events.

— Lastly, the ever-growing volume of imports of tissue and cells from third countries should only be carried out by accredited tissue banks, supervised by the competent authority, to ensure that standards are at least equivalent to those in force in the European Union.

4.4. Quality, safety and ethical issues in donor evaluation

— Quality and safety standards in donor selection and evaluation must be high in order to protect the health of recipients.

— There must be a high level of protection for the rights and health of donors and recipients. Exchange and allocation activities should not give rise to financial gain; they should be voluntary and unpaid in accordance with the texts of the Council of Europe and of the EGE.

— The procurement of human cells and tissue must be conducted with respect for the Charter of Fundamental Rights and the principles of the Convention on Human Rights and Biomedicine.

— The EESC welcomes the importance attributed to tissue banks, which must ensure quality and safety throughout the process.

5. Special considerations

5.1. The objectives of the directive are clear, in particular the need for a strong, clear and transparent regulatory framework at European level to cover all the parties concerned, and, on the eve of enlargement, for general rules to be valid throughout the European Union.

5.2. The legal basis is clear-cut (Articles 152 and in particular (4)(a)).

5.3. While the principles of subsidiarity and proportionality are certainly upheld, the directive implements a common approach that requires effective cooperation and coordination, in view of its transnational dimension.

5.4. This proposal provides the regulatory and administrative framework for the current, spectacular growth in movements of tissue and cells of human origin.

5.5. The proposal puts the European Union at the cutting edge of the debate on this subject within the World Health Organisation.

6. Specific EESC recommendations

6.1. The word 'donation' is too narrow for the scope of the directive, which targets both autologous and allogeneic uses. The Committee proposes that it be replaced by the term 'retrieval', to refer to operations conducted with a view to grafting the elements retrieved, and 'collection' to refer to the collection of surgical residues for reuse for therapeutic purposes.

These terms would replace 'procurement' which should then be eliminated from the rest of the directive. The terminology in the current blood directive must also be brought into line.

In addition, the second paragraph of Article 2(1) should be reworded to make it clear that 'testing' relates to the retrieval and collection rather than the product.

6.2. In the French version, the term '*conservation*' is preferable to the more restrictive term '*stockage*'.

6.3. Article 1 should be reworded as follows: 'This Directive lays down standards of quality and safety of human tissues and cells for use on humans, (instead of "used for application to the human body") in order to ensure a high level of protection of human health' as this covers all uses on humans (external and internal).

6.4. Article 2 contains a serious inaccuracy when referring to 'industrially manufactured products': it would be preferable if the provisions of this directive were to apply to all products other than medicines, such as tissues and cells incorporated within medical devices.

It should also be noted in relation to this article that medicines are already excluded from the directive from the processing until the distribution stage; there is no need to mention that autologous cells destined for manufacturing are excluded from the scope of the directive as far as processing, storage or distribution is concerned.

6.5. The current wording of the list of definitions in Article 3 could raise a number of issues, as experts and consultants may wish to make amendments in order to bring it into line with their understanding of the field. The EESC would make the following comments in this respect:

6.5.1. 'Tissue': it would be better to use the definition given by Council of Europe Recommendation No R (94) 1 on human tissue banks, namely: 'all constituent parts of the human body, including surgical residues but excluding organs, blood and blood products as well as reproductive tissue (...). Hair, nails (...) and body waste products are also excluded'.

6.5.2. The EESC proposes restricting the concept of the donor to living or deceased individuals for the time being, as the use of foetal or embryonic elements of human origin is liable to generate ethical debates or controversies in individual EU Member States, which would be difficult to manage in the Union context.

6.5.3. The EESC is in favour of excluding organs from this directive, as these cannot be stored. Organs are subject to different specific procedures, made necessary by transplantation.

6.5.4. The EESC believes that 'transportation' should be removed from the definition of 'distribution', as it is distinct from distribution as an activity and is mentioned specifically in Article 23.

6.5.5. The EESC proposes replacing the term 'transplantation' with the usual terms 'graft' (used in particular for tissue grafts) and 'administration' (used for certain cell therapies). 'Patient' should replace 'recipient', as the notion of recipient seems to limit the definition to allografts.

6.5.6. More precision is needed in the definition of 'delayed autologous use', by analogy with the definition used in the blood directive, which is more meaningful ('transfusion in which the donor and the recipient are the same person and in which pre-deposited blood and blood components are used').

6.5.6.1. Special measures must be taken for:

- autologous cells;
- autologous tissues for differentiated use;
- surgical residues and placentas;
- tissues and cells for cosmetic surgery.

6.5.7. The EESC believes it is important to define the two notions of 'traceability' and 'biomonitoring' in detail, as Articles 10 and 11 make specific reference to them.

- 'Traceability': refers to all the information and measures that enables the rapid tracking and pinpointing of each of the stages from donor selection to the therapeutic use of tissues and cells including retrieval or collection, testing, processing, storage and distribution. Traceability enables a link to be made between the donor and the patient(s)/recipient(s). It is based on the anonymous coding of individuals.
- 'Biomonitoring': uses traceability data and includes all formal procedures for the supervision of undesirable events and reactions experienced by donors, recipients/patients, and for the epidemiological monitoring of donors.

7. General proposals

7.1. The title: the definition is incomplete.

7.1.1. — 'procurement' should be replaced by:

- retrieval: surgery carried out by a specialised team (from the hospital or tissue bank) on site or at another site;
- collection: a surgical act in the case of surgical residues (femur heads, explanted hearts) or placentas, and a medical act in the case of stem cells;
- procurement: administrative and health procedure to obtain tissue or cells from another licensed body (tissue bank, sterilisation/inactivation laboratory without the status of a tissue bank, hospital cell therapy units);

another possibility would be to keep 'procurement' throughout the directive, but alter its definition in Article 3e, using the three concepts above.

7.1.2. — In the French version, '*stockage*'..., should be replaced by '*conservation*' (in English 'storage') which defines the whole process of preservation (active, technical stage in preparation) and storage (static stage, maintaining tissues or cells in a given state).

7.1.3. — Of human origin, should be added at the end of the title, to cover the subject more completely.

7.1.4. The title would then be:

'Directive of the European Parliament and of the Council setting standards of quality and safety for the donation, retrieval, collection, procurement, testing, processing, storage and distribution of tissues and cells of human origin.'

7.2. The directive's seven chapters describe more or less comprehensively the authorisation system to which specialised establishments, i.e. tissue banks, will be subject. Consent will therefore be given to authorised teams.

It would however be wise to include an appendix containing an approved list of authorised products per speciality, with simple formalities and reviewed frequently to take account of the rapid progress of knowledge in the sector.

7.3. Incorporation within the directive of compulsory 'procedural authorisation for the preparation of a given type of product (tissue/cell)', describing procedures and practices, by product type, for all stages, from retrieval to distribution.

7.3.1. This could be included under Article 20 which deals with 'standard operating procedures'.

7.3.2. This authorisation, which could be granted by the supervisory authorities responsible (designated under Article 4.1), would guarantee the safety and quality of transplants.

7.4. The EESC takes the view that a specific directive should be drafted to cover cases of tissues and cells that fall outside the scope of the present directive, where more in-depth research and high-tech development is required, for instance for use in treatments the aim of which is not to re-establish a function — as is the case with the grafting of tissues and cells — but which require growth and 'exceptional' differentiations.

7.5. *Agreements between tissue banks and healthcare establishments that supply and/or use tissues (the same for cell therapy units and healthcare establishments)*

7.5.1. This type of document does not appear under Article 24 (Relationship of tissue banks with third parties) or Article 25 (Access to human tissues and cells).

7.5.2. These agreements, common practice in most of the countries, govern relations between the supplier of transplants (tissue banks) and the user surgeon/care establishment, on the one hand, and the retrieving surgeon/retrieving healthcare establishment and tissue bank, on the other, in the form of a contract listing commitments relating to quality, quantity, responsibility, contact and transport techniques, invoicing and disputes.

7.5.3. This practice should probably be introduced under Article 25 (Access to human tissues and cells), at European level.

7.6. *Clinical trials*

While retaining clinical trials involving the use of tissues or cells for therapeutic use within the scope of the directive, special provisions must be made to take account of their specific characteristics (authorisation for retrieval and processing, and applications in the context of the clinical trial) and existing regulations on biomedical research. By definition, a clinical trial will not necessarily use procedures that have prior product authorisation.

7.7. *European health certificate*

7.7.1. There should be a 'European health certificate' for all tissue and cell products covered by the directive, prepared by the Member State banks.

7.7.2. This certificate would set out the results of and techniques used in the compulsory tests for the biological evaluation of these products, thus facilitating trade between countries.

7.7.3. The EESC thinks it would be useful to form a central data bank containing all the available information on authorised centres, on the products present and/or made in the tissue banks or in the other authorised centres, on health certificates and on biomonitoring.

7.8. *Confusion between tissue banks and units dealing with cells*

Clarification is needed throughout the directive for the following terms, to differentiate them from the definition of tissue banks:

- Tissue and cell bank,
- Cell bank,
- Cell therapy unit,
- Tissue centre,
- Third party units — provision of technically advanced services.

7.9. The EESC thinks that the impact assessment carried out is inadequate and hopes not only for more thoroughness in this area, but also for the inclusion of a regular report on such matters, which could also be useful in view of the areas of application that are currently excluded and on which the Commission will issue further proposals for directives in the future.

8. Conclusion

8.1. This specific directive is urgent, and the measures chosen are necessary and coherent, as reflected by the regulatory approach taken. Moreover, this trade in tissues and cells is based on fundamental principles: the anonymity of the donor, the voluntary nature of the donation, the solidarity implied, the fact that no price tag can be attached to these human body parts.

8.2. The EESC would make the same comment as the Commission: in view of extremely rapid scientific developments in these areas, provision must be made for the text to be updated regularly, to take account of proven scientific progress, while upholding the principle of coherence.

8.3. It would make sense to incorporate within the Directive a compulsory 'procedural authorisation' for the preparation of a given type of product (tissue/cell), describing procedures and/or practices, by product type, for all stages, from retrieval to distribution. This authorisation would provide a guarantee of the safety and quality of transplants.

8.4. *Give a clear definition of the responsibility of each of the players*

Responsibility for the transfer of a product (tissue/cells) usually lies with the tissue bank. Responsibility for the health and safety of a product can, however, fall into three areas:

- health establishment, site of retrieval or collection: selection of potential donor, technical and health conditions, traceability and biomonitoring;

- tissue bank or cell therapy unit: preparation process, microbiological tests (transmissible diseases, bacteria, etc.), biological and functional validation, traceability and biomonitoring;
- transplant surgeon: risk/benefit analysis in the light of the health profile of the product and the vital urgency for the patient, traceability.

8.5. Provision should be made for a Europe-wide agreement between healthcare establishments that supply and/or use

tissues (likewise for cell therapy units and healthcare establishments).

8.6. The appendices are an integral part of the Directive, but there is a risk that their regular updating could be hindered for administrative reasons. For this reason, the EESC believes that Article 29 should mention the regular modification of these appendices to take account of scientific progress, and make it obligatory to update.

Brussels, 11 December 2002.

The President

of the European Economic and Social Committee

Roger BRIESCH

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the Council and the European Parliament on a Community return policy on illegal residents’

(COM(2002) 564 final)

(2003/C 85/15)

On 14 October 2002 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 25 November 2002. The rapporteur, working without study group, was Mr Pariza Castaños.

At its 395th plenary session (meeting of 11 December 2002) the European Economic and Social Committee adopted the following opinion by 103 votes to one with ten abstentions.

1. Summary of the Commission proposal

1.1. Return policy is presented by the Commission as an integral part of immigration and asylum policy. The Commission notes that, on the one hand, legal immigration channels must be consolidated and protection given to those needing it and, on the other, illegal residents must be returned (preferably voluntarily, but by force if necessary), since ‘A credible threat of forced return and its subsequent enforcement send a clear message to illegal residents in the Member States and to potential illegal migrants outside the EU that illegal

entry and residence do not lead to the stable form of residence they hope to achieve’⁽¹⁾ Hence a return policy is a necessary adjunct to a comprehensive immigration and asylum policy.

1.2. The Commission’s communication also responds to the call of the Seville European Council of 21 and 22 June 2002 for the approval by the end of the year of the basic components of an expulsion and repatriation policy.

1.3. Before establishing the bases of a return policy, the Commission had already opened a broad debate on the issue.

⁽¹⁾ Point 1.22 (2nd para.) of the communication.