III

(Preparatory Acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

440th PLENARY SESSION HELD ON 12 AND 13 DECEMBER 2007

Opinion of the European Economic and Social Committee on the

— **'Proposal for a Regulation of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products'**

— **and the 'Proposal for a Decision of the European Parliament and of the Council on a common framework for the marketing of products'**

— **and the 'Proposal for a Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC'**

COM(2007) 37 final — 2007/0029 (COD)

COM(2007) 53 final — 2007/0030 (COD)

COM(2007) 36 final — 2007/0028 (COD)

(2008/C 120/01)

On 14 March 2007, the Council decided to consult the European Economic and Social Committee, under Articles 95 and 133(3) of the Treaty establishing the European Community, on the

Proposal for a Regulation of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products

and the *Proposal for a Decision of the European Parliament and of the Council on a common framework for the marketing of products.*

On 2 April 2007, the Council decided to consult the European Economic and Social Committee, under Articles 37 and 95 of the Treaty establishing the European Community, on the

Proposal for a Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC.

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 21 November 2007. The rapporteur was Mr Pezzini.

At its 440th plenary session, held on 12 and 13 December 2007 (meeting of 13 December), the European Economic and Social Committee adopted the following opinion by 68 votes to two with three abstentions.

1. **Conclusions and recommendations**

1.1 The EESC is firmly convinced of the importance of ensuring full application of the principle of the free movement of goods, which is enshrined in the Treaty and confirmed by numerous Court of Justice judgments, so that products lawfully marketed in a Member State can also be marketed without hindrance throughout the EU.

1.2 The EESC believes it is a priority to guarantee certainty, transparency and efficiency in trade, eliminating duplication of checks and tests and ensuring high levels of protection for

consumers, citizens and businesses, and to coordinate and step up market surveillance activities to ensure active, uniform application of Community product safety requirements.

1.3 The EESC stresses that the free movement of goods is an essential driver for competitiveness and the economic and social development of the European single market and that reinforcement and updating of the requirements for the marketing of safe, high-quality products are key factors for consumers, businesses and European citizens.

1.4 The EESC believes that the updating and streamlining of EU legislation on goods cannot be put off, given:

— the problems encountered in implementing and enforcing the provisions of the Treaty;

— the lack of a consistent approach to market surveillance in the Member States;

— shortcomings in conformity assessment bodies and in the legal protection of the CE marking;

— gaps in businesses', administrations' and citizens' awareness of their rights and obligations.

1.5 The EESC supports the Commission's initiative of putting together a **legislative package** on the subject insofar as it fully achieves:

— effective, uniform implementation of the mutual recognition principle;

— more robust market surveillance;

— a European common accreditation system, providing a public service of general interest;

— common levels of competence for accredited certification bodies;

— more stringent selection criteria and harmonised selection procedures for conformity assessment;

— greater systematic, ongoing cooperation between national authorities;

— greater legal protection for the CE marking, avoiding confusion caused by the existence of too many marks;

— full identification and definition of responsibilities for all those placing products on the market;

— a more uniform legal framework with greater consistency between existing texts, high levels of conformity and minimal red tape;

— a traceability guarantee for any product placed on the market;

— full application of the principle of proportionality of certification responsibilities and procedures, particularly as regards smaller businesses and non-mass produced or products produced in small quantities;

— full involvement of all market players and, in particular, consumers;

— explicit provision for out-of-court redress mechanisms, with time frames and costs reduced to the absolute minimum.

1.6 The EESC feels that high levels of transparency, legal certainty and simplification must be ensured in the application of common mutual recognition procedures, by means of:

— reversal of the burden of proof, and the possibility of recourse to national courts;

— the possibility of out-of-court settlement of disputes at Product Contact Points, including on line;

— reduced time frames for both judicial and out-of-court proceedings;

— provision of capable, competent national technical facilities which can produce any proof needed quickly — using emergency procedures where applicable;

— an active role for regulatory bodies in producing a telematic guide making it possible to trace all existing legislation throughout the EU.

1.7 The EESC endorses the basic principles of the proposals, which are derived from combining the successful elements of the 'new approach' with the 'global approach' in the area of conformity assessment. They should be applied across the board in present and future Community legislation, covering all aspects of products sold, particularly as regards safety, health and environmental protection.

1.8 It is vital that all economic operators in the supply and distribution chain — be they manufacturers, authorised representatives or importers — take the necessary measures and equal responsibility to ensure that only products which comply with the regulations are marketed.

1.9 Product traceability, ensuring accountability of economic operators who place goods on the market, must allow these operators to be identified clearly so that Community rules can be properly applied.

1.10 In the EESC's view, the problems of placing goods on the market online need to be addressed, given that online selling is not yet fully regulated.

1.11 The EESC feels that clearer provisions are essential to improve the current 'new approach' framework, as regards:

— obligations for economic operators which are necessary and proportionate and do not entail heavy bureaucratic and administrative costs;

— more efficient market surveillance and more uniform levels of competence among notified conformity assessment bodies, to ensure competence, impartiality and effectiveness throughout the European Economic Area and a level playing field for all producers.

1.12 The EESC agrees that there is a need to enhance the status and significance of the CE marking, affording it greater legal protection by registering it as a collective mark, which will enable public authorities to take swift action and curb misuse.

1.13 The EESC stresses that technical standardisation plays a key role throughout this area, as the new approach is based precisely on essential legal requirements and European technical standards — which must be supported and harnessed — being closely linked.

1.14 The European Accreditation System (EAS) — providing a public service of general interest — must be based on internationally recognised standards and clear definitions, ensure acceptance across the board of conformity assessment results and prevent unnecessary duplication of assessment.

1.15 The provisions of the Regulation which relate to the EAS must apply to all accreditation bodies and the services they provide, within the European Economic Area, irrespective of the kind of conformity assessment services supplied to clients.

1.16 These provisions must ensure:

— a coherent set of clear, transparent common definitions which are in line with international standards, to be used in all 'new approach' directives and product-specific directives ([1]), including those on conformity assessment and conformity assessment bodies;

— a public accreditation system which is not subject to commercial competition;

— general coverage of all relevant Community legislation, without exceptions in the area of either safety and health or environmental protection;

— application to all activities subject to accreditation across the board, including calibration, irrespective of whether the purpose of the accreditation is to meet legal conformity assessment requirements or to comply with private contracts;

— that national accreditation bodies comply with competence and impartiality standards by requiring them to take in part in peer evaluations carried out under the supervision of all the parties involved in the accreditation process.

1.17 The EESC believes that it is necessary to establish a clear legal basis for European cooperation for Accreditation (EA), whose role must be enhanced and better defined: all national accreditation bodies must be members of the EA, to ensure equivalence, transparency, reliability and effectiveness; moreover, the EA network must be supported by the Member States.

1.18 The EESC believes that, since accreditation bodies have to show that the confidence placed in them is well-founded, they should have to prove that they participate successfully in peer reviews.

1.19 In addition, the EESC believes that it is important for stakeholders to be involved: they should be represented on accreditation bodies and this provision should be an integral part of the new Regulation.

1.20 The EESC believes in this connection that there should be greater awareness and acknowledgement of consumers' rights in the internal market and that an appropriate initiative needs to be planned to this end.

1.21 Market surveillance activities should also apply to products covered by the General Product Safety Directive (GPSD) as numerous products are sold both for professional use and for use by an end consumer. The EESC feels that the existence of the current rapid information-exchange system, RAPEX, which can assist market surveillance effectively, is fully justified.

1.22 It is necessary for customs authorities to cooperate in a European network with market surveillance authorities, to ensure effective checks on products before they are placed on the European internal market, where they can circulate freely.

1.23 For this and other reasons, customs authorities must be equipped with trained staff, sufficient funds and powers to be able to cope effectively with the tasks assigned to them, and instruments to deal rapidly with seasonal products or products sold over limited periods.

1.24 Lastly, the EESC believes that the Regulation should specify that measures taken in response to a proven lack of conformity must comply with the proportionality principle as well.

2. **Introduction**

2.1 The internal market for goods is not only the driving force for growth within the Community: it also has a considerable impact on the European Union's ability to compete on the international market. As the EESC has pointed out a number of times, 'a factor which has increased its importance is "Globalisation" which is both a challenge and an opportunity. The challenge can only be met if the full potential of the single market is realised' ([2]).

([1]) In EU legislation, different definitions have been used to address the same concepts in different product legislation covering aspects such as environmental-conscious design, product safety, product liability, waste disposal, energy efficiency etc. This has caused confusion for stakeholders, especially when different directives apply to the same product.

([2]) OJ C 93 of 27.4.2007, *Review of the Single Market*. Rapporteur: Mr Cassidy.

2.2 The central pillar of the single market is the free movement of goods: under Articles 28-30 ([3]) of the Treaty essential progress has been made in harmonising technical regulations at EU level to remove technical barriers to trade, often by means of 'new approach' directives (also known as 'CE marking' directives).

2.3 However, gaps have emerged in the application and enforcement of the Treaty's provisions, particularly in the area of non-harmonised products. The introduction of national technical rules has created major barriers to free trade, especially for SMEs, because of a legislative framework which is still too fragmented and the lack of a consistent approach to market surveillance among Member States.

2.4 The EESC has stressed that 'Member States have a heavy responsibility to ensure that EU measures are properly transposed into their national law and enforced' and that it is important that 'the resulting regulatory framework at national level is both as balanced in terms of content and as simple as possible for business, employees, consumers and all civil society players' ([4]).

2.5 The EESC firmly supports the goals of more transparent, effective rules and stronger, updated requirements for marketing of safe, high-quality products, in order to provide:

— consumers with higher levels of safety and quality and greater freedom of choice on the basis of reliable conformity assessments of both domestic and imported products;

— producers with legal certainty and clear, consistent legislation, with a common framework for industrial products; the agility necessary to adapt to technological developments; genuine free trade without unnecessary technical barriers, administrative controls or additional, burdensome tests for access to the individual domestic markets;

— citizens with protection of health and the environment, removing burdensome, unnecessary red tape and giving them a practical experience of a tangible, close-at-hand, quality-based 'Europe that delivers' as a key part of European citizenship.

2.6 In its opinion on the Internal Market Strategy — Priorities 2003-2006 ([5]), the EESC pointed out that 'trade with third countries has been growing faster than trade between Member States.' and that 'one reason is the failure of mutual recognition designed to give consumers confidence in products manufactured in another country. Member States should trust each other's systems. A sound legal system, high and transparent quality standards and consumer education initiatives provide the best conditions for increasing trade in goods between Member States.'

2.7 The EESC also stressed that knowledge of consumer rights in the internal market is extremely limited and that it had on several occasions drawn attention ([6]) — particularly as regards peripheral and recent accession countries — to these failings and the way in which national and local officials often exploit this ignorance.

2.8 In addition, the EESC points out that the four main barriers to the proper operation of the internal market identified by the SMO in 2007 are:

— uncertainty among economic operators and national administrations regarding rights and obligations relating to the implementation of the mutual recognition principle;

— insufficient trust, transparency and cooperation between Member States to facilitate mutual recognition and acceptance of certification and free movement of goods, providing a clearer framework, in terms of conformity assessments, accreditation and market surveillance systems, transparency and protection of the 'CE marking';

— lack of coherent measures to ensure high levels of safety and health in the products to be placed on the market and optimum general requirements relating thereto.

2.9 The EESC has stated: 'It is noticeable and regrettable that after many years of European integration EU law and policy are not yet sufficiently integrated in a number of Member States as a political and administrative layer in domestic policy-making in those areas in which they have committed themselves to common policies and to carry out the results of common decision-making' ([7]).

2.10 It went on to point out: 'An effective and transparent approach of EU matters at national level is indispensable as 25 Member States, each with their own administrative culture and traditions as well as process management, have to respect the same *acquis*, which includes similar requirements regarding lawmaking, transposition, implementation and enforcement of EU law' ([8]).

([3]) See also Articles 94-95 of the EU Treaty.
([4]) OJ C 309 of 16.12.2006, *Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment*. Rapporteur: Mr Cassidy.
([5]) OJ C 234 of 30.9.2003. Rapporteur: Mr Cassidy.
([6]) OJ C 208 of 3.9.2003. Rapporteur: Mr Pezzini.
([7]) OJ C 325 of 30.12.2006. Rapporteur: Mr van Iersel.
([8]) Ibid.

2.11 According to the 'Kok Report' ([9]), 'the free movement of goods within the EU continues to be hindered by a range of local rules, often applied arbitrarily and in clear contradiction to the mutual recognition principle' ([10]).

2.12 In the light of the above, the EESC feels that it is an urgent priority, with a view to securing the future of European integration, the protection of consumers and citizens and the development of European businesses, to:

— ensure full application of the principle of the free movement of goods, which is enshrined in the Treaty and confirmed by numerous Court of Justice judgments, so that products lawfully marketed in a Member State can also be marketed without hindrance throughout the EU;

— guarantee certainty, transparency and efficiency in trade, eliminating duplication of checks and tests and ensuring high levels of protection of consumers, citizens and businesses;

— eliminate uncertainties, layers of legislation, inconsistencies in the law and unnecessary complexity in product conformity assessments: these should be appropriate, authoritative, independent and impartial and comply with a common legal framework for industrial products;

— coordinate and step up market surveillance activities to ensure active, uniform application of Community product safety requirements;

— promote, strengthen and protect more effectively the CE marking; this must be a genuine 'conformity passport' allowing free movement throughout the EU, with due regard for the safety and quality levels laid down by Community legislation.

3. **The Commission proposals**

3.1 The Commission takes as a starting point the observation that the internal market is not yet complete:

— national technical rules still constitute important barriers to free trade within the EU. As has been noted ([11]), in one survey, over a third of enterprises reported problems caused by technical rules in another Member State and about half of enterprises decided to adapt their products to these rules;

— too many EU rules have proven to be inconsistent or too complex: different definitions applying to the same product, overlapping conformity assessment procedures, differing conformity assessment bodies, a fragmented regulatory framework, with a patchwork of different rules and procedures;

— consumers, citizens, and SMEs, are still to a large extent uninformed or unaware of their rights, while new barriers and new red tape hampering the exercise of these rights are gradually emerging.

3.2 To address these issues, the Commission proposes:

— a Regulation (COM(2007) 36 final) laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC;

— a Decision (COM(2007) 53 final) on a common framework for the marketing of products, while in parallel with the proposal, the Commission will register the CE marking as a collective mark to ensure its legal protection;

— a Regulation (COM(2007) 37 final) setting out the requirements for accreditation and market surveillance relating to the marketing of products.

3.3 The first regulation (COM(2007) 36 final) proposes the repeal of the current procedure for mutual exchange of information and addresses some aspects of the non-harmonised area:

— a new procedure for national authorities to follow when they intend to impose a national technical rule and do not believe they can apply mutual recognition;

— definition at EU level of the rights and obligations of national authorities and of enterprises wishing to sell in a Member State one of their products which is already lawfully marketed in another Member State;

— establishment in each Member State of one or several 'Product Contact Points', with the task of providing information on the technical rules on a product or specifying the competent authorities/bodies to be contacted; it will also be possible to set up a telematic network linking these Product Contact Points, for the exchange of information, in accordance with the IDABC interoperability scheme.

3.4 The decision (COM(2007) 53 final) sets out the general framework for future sectoral legislation with:

— harmonised definitions, common obligations for economic operators, criteria for the selection of the conformity assessment bodies, criteria for the national notifying authorities and rules for the notification process;

— rules for the selection of conformity assessment procedures as well as the harmonised range of procedures, to avoid burdensome overlaps;

— a single definition for the CE marking (with corresponding responsibilities and safeguards) as a Community collective mark, for those directives which already provide for it;

— an information and market surveillance procedure as an extension of the GPSD system;

([9]) Report from the High Level Group chaired by Wim Kok: 'Facing the Challenge', November 2004 — European Commission.
([10]) SEC(2007) 113 of 14.2.2007.
([11]) *Second Biennial Report on the Application of the Principle of Mutual Recognition in the Single Market* — COM(2002) 419 final.

— harmonised provisions for the future safeguard mechanisms as a complement to those for market surveillance.

3.5 The second regulation (COM(2007) 37 final) provides for reinforcement of the requirements for accreditation and for market surveillance, so that non-compliant products can be easily identified and taken off the market. The main objective of the proposal is to ensure the free movement of goods in the harmonised area by:

— stepping up European cooperation, so that accreditation can genuinely provide the final level of control in the proper functioning of EU legislation;

— establishing a framework for recognition of the existing organisation 'European cooperation for Accreditation' (EA), so as to ensure the proper functioning of a rigorous peer evaluation ([12]);

— putting in place a Community framework for market surveillance and checks on products entering the EU market, with closer cooperation between internal authorities and customs authorities, exchange of information between national authorities and cooperation between them in the case of products on the markets of more than one Member State;

— applying clear, standardised rules across all sectors, ensuring legal stability and consistency in measures, and reducing some of the burdens in pre-marketing requirements and in conformity assessment;

— providing Community funding for sectoral accreditation schemes, the activities of the EA central secretariat, setting-up and coordination of market surveillance projects, training programmes and exchange of national officials, including customs authorities.

4. **General comments**

4.1 The EESC firmly believes that the free movement of goods is an essential driver for competitiveness and the economic and social development of the European single market and that reinforcement and updating of the requirements for the marketing of safe, high-quality products are key factors for consumers, businesses and European citizens.

4.2 Over the past 50 years, the single market for goods has helped to bring Europe's economies increasingly close: trade between the EU-27 Member States now accounts for two-thirds of all EU trade.

4.3 Implementing the provisions of Articles 28 and 30 ([13]) of the EC Treaty, harmonising the old and new approach technical rules and applying the mutual recognition principle properly are key pillars for the development of intraCommunity trade.

4.4 There are many reasons why the updating and adjustment of EU legislation on goods cannot be put off: the problems encountered in implementing and enforcing the provisions of the Treaty; the lack of a consistent approach to market surveillance in the Member States; shortcomings in conformity assessment bodies and in the legal protection of the CE marking; the inconsistencies and complexity of European legislation, which is often multi-layered and overlapping, with a patchwork of different procedures; and gaps in businesses', administrations' and citizens' awareness of their rights and obligations.

4.5 The EESC supports the Commission's initiative, as, moreover, it has already stressed, and it repeatedly called for such an initiative in its opinions on the single market ([14]); it supports the proposals issued insofar as they reflect the comments made in this opinion.

([12]) At present there are about 1700 notified bodies in the EU.

([13]) See also Articles 94-95 of the EU Treaty.

([14]) List of recent EESC opinions on Simplification, Better Lawmaking and Priorities of the Single Market:

1) OJ C 93 of 27.4.2007, *Review of the Single Market*, rapporteur: Mr Cassidy.
2) Opinion on the *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment*, COM(2005) 535 final, rapporteur: Mr Cassidy, OJ C 309 of 16.12.2006.
3) Exploratory opinion at the request of the UK Presidency on *Better lawmaking*, rapporteur: Mr Retureau, adopted on 28.9.2005, OJ C 24, 31.1.2006.
4) Own-initiative opinion on *How to improve the implementation and enforcement of EU legislation*, rapporteur: Mr van Iersel, adopted on 28.9.2005, OJ C 24, 31.1.2006.
5) Opinion on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Updating and simplifying the acquis communautaire*, COM(2003) 71 final, rapporteur: Mr Retureau, adopted on 31.3.2004, OJ C 112, 30.4.2004.
6) Own-initiative opinion on *Simplification with particular reference to European Governance: Better lawmaking*, rapporteur: Mr Simpson, adopted on 26.3.2003, OJ C 133, 6.6.2003.
7) Exploratory opinion on the *Communication from the Commission — simplifying and improving the regulatory environment*, COM(2001) 726 final, rapporteur: Mr Walker, adopted on 21.3.2002, OJ C 125, 27.5.2002.
8) Own-initiative opinion on *Simplification*, rapporteur: Mr Walker, adopted on 29.11.2001, OJ C 48, 21.2.2002.
9) Own-initiative opinion on *Simplifying rules in the single market*, rapporteur: Mr Vever, adopted on 19.10.2000, OJ C 14, 16.1.2001.
10) Own-initiative opinion on the *Priorities of the Single Market 2005-2010*, rapporteur: Mr Cassidy, adopted on 7.4.2005, OJ C 255, 14.10.2005.
11) Opinion on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions Internal Market Strategy — Priorities 2003-2006*, rapporteur: Mr Cassidy, adopted on 16.7.2003, OJ C 234, 30.9.2003.
12) Information report on simplification.
13) Information report on the *State of co-regulation and self-regulation in the Single Market*, rapporteur: Mr Vever, adopted on 11.1.2005, CESE 1182/2004 fin.

4.6 The EESC believes that four key criteria should be used to assess the proposed measures, to ensure that they are incorporated into the existing Community framework:

— the level of transparency, simplification, reliability, legal certainty and accessibility for the Community user, whether consumers, businesses, public administrations or individuals;

— the level of consistency with EU policy and other goals;

— the level of communication and information exchange on rights and obligations between Community stakeholders;

— the amount of unnecessary red tape and related burdens, particularly for minor stakeholders such as consumers, small and medium-sized enterprises and individuals.

4.7 The EESC feels that the Commission's proposals allow major steps forward as they lay down:

— provisions for increasing market surveillance;

— a common accreditation system;

— common levels of competence for accredited certification bodies;

— more stringent selection criteria and harmonised selection procedures for conformity assessment;

— more cooperation and information exchange between national authorities;

— greater legal protection for the CE marking as a Community collective mark.

4.8 The EESC fully agrees that there is a need to improve the quality of the system for accrediting notified bodies and to establish more stringent criteria for selecting, managing and supervising these bodies, with a legal framework providing consistency, comparison and coordination in the decentralised system to ensure reliability and increase mutual trust.

4.9 Particularly in view of increasing globalisation, the market surveillance system must provide a common legislative framework ensuring efficient, consistent application of legislation throughout the EU.

4.10 Non-compliant, potentially dangerous products must not be allowed to reach the market, as stressed in the RAPEX (Rapid Alert System for non-food consumer products) 2006 annual report on dangerous consumer products ([15]).

([15]) European Commission RAPEX 2006 report, http://ec.europa.eu/rapex. The report issued on 19 April 2007 notes a steadily increasing number of notifications in recent years. The number of notifications of non-food consumer products presenting a serious safety risk in Europe more than doubled between 2004 and 2006, rising from 388 to 924, while in 2006 the annual increase over 2005 was 32 %, relating mainly to the toy, electrical-appliance, motor-vehicle, lighting-equipment and cosmetics sectors, entailing risk of injury, electric shock, fire and burns, choking and suffocation and chemical risk.

4.11 As regards the CE marking — conceived as a conformity mark rather than a quality mark — the EESC feels that it is essential to restore faith in conformity marks. The value of the CE marking must be restored, with greater possibilities of prosecution for breach thereof and legal protection ensured for something which represents the legislative linchpin for all the 'new approach' directives, now covering 20 production sectors.

4.12 Regarding the current legislative framework, the EESC believes that the inconsistencies, duplicated rules and legal uncertainties may well be the Achilles Heel of the entire system, severely harming consumers, businesses, citizens and civil society as a whole.

4.13 The existence of several layers of legislation and failure to respect the need for consistency among initiatives linked to EU policy and other goals have led to excessive red tape and considerable burdens in terms of time relating to the actual launch of differing procedures. This has had a very harmful impact, especially on consumers, small and medium-sized enterprises and individuals.

4.14 The EESC therefore fully supports the proposal for a common reference framework for the marketing of products ([16]). This framework should include common elements, procedures and definitions for the future reorganisation and adjustment of individual directives so as to remove unnecessary red tape and shortcomings from the current legislative framework.

4.15 The EESC feels that it is important, as a key element in the single market, to draw up a practical telematic guide for the marketing of products in the European single market ([17]), giving a user-friendly overview of all legislation and procedures broken down by major sectors, including rights and obligations, access procedures, time frames and launch costs.

5. **Specific comments**

5.1 *Proposal for a Regulation on Mutual Recognition and 'Product Contact Points' (COM(2007) 36 final)*

5.1.1 The principle of mutual recognition, provided for under Articles 28 and 30 of the Treaty, is a cornerstone of the free movement of goods and services in the internal market. Fifty years on, as the EU has progressively enlarged and markets have become increasingly globalised, the EESC believes there is a need to strengthen and safeguard its role, providing greater legal certainty and uniform implementation, and harness its full potential for economic operators, European businesses and national authorities alike.

5.1.2 The Commission proposal represents a positive step in this direction since it:

— sets up a procedure to contest exceptions to the general principle;

([16]) The common framework should also take account of services, which are increasingly linked to the marketing of products per se.

([17]) Cf. point 5.1.11.

— establishes a common framework of rights and obligations for national authorities and businesses;

— proposes a system for information and administrative cooperation with regard to national regulation.

5.1.3 The EESC believes, however, that there remain several problem issues which the proposal needs to address more specifically:

— implementation of the principle of mutual recognition cannot be decoupled from mutual trust between Member States with regard to the reliability of market surveillance mechanisms, which play a vital role in granting a product access to the European internal market; the effectiveness of conformity assessment procedures; the role played by test laboratories; and the competence of certifiers and standardisation bodies;

— in the draft regulation the role of the Commission is more circumscribed compared to that provided for under Decision 3052/95/EC;

— administrative cooperation mechanisms would be limited to vertical cooperation between national businesses and authorities, whereas it would seem important to develop horizontal cooperation between administrative authorities and likewise between the different Product Contact Points;

— the lack of reference to dispute settlement mechanisms such as SOLVIT ([18]), which would allow businesses to directly request a rapid, tried and tested procedure;

— the reversal of the burden of proof, including for third country products brought to the Community market by European importers;

— the inclusion of a positive product list, which could be particularly tricky given that the principle of mutual recognition applies to all products that are not covered by harmonised legislation.

5.1.4 The EESC feels that it would be appropriate for the text to refer explicitly to the Treaty legal bases establishing the principle of mutual recognition, thus highlighting that safeguarding supposed national requirements can only be the exception.

5.1.5 The EESC feels that high levels of transparency, legal certainty and simplification must be ensured in the application and enforcement of the mutual recognition principle:

— reversing the burden of proof on national authorities wishing to derogate from this principle, using simple procedures and definite time frames in order to make resolution of disputed cases faster and more transparent;

— the possibility of recourse to national courts, without involving any further, excessive demands in terms of costs, time and energy;

— access to out-of-court complaint procedures, using tried and tested EU procedures;

— freer, more efficient movement of goods and services, using combined information and training campaigns targeting businesses, consumers and administrations;

— shorter procedural time frames; after receiving a written reasoned notification from the national authority, a business has 20 days to submit its counter arguments and, if the issue is not resolved within a specific timeframe, it can take it to the national courts of the country of the potential market;

— European networking and inclusion on the EU website for the 'Product Contact Points' (PCP) provided for in each Member State, to ensure sufficient communication and provision of information on rights and obligations.

5.1.6 In the EESC's view, the maximum time limits for discussing appeals should be defined so that an issue can be settled before the court of first instance.

5.1.7 The Member States must equip themselves with efficient technical structures (including provision for an urgency procedure) in order to rapidly produce any evidence for a derogation from the principle of mutual recognition in accordance with Article 30 of the Treaty, which 'allows Member States to take measures having an effect equivalent to quantitative restrictions when these are justified by general, non-economic considerations (public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures and the protection of industrial and commercial property)' ([19]).

5.1.8 The Product Contact Points (PCP) should employ SOLVIT methods in an initial attempt to settle disputes and to allow businesses whose products have been blocked at borders to access this out-of-court procedure for administrative cooperation between Member States, with answers due within 10 weeks ([20]).

([18]) http://ec.europa.eu/solvit/

([19]) European Parliament Fact Sheets: 3.2.1 Free movement of goods. Last updated on 22 October 2001. http://www.europe-infor.de/facts/en/3_2_1.htm

([20]) SEC(2007) 585. Commission staff working document SOLVIT 2006 Report 'Development and Performance of the Solvit network in 2006', 30.4.2007.
All EU Member States as well as Norway, Iceland and Liechtenstein, have created a SOLVIT centre, in most cases within their ministry of foreign or economic affairs.
These centres cooperate directly via an on-line database to solve problems submitted by citizens and businesses rapidly and pragmatically. The rules for cooperation within Solvit are included in a 2001 Commission recommendation that was endorsed by Council conclusions. Solvit has been operational since July 2002. In addition to the recommendation, the Solvit centres adopted a set of common quality and performance standards in December 2004 to ensure a high quality of service throughout the network.

5.1.9 The EESC believes it is important for the PCPs to take a proactive approach by making practical procedural guides available. They could also set up national websites, linked in a European network and to an EU website, featuring decisions on previous resolved cases, the list of products covered by the mutual recognition principle and a database open to potential users linked to the telematic network for the exchange of information between PCPs in accordance with IDABC interoperability ([21]).

5.1.10 Preparing and operating these instruments cannot be optional; it should be an obligation, stipulated in the proposal. The PCPs should, together with the Commission, hold regular joint information and training seminars for economic operators, administrative and customs officials and for consumers, to ensure proper understanding and dissemination of the rights and obligations laid down in the Treaty.

5.1.11 There is also a need to prepare a Telematic Guide, giving a user-friendly EU overview of all the current legislation in force, broken down horizontally and by major sector.

5.1.12 It does not seem worth drawing up a list of positive products covered by the Regulation, just as it would be inappropriate to exclude the urgency procedure provided for in the General Product Safety Directive.

5.1.13 The Commission must monitor closely the way the notification mechanisms are operated: Member States must thus be required to submit a copy of every notification and to draw up an annual report on the measures adopted, under the terms of the Regulation, to enable the Commission to submit a report to the European Parliament, the Council and the EESC — SMO.

5.2 *Proposal for a Decision on a Common Framework for the Marketing of Products and CE Marking (COM(2007) 53 final)*

5.2.1 The EESC endorses the principles of the proposal, which is underpinned by the positive experience of the New Approach, combined with the Global Approach ([22]) on conformity assessment. These principles should be applied across the board to current and future Community legislation, covering all aspects of marketed products, especially as regards safety, health and environmental protection. The key principle of the internal market, i.e. non-discrimination between economic operators, must be fully respected in law and implemented by the Member States.

5.2.2 The EESC would stress that 'all economic operators intervening in the supply and distribution chain should take the appropriate measures to ensure that they make available on the market only products which are in conformity with the applicable legislation' ([23]), whether they be manufacturers, authorised representatives or importers ([24]).

5.2.3 Product traceability is essential in order to identify the liability of economic operators who place goods on the European market, and to ensure that all the relevant Community requirements are enforced, rather than just the conformity requirement 'limited to certain control measures', as proposed by the Commission ([25]).

5.2.4 Turning to the subject matter and scope of the Decision, the EESC feels that the exceptions contained therein must be avoided and that the Common Framework for the Marketing of Products must apply — in line with the proposals advanced in point 5.3.3 relating to the Regulation on the European Accreditation System and Market Surveillance mechanisms — to all relevant Community legislation without exception, either for health and safety or environmental protection. The new framework must apply to the whole body of legislation in this field, without waiting to see whether each individual directive or regulation might be subject to a general review.

5.2.5 The common definitions contained in Chapter 1 of the proposal are of vital importance to market operators, given that too many directives use different definitions to cover the same products.

5.2.6 The EESC believes the following are essential:

— clearer description of economic operators' obligations, in order to improve the existing New Approach framework;

— more efficient market surveillance;

— more uniform levels of competence for the notified conformity assessment bodies.

5.2.7 The obligations for economic operators must be justified, proportionate and free from costly bureaucratic and administrative red tape, both with regard to sample testing of marketed products and the register of complaints (second paragraph of Article 7(4)), and as regards the reporting requirement, which should be restricted to the dangerous products as defined in the General Product Safety Directive.

5.2.7.1 In the European Accreditation System, the action taken by conformity assessment bodies must be proportionate; these bodies must use suitable methods when dealing with small and medium-sized businesses and non-mass produced products or products produced in small quantities.

([21]) OJ C 80 of 30.3.2004, rapporteur: Mr Pezzini.

([22]) The global approach brought in a modular approach. This divides conformity assessment into a number of steps or 'modules' which differ according to the development phase of the product (e.g. planning, prototype, full production), the type of assessment carried out (checking paperwork, type approval, quality guarantee), and responsibility for the assessment (manufacturer or third party).
The global approach was formalised by Council Decision 90/683/EEC, repealed and updated by Decision 93/465/EEC: both decisions set general guidelines and detailed procedures for conformity assessment, for use in the new approach directives.

([23]) Recital 14, COM(2007) 53 final.

([24]) Including importers of 'no-name products' from third countries, which are marketed for short periods and often under fantasy names, according to the 'sell and run' principle.

([25]) Recital 17, COM(2007) 53 final.

5.2.8 With regard to the Notified Bodies, the EESC would reiterate that they must provide a guarantee of competence, impartiality and effectiveness throughout the European Economic Area. In order to enable all manufacturers to compete on even terms, and in compliance with the accreditation obligation laid down in Article 3 *et seq*., accreditation assessment must be carried out by the National Accreditation Body and accepted by the notifying authority, thus avoiding pointless, expensive duplication.

5.2.9 Module A for internal control should be the preferred conformity assessment procedure, largely due to the fact that, in any case, product liability rests entirely with the manufacturer or with the importer, in the European Economic Area (EEA). There is also a need to ensure choice between several different simplified modules, in particular for SMEs and limited series production.

5.2.10 The very heart of the provisions is the CE marking system, which is intended to certify the product's compliance with the applicable rules and which the Member States are required to safeguard more effectively by responding to improper use with sufficient and proportionate sanctions, including penal ones. The new provisions, like the old ones, stipulate that the product's conformity, attested by the CE marking, does not relieve the maker of the obligation to make good any damage caused by a product subsequently revealed to be faulty.

5.2.11 The EESC agrees unreservedly that a lack of credibility of the CE marking amounts to a 'lack of confidence in the whole system: market surveillance authorities, manufacturers, laboratories and certifiers, and ultimately the adequacy of New Approach legislation' ([26]).

5.2.12 The best way to boost the standing and importance of the CE marking, as defined in Council Decision 93/465 ([27]), is through a radical shake-up of the marking itself, which would involve:

— making it clear that it should not be used or regarded as a marking or labelling system for purposes of consumption ([28]), nor a guarantee of quality or certification or approval by independent third parties, but only as a declaration of conformity with product requirements and a technical document that the manufacturer or the importer has an obligation and full responsibility to produce for the authorities and the consumer;

— rationalising the various procedures for assessing conformity;

— strengthening legal protection of the CE marking by registering it as a collective mark, which means that the public authorities can act swiftly to clamp down on abuses, while keeping open the possibility of additional national markings;

— strengthening market surveillance mechanisms and border customs checks;

— getting producers and consumers to look into the pros and cons of a possible voluntary code of conduct on the efficacy of the proliferation of European and national quality marks and labels —voluntary or otherwise — and how they mesh with the CE marking.

5.2.13 The market surveillance mechanisms are dealt with in point 5.3.13 *et seq*., but here the EESC wishes to stress the importance of Commission involvement, not only in the case of all products that, though complying, also entail risks for health and safety, but also in cases of formal non-compliance as covered by Article 38 of the Proposal for a Decision.

5.2.14 The EESC reiterates the crucial role played in all aspects of this issue by the process of technical standardisation, since the very foundation of the new approach is the close linkage of minimum legal requirements and European technical standards, which need to be supported and harnessed. If there is a formal objection to harmonised standards ([29]), therefore, the relevant standards authority should be informed immediately so that it can pay due attention to this in drawing up the standards.

5.3 *Proposal for a Regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products (COM(2007) 37 final)*

5.3.1 The EESC supports the proposals for establishing a European Accreditation System founded on mutual trust and cooperation inasmuch as this puts in place binding rules for both economic operators and public authorities to ensure that all products put on the market meet high levels of safety and health protection. The system should also guarantee the same level of application and regulation to all European consumers and to all economic operators, with simpler and more streamlined procedures.

5.3.2 The European Accreditation System must ensure universal acceptance of the outcome of conformity assessments and avoid superfluous duplication of testing: in order to ensure that the system is internationally acceptable, the competence of the accreditation assessment must be based on internationally recognised standards, and the definitions of 'conformity assessment', 'conformity assessment bodies', 'designation of the body' and 'notification' must be stated explicitly in the Regulation.

5.3.3 The provisions of the Regulation must apply to all accreditation bodies and the services they provide, within the European Economic Area, irrespective of the kind of conformity assessment services supplied to clients, and they must ensure:

— a coherent set of common, clear, transparent definitions which are in line with international standards, to be used in all 'new approach' directives and the product-specific directives, including those on conformity assessment and conformity assessment bodies;

([26]) The role and significance of the CE marking — European Commission Draft Certif Doc 2005 — 11 of 30.8.2005.

([27]) Council Decision 93/465/EEC: modules decision: 'The CE marking symbolises conformity to all the obligations incumbent on manufacturers for the product by virtue of the Community directives providing for its affixing.'

([28]) BEUC 298/2007 of 5.6.2007 on Internal Market package for goods. Jim Murray, EP hearing 5.6.2007.

([29]) Article 14 of Proposal for a Decision COM(2007) 53 final.

— an accreditation system which is run by the public authority and must not be subject to commercial competition;

— general coverage of all relevant Community legislation, without exceptions either in the area of safety and health or in the area of environmental protection: the growing complexity of Community legislation in this area must be recast in a single coherent framework for both EU and non-EU producers;

— application to all activities subject to accreditation across the board, including calibration, irrespective of whether the purpose of the accreditation is to meet legal conformity assessment requirements or to comply with private contracts;

— that national accreditation bodies comply with competence and impartiality standards by requiring them to take part in peer evaluations carried out under the supervision of all the parties involved in the accreditation process;

— cost effectiveness, proportionality, reliability and reciprocal trust in the common accreditation system for both the regulated and the non-regulated area.

5.3.4 The definition of accreditation should be modified to include calibration, testing, certification, inspection and other conformity assessment activities.

5.3.5 In addition, to ensure uniform rules embracing all the conformity assessment procedures, including those of quality assurance, calibration and ISO 43 evaluation tests, there should be no exemptions: all accreditation bodies and all the services they provide in the European Economic Area should be covered by the Regulation, irrespective of the kind of conformity assessment services supplied to clients.

5.3.6 National accreditation bodies should operate on a non-profit basis as proposed in Article 4(6). However, the present wording risks hampering the creation of the start-up capital needed to secure a sound financial footing for delivering quality services. In the EESC's view, national accreditation bodies should operate like non-profit bodies in the sense that they must not distribute profits, as established internationally in ISO/IEC 17011 ([30]).

5.3.7 The European Accreditation System (EAS) should be regarded as the system's highest level of accreditation, and as a public service of general interest must be free of competition. The EESC supports the rule which obliges Member States to have a single national accreditation body whose competence, objectivity and impartiality must be subject to peer review, with some exceptions in certain circumstances ([31]) for smaller states should they wish to use the national accreditation bodies of a neighbouring Member State.

5.3.8 The EESC thinks that a clear legal basis needs to be established for European cooperation for Accreditation (EA), whose role must be strengthened and better defined: all the national accreditation bodies must be members of the EA in order to ensure equivalence, transparency, reliability and efficacy, and the EA network must be supported by the Member States.

5.3.9 In order to further strengthen EA, the EESC thinks that the accreditation bodies must be signatories of multilateral recognition agreements (MLAs) operated by EA. In addition, the financing mechanisms enshrined in the Regulation should not only cover EA, but be extended to campaigns in support of market surveillance activities and joint training of the various national administrations taking part.

5.3.10 The peer review enshrined in Article 9(1), intended to facilitate and improve the operation of the single market by increasing its trustworthiness, must be organised within the European Accreditation System and implemented according to harmonised rules defined within EA. The results of the peer review must be rendered public and communicated to all the Member States and to the Commission.

5.3.11 Since accreditation bodies must actively demonstrate that the trust they enjoy is well placed, the EESC thinks they should have to prove that they participate successfully in peer review.

5.3.12 The EESC also considers it important for stakeholders to be involved: they should be represented on accreditation bodies and provision to this effect should be an integral part of the new Regulation.

5.3.13 The EESC stresses the importance of Member States achieving equivalent, more coherent and efficient market surveillance mechanisms by way of a harmonisation of Community legislation which includes the strengthening of crossborder cooperation: there should be a realignment of provisions on general product safety — Product Safety Directive 2001/95/EC — and of the other relevant directives in order to ensure the full application of the 'better lawmaking' principle to the operation of the single market. Market surveillance activities should also apply to products covered by the General Product Safety Directive (GPSD), as numerous products are sold both for professional use and for use by an end consumer. The EESC therefore regards as unjustified the exclusion of the GPSD from the provisions mentioned in Article 13(2), as this would create more confusion and complications for economic operators rather than greater cohesion of single market surveillance activities.

5.3.14 The EESC feels that the existence of the current rapid information-exchange system, RAPEX ([32]), which is capable of effectively assisting market surveillance, is fully justified: it should, however, be used in a more uniform and coordinated way by the Member States and the customs and administrative authorities.

([30]) ISO/IEC 17011 'The accreditation body shall have the financial resources, demonstrated by records and/or documents, required for the operation of its activities'.

([31]) Article 6(1) of Proposal for a Regulation COM(2007) 37 final.

([32]) In addition to RAPEX there are: the RASFF alert system for the food and feed sector, the EWRS system for human diseases, and the ADNS system for animal diseases. Compare Decision 2004/478/EC and Regulation 2230/2004/EC.

5.3.15 Customs authorities should cooperate with market surveillance authorities in a European network in order to ensure effective checks on products before these are put on the single European market, and customs authorities must be equipped with trained staff, financial resources and sufficient powers to carry out the tasks entrusted to them effectively.

5.3.16 Market surveillance and customs inspection mechanisms must have, above all, the necessary instruments to deal promptly with products that are seasonal or sold only for limited periods as special promotions, often under ephemeral made-up names. The authorities must have the powers and means for rapid intervention against these and the importer into the Community must bear full responsibility for ensuring they satisfy essential EU requirements, especially as regards safety and environmental protection.

5.3.17 Finally, the EESC thinks that the Regulation should clearly stipulate that the measures taken in response to a proven lack of conformity respect the principle of proportionality, irrespective of the guidelines proposed in Article 19(1): the EESC thinks that Article 17 should be amended accordingly.

Brussels, 13 December 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

APPENDIX

to the Opinion of the European Economic and Social Committee

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

Point 5.2.12

Add on to first bullet:

'— *making it clear that it should not be used or regarded as a marking or labelling system for purposes of consumption, nor a guarantee of quality or certification or approval by independent third parties, but only as a declaration of conformity with product requirements and a technical document that the manufacturer or the importer has an obligation and full responsibility to produce for the authorities and the consumer. Consequently, as the CE mark is not a guarantee of quality or certification or approval by independent third parties, it is sufficient that the CE mark is put on the accompanying papers and not on the product itself;*'

Reason

Under the existing rules all products of the particular kind, for instance toys, must be stamped with the CE mark. This means that there is no message to the consumer that one product is better than the other. It (only) means that the product lives up to the safety standards to be sold at all. The consumer expects all products in the shop to be allowed to be sold.

And if for instance the consumer is looking at sports equipment like roller skates and/or skateboards there is no CE mark required on the products meant for children over 20 kilos. They may sit together on the shelf, and the consumer may think that those marked with CE are better than the others.

Numerous surveys over time have shown that consumers do not understand/are misled by the CE mark. Among the misconceptions are: that the products have a certain quality (are not only safe), have been third party tested, or that they are produced in the EU.

And it is understandable that consumers do not understand the system. All food products are not obliged to carry a special mark, but they have to live up to the EU regulations and directives, anyway. It is the opinion of the European consumer organisations, BEUC and ANEC that it is sufficient for the CE mark — as the safety passport to the market — to be on the accompanying papers for the relevant authorities to check.

Voting

For: 24 Against: 27 Abstentions: 10

Point 5.2.12

Add a new 6th bullet:

'— *Getting the Commission, producers and consumers to look into creating a real product quality mark scheme based on third party certification covering more aspects than the basic safety rules in the directives;*'

Reason

Such a discussion could look into creating standards not only on safety, but also covering demands regarding quality, environment and ethics to enable some producers — should they so wish — to have their products tested to more demands than safety.

If this amendment is agreed, section 1 'Conclusions and recommendations' should be adapted accordingly (for instance in point 1.5 after the 7th bullet).

Voting

For: 25 Against: 29 Abstentions: 12