

**Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament and the Council — Towards a stronger European response to drugs'**

COM(2011) 689 final

(2012/C 229/16)

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On 25 October 2011, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

*Communication from the Commission to the European Parliament and the Council — Towards a stronger European response to drugs*

COM(2011) 689 final.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 April 2012.

At its 481st plenary session, held on 23 and 24 May 2012 (meeting of 24 May), the European Economic and Social Committee adopted the following opinion by 118 votes to 1 with 2 abstentions.

## 1. Summary and recommendations

The European Economic and Social Committee (EESC):

1.1 welcomes the proposals in the Commission communication, and agrees that, in the interests of a stronger Europe, more decisive action is needed; and also agrees that there must be a balanced approach to effectively influencing supply and demand for drugs;

1.2 is therefore disappointed that the Communication constitutes a step back compared to the previous balanced and consensus-based approach, with its one-sided emphasis on measures to reduce supply;

1.3 does not feel that a regulatory and criminal law approach suffices, and calls for the development of a new EU-level drug strategy, based on an in-depth evaluation of the current drugs strategy, which will soon expire;

1.4 is concerned about changes in funding policy priorities, and would like to see a return to a balanced approach in this respect too;

1.5 supports further harmonisation of national measures to combat drug trafficking, and recommends that the process of harmonising EU penal law be extended to different forms of drug-related offences;

1.6 recommends developing and using an independent, scientifically based evaluation system on supply reduction measures, and ensuring that adequate resources are available for such instruments;

1.7 agrees with the measures on confiscation and recovery of criminal assets, and recommends that at least some of the assets

acquired from confiscation should be used to support the largely under-funded area of reducing demand;

1.8 emphasises that a regulatory approach is not enough either to deal with new and dangerous drugs, and that such regulation must be implemented as part of an integrated and comprehensive policy framework for action; the effectiveness of such a framework must be continuously monitored and evaluated;

1.9 feels that the section of the Communication on demand reduction is over-generalised and disproportionate, and recommends that the Commission initiate the development of an institutional mechanism to ensure the implementation of successful policy initiatives based on scientific evidence;

1.10 firmly believes that already in the medium term a comprehensive and coordinated policy on addiction to all psychoactive drugs, both 'legal' and 'illegal', is needed to ensure that individual policies do not work against one another;

1.11 supports the work of the EU Civil Society Forum on Drugs and recommends that greater account be taken of this body's expertise of at both EU and national level.

## 2. General comments

2.1 The European Economic and Social Committee (EESC) welcomes the European Commission's Communication entitled *Towards a stronger European response to drugs* (1).

(1) COM(2011) 689 final.

2.2 The EESC agrees with the document that following adoption of the Lisbon Treaty 'the European response to drugs needs to be strong and decisive, addressing both drug demand and drug supply'; it welcomes the Commission's commitment to lending fresh impetus to the EU anti-drugs policy, and fully agrees that 'EU action should be focused where it brings more added value'.

2.3 At the same time, the Committee is disappointed that the Communication constitutes a step back compared to the previous consensus-based approach, which struck a balance between supply- and demand-related measures. The Communication places a one-sided emphasis on legal instruments to reduce supply, with only very generalised objectives for reducing demand.

2.4 The Committee is disappointed that a Commission document seems to disregard human rights and broad social policy aspects in relation to drug use; at the same time, the document emphasises regulatory and criminal law instruments which are rarely subject to scientific evaluation procedures, whose effectiveness is questionable based on existing data, and which are not particularly cost-effective <sup>(2)</sup>.

2.5 The Committee believes that measures to reduce supply should be part of a strategic system, and that they make sense as part of that system. It is important to avoid an over-emphasis on law enforcement measures, which should only be used as a last resort (*ultima ratio*). The policy must not be characterised by a possible shift away from previous measures in support of a holistic, multi-instrumental approach, in contrast to the simplistic and punitive approach found in many parts of the world, showing little respect for human rights.

2.6 The EESC calls for EU policy on combating drug-related problems to frame and adopt a new strategy based on an evaluation of the existing strategy followed by a broad societal discussion. This new strategy should be adopted on the basis of consensus, and it should express the shared commitment of Member States to the existing strategic thinking, with its emphasis on balance and the fundamental values of the Lisbon strategy, together with action programmes and funding policies (best mix of policies).

2.7 In line with the basic idea that a State's response to a threat should not cause more harm than the actual threat it wishes to prevent, decision-making mechanisms must be developed in which unfavourable outcomes of independent evaluations would trigger immediate policy changes.

### 3. Financing

3.1 The EESC is concerned about the shifts and reductions in the number of the European Commission's financing priorities. The current public health programme entitled 'Health for

Growth', within the context of the 3rd multi-annual financing programme for the 2014-2020 period, no longer addresses the issue of drugs and drug demand reduction responses. Neither does it mention the resources needed to implement demand reduction-focused aims and objectives which are in line with the European Drug strategy and its Action Plan.

3.2 At the same time, the support priorities set out in the Commission's proposal for the Justice Programme and the Rights and Citizenship Programme have changed, with the emphasis being placed on crime prevention as a response to drug problems. The EESC strongly urges the Commission to adapt its financing policy in line with the needs of a balanced strategy.

### 4. Specific content

#### 4.1 Drug-related offences, drug trafficking

4.1.1 In its discussion of drug trafficking, the Communication emphasises the constantly changing nature of the drugs market, as well as the innovative methods and new technologies used to smuggle drugs. As an effective response to these unfavourable developments, the Commission draws attention to the importance of improved coordination between initiatives to combat drug trafficking.

4.1.2 The document emphasises that the entry into force of the Lisbon Treaty <sup>(3)</sup> makes it possible to strengthen the important legal and political instruments combating drug trafficking. It also points out that certain legislative instruments <sup>(4)</sup> have 'scarcely led to any alignment of national measures in the fight against drug trafficking. [They have] not sufficiently contributed to facilitating judicial cooperation in drug trafficking cases' <sup>(5)</sup>.

4.1.3 In this connection, the Commission's Communication proposes new legal instruments. Firstly, these would target major cross-border drug-trafficking criminal networks by exploring minimum common aggravating or mitigating circumstances; secondly, they would improve the definition of offences and sanctions, and thirdly, they would introduce stronger reporting obligations for Member States.

4.1.4 Though the Committee basically agrees with the observations set out in the document, it would emphasise that these efforts can only succeed if a system is in place to measure the effectiveness of action to reduce the supply of drugs, with valid indicators. It therefore advocates the development of evaluation and monitoring mechanisms able to measure the real impact

<sup>(2)</sup> In the majority of countries, criminal law instruments impact drug users most heavily; they have only a slight incidence on traffickers.

<sup>(3)</sup> Treaty on the Functioning of the European Union, Article 83(1).

<sup>(4)</sup> e.g. Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking.

<sup>(5)</sup> COM(2011) 689 final.

and cost-effectiveness of such action, and supports the work which has already begun on developing appropriate indicators <sup>(6)</sup>.

4.1.5 The EESC emphasises that in relation to supply reduction measures, disproportionately few resources are allocated to evaluating the efficiency of these instruments compared to the effects they might have on the fundamental human rights of those drug users who, from the legal point of view, are not harming others and are not acting with a view to making a profit.

4.1.6 The EESC recommends that in the spirit of the relevant Commission communication <sup>(7)</sup>, efforts to harmonise criminal law are extended to offences in which there are major discrepancies in Member State criminal justice practices (standards, sanctions, enforcement, exemption) relating to particular forms of criminal behaviour. Some of these discrepancies are so large as to definitely undermine human rights and legal certainty; in the EESC's opinion, this currently applies to drug abuse cases <sup>(8)</sup>.

4.1.7 The EESC argues that the planned harmonisation of minimum penalties must not mean higher maximum penalties in particular Member States. The Committee also points out that a supply reduction-oriented policy could reflect decision-making inertia; the right balance has therefore to be struck between the necessary penal deterrents and the crucially important treatment and support initiatives.

4.1.8 The EESC feels that new criminal justice strategies must be reshaped in response to the social and health threats presented by drug trafficking. At the same time, a focus on the safety of the individual and the community is needed, instead of an approach based solely on preventing drug trafficking.

#### 4.2 Drug precursors

4.2.1 The EESC agrees with the assessment of the situation in this chapter of the Communication, and also agrees that existing and planned measures to prevent the diversion of drug precursors must strike a balance between ensuring an effective control of diversion without disrupting lawful trade in such substances.

<sup>(6)</sup> First European conference on drug supply indicators. A joint initiative to develop sustainable options for monitoring drug markets, crime and supply reduction activities, European Commission, 20–22 October 2010.

<sup>(7)</sup> COM(2011) 573 final.

<sup>(8)</sup> The same offence (e.g. the sale of small quantities of drugs between consumers) can result in a jail sentence of two to five years in some countries, whereas in other Member States the response involves State or regional support policy instruments (job creation, assistance with housing and welfare benefits, etc.).

4.2.2 The Committee agrees that closer international cooperation is needed in this field, although there are major disparities in terms of access to data, the quality of data and levels of cooperation, particularly in relation to cooperation with the third countries concerned.

#### 4.3 Confiscation and recovery of criminal assets

4.3.1 The EESC approves the Commission's endeavours here, and it feels that the legislative instruments mentioned are proportionate and appropriate as a response to the situation. It is therefore regrettable that for various reasons these have not proved effective.

4.3.2 The Committee is therefore in favour of developing new, more stringent EU legislation, and of extending the process of harmonising Member State legislation to this field.

4.3.3 The EESC recommends that at least some of the assets acquired from confiscations should be used at least partially to support the most effective, but always under-funded areas of demand reduction measures such as the treatment of drug use and its social consequences.

#### 4.4 New psychoactive substances

4.4.1 The EESC essentially agrees on this point with the Commission's Communication. The Committee feels that generic regulation meets the expectations of the public and decision makers in terms of rapid checking of new drugs; however, assessing individual substances without genuine risk analysis could harm legitimate pharmaceutical and industrial interests. At the same time, the EESC notes that risk assessment methods are mainly based on chemical and forensic analysis, rather than a multidisciplinary approach.

4.4.2 The EESC emphasises that a regulatory approach is not sufficient either for dealing with new and dangerous psychoactive substances, and that such regulation must be implemented as part of an integrated and comprehensive policy framework for action; the effectiveness of such a framework must be continuously monitored and evaluated, since regulatory acts applied exclusively might result in unintended risks (conversion to new substances, criminalisation, higher market prices, automatic banning of or controls of useful psychoactive substances, users going underground, the additional risks entailed by an illegal market, etc.). The EESC is disappointed that the proposed regulatory instruments do not take these issues into account.

4.4.3 The EESC feels it is important that when substances are added to the list, decision-makers propose health and health measures relating to the psychoactive substance in question, while possibly looking at regulatory alternatives to direct criminalisation of users. The Committee emphasises that remedying

problems in the area of data collection, improving the inter-activity of information flow, training specialists, communicating credibly with the help of modern methods and technologies, developing consumer protection legislation and monitoring, as well as developing and providing the appropriate treatment and support services are all part of this approach.

4.4.4 The EESC points out that legislative responses to new substances should not obscure the problems caused by unlisted 'old' psychoactive substances (alcohol, nicotine, certain industrial hallucinogens, etc.), which are often more serious.

#### 4.5 Reducing the demand for drugs

4.5.1 The EESC is disappointed with this section of the Commission's proposal, which basically only offers generalities. The Committee urges the Commission to further develop an approach helping to enforce basic rights to treatment in both qualitative and quantitative terms.

4.5.2 In view of this, the EESC urges the Commission not only to work on drawing up quality standards but also to oblige Member States to develop funding policies reflecting a balanced approach.

4.5.3 Coverage, accessibility, availability and affordability of a broad range of evidence-based services aimed at reducing health-related harm (HIV/AIDS, Hepatitis and overdose) and intended for people with drug-related problems should be guaranteed across Europe. These services include detoxification, residential, out-patient and community-based treatment, rehabilitation, reintegration, substitution treatment and needle-exchange services. The full range of programmes should be available on the same footing in prisons and for minority populations and groups at risk of discrimination.

4.5.4 The EESC considers that EU and Member State drugs policies should give preference to the provision of healthcare and treatment services to people in need, rather than criminalising and punishing people exposed to drug-related problems.

4.5.5 The EESC would like to point out that the European Community currently has no means of disciplining or sanctioning Member States failing to adopt an approach involving the provision of scientifically proven treatment, even when lives are at risk, in violation of human rights.

4.5.6 The EESC would therefore encourage the Commission to begin developing an institutional mechanism to ensure that Member States genuinely implement policy measures based on scientific evidence, and that they operate the requisite financing mechanisms in a balanced and accountable way.

#### 4.6 International cooperation

4.6.1 The EESC welcomes the dialogue with production and transit countries and of the policy of providing technical assistance and support; it also suggests stepping up such activities.

4.6.2 It agrees that, at the same time as pursuing a balanced and comprehensive approach with full respect for human rights, the EU must step up its engagement with neighbouring countries, with strategic partners, and along drug supply routes into the EU.

4.6.3 The Committee appreciates the results achieved by the European Monitoring Centre for Drugs and Drug Addiction since it was set up, in terms of monitoring the drugs situation, enhancing data collection discipline and quality, and developing a common technical approach.

4.6.4 The EESC calls on the Commission to make an assessment of the situation as regards societal changes caused by the continuing economic crisis and to pay more particular attention to the pattern relating to drug consumption and trafficking.

4.6.5 Although the Committee acknowledges the importance of the three United Nations drugs conventions<sup>(9)</sup> and the results which they have achieved, it would also like to point out that contrary to their declared goals, the conventions have not ensured appropriate and fair legal access to pharmaceutical drugs in most countries, including in Europe. On the other hand, illegal production and use, far from decreasing, have grown significantly, and the systems in place do not always ensure measures which have been scientifically proven to benefit health and well-being.

4.6.6 Provided that there is consensus with the Member States and that scientific evidence is taken closely into account, the Committee therefore proposes that the European Union speaks out in favour of the UN drugs conventions and their implementation, while maintaining a critical guardian. If necessary, it could express an opinion on updating the conventions.

4.6.7 The Committee welcomes and supports the work of the EU Civil Society Forum on Drugs and recommends that the expertise of this body be taken more closely into account by EU decision-making bodies. The EESC would welcome the opportunity to be an observer of this body's activities.

<sup>(9)</sup> 1961 Single Convention on Narcotic Drugs amended by 1972 Protocol, 1971 Convention on Psychotropic Substances, 1988 Convention Against Illicit Trafficking in Narcotic and Psychotropic Substances.

## 5. The way forward

5.1 With Articles 11(3) - 11(4) of the Lisbon Treaty in mind, the EESC recommends that both the Commission and the Member States strengthen genuine social dialogue in the spirit of participatory democracy involving professional groups and, if possible, user organisations in the strategic planning process, so that governmental coordination mechanisms can be directly evaluated by civil society and professionals.

5.2 The Committee feels that a two-pronged approach to policy planning is needed. On the one hand, a more global approach is needed to enable synergies arising from the harmonisation of approaches through closer coordination, while on the other, local approaches are needed to ensure that EU policies can be developed on the basis not of abstract concerns but of the actual needs of local communities, and in cooperation with them.

5.3 The EESC firmly believes that even in the medium term, a comprehensive and coordinated policy on addiction to all

psychoactive drugs - both 'legal' and 'illegal' - is needed. As matters currently stand, for political and legal reasons there is an artificial separation between these policies, which use very different tools tending to work against one another instead of being mutually reinforcing. At the same time, given the need to ensure legal certainty and protect human rights, significant discrepancies in the binding force of such government policies are questionable.

5.4 The EESC recommends that the Commission pave the way towards granting access to controlled medical use of medicinal cannabis and to the full range of substitution treatment modalities.

5.5 The EESC takes a critical view of the EU-level policy approach to alcohol, a substance causing much greater social problems; it therefore maintains the position set out in previous corrective opinions<sup>(10)</sup>, which urged the Commission to act decisively in this respect.

Brussels, 24 May 2012.

*The President*  
*of the European Economic and Social Committee*  
Staffan NILSSON

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<sup>(10)</sup> OJ C 175, 27.7.2007 p. 78-84.  
OJ C 318, 23.12.2009 p. 10-14.