

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) creating a mechanism whereby the Commission can intervene in order to remove certain obstacles to trade'

(98/C 214/24)

On 2 February 1998 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 1 April 1998. The rapporteur was Mr Green and the co-rapporteur Mr Schmitz.

At its 354th plenary session (meeting of 29 April 1998), the Economic and Social Committee adopted the following opinion by 93 votes in favour and 15 votes against, with 10 abstentions.

1. Background: the Commission proposal

1.1. On several occasions obstacles to the free movement of goods have arisen, directed against individuals and enterprises from other Member States.

1.2. The Amsterdam European Council called on the Commission 'to examine ways and means of guaranteeing in an effective manner the free movement of goods, including the possibility of imposing sanctions on the Member States'. The Council also requested the Commission to 'submit relevant proposals before its next meeting in December 1997.'

1.3. The legal basis specified in this Commission proposal is Treaty Article 235.

1.4. The proposal encompasses obstacles to free movement of goods resulting from a Member State's action or inaction.

1.5. For the purpose of the proposed regulation, obstacles must be 'clear, unmistakable and unjustified'. In addition, they must involve grave disruption to free movement of goods, cause serious loss to the individuals affected and require immediate intervention in order to prevent any continuation, extension or aggravation of the disruption or loss.

1.6. Within the meaning of the proposal, inaction exists when the Member State concerned refrains from implementing any measure necessary and proportionate to the nature of the infringement so as to safeguard the free movement of goods without affecting the exercise of fundamental rights recognized under national law.

1.7. The proposed procedure is guided by the Treaty rules governing state aids.

1.8. Owing to the binding force of this Commission Decision, injured parties will be able to invoke it in the

national courts with a view either to removing the obstacle or to obtaining compensation.

2. General comments

2.1. The ESC is in favour of ensuring free movement of goods within the internal market. Hence it welcomes speedier intervention against illegal obstacles to trade; at present, action in cases covered by Treaty Article 169 normally takes 4-5 years.

Nevertheless, the Committee is unable to support the proposal in its present form.

2.1.1. Legal basis

In the ESC's view, the Commission — in conjunction with the Member States — should frame arrangements to make prompt use of the procedure provided for in Treaty Article 169, especially in cases of obstacles to trade requiring a speedy solution, instead of opting for Article 235 as legal basis. Article 235 should not be used, purely and simply because of its subsidiary nature. Here the ESC would point out that Treaty Article 186 authorizes the European Court of Justice to prescribe interim measures.

2.1.2. Restriction of the scope of the directive to the free movement of goods

The ESC wonders why the proposal focuses only on the free movement of goods and does not encompass the other three internal market freedoms — services, capital and persons.

2.1.3. Time-limits

In the ESC's opinion, the time-limits proposed by the Commission for a response by the Member States are unrealistic, especially in the case of countries with federal systems.

2.1.4. Basic social rights

Under no circumstances must the intervention mechanism proposed by the Commission to ensure free movement of goods lead to action on labour disputes. Problems would arise if the Court of Justice were to be required to rule on the legitimacy of labour disputes, thereby encroaching on national legal systems. That would be at odds with the subsidiarity principle.

2.1.4.1. It must therefore be made clear that, in assessing a measure which threatens free movement of goods, consideration must first be given to the special scope of Community legislation (in particular Treaty Article 36). Outside these limits, legal questions relating to labour disputes should be assessed solely on the basis of national provisions and by national authorities and courts.

2.1.5. European Court of Justice

The Commission obviously lays great store by the Court of Justice's rulings. Nonetheless, the ESC questions whether the Commission's preparatory work can be speeded up sufficiently to allow interim measures to be prescribed with due speed.

3. Conclusions and proposals

3.1. The ESC supports free movement of goods and therefore advocates a speedier and more effective way

of curbing Member States who impede free movement through their action or inaction.

3.2. However, the ESC is unable to support the proposal in its present form since the Treaty does not authorize the powers envisaged for the Commission. The ESC is also critical on grounds of uncertainty as to the proposal's scope.

3.3. In view of the problems connected with this proposal and the disapproving stance of the Council⁽¹⁾, the ESC urges that the Commission intervention mechanism should be an option only when a Member State can be shown to be treating EU citizens or enterprises differently on grounds of nationality. The Commission should take Treaty Articles 6, 7A and 5, along with Treaty Articles 169 and 186, as a guide in developing a new legal basis for the intended intervention mechanism. Such an approach would also make it easier to include the three other internal market freedoms of movement: services, capital and persons.

3.4. The ESC proposes that the Commission publish a Communication reporting on the current state of affairs, the case law of the European Court of Justice and options for developing an intervention mechanism for situations such as those where a Member State treats EU citizens or enterprises differently on grounds of nationality.

⁽¹⁾ Single Market Council of 30 March 1998, 6875/98 — MINUTES/CCIL 16- MI 19.

Brussels, 29 April 1998.

The President
of the Economic and Social Committee
Tom JENKINS