

## Opinion of the European Economic and Social Committee on 'The Treaty of Lisbon and the Functioning of the Single Market' (own-initiative opinion)

(2011/C 44/12)

Rapporteur: **Mr Jorge PEGADO LIZ**

On 18 February 2010, the European Economic and Social Committee, acting under Article 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

*The Treaty of Lisbon and the Functioning of the Single Market.*

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 15 June 2010.

At its 464th plenary session, held on 14 and 15 July 2010 (meeting of 14 July), the European Economic and Social Committee adopted the following opinion by 129 votes to two, with eight abstentions.

### 1. Conclusions and recommendations

1.1 The entry into force of the Lisbon Treaty had originally been set for 1 January 2009, but only took place on 1 December 2009, once the process of ratification by the 27 Member States had been completed. It should be pointed out that this treaty remains complex and hard to understand.

1.2 The comparative study that forms part of the information report (CESE 241/2008) allows us to conclude that the internal market, while not undergoing structural modification as a result of the new Lisbon Treaty, seems to be defined in a more social way. In effect, unlike the Constitutional Treaty which could concern some people with the phrase 'an internal market where competition is free and undistorted', the Lisbon Treaty seems to give to the internal market more social aims by working towards 'a social market economy, aiming at full employment and social progress'.

1.3 The texts that have appeared to date on the Commission's future policy guidelines, on the 2020 Strategy and a number of statements by Commissioners and national political leaders also appear to favour the same approach to the single market that gradually focuses more on the citizen.

1.4 This aspect has also been strengthened by the explicit reference to the binding legal power of the Charter of Fundamental Rights, which has 'the same legal value as the treaties', albeit with restrictions in some Member States.

1.5 Furthermore, the legislative process relative to the internal market will be marked by the intervention of the national parliaments, which are required to ensure respect for the principle of subsidiarity, which regulates the sharing of competences between the Union and the Member States. Due to two protocols, one on 'the role of national parliaments' and the other on 'the application of the principles of subsidiarity

and proportionality', they are consequently even able to ask for a review of a legislative proposal at first reading, which improves democratic participation in the EU legislative process.

1.6 If national parliaments' preventive measures work well and if monitoring of the principle of subsidiarity proves to be effective and of high enough quality to fully support the 'early warning mechanism' that the Lisbon Treaty has taken from the Constitution, EU legislation might generate less criticism from Member States for riding roughshod over national powers and also be less resented by the European public for demonstrating a type of 'Brussels-based centralism'. For this reason, national parliaments should also improve their networking, because the influence and effectiveness of the 'early warning mechanism', although an individual right granted to each parliamentary chamber, depends on national parliaments' ability to organise themselves on collective lines.

1.7 The Lisbon Treaty also moves towards general use of the 'ordinary legislative procedure' (co-decision under Article 251 EC) for the internal market, as witnessed by Article 48 TFEU on measures in the area of social security necessary for the free movement of labour.

1.8 The Lisbon Treaty thus aims to facilitate the development of the internal market by making more general use of the form of co-decision that it renames the 'ordinary legislative procedure', but it adds a new partner to the Union institutions in their decision-making: the national parliaments, which from now on will need to be considered for the adoption of all legislative measures applicable to the internal market.

### 2. Introduction

2.1 The information report on the impact of the Lisbon Treaty on the internal market<sup>(1)</sup>, adopted by the specialised section on 13 June 2008, proposed a comparative study in

<sup>(1)</sup> CESE 241/2008 - INT/393 (not published in the OJ).

the form of a table setting out side by side the provisions on the single market contained in the Lisbon Treaty, the EC Treaty (which was still in force at the time) and the Constitutional Treaty (the 'Constitution' never actually having been ratified), as well as the comments of the Single Market Observatory on the legal implications of the text adopted in Lisbon on 13 December 2007.

2.2 The Lisbon Treaty's entry into force had originally been set for 1 January 2009, but the planned course of events was upset on 12 June 2008, when Ireland rejected the Lisbon Treaty in a referendum.

2.3 After Ireland obtained guarantees on national sovereignty and assurances that each EU Member State would continue to have a Commissioner of its own, the Treaty was adopted by referendum on 3 October 2009.

2.4 The ruling handed down by the Czech Constitutional Court on 3 November 2009 stating that the Treaty of Lisbon did indeed comply with national law ended the delay in ratifying the Treaty. The signature of the president, Vaclav Klaus, completed the ratification process and the Treaty finally entered into force on 1 December 2009.

2.5 The time elapsing between the adoption of the Committee's information report, on the one hand, and the entry into force of the Lisbon Treaty, on the other, together with the Commission's 26 June 2009 Recommendation on 'Measures to improve the functioning of the Single Market', and its 3 March 2010 Communication on 'Europe 2020: A European strategy for smart, sustainable and inclusive growth', have all meant that the Committee now deems it appropriate to convert this report into an own-initiative opinion, in order to update the content and, furthermore, publish its opinion on the subject. With the benefit of hindsight, it will also be in a position to consider new issues not addressed in the initial report; the last consolidated version of the treaty was not as readable as it might have been and was not published in the *Official Journal of the European Union* until 30 March 2010 <sup>(2)</sup>.

### 3. General comments

3.1 The political events marking the life of the Lisbon Treaty from its signing by the 27 Member States on 13 December 2007 to its entry into force on 1 December 2009, have not fundamentally changed the provisions on the single market, but they have primarily had implications for the institutions.

3.1.1 Indeed, having noted the concerns of the Irish people, which were set out by the Taoiseach (Irish Prime Minister), the European Council of 11 and 12 December 2008 agreed that, provided the Treaty of Lisbon entered into force, a decision

would be taken, in accordance with the necessary legal procedures, to the effect that the Commission would continue to include one national of each Member State.

3.1.2 The European Council of 18 and 19 June 2009 gave Ireland guarantees which were legally binding but which would affect neither relations between the EU and the other Member States nor the content and enforcement of the Lisbon Treaty. It was guaranteed that certain subjects, such as taxation, the right to life, education, the family and the policy of military neutrality, would not be affected by the entry into force of the Lisbon Treaty.

3.1.3 Furthermore, the European Council adopted a formal declaration on the importance of workers' rights and public services.

3.2 The Czech Republic's delay in ratifying the treaty has not had any immediate impact on the Lisbon Treaty. In fact, as agreed by the Member States at the European Council of 29 and 30 October 2009, a protocol to the next accession treaty will grant the Czech Republic a derogation from the Charter of Fundamental Rights, matching the derogation granted to the United Kingdom and Poland.

3.3 The information report on 'The impact of the Treaty of Lisbon on the functioning of the internal market' and its appendix remain topical and could provide a basis for this opinion in the form of legal analysis and should therefore be considered as integral components of the opinion.

3.4 It is worth pointing out in this regard that the Lisbon Treaty remains a complex text, even in its consolidated version. It is difficult to read and understand, even for legal experts. This is because it is the result of a whole series of amendments made to both the Treaty on European Union (TEU), which forms the general framework for the European Union and the principles on which it is founded, and the Treaty establishing the European Community (TEC), which becomes the Treaty on the Functioning of the European Union (TFEU) and which sets out the implementing methods for the principles laid down by the TEU.

3.5 Because no official consolidated text was available when ratification took place, the Member States ratified a text that was as unclear as it was unreadable, in which most of the new decision-making 'mechanisms' were not particularly well defined, except in the protocols to the treaty. Furthermore, their operability had not yet been tested.

3.6 Moreover, unlike the Constitutional Treaty, the text signed in Lisbon was not submitted for consultation to the European Parliament, the European Economic and Social Committee, the Committee of the Regions or to national or

<sup>(2)</sup> OJ C 83, 30.3.2010 – Henceforth, all references to the Treaty of Lisbon refer to this consolidated version.

regional parliaments or organisations representing civil society at Community, national or regional levels. It was only after the Treaty's ratification that the Commission and the Council decided to publish documents publicising and explaining the content and benefits of the new treaty, in contrast to what had been done for the 'Constitution'.

3.7 The Lisbon Treaty has returned to the method consisting of amending existing treaties in the framework of an intergovernmental conference (IGC) comprising only Member State representatives, whereas the Constitution had been prepared by a Convention made up primarily of members of national parliaments, including those from future Member States in 2004 and 2007), and Members of the European Parliament, as well as representatives of the fifteen Member States, the twelve countries that were candidates for accession at the time plus Turkey, and the Commission, in addition to representatives of civil society, including the European Economic and Social Committee, as observers.

3.8 The Lisbon Treaty thus clearly marks a return of power to the Member States, in contrast to the Constitution, which appeared to be more federalist in nature. This shift of power is illustrated in particular by the removal of the symbols that the Constitution had introduced and which might suggest the creation of a federal state (flag, anthem, motto, designation of 9 May as Europe day, etc.).

3.9 The Lisbon Treaty merges the three pillars, by giving the TEU and the TFEU the same legal value<sup>(3)</sup>. The European Union also gains legal personality by replacing and succeeding the European Community, whereas until the Lisbon Treaty entered into force, only the European Community had legal personality.

3.10 The primacy of EU law over Member State law had been included in Article I-6 of the Constitutional Treaty as one of the fundamental principles of the European Union. In order to put an end to the controversy caused by inclusion of the primacy principle in the Constitution, which simply reflected the existing case-law of the Court of Justice, this principle is included in Declaration No 17. The Conference decided to append an opinion on primacy prepared by the Council's legal department to the Treaty of Lisbon, **noting the source of the primacy principle in case law and its value as a fundamental principle.**

3.11 The Lisbon Treaty amends the legal status of the Charter of Fundamental Rights proclaimed in Nice on 7 December 2000. In fact, there was no decision at the Nice Summit on the legally binding nature of the Charter, which

meant that it remained a declaration of principle without confirmed legal status.

3.11.1 The Charter, on the other hand, appeared to have acquired binding legal force as a result of being incorporated into the Constitution. Because the Constitution was not ratified, the legally binding nature of the Charter has remained largely theoretical<sup>(4)</sup>. The Treaty of Lisbon remedies this situation without, however, incorporating all the progress made by the Constitution<sup>(5)</sup>.

3.11.2 Article 6 of the Treaty on European Union, as amended by the Treaty of Lisbon, states that the Charter shall have 'the same legal value as the Treaties'. This means that the EU's institutions, bodies and agencies are obliged to respect the rights laid down in the Charter. The same obligations are imposed on the Member States (governments, administrations, courts) when they implement EU law.

3.11.3 Nevertheless, Protocol No 30 on the Application of the Charter of Fundamental Rights of the European Union to the United Kingdom and Poland states that the Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to deem the laws of Poland or of the United Kingdom to be inconsistent with the Charter.

3.11.4 This protocol also states that Title IV of the Charter, on social rights and solidarity, does not create rights applicable to the United Kingdom and Poland, except where these rights are provided for in the national legislation of those countries.

3.11.5 This protocol states ultimately that the Charter will only apply to the United Kingdom and Poland to the extent that the rights or principles that it contains are recognised in the law or practices of those Member States.

<sup>(4)</sup> Nevertheless, although the Charter is not legally binding, the Court of Justice of the European Communities frequently refers to it. For a recent example, see in particular: the ECJ ruling of 14 February 2008, Case C-244/06, **Dynamic Medien Vertriebs GmbH v Avides Media AG**, concerning the free movement of goods. The Court refers to Article 24(1) of the Charter, which provides that children have the right to such protection and care as is necessary for their well-being (point 41 of the ruling). See also the ECJ judgment of 14 February 2008, Case C 450/06, **Varec SA v Belgian State**, concerning the freedom of establishment. The Court refers to Article 7 of the Charter of Fundamental Rights of the European Union on the right to respect for private life (point 48 of the ruling).

<sup>(5)</sup> Declaration No 11 of the version of the draft Lisbon Treaty dated 23 July 2007 (IGC 3/07) stated that the Charter of Fundamental Rights would be formally proclaimed by the 3 institutions on the day of the signing of the Lisbon Treaty, but said nothing about its legally binding status.

The EU Charter of Fundamental Rights was proclaimed by the three EU institutions for the second time in Strasbourg on Wednesday 12 December 2007. This second proclamation was needed because explanations and footnotes had been added to the Charter since its original proclamation at the Nice Summit in December 2000.

<sup>(3)</sup> TEU Article 1, para. 3: The TEU and the TFEU are given equal standing, whereas on 13 September 2005, in a ruling on environmental protection in criminal law, the Court of Justice recognised the primacy of EC Treaty over the EU Treaty.

3.11.6 The scope of these protocols will in practice be extremely limited: on the basis of the principle of uniform application of EU law, the case-law of the Court of Justice of the European Union must, as an integral part of the EU legal system, be respected in all Member States. Consequently, if a Court ruling were to refer to or issue an interpretation of Title IV of the Charter, British and Polish courts would have to comply with the ruling, whether or not they were involved in the proceedings.

3.12 The Treaty incorporates the option provided in the Constitution for a Member State to withdraw voluntarily from the EU (Article 50 TEU). In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that state, setting out the arrangements for its withdrawal, taking account of the framework for its future relations with the Union.

3.13 Voluntary withdrawal should not be confused with the suspension of the right to EU membership of a Member State that has committed a serious and persistent breach of the values of the EU, as set out in Article 7 TEU (respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, etc.)<sup>(6)</sup>.

#### 4. Specific comments

4.1 Particular attention should be paid to some specific political and economic aspects that have in the meantime arisen as a result of the single market policy developing under the terms of the new treaty, such as the new composition of the European Parliament and the 'Barroso II Commission'.

4.2 It should be remembered that as early as November 2007, the European Commission published an important communication entitled '*A single market for 21st century Europe*', in the wake of a European Parliament resolution on 4 September 2007, calling for '*a Single Market Review: tackling barriers and inefficiencies through better implementation and enforcement*'. This echoed a 'new vision' for a single market for all '*that does more to boost Europe's response to globalisation, to create growth and jobs, to ensure fair prices and to contribute to social and environmental protection*'. In two opinions<sup>(7)</sup>, the EESC reiterated its view that the single market had always been an instrument contributing to the wellbeing of all Europeans, including professionals, workers and consumers.

<sup>(6)</sup> Article 7 TEU provides for two distinct arrangements applicable to the 'clear risk of a serious breach' and to 'the existence of a serious and persistent breach'.

<sup>(7)</sup> OJ C 77, 31.3.2009, p. 15 – Rapporteur, Mr Cassidy, co-rapporteurs, Mr Hencks and Mr Cappellini and OJ C 182, 4.8.2009, p. 1 – Rapporteur, Mr Adamczyk.

4.3 In a Communication of 6 November 2008<sup>(8)</sup>, the Commission showed that the benefits of the single market were linked to improving administrative cooperation. In its progress report on the Internal Market Information System (IMI), the Commission called on the Member State authorities to cooperate closely so as to build up confidence in each others' systems<sup>(9)</sup>.

4.4 In its Recommendation of 29 June 2009 on measures to improve the functioning of the single market<sup>(10)</sup>, the Commission identified a number of shortcomings in the functioning of the single market, in particular inasmuch as the rules are not properly applied and enforced. The Commission also proposed adopting concrete measures complementing those of the Member States, in a partnership-based approach.

4.4.1 These measures include monitoring compliance with the rules, promoting alternative dispute resolution methods, regularly assessing national legislation, and informing individuals and businesses about their single market rights.

4.5 The financial crisis spread quickly, especially in Europe, with economic and social consequences that were as unexpected as they were unpredictable, as the Committee has highlighted – and resulted in the deepest recession since the 1930s, taking the total number of jobless to over 23 million<sup>(11)</sup>: a level of unemployment not seen since WWII. Shortly before the renewal of its term of office, and having instructed the 'Larosière Group'<sup>(12)</sup> to carry out an in-depth study of the causes of the crisis and the measures needed to counter it, the Commission felt the need to draw up new political guidelines for the future, in this new economic, social and financial climate.

4.6 It was for this purpose that, in the Commission's 'Political guidelines for the next Commission', the president, José Manuel Barroso, set out the guidelines for 'A Single Market fit for the 21st century', condemning attempts to use the crisis as a pretext to attack the single market and restating the Commission's determination to defend it as 'a cornerstone of the Treaties' and the 'best guarantee of long-term prosperity', provided it met 'the demands of tomorrow's economy'. Against this backdrop, it should be emphasised that the aim of revitalising the internal market as the powerhouse of the European economy will only be achieved if an 'active consumer policy' manages to 'to give people confidence to participate fully in the single market'.

<sup>(8)</sup> COM(2008) 703 final.

<sup>(9)</sup> OJ C 128, 18.5.2010, p. 103 – Rapporteur: Mr Hernández Bataller.

<sup>(10)</sup> COM(2009) 4728 final; cf. the key EP Resolution of 9.3.2010 (Doc. A7-0064/2009).

<sup>(11)</sup> According to the latest data provided by Eurostat.

<sup>(12)</sup> The EESC delivered an opinion on the Larosière Group report: OJ C 318, 23.12.2009, p. 57 – Rapporteur: Mr Nyberg.

4.6.1 At the same time, the Commission President entrusted Mr Mario Monti, former Commissioner responsible for the Internal Market, with the task of drawing up a report on boosting the single market, which was presented on 9 May – Europe Day – at the European Parliament. After underlining the main difficulties facing the single market, the report proposes initiatives to strengthen it, taking due account of social and environmental considerations. Another report, entitled ‘Project Europe 2030, Challenges and Opportunities’ and drawn-up by the task force on the future of Europe, which was chaired by the former Spanish prime minister Felipe González, was presented to the European Council on the same day. This report focuses essentially on mid-term European economic governance, and also refers to the importance of consolidating and completing the Single Market so as to ‘create a win-win situation: a new deal for the Single Market’. Its conclusions on economic governance will certainly have a major impact on the future of the single market.

4.7 The strategy replacing the Lisbon strategy – the implementation of which was, moreover, a partial failure – should be viewed in the light of these new political guidelines. The Europe 2020 Strategy, however, does not appear to attach much importance to the single market, apart from a few lines in the chapter on ‘Missing links and bottlenecks’, which reveals dwindling enthusiasm for the single market.

4.7.1 In order to tackle this bottleneck in the single market, the Commission has announced that it will be proposing legislation, in particular prioritising the wider use of regulations rather than directives, adapting legislation to the digital era and making progress towards optional European contract legislation, especially in the area of consumer contracts. At his hearing before the European Parliament, and especially in recent statements made in Paris, Commissioner Michel Barnier, who is responsible for the single market, has stressed the need to reconcile the needs of private individuals with the market at large, which should exist to benefit the social project. As emphasised by Commissioner Viviane Reding, the single market remains ‘the jewel in the EU’s crown’<sup>(13)</sup>.

4.8 At the same time, the citizens’ initiative introduced by Article 11(4) TEU, which is the subject of a detailed study by the EESC<sup>(14)</sup>, could have major consequences for the future development of the single market.

4.8.1 Indeed, this instrument to promote public involvement opens up a new way of promoting issues that are fundamental

<sup>(13)</sup> Speech given on European Consumers Day in Madrid on 15.3.2010 ‘An ambitious Consumers Rights Directive: boosting consumers’ protection and helping businesses’.

<sup>(14)</sup> Own-initiative opinion on ‘The implementation of the Lisbon Treaty: participatory democracy and the citizens’ initiative’ (CESE 465/2010 - SC/032. Rapporteur Anne-Marie Sigmund) which analyses and comments on the Commission’s Green Paper (COM(2009) 622 final of 11.11.2009); and the own-initiative opinion on ‘Civil society organisations and EU presidencies’ (CESE 464/2010 - SC/031, Rapp. Miklós Barabás); cf also the important EP resolution on the implementation of the citizens’ initiative, 7.5.2009 (Doc A6-0043/2009).

to civil society but which have not been covered to date due to a lack of interest or political will on the part of the Community institutions, (the European Foundation Statute<sup>(15)</sup>, European collective actions<sup>(16)</sup>, the European right to strike, etc.).

## 5. Detailed comments

5.1 The comments made in the information report on the provisions relating to the Single Market contained in the Treaty on the Functioning of the European Union (TFEU) remain of topical importance (see, for example, point 6(a)).

5.2 Out of the thirty-seven protocols appended to the Lisbon Treaty, four more or less directly affect the internal market.

— Firstly, Protocol No 2 on the application of the principles of subsidiarity and proportionality, because these are intended to be applied in the context of competences shared between the Union and the Member States; the internal market is one of the areas of shared competence.

— Protocol No 27 on the internal market and competition will also affect the internal market. In substance, it provides that the internal market should include a system guaranteeing that competition is not distorted.

— Protocol No 25 on the exercise of shared competences will affect the internal market for the same reasons as Protocol No 2 on the application of the principles of subsidiarity and proportionality.

— Protocol No 26 on services of general interest will also certainly influence the internal market. It specifies that these services are part of the common values of the Union and stresses the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest. It also justifies their diversity and the possible disparity of users’ needs and preferences due to geographical, social and cultural reasons. Finally, it stresses the promotion of universal access, a high level of quality, security and accessibility for these services and user rights. Article 2 of Protocol No 26 breaks new ground by referring for the first time in primary law to ‘non-economic services of general interest’ and guarantees the competence of Member States to provide, commission and organise these services.

<sup>(15)</sup> EESC own-initiative opinion 634/2010 - INT/498 – Rapporteur: Ms Hellam.

<sup>(16)</sup> OJ C 162, 25.6.2008, p. 1 – Rapporteur: Mr Pegado Liz; and OJ C 128, 18.5.2010, p. 97 – Rapporteur: Mr Calleja.

5.3 Two declarations may affect the internal market. Declaration No 18 on the delimitation of competences between the Union and the Member States as provided for in the Treaties states that all competences not conferred upon the Union in the Treaties remain with the Member States and that, within the framework of shared competences, the Member States exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence.

5.3.1 Indeed, the conferral of powers on the Community was very quickly likened by the Court to a transfer of powers from the Member States to the Community institutions, as demonstrated by the *Costa versus ENEL* judgment of 1964, which defined the European Economic Community as ‘a Community of unlimited duration, having its own institutions, ... and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community ...’. (Case 6/64 ECR 1141).

5.3.2 Secondly, Declaration No 42 specifies that, in applying the well-settled case law of the Court of Justice, the principle of conferral of powers should not serve as a basis for widening the scope of Union powers beyond the general framework created by the provisions of the Treaties as a whole.

## 6. Main effects of the Lisbon Treaty on internal market policy

6.1 As for the specific amendments introduced to the provisions of the treaties concerning the internal market policy, the following should be stressed:

- a) The replacement of the term ‘common market’ by the term ‘internal market’ illustrates the shift in nature from a common market to an internal market, helping to clarify controversial doctrinal concepts and thus reinforcing the idea that the EU is not just a free market in the purely economic sense of a free trade area, but rather an internal market for the people (Article 26 TFEU) <sup>(17)</sup>.
- b) With regard to strengthening the principle of subsidiarity and defining it in greater detail, it can be observed that the preference for directives over regulations apparent in Protocol No 30 of the EC Treaty has been removed from Protocol No 2 of the Lisbon Treaty.
- c) In order to ensure that the principles of subsidiarity and proportionality are observed, national parliaments have been granted almost a right of veto, defined as one third of the total votes allotted to the national parliaments. A single national parliament can also veto a legislative initiative in the field of family law (see Article 81 TFEU).
- d) New powers are given to the European Parliament, thanks to the extension of the co-decision procedure, renamed ‘ordinary legislative procedure’. It is put on an equal footing with the Council in budgetary matters and will elect the president of the Commission. The European Parliament is defined in the Lisbon Treaty as being composed of representatives of the ‘citizens of the Union’, whereas the EC Treaty refers to ‘peoples of the Member States’.
- e) A co-decision procedure (ordinary legislative procedure) with a new system of qualified majority voting at the Council <sup>(18)</sup> will apply to a number of new areas.
- f) Member States have removed from the Union’s objectives the reference to ‘an internal market where competition is free and undistorted’. Competition policy is reformulated in terms of a ‘necessary instrument for the functioning of the internal market’ whilst, by making one of the objectives of the Union ‘an internal market where competition is free and undistorted’, the Constitutional Treaty had evoked fears in some quarters.
- g) A new consideration of the interests of consumers and SMEs, which underpin the New vision ‘package’ and the Communication entitled ‘A single market for 21st century Europe’ <sup>(19)</sup>.
- h) A new understanding of services of general interest (Article 14 TFEU and Protocol No 26) clarifying the responsibilities of the Union and the wide discretion of national, regional and local authorities examined by the *Communication on Services of general interest, including social services of general interest: a new European commitment* <sup>(20)</sup> which proposes to consolidate the EU framework for SGI.
- i) Increased concern over the integration of the social aspects of the implementation of the internal market (combating exclusion or discrimination, promoting social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child) linked with the *Communication: Opportunities, access and solidarity: towards a new social vision for 21st century Europe* <sup>(21)</sup>.

<sup>(17)</sup> As far back as 5 May 1982, the Court confirmed (case 15/81 - *Schul* judgment) that the common market, simply a free trade area, precedes the internal market. The internal market thus entails a higher degree of economic integration.

<sup>(18)</sup> Protocol on transitional provisions (No 36).

<sup>(19)</sup> COM(2007) 724 final, SEC(2007) 1517, 1518, 1519, 1520 and 1521.

<sup>(20)</sup> COM(2007) 725 final, SEC(2007) 1514, 1515 and 1516.

<sup>(21)</sup> COM(2007) 726 final.

j) The Lisbon Treaty demonstrates innovation, by extending the possibilities for enhanced cooperation to all EU action, with the exception of areas falling within the exclusive competence of the Union (Article 2 TEU), provided that at least nine Member States participate in it (irrespective of the number of Member States). This is underpinned by a

decision of the Council acting by a qualified majority on a proposal of the Commission and with the consent of the European Parliament (Article 329 para. 1 TFEU) and could, therefore, affect the internal market, the energy market, immigration policy and civil protection, in particular.

Brussels, 14 July 2010.

*The President*  
*of the European Economic and Social Committee*  
Mario SEPI

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