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OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

451ST PLENARY SESSION HELD ON 25 AND 26 FEBRUARY 2009

Opinion of the European Economic and Social Committee on the European Civic Service (exploratory opinion)

(2009/C 218/01)

In a letter dated 3 July 2008, in the context of the French Presidency of the European Union, the French Minister for Foreign and European Affairs asked the European Economic and Social Committee to draft an exploratory opinion on the following subject:

'*European civic service*'.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 February 2009. The rapporteur was Mr JANSON and the co-rapporteur was Mr SIBIAN.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February.), the European Economic and Social Committee adopted the following opinion by 131 votes to 7 with 9 abstentions.

1. Summary and conclusions

1.1 The EESC warmly welcomes the French Presidency's initiative. It would also like to refer to the Council Recommendation of 20 November 2008 on the Mobility of Young Volunteers across the EU [1]. However, given the wide variety of systems regarding young people's active participation in society, the best way of approaching this question is to base a European initiative on a framework:

— of cooperation between voluntary activities open to all, unpaid, undertaken freely, educational (non-formal learning aspect) and bringing added social value;

— characterised by a fixed period of activity; with clear objectives, contents, tasks, structure and framework, having appropriate support and legal and social protection;

— where this also has a European and transnational context.

1.2 Active participation in society, including transnational exchanges, is of great benefit for personal development, especially of young people, as well as the development of organised civil society in Europe. For the volunteers this is a unique opportunity for formal and informal learning and to acquire social and language skills. This can raise a sense of European citizenship and strengthen the intention to continue their commitment later in life. Including other age groups, such as older people, in the schemes can enable them to make use of their life experience. This has a positive effect on their health and quality of life. When people from different age groups act together in undertaking voluntary activity, understanding between generations can also be promoted.

1.3 The EESC is of the opinion that the Union should set ambitious objectives aiming at broader participation of people in civil society. An initial step is to follow the EESC recommendations set out in the previous opinion [2].

1.4 The EESC would therefore be pleased if Member States launched cooperation between organisers of voluntary activities, whereby the existing forms of voluntary activities would include a transnational element.

[1] 14825/08, JEUN 101.

[2] See EESC opinion on Voluntary activity: its role in European society and its impact, rapporteur: Ms Koller (OJ C 325, 30.12.2006).

1.5 The EU could promote a European Citizenship Initiative [1] combining policies and activities for exchange programmes beyond today's emphasis on youth. One objective could be a contribution to European integration. The EESC finds it natural that the European Union should devote more financial resources to such programmes. It should make it possible initially to double the current rate of participation in youth exchanges and significantly increase the participation rate of other age groups.

1.6 The EESC believes that it is necessary to target to a greater extent disadvantaged people and in particular young people with fewer opportunities.

1.7 It would be essential, to ensure better cooperation between the existing national and European programmes, to reduce technical obstacles as well as issues regarding health insurance coverage and accident insurance. For this purpose the European Union could consider developing a brand for exchange programmes meeting the Union's quality standards. Quality of voluntary activities, whatever form they take, is important and needs to be ensured by the appropriate means.

1.8 The EESC feels it is important to promote a third country element contributing to EU's work towards the Millennium Goals and implementation of European Development and Humanitarian Aid policy.

1.9 The EU needs to evaluate this area by initiating and supporting research, as well as develop the statistical components.

1.10 Insurance and health and safety issues also need to be resolved. Adequate social protection should be guaranteed for volunteers during their service but that becomes difficult if the provisions for transnational volunteers with regard to social security differ from country to country. The EESC therefore would encourage the Commission to promote a common understanding of these issues, and calls for Members States and the appropriate institutions to resolve these important questions.

1.11 The EESC is aware that this subject needs a follow-up e.g. in the form of a conference. This should include the participation of all national services bodies, the European Commission and non-governmental organisations active in the field of either youth - or voluntary service, with the aim of promoting the development of a European Citizenship Initiative framework.

[1] To avoid any confusion over the fact that 'civic service' means different things in different Member States, the EESC has used the term 'citizenship initiative' throughout this opinion.

2. Points of departure

2.1 The EESC warmly welcomes the French Presidency's initiative to ask the EESC to draft an exploratory opinion on European Civic Service.

2.2 However, given the wide variety of systems regarding young peoples' active participation in society, be it civic service, voluntary service or other forms of participation, a European initiative must be clear about its framework and definition. The EESC believes that the best way of approaching this question at European level is to go beyond a traditional civic service and base a European initiative on a framework:

— of a voluntary service open to all, unpaid, freely undertaken, educational (non-formal learning aspect) and bringing added social value;

— characterised by a fixed period of activity; with clear objectives, contents, tasks, structure and framework, having appropriate support and legal and social protection;

— where this also has a European and transnational context.

2.3 This could be called a European Citizenship Initiative and include a wide variety of traditions and practices of voluntary activities including civic services in the different Member States.

2.4 Already in the Treaty establishing the European Economic Community there were provisions for an exchange of young workers to promote and deepen solidarity between peoples of Europe.

2.5 A previous EESC opinion on volunteering [2] made a number of recommendations, including:

— to announce a Year of Volunteers, and to publish a White Paper on voluntary activity and active citizenship in Europe;

— to encourage the governments of the Member States to frame national policies on voluntary activity;

— Member States should draw up a legal framework to guarantee the right to carry out a voluntary activity independently of an individual's legal or social status;

— the need, at European level, for reliable and comparable statistics in the field;

[2] See EESC opinion on Voluntary activity: its role in European society and its impact, rapporteur: Ms Koller (OJ C 325, 30.12.2006).

— EU funding, policies and programmes should do more to promote voluntary activity, and adequate infrastructure should be put in place throughout Europe to support voluntary action.

— to make pan-European volunteer programmes available to all the population.

2.6 The EESC feels that, even though progress has been made, many of the recommendations and proposals have not yet been implemented. With this opinion the EESC again underlines the need to implement the recommendations of the previous opinion as well as increasing ambition for a specific area of volunteering, namely voluntary services.

2.7 The EESC believes there is a need for a greater involvement of civil society in European integration. An ambitious European Citizenship Initiative accessible to all age groups can help to bridge the gap of trust between the ordinary citizen and the European Union. The promotion of people's active citizenship contributes to the European Union's principles of liberty, democracy, respect for human rights and fundamental freedoms, equality between men and women and non-discrimination.

2.8 The EESC underlines the need for greater, active participation in society of all people, but especially of young and/or disadvantaged people, in order to strengthen their sense of citizenship and solidarity. Cooperation among the Member States, the European Commission and the EESC in the field of civic services should also be enhanced.

2.9 In the current Treaty, the legal basis for youth policies and citizenship activities lies in Articles 149 and 151, excluding any harmonisation of laws but giving the EU possibilities for encouraging cooperation between Member States and promoting youth exchanges. The Lisbon Treaty widens the scope for youth policies somewhat, adding the participation of young people in democratic life in Europe.

2.10 The Lisbon Treaty, once it comes into effect, will establish a framework for joint contributions from young Europeans to the humanitarian aid operations of the Union, a European Voluntary Humanitarian Aid Corps.

2.11 At present volunteer activities are carried out primarily through the open method of coordination in the framework of European Union's Youth policies' three priority strands:

— encouraging participation of young people in active citizenship and civil society;

— promoting voluntary activities among young people;

— enhancing information addressed to young people and existing information services for young people, promoting voluntary activities among them, encouraging greater understanding and knowledge of youth.

2.12 There are several reasons to reflect on increasing active participation in society in Europe. The European Union has a bigger responsibility than any other continent to meet the millennium goals. It is one of the world's largest donors. Involving Europe's citizens in meeting the world's biggest challenges would not only contribute to the individuals' own development but also foster understanding and create necessary networks in a globalised world.

2.13 National civilian services have sometimes existed as an alternative to military service. With phasing out of compulsory military service and increasing professionalisation of the army in the Member States, civilian services are also reduced. On the other hand, the development of youth voluntary services could also be an attractive alternative to involve young people in society even when military/public service becomes less frequent.

2.14 Volunteering and other civic society initiatives are attracting more and more attention. Representatives of the Member States, acceding countries and the European Commission met in Rome at the invitation of the Italian Presidency in 2004, for the first Conference on Civic Service and Youth. The Italian conference presidency advised in its conclusions, amongst other things:

— systematic and regular exchange of information and good practices and strengthened cooperation between civic services and youth policy;

— greater participation of young people in civic services in order to strengthen their citizenship and sense of solidarity;

— enhanced cooperation among the Member States, acceding countries and the European Commission in the field of civic services for young people.

3. **Present exchange programmes**

3.1 **Europe**

3.1.1 Included in the Youth in Action programme is the European Voluntary Service (EVS). Volunteers between the age of 18 and 30 spend from two to 12 months abroad. They can benefit from specific training and their learning experience is formally recognised in a Youthpass. Between 1996 and 2006, 30 000 volunteers participated in the European Voluntary Service.

3.1.2 From 2009 onwards, older people will be included in the institutionalised forms of European voluntary service, within the framework of the Gruntvig programme. Despite the fact that initially the scale of these exchanges will not be significant, it is worth noting that the European Commission is looking for ways of supporting voluntary work carried out by different age groups. Furthermore, the action taken under the European Commission's Europe for Citizens programme will create real opportunities for the exchange of volunteers from different countries and different age groups.

3.1.3 Thousands of organisations working in EU countries have for many years been engaged in bilateral cooperation, an important element of which is volunteer exchanges. This takes place on a decentralised basis but data on the scale of this phenomenon is unavailable. However based on the exchanges carried out by organisations operating within global structures alone, it is clear that a significant number of Europeans participate in these programmes, particularly young people.

3.1.4 The EVS is built on certain core values and quality standards which are laid down in the EVS Charter. In order to protect and uphold these, organisations interested in sending or hosting EVS volunteers or coordinating an EVS project need first to be accredited.

3.1.5 The European Erasmus programme has been highly successful in increasing mobility for university students as well as supporting cooperation between higher education institutions. Around 90% of European universities take part in the Erasmus Programme and 1.9 million students have participated in it since its inception in 1987. The Programme is seeking to expand its mobility actions even further in the future, with the target of 3 million Erasmus students by 2012.

3.1.6 The Leonardo da Vinci programme supports mobility for those undergoing initial vocational education and training, mobility of employees or the self-employed and mobility for professionals in vocational education and training.

3.2 **Member States**

3.2.1 The EESC recognises the various forms and traditions of civic service and other forms of voluntary activity in the Member States, which aims at active citizenship, solidarity and social development. It underlines the role and contributions of non-governmental organisations active in the field of either youth work or voluntary service. It also is aware of the fact that not much information is available to describe Member States civic service programmes or voluntary activities.

3.2.2 In a number of Member States such as Germany, Italy and France, forms of civic service (compulsory or voluntary) for young people have been already implemented. Some other countries are either in the process of or are considering implementing such services.

4. **A European Citizenship Initiative**

4.1 **Current policy initiatives**

The Committee welcomes the Council recommendation which aims to promote mobility of young volunteers in Europe. The EESC also welcomes the European Parliament's resolution of 22 April 2008 on voluntary action's role in contributing to economic and social cohesion. It highlights the need to mobilise resources for voluntary action and to open up programmes to groups other than young people.

The EESC also welcomes the Commission's call to implement the Amicus Preparatory Action, in order to promote the transnational character of youth placements in civic service and voluntary work activities, encourage the development of a European framework and allow a testing and evaluation phase.

4.1.1 The EESC would therefore welcome those Member States with strong traditions and interest in the area initiating cooperation in which the existing forms of civic/civilian service could include a transnational element.

4.1.2 The EESC agrees that the lack of coordinated actions between the different national schemes and the scarcity of the information available limit the EVS's possibilities and is a cause for concern. The Committee also welcomes endeavours to try to achieve a wider brand recognition for the EVS, comparable to that of the ERASMUS programme.

4.2 **What should the ambitions be?**

4.2.1 The EESC is of the opinion that the Union should set ambitious targets which aim at people's broader participation in civil society. An initial step would be to follow the EESC recommendations set out in the previous opinion (see point 2.5).

4.2.2 The EU should promote a European Citizenship Initiative combining policies and activities for exchange programmes which not only emphasise youth but also ensure a stronger European component. The service period should ideally be completed in a country other than that of the participant. The Committee believes that the European Union should devote more financial resources to such programmes.

4.2.3 In the first phase, it should aim to double the current rate of participation in youth volunteer exchanges. This should be possible given that more than 100 000 students currently participate in the Erasmus programme while only a very small number of European young people participate in other youth exchange programmes in Europe. In the long term, these programmes could aim to achieve the participation levels of the Erasmus programme.

4.2.4 The EESC believes that it is necessary to target disadvantaged young people to a greater extent. This group would draw the greatest advantage from participating in civil society, but often does not have the financial and/or educational qualifications to do so.

4.2.5 Such an initiative should also include groups other than young people. Europe is ageing but older people are more active than before and also want to play a more visible role in society. Including other groups, such as retired persons, in the scheme would contribute to the concept of 'active ageing' as well as bring new groups of people from different countries closer to each other. It would enable older people to be involved in the life of society, to make use of their life experience and to feel useful. This would have a positive effect on their health and quality of life. When young and old act together in undertaking voluntary activity, understanding between generations can also be promoted,, experiences exchanged and mutual support offered.

4.2.6 It is important to ensure better cooperation between existing national and European programmes. This would reduce technical obstacles such as lack of mutual recognition of civic service experience, and of young people's qualifications as well as issues regarding health and accident insurance coverage. For this purpose the European Union should decide on a brand for exchange programmes which meets the Union's quality standards.

4.2.7 Today state support is important in stimulating programme development and guaranteeing quality standards. But no country covers all the costs of volunteer projects. Especially for transnational activities, additional private funding sources are often sought. To encourage exchanges and build up a European Citizenship Initiative the EU therefore has to increase substantially the EU budget for volunteer activities (including exchanges) to cover for example co-ordination expenses, incentive creation and cross-subsidies between countries. The EESC also encourages Member States to increase funding for these activities.

4.2.8 The Committee considers it important to promote a third country element whereby volunteers can do service abroad which contributes to the EU's work towards the Millennium Goals and the implementation of the European Development and Humanitarian Aid policy. An initiative promoting a broader framework and a higher number of exchanges should also be coordinated with the European Voluntary Humanitarian Aid Corps provided for in the Lisbon Treaty. The Corps should also, in the long run, include groups other than young people. In this framework it is important to make sure that the EU's visa policies do not unnecessarily impede such exchanges.

4.2.9 Finally the EU also needs to highlight and evaluate this area by initiating and supporting research as well as developing the statistical component. Cooperation among existing civic services needs to be further discussed, followed up and monitored, in the appropriate institutional framework.

4.3 **Benefits and challenges**

4.3.1 The European Citizenship Initiative would help to underpin the universal as well as European values of liberty, democracy and respect for human rights in addition to the fundamental freedoms and the rule of law. Furthermore, it should also aim to develop social, language and networking skills, the construction and functioning of the European Union as well as the acquisition and exchange of experience. The desire to acquire knowledge or better understand one's own character and abilities are the reasons that often underpin young people's engagement in volunteer activity and also contribute to meeting the requirements of the knowledge-based society.

4.3.2 The EESC believes that there is considerable scope for transnational cooperation and exchange of volunteers in a variety of domains (e.g. social inclusion, human needs, children and youth, sports, information, heritage protection, culture and the arts, environment, civil protection, etc.) which may enhance the European dimension of citizenship.

4.3.3 The EESC believes that the European Citizenship Initiative could also enhance cooperation among Member States, acceding countries and the countries under the European Neighbourhood Partnership Instrument (ENPI) in terms of active citizenship and sense of solidarity.

4.3.4 Volunteers can accumulate important non-formal experience and knowledge which is in demand on the labour market and build up a network of contacts. Volunteers can also acquire key competences and knowledge in areas such as publicity, communications, self-expression, social skills, management and vocational training. Voluntary activity can thus form an important part of a person's CV and career. However the recognition of the young people's volunteer activities and their non-formal learning needs to be ensured.

4.3.5 There are also challenges. One is the lack of legal status for volunteers. National frameworks define the volunteers' and organisations status in the country and, to a lesser extent, abroad. There are no existing national legislative frameworks to give EVS volunteers, for example, a similar legal status.

4.3.6 Insurance and health and safety issues also need to be resolved. Adequate social protection is desirable should be guaranteed for volunteers during their service but that becomes difficult if the provisions for transnational volunteers with regard to social security differ from country to country. The EESC therefore would encourage the Commission to promote a common understanding of these issues, and urge that Member States and the appropriate institutions resolve these important questions.

4.3.7 All efforts have to be made to avoid any potential conflict as to what constitutes paid employment and what constitutes voluntary service. Therefore the differences between employees and volunteers as well as the responsibilities of volunteers, if applicable, must be clearly defined. Voluntary activity is not intended to replace employment. Cooperation with the social partners is therefore of importance.

5. **The role of the EESC and organised civil society**

5.1 Organised civil society is the core sector for volunteer activity. A multitude of civil society organisations are already involved in the EVS and other European programmes. Voluntary organisations should also continue to play a vital role in a broader exchange programme.

5.2 It is a fact that non-profit and voluntary organisations are often providers of various welfare services in Europe. At the same time, participation in popular movements is, in many cases, declining. In this context, a European Citizenship Initiative could both contribute to increasing people's participation in organised civil society and to improving organisations' opportunities for self-development. A review and discussion of the role and position of non-profit organisations in society can bring about a change in these organisations' specific contributions and raise awareness of the added value which they provide to society.

5.3 The European Citizenship Initiative can also contribute to a stronger and a more vibrant civil society. This will also benefit social capital, in terms of trust, less corruption, and membership of voluntary associations.

5.4 The problem of accreditation of organisations and the question of quality of the exchange has often affected civil society organisation. The EESC would encourage organised civil society in Member States and on the European level to cooperate to find common principles regarding accreditation and developing further common quality criteria. This could, where appropriate, be done in cooperation with the public administrations responsible.

5.5 The EESC is aware that this subject needs a follow-up e.g. in the form of a conference. This should include -the participation of all national services bodies, the European Commission and non-governmental organisations active in the field of either youth - or voluntary service, with the aim of promoting the development of a European Citizenship Initiative framework.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

ANNEX

Appendix to the opinion of the European Economic and Social Committee

The following amendments were rejected, although they did receive at least a quarter of the votes cast:

Point 2.11

'At present volunteer activities involving young people ~~are carried out primarily through the are a priority of the~~ open method of coordination in the framework of European Union's Youth policies' three priority strands:

— *encouraging participation of young people in active citizenship and civil society;*

— *promoting voluntary activities among young people;*

— *enhancing information addressed to young people and existing information services for young people, promoting voluntary activities among them, encouraging greater understanding and knowledge of youth.'*

Voting

For: 49 Against: 69 Abstentions: 19

Point 4.3.7

'All efforts have to be made to avoid any potential conflict as to what constitutes paid employment and what constitutes voluntary service. Therefore the differences between employees and volunteers as well as the responsibilities of volunteers, if applicable, must be clearly defined. Voluntary activity is not intended to replace employment. Cooperation with between organisations representing volunteers and the social partners is therefore of importance'.

Voting

For: 48 Against: 77 Abstentions: 23

Opinion of the European Economic and Social Committee on Cooperation and transfer of knowledge between research organisations, industry and SMEs — an important prerequisite for innovation (own-initiative opinion)

(2009/C 218/02)

On 10 July 2008 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on:

'Cooperation and transfer of knowledge between research organisations, industry and SMEs — an important prerequisite for innovation.'

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 3 February 2009. The rapporteur was Mr WOLF.

At its 451st plenary session, held on 25 and 26 février 2009 (meeting of 26 February), the European Economic and Social Committee adopted the following opinion by 158 votes with 1 abstention.

1. Summary and recommendations

1.1 This opinion is about cooperation and knowledge transfer between research performing organisations, industry and SMEs, as such cooperation plays a key role in turning the results of scientific research into innovative products and processes.

1.2 The Committee recommends that those working in industry and SMEs be systematically informed about which knowledge and technology resources are available in universities and research organisations in the EU and how relevant contacts can be established. Accordingly, the Committee recommends that the Commission should work to set up a Europe-wide (internet) search engine, bringing together and complementing existing information systems, thus fulfilling the specific demand for information better than hitherto.

1.3 The Committee supports efforts towards free internet access to scientific publications. However, this will usually be associated with higher costs for the public purse. Efforts should therefore be made to secure reciprocal arrangements between EU Member States and with non-European countries. This should not restrict research performing organisations' and their scientists' freedom of choice in publishing their results in whichever journal or whichever forum best serves the purpose of getting their results disseminated and recognised worldwide.

1.4 The Committee recommends that further thought be given to free access to research data, but that limits be set on how far such an enterprise should go. This should not mean premature open access to any data that arises from the research process, including what is known as raw data. The Committee recommends that the Commission proceed cautiously and step by step, involving the relevant researchers.

1.5 In view of the different working cultures of research performing organisations and industry, the Committee recommends that a fair balance of interests be ensured. This includes the tension between prompt publication of results and the need for confidentiality, as well as intellectual property rights including patents.

1.6 The Committee therefore welcomes the fact that the Commission has now made clear, with its recommendation concerning the handling of intellectual property, that it certainly does not wish to interfere with cooperation partners' freedom to make contractual arrangements even when contract research is involved. The Commission's recommendations should be a help, but not become a straitjacket.

1.7 The Committee repeats its recommendation that a European Community Patent be introduced, with an appropriate grace period that does not infringe novelty status.

1.8 When it comes to developing research infrastructure, such as accelerators, radiation sources, satellites, earth-based astronomical equipment, or fusion facilities, research performing organisations are not primarily suppliers of new knowledge, but rather principals and customers. The Committee recommends that the experience arising so far from the EU's and Member

States' existing rules on aid, budgets, procurement and competition be thoroughly reviewed to see that they are conducive to the purpose of keeping the skills and specialist knowledge gained by industry under such contracts and using them to make Europe more competitive, and indeed for subsequent follow-on contracts, or whether new kinds of industrial policy instruments are needed in this area.

2. Introduction

2.1 The Committee has published numerous opinions [1] on issues of research policy. In particular, it has pointed out the fundamental importance of sufficient research and development for the Lisbon and Barcelona goals.

2.2 One particularly important aspect of these recommendations concerned to cooperation between research performing organisations/public research organisations (including universities), industry and SMEs and the necessary knowledge transfer, with the aim of developing innovative processes and marketable products. This opinion looks at this aspect in more depth and focuses on the themes listed in chapters 3 to 5: (a) publications and information; (b) cooperation in developing innovative processes and marketable products; and (c) cooperation in developing research infrastructure [2].

2.3 These issues relate to the balance – but also the tension – between cooperation and competition. On the one hand, cooperation is necessary in order to maintain and strengthen the competitiveness of European industry vis-à-vis that of countries outside the EU. On the other, competition among European businesses must not be distorted; this is covered by the rules on state aid (European law on state aid), which are designed to ensure a level playing field in the single market.

2.4 The tension that thus arises forms the background for the issues and recommendations set out below, in particular as regards intellectual property rights and the associated problems of free information transfer.

2.5 The subject of cooperation has also been taken up by the Commission and the Council. Among other things, this has led to the Commission Recommendation [3] on the management of intellectual property in knowledge transfer activities and Code of Practice for universities and other public research organisations. The aim of this is to encourage the Member States and research bodies to act in a more uniform manner. However, these recommendations, despite their largely sensible aims and proposals, raised new questions of their own and gave rise to serious reservations among the relevant organisations concerning intellectual property rights in collaborative and contract research. These questions, and their subsequent resolution by the Commission, are part of this opinion.

3. Publicising research activities and achievements

3.1 **Scientific publications**. Traditionally, scientific results are published in printed specialist journals after undergoing stringent peer review. Sometimes they are published beforehand by the research institutes as pre-prints or technical reports etc. In addition, they are reported at, and published in the proceedings of, specialist conferences.

3.1.1 **A new dimension: the internet**. The internet has opened up a new dimension of communication and knowledge transfer. Thus, the publishers now also publish most scientific journals in electronic form on the internet.

3.1.2 **Libraries and cost issues**. Access to printed and electronic publications has largely become a reality thanks to the libraries of universities and research performing organisations. However, universities and research performing organisations must be financially capable – and there is a serious problem [4] here – of bearing the associated costs (of publications and subscriptions).

3.1.3 **Free open access to scientific publications**. Whilst internet access to scientific publications has up until now usually been associated with costs that have to be borne either by the libraries and/or their sponsoring institution, or directly by the users, efforts to make such access free of charge for all users ('free open access' [5]) have been ongoing for some time. To make this work, a number of business models and payment arrangements are being examined, some of which have already led to firm agreements. The Committee supports such efforts. However, not all agreements will be cost-neutral for the public purse. The Committee therefore recommends that efforts be made towards reciprocal arrangements among EU Member States and with non-European countries.

3.1.3.1 **Unrestricted freedom of choice**. However, this should certainly not restrict research performing organisations' and their scientists' freedom of choice in publishing their results in whichever journal or forum in their view best serves the purpose of getting their results disseminated and recognised worldwide.

[1] See point 6.
[2] INT/450, CESE 40/2009 (not yet published in the Official Journal).
[3] C(2008) 1329, 10 April 2008.
[4] URL: http://ec.europa.eu/research/science-society/pdf/scientific-publication-study_en.pdf.
[5] Open Access. Opportunities and Challenges — a Handbook. European Commission/German Commission for UNESCO, 2008.

3.1.4 **Open Access to research data**. Beyond this, models ([1]) have been developed to enable generalised open access – i.e. beyond the voluntary exchange of data that is already commonplace between cooperation partners – via the internet not only to scientific publications, but to the data underlying them. However, this raises questions of an organisational, technical and legal nature (e.g. protection of intellectual property and data protection), and of quality assurance and motivation, which in many cases can only be answered in a way specific to each discipline. The Committee therefore considers that it is right to continue such deliberations, but also to set limits on how far such an enterprise should go. The Committee recommends that the Commission proceed very cautiously in this area, in particular by involving the researchers directly affected.

3.1.5 **Right to confidentiality**. The Committee emphasises that this must not mean premature open access to any data arising from the research process, including what is known as raw data. Researchers must first correct erroneous measurements, mistakes, issues of interpretation etc., assess their importance, and deal with them in the internal opinion-forming process before they give the go-ahead (if appropriate) for publication. Otherwise, the individual rights of researchers and the fundamental basis of scientific work and data protection, not to mention quality standards and priorities in scientific publications, could be damaged.

3.2 **Information for businesses and SMEs**. Many businesses and SMEs who are interested in new developments are not sufficiently well informed about which knowledge and technology resources are actually available in universities and research organisations in the EU and how relevant contacts can be established with a view to initiating possible cooperation. There is therefore, above and beyond the set of instruments mentioned above, a need for information outside the narrow circle of experts.

3.2.1 **Publications aimed at a wider public**. There is also literature aimed at non-specialists (so-called popular science literature) on scientific and technical subjects. The Commission has in recent years also played an increasing and successful role in disseminating the scientific and technical results from the research programmes it sponsors, for example with the excellent **research*eu** ([2]) magazine or the ***CORDIS*** ([3]) internet portal. Similarly, more and more universities and research organisations have started to present their activities and results on the internet ([4]), not least with a view to knowledge transfer and possible cooperation.

3.2.2 **Transfer offices**. In addition, numerous research organisations have for some time had their own, very useful, knowledge transfer offices ([5]) with appropriately-trained specialists ('technology transfer officers' ([6])). However, these mostly work at regional or organisation level, such that using them for the purpose of carrying out a pan-European search remains very tedious.

3.2.3 **Support organisations and consultants**. Alongside the Commission, several organisations and networks are working, in some cases on a commercial basis, to meet the need at European level described above: there exist, for example, EARTO, the Association of European Science and Technology Transfer Professionals and ProTon ([7]). The Commission, too, offers support via its SME Portal and the European Enterprise Network ([8]).

3.2.4 **Systematic search**. Insofar as the above-mentioned instruments cannot yet adequately meet the demands of industry/SMEs, the Committee recommends that the Commission – where possible in cooperation with one of the large search engine companies – work towards **meeting this need systematically through a pan-European (internet) search system** in which the specific information referred to above is summarised in a uniform and accessible format. As a first step towards this, there would need to be an opinion-forming process to define more precisely the aims and scope of the first stage of such a search system, so as to gain experience in a pilot phase.

3.2.5 **Staff exchanges**. As the most effective knowledge transfer takes place between people who move between research and industry, the Committee reiterates in this context its repeated recommendation that such exchanges of staff should be more strongly encouraged and supported, for example through a system of grants and sabbaticals such as the Marie Curie Industry-Academia grant.

([1]) COM(2007) 56, 14.2.2007; C (2008) 1329, 10 April 2008 – Annex II.
([2]) http://ec.europa.eu/research/research-eu.
([3]) http://cordis.europa.eu.
([4]) http://www.ott.csic.es/english/index.html in Spain or http://www.technologieallianz.de in Germany.
([5]) COM(2007) 182, 4.4.2007.
([6]) C(2008) 1329, 10 April 2008, point 7.
([7]) http://www.earto.org/; http://www.astp.net/; or http://www.protoneurope.org.
([8]) EEN: http://www.enterprise-europe-network.ec.europa.eu/services_en.htm and SME Portal http://ec.europa.eu/enterprise/sme/index_en.htm.

4. Cooperation in the development of marketable products and processes - fair balance of interest

4.1 **Different work cultures**. In view of the many documents and recommendations that are already available on this subject, which are referred to in the introduction, this chapter must focus on a few selected issues that arise from the working cultures and interests of research and industry, which are, of necessity, different. The Committee has already dealt with some of these differences in detail in its first opinion on the European Research Area ([1]) and subsequently mentioned them on several occasions. Essentially these are about:

4.2 **Publication and secrecy**

— Research needs early publication of its results so that other scientists and groups of researchers can check them. This is also helps to generate synergies through immediate interaction within the scientific community, in particular where several laboratories are cooperating in a joint research and development programme.

— Government must generally also insist on early publication of findings from research it has funded in order to ensure a level playing field.

— At present, however, even publicly funded research performing organisations must, where their results lead to significant innovations, submit a patent application before they publish their results, as this would otherwise infringe novelty status and prevent them from patenting their invention. This necessity, which also applies to open access, is also highlighted in the Commission's recommendation on the management of intellectual property ([2]).

— In order to defuse the resulting conflict between objectives, the Committee has repeatedly recommended that a grace period in which novelty status is not infringed ([3]) be introduced into the Member States' patent legislation and into the future Community patent legislation.

— On the other hand, it is generally in a company's interests - in view of the competition situation - that the findings from its product development remain confidential at least until a new product is ready for the market or the relevant patents have been secured.

4.3 **Research to seek knowledge – development to seek results**. A researcher's product consists of discoveries that are made through a complex process of seeking and finding out, the outcome of which is unknown. By contrast, development covers a targeted, planned process that only begins when a specific aim can be set and the route is sufficiently clear. Nonetheless, there are shifting overlaps, interactions and synergies between research and development – indeed, these processes do not have to follow a linear sequence.

4.4 **Different evaluation criteria. Researchers** and 'their' research organisations are judged according to the quality, number and impact of their publications ([4]) and discoveries, and increasingly by the number of their patents. By contrast, **managers** are evaluated primarily according to the commercial profits of 'their' business, which in turn depends on the number, quality and price of the products sold.

4.5 **Synthesis**. These contradictions must therefore be reconciled and a fair balance of interest established that brings benefits to both – unequal – cooperation partners. If the most effective researchers and their organisations are to come on board, they must be given a sufficient incentive to do so. Such '*cooperation may be impeded if rights to research results are all passed on to the contracting companies*' ([5]). The reason for this is that new knowledge (foreground) grows and evolves out of existing knowledge (background) and thus, by its nature, includes significant aspects of the background, meaning that the latter is an inherent part of new knowledge. Therefore, flexibility and room for manoeuvre are needed in the agreements about intellectual property rights and the associated appraisal processes, so that individual circumstances and the very nature of creative processes can be taken into consideration. A lack of such flexibility and room for manoeuvre can, at worst, discourage science and business from cooperating.

([1]) OJ C 204, 18.7.2000, p. 70.
([2]) C(2008) 1329, 10.4.2008, Recommendation No. 4 to the Member States and in Annex I, No. 7 to public bodies.
([3]) As used to be the case, for example, in German patent law.
([4]) And according to the prestige of the particular journal in which the results are published!
([5]) OJ C 204, 18.7.2000, p. 70.

4.6 **Intellectual property and the Commission's recommendation on that subject**. The Committee therefore welcomes the fact that the Council (Competition) has emphasised the contractual freedom of the parties, stating in its decision of 30 May 2008: '*CALLS UPON all universities and other public research organisation to pay due regard to the content of the Commission's Code of Practice and to implement it according to their specific circumstances, including appropriate flexibility for contract research*'. In particular, the Committee welcomes the fact that the Commission, too, has now made clear ([1]) that it does not, in its recommendation ([2]) which specifically addresses this issue, wish to interfere with the freedom to make contractual arrangements, even for contract research. Instead, sufficient flexibility should be provided for, as long as there are no other restrictions such as the framework for research, development and innovation or other European or national laws.

4.6.1 **Further clarification**. It should also be made clear that inventions that give rise to patents cannot simply be commissioned, but represent an additional creative achievement ([3]). The evaluation of these and the returns arising from them must therefore be a matter for negotiation; equally, the commissioning partner firm must not block an evaluation to the detriment of the economy. The Committee therefore welcomes the fact that the Commission is drafting a clarification on this point. The Commission's recommendations should be a help, but not become a straitjacket.

4.7 **The Community patent**. In this context, the Committee once again stresses (see also point 4.2) its repeated recommendations in favour of a European Community patent that provides the inventor with an appropriate grace period that does not infringe novelty status.

4.8 **Rules for participation and law on state aid**. The Committee has already recommended, in its opinion ([4]) on the rules for participation, that in the future parties to contracts be given greater freedom in the contractual arrangements, but also in the choice of instruments. In particular, this relates to the access rights to contract partners' new knowledge and protection rights and/or to existing knowledge and protection rights. Free access rights should be offered as an option, but not – as proposed for certain cases – required without exception. Moreover, the free provision to business of intellectual property by state-run higher education institutions or research organisations also carries the danger of violating European law on state aid.

4.9 **Public-private partnerships**. The Committee's arguments and recommendations mentioned in points 4.6 and 4.8 should therefore also be applied in particular to the otherwise very welcome public-private partnerships in the area of research and development and to the joint technology initiatives they entail.

4.10 **Inventor's fees for employees**. Particular attention should be paid to the laws on employee inventions that exist in some Member States. This relates to the right of an inventor to a patent and an appropriate fee for the use thereof, even if he made the invention as part of his regular employment. Under no circumstances must this right be undermined.

5. Cooperation in developing research infrastructure – maintaining know-how

5.1 **New technological territory – one-offs**. Aside from the category of cooperation between research and industry mentioned above, there is another equally important category, in which the research bodies are not primarily suppliers of new knowledge for the purpose of developing innovative serial products (or processes), but rather principals and customers. This mainly concerns the development of new kinds of infrastructure, such as accelerators, radiation sources, satellites, earth-based astronomical equipment or fusion facilities. In this context, industry develops and produces important new individual components, mostly on the basis of ongoing development contracts.

5.2 **Specialisation and risk**. Businesses in this innovative area require highly-skilled, specialist staff and - because of the possibility of failure - a willingness to take risks. The financial return is often low, as the manufactured product is nearly always a one-off and businesses regularly underestimate the costs involved: generally speaking, the boundaries of existing know-how need to be pushed back significantly.

([1]) Commission Recommendation on the management of intellectual property in knowledge transfer activities and Code of Practice for universities and other public research organisations. (2008) ISBN 978-92-79-09850-5. The last paragraph of chapter 4.3 reads: "Nevertheless, the parties are free to negotiate different agreements, concerning ownership (and/or possible user rights) to the Foreground, as the principles in the Code of Practice only provide a starting point for negotiations. …".

([2]) C(2008) 1329, 10 April 2008, Annex I, Point 17.

([3]) This idea is also behind the granting of inventor's fees for employees – see point 4.10.

([4]) OJ C 309, 16.12.2006, p. 35.

5.3 **Drivers of technological progress**. To be sure, such orders give the firms involved a significant boost to their high-tech skills, which in the long term increases their competitiveness in related areas and is generally conducive to technological progress. However, businesses often find it difficult to use their potential, including employees and engineers in the relevant speciality, where there is no immediate prospect of follow-up orders, when putting those resources to work in the development and production processes for mass-produced goods is much more lucrative.

5.4 **Application of rules on competition and awarding contracts**. The way the existing rules on competition and awarding contracts are applied has the potential to make the situation worse, not least because the firm that has carried out the development contract cannot then simply receive the production contract as a matter of course. This can mean that that production contract is awarded to a less experienced firm, which, precisely because of its more limited experience, underestimates the difficulties and has therefore quoted a cheaper price. This problem has even led some companies to stop bidding for and/or accepting such contracts. Even 'pre-commercial procurement' instrument [1] does not really deal with the problem described above, as no mass-produced goods are subsequently produced.

5.5 **Problems and the quest for solutions**. The Committee has no ready-made solution for these issues. However, it wishes to draw attention to a serious problem, which not only adds to the cost and timescale of such projects, but also fails to make optimum use of the skills and experience arising from them, as valuable skills are often lost. It therefore recommends that the Commission set up a high-level group of experts [2] to look at experiences to date. This could shed light on whether the current rules on state aid, competition and awarding contracts, and the way they are applied, are appropriate to this specific situation, or whether new kinds of industrial policy instruments are needed in this area.

5.6 **ITER**. The Committee is under the impression that the Commission is very much aware of the problem, for example with the international ITER project, and that appropriate measures to involve industry in that project should now therefore be set in train. This action should, if possible, also be transferred to the requirements of new research infrastructure that is to be set up (ESFRI list).

6. Relevant Committee opinions from the last three years

This opinion has taken account of the following relevant opinions issued over the past three years:

— **7th R&D Framework Programme** (INT/269, CESE 1484/2005 – OJ C 65/9, 17.3.2006)

— **Nanosciences and nanotechnologies** (INT/277, CESE 582/2006 – OJ C 185/1, 8.8.2006)

— **Five-Year Assessment of Community research activities (1999-2003)** (INT/286, CESE 729/2006 – OJ C 195/1, 18.8.2006)

— **RTD – Specific programmes** (INT/292, CESE 583/2006 – OJ C 185/10, 8.8.2006)

— **Research and innovation** (INT/294, CESE 950/2006 – OJ C 309/10, 16.12.2006)

— **Participation of Undertakings – 7th Framework Programme** (INT/309, CESE 956/2006 – OJ C 309/35, 16.12.2006)

— **Participation of undertakings – 7th framework programme 2007-2011 (Euratom)** (INT/314, CESE 957/2006 – OJ C 309/41, 16.12.2006)

— **Investment in Knowledge and Innovation (Lisbon Strategy)** (INT/325, CESE 983/2007 – OJ C 256/17, 27.10.2007)

— **Europe's potential/research, development and innovation** (INT/326, CESE 1566/2006 – OJ C 325/16, 30.12.2006)

— **European Institute of Technology** (INT/335, CESE 410/2007 – OJ C 161/28, 13.7.2007)

— **Green Paper on the European Research Area – New Perspectives** (INT/358, CESE 1440/2007 – OJ C 44/1, 16.2.2008)

— **Innovative Medicines Initiative / Setting up the joint undertaking** (INT/363, CESE 1441/2007 – OJ C 44/11, 16.2.2008)

— **Technology Initiative on Embedded Computing Systems/Setting up the joint undertaking (ARTEMIS)** (INT/364, CESE 1442/2007 – OJ C 44/15, 16.2.2008)

[1] COM(2007) 799 final. Commission communication - Pre-commercial Procurement: Driving innovation to ensure sustainable high quality public services in Europe. See also Committee opinion INT/399 – Pre-commercial procurement, CESE 1658/2008 (not yet published in the Official Journal).

[2] If possible involving the research bodies belonging to EIROforum.

— **Setting up the Clean Sky Joint Undertaking** (INT/369, CESE 1443/2007 – OJ C 44/19, 16.2.2008)

— **Setting up the ENIAC Joint Undertaking** (INT/370, CESE 1444/2007 – OJ C 44/22, 16.2.2008)

— **Research and development programmes for SMEs** (INT/379, CESE 977/2008 – OJ C 224/18, 30.8.2008)

— **Competitive European regions through research and innovation** (INT/383, **CESE** 751/2008 – OJ C 211/1, 19.8.2008)

— **Fuel Cells and Hydrogen – Joint Undertaking** (INT/386, CESE 484/2008 – OJ C 204/19, 9.8.2008)

— **European partnership for researchers** (INT/435, CESE 1908/2008 – Not yet published in the Official Journal)

— **Community legal framework for a European Research Infrastructure** (INT/450, CESE 2009/2008 – Not yet published in the Official Journal)

Brussels, 26 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

451ST PLENARY SESSION HELD ON 25 AND 26 FEBRUARY 2009

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of the construction products

COM(2008) 311 final — 2008/0098 (COD)

(2009/C 218/03)

On 1 July 2008 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the:

'*Proposal for a Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of the construction products*'

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 3 February 2009. The rapporteur was Mr GRASSO.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February), the European Economic and Social Committee adopted the following opinion by 114 votes to one with one abstention.

1. Conclusions and recommendations

1.1 The Committee is convinced of the importance of ensuring full application of the principle of the free movement of goods, which is enshrined in the Treaty and enhanced by the common framework launched in July 2008 and subsequent sectoral regulations, so that products lawfully marketed in a Member State can also be marketed without hindrance throughout the EU, with guarantees in terms of health, safety and environmental protection over the entire life cycle of the product, from conception to disposal.

1.2 The Committee welcomes the Commission's initiative aimed at revising EU legislation on construction products – specifically the CPD Directive (89/106) – to bring it into line with current needs, update its content and establish a certain, unambiguous European legal framework.

1.3 The Committee firmly believes that, from the design stage, ecosystemic quality must be factored into the range of characteristics and structural conditions of housing and/or building structures by using natural resources sparingly, improving people's housing conditions and instilling a more responsible approach into the procedures, practices and techniques involved in meeting quality and safety requirements for workers and end users.

1.4 The Committee feels that the European system of construction product standardisation needs to be bolstered, by supporting standardisation bodies and incorporating into standards the aspects of work safety, product use and disposal.

1.5 The Committee feels that the huge potential of innovative construction products, in terms of mitigating the negative effects of climate change and improving housing comfort, should be incorporated into the culture of construction professionals, construction companies and consumers, as a practical, effective means of contributing to environmental protection and energy-saving.

1.6 The Committee reiterates that the free movement of goods should be 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, healthy products should ensure quality for European consumers and industry players.

1.7 The Committee believes it important to ensure a **harmonised EU regulatory framework** for the marketing and manufacturing of construction products in the single European market (EEA).

1.8 The Committee attaches particular importance to the need to **restore the credibility of the CE mark and improve the system for accrediting notified bodies**. A legal framework should be developed which provides consistency, comparison and coordination in the decentralised system, effective market surveillance, and unambiguous, simplified definitions and procedures.

1.9 The Committee recommends that adequate **financial resources** are allocated **to fund EU training and information programmes**, targeting all the public and private bodies involved – particularly through trainer-training campaigns – as well as a flanking programme to monitor implementation.

1.10 The **provisions specifically designed to simplify procedures are essential**, particularly for **SMEs and micro-enterprises**, providing simplified access to the CE mark system and setting up Solvit [1] at national product contact points (PCP), to facilitate problem-solving.

1.11 The Committee feels that the new rules and technical annexes should be accompanied by **technical guides on developing the basic requirements** of activities linked to the use of environmentally-friendly primary and secondary materials and innovative products.

1.12 The Committee stresses the need for a sector-specific application of the Rapex **rapid alert system** to construction products and calls for **cases of infringement and fraud to be published in the Official Journal** of the EU and on an EU web portal for construction products.

1.13 The Committee thinks that the **time frames for implementation of the Regulation** are **too tight** to allow for its full and effective application and that they should be carefully assessed inter alia in relation to the training and information requirements involved in assimilating the imposed changes.

1.14 Finally, the Committee calls on the Commission to present a two-yearly report to the Parliament, Council and EESC on the implementation of the Regulation, with a chapter dedicated to health and safety requirements for construction products and related cases of infringement and fraud.

[1] http://ec.europa.eu/solvit/

2. Introduction

2.1 The European construction industry accounts for some 10 % of EU GDP and around 7 % of the entire EU workforce, with over 65 000 companies working in the construction products sector, of which some 92 % are SMEs and micro-enterprises.

2.2 A significant proportion of construction products are subject to intra-Community trade within the European Economic Area, ranging from 15 % to 25 % of the total market, depending on the sector.

2.3 Construction products can be placed on the EEA market [2] only if fit for purpose: construction materials should retain the declared levels of fitness for purpose in terms of their properties for the entire lifecycle of the product of which they are part. This applies in particular to essential requirements with regard to mechanical strength and stability, safety in the event of fire, hygiene, health and the environment, safety in use, protection against noise, and energy economy and heat retention.

2.3.1 Due consideration must therefore be given to the compatibility and durability of construction products, especially when major investment is needed to renew the building stock with a view to making it more energy efficient.

2.4 The Committee 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' [3].

2.5 To date over 300 categories of construction products have obtained the CE mark and since the year 2000 the CEN has established over 380 harmonised standards [4]. During the same period over 1 100 European Technical Assessments (ETA) have been carried out on specific products, enabling the CE mark to be obtained, instead of using harmonised standards.

2.6 Innovative construction products offer huge potential for mitigating the negative effects of climate change, increasing energy efficiency and improving housing comfort. If this potential were recognised and appreciated by architects and consumers, it would provide a practical, effective means of contributing to environmental protection and energy-saving [5].

[2] EEA: European Economic Area.
[3] OJ C 120, 16.5.2008.
[4] CEN: http://nan.brrc.be/docs_public/other/cpd_standards_20080730.pdf; and OJ C 304, 13.12.2006.
[5] OJ C 162, 25.6.2008.

2.7 It is crucial that manufacturers take timely action to adapt their production processes to the new rules. The requirement to use a common language in assessing product performance – both in terms of reducing CO_2 emissions at the manufacturing stage and in terms of healthy building interiors – should improve relations between manufacturers, their clients and public authorities and improve construction quality.

2.8 A simple high-quality legal framework for companies is a key factor for competitiveness, development and employment. Simplification of the regulatory environment is crucial to encouraging innovation and reducing the administrative burden stemming from regulatory requirements, reducing the total volume of the Community *acquis* and promoting the transition to more flexible regulatory approaches.

2.9 The Committee thinks that in addition to the properties and characteristics required of the products themselves, account should be taken of the capacity and need to predict the possible costs of the design and building of works, and particularly of management and maintenance.

2.10 The Committee also reiterates 'that better lawmaking and implementation and enforcement are closely linked: a good law is an enforceable and enforced law. (…) This [application problem] has to do with different cultures and responsibilities and varying degrees of involvement in effective implementation across Europe' ([6]).

2.11 Consequently, **the Committee strongly supports the decision to opt for a Regulation (CPR) as the means of revising the Directive**, so as to avoid the problem of divergent interpretation and implementation, reduce the burden and simplify the regulatory framework.

2.12 The Committee stresses again the importance of guaranteeing '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' ([7]).

3. The Commission proposal

3.1 The aim of the proposed Regulation is to ensure accurate and reliable information on construction product performance throughout the EEA internal market, by:

— establishing a common technical language;

— defining objectives, concepts and precise rules for determining the obligations of all economic operators;

— stipulating that obtaining the CE mark is dependent on a Declaration of performance, sole responsibility for which lies with manufacturers and importers;

— increasing the credibility of the rules, including those for the designation of Technical Assessment Bodies (TAB);

— simplifying procedures and reducing administrative burdens on companies;

— establishing more stringent criteria for notified bodies under the control of a notifying authority designated by the Member States; and

— increasing market surveillance by means of Member States' surveillance authorities.

4. General comments

4.1 The Committee welcomes the initiative to harmonise Community legislation on the subject, updating it and establishing a certain, unambiguous, clear, transparent, balanced European regulatory framework for all public and private operators on the European internal market, with a common language, harmonised technical specifications (harmonised European standards – hEN and European Assessment Documents – EAD) and basic works requirements – BWR – fully incorporating obligations in the area of sustainable development, public health and sustainable use of natural resources, and simplifying procedures for SMEs.

4.2 The Commission sees the construction sector as a cutting-edge European market which, however, is governed by 'insufficiently coordinated regulations, not only at EU … level'. This factor, 'coupled with the predominantly local business structure, lead[s] to considerable administrative burden and to a high fragmentation of the sustainable construction market' ([8]).

4.3 The Committee believes that the following essential criteria should be taken into account in particular as the Construction Products Directive is revised and converted into a CPR:

([6]) OJ C 24, 31.1.2006.
([7]) As footnote 3.
([8]) COM(2007) 860 final of 21.12.2007, Communication on A lead market initiative for Europe, p. 5.

— **transparency, streamlining, reliability, legal and technical certainty, consistent definitions, accessibility to the Community user**, intermediate and end consumers of construction products, sellers and buyers, engineers, architects and design engineers, public and private contracting agents, and public administrations;

— **a common language based on harmonised standards and European Technical Assessments which is accessible, clear and user-friendly** for both professionals and the layman, with their living and space needs and requirements in the area of health and energy and environmental efficiency, quality of life, hygiene and safety;

— **consistency with other EU objectives and policies, particularly the general precautionary principle enshrined by the Treaty** and adopted in a number of international conventions and in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS): this principle must be applied when objective scientific research has identified potentially harmful effects of a phenomenon, product or process, particularly in relation to the REACH regulatory framework for chemicals ([9]), the general safety of products placed on the market ([10]) and product liability, to ensure a high level of consumer protection against damage to consumers' health or property by a faulty product ([11]);

— **communication, information and training on the rights and responsibilities of all the various Community stakeholders**, with clear identification of the Product Contact Points (PCPs) which should incorporate Solvit mechanisms to settle disputes and give intermediate and end users and businesses, especially SMEs, access to out-of-court procedures;

— **cutting red tape and related burdens**, especially for smaller, weaker consumers such as intermediate and end consumers, SMEs and individuals, bearing in mind that requirements laid on economic operators must be justified and proportionate and not entail costly bureaucratic and administrative burdens;

— **development and dissemination of a culture of sustainable, health-aware, safe construction** incorporating project research, revised building methods, manufacture, placing on the market and use of better materials in the construction process, and new structural methods, giving all those involved a share of responsibility as early in the process as schools, training of engineers and universities;

— **support for European standardisation bodies**, aimed at increasing their efficiency in the process of drawing up technical standards for construction products, and ensuring that such bodies have clear, transparent and fully respected mandates, and broader representation of all the relevant categories;

— **reinforcement of market surveillance systems and publishing of offences and their perpetrators**, with enhancement and coordination of national systems, sector-specific application of Rapex construction products ([12]), publication on a European web portal and in the EU Official Journal of construction products which have been the subject of infringements or fraud, and a chapter on cases of infringement or fraud in a two-yearly report on the application of the new Regulation, to be submitted to Parliament, the Council and the EESC.

4.4 The Committee agrees on the need to improve the system for accrediting notified bodies and to establish more stringent requirements for designating, managing and overseeing these bodies, in line with general legislation in this area, laid down under Decision No 768/2008/EC and Regulation (EC) 765/2008 of 9 July 2008.

4.5 In view of increasing globalisation, the market surveillance system must provide a common regulatory framework to ensure effective, consistent implementation of legislation throughout the Community: Member States must provide sufficient resources for this to be carried out. In any case, Member States must be explicitly required to designate a body to which complaints can be submitted and to give the public access to this body.

4.6 The Committee feels that the responsibilities of the various players should be clearly demarcated, ensuring full product traceability, particularly in terms of the performance of construction materials throughout the whole product life cycle; in terms of health and safety – especially the safety of workers and end users; and in terms of integrated protection of the general living and working environment.

4.7 There is a need to rebuild confidence in conformity marks. The intrinsic value of the CE mark needs to be restored and greater scope needs to be provided for prosecuting infringements and for legal protection of the CE mark. The Committee notes that changing over to the new CE mark system will entail burdens for businesses and substantial initial investment from public authorities in standardisation and surveillance infrastructure, especially as regards bringing notified bodies up to levels of excellence.

([9]) Cf. Regulation (EC) No. 1907/2006 of 18.12.2006.
([10]) Directive 2001/95/EEC of 3.12.2001 on general product safety.
([11]) Directive 85/374/EEC of 25.7.1985 on liability for defective products.
([12]) RAPEX: rapid alert system for non-food products.

4.8 The Committee feels that in tandem with bolstering the European construction product standardisation system there should be greater promotion of the establishment and application of international standards, facilitating access to markets and international trade, and ensuring that construction product markets have a global dimension.

4.9 The Committee advocates more suitable implementation time frames than those proposed, given the need for widespread and grassroots information campaigns and for a period of adjustment to the changes in methods, procedures and behaviour required to make the transition from the CPD to the CPR.

4.10 The Committee believes it is essential for adequate financial resources to be provided to support Community programmes for training, information, support and monitoring of implementation, targeting all public and private stakeholders.

4.11 The Committee recommends that the new standards and technical annexes be supplemented with technical guides on developing basic works requirements to help with:

— defining obligations in this field in the future, particularly with a view to use of environmentally-friendly primary and secondary materials;

— greater flexibility for innovative products, not least in processing times, thanks to European Technical Assessments (ETAs), and the role and selection of the various bodies and organisations specified in the proposal.

5. **Specific comments**

5.1 The proposal should include two additional chapters:

— one on communication, information and training, with a view to developing a widespread culture of sustainable construction;

— the other on energy saving, sustainable use of natural resources and health, hygiene and safety throughout the entire product life cycle – from conception to disposal. The basic requirements for these appear in Annex I but the Committee feels that they should be specified in the text of the Regulation itself.

5.1.1 In particular, the obligation to observe hygiene and health requirements is essential as regards the dangers of using recycled material which is radioactive [13] and/or contains hazardous toxic substances which, once incorporated into buildings or structures, could cause permanent – sometimes extremely serious – harm to the health of people living there or who are in contact with them for a long time.

5.2 As regards the definitions (Article 2), the Committee attaches particular importance to the definitions proposed relating to marketing products [14], on which it has already commented [15]. These should ensure consistency with legal frameworks adopted elsewhere but also provide definitions relating to non mass-produced construction products (which are particularly important for SMEs), complex pre-engineered or pre-assembled product kits, and innovative products. The definition of harmonised technical specifications should refer to European Technical Assessments (ETAs) rather than European Assessment Documents (EADs).

5.3 With regard to the declaration of performance, the Committee believes that as soon as a product is placed on the market and complies with the essential product characteristics, meeting the basic works requirements, a complete declaration of performance should be mandatory, not limited to national standards. IT systems or websites which the client can access could also be used for this.

5.3.1 The Committee considers that a declaration of performance must be made if the product is covered by a harmonised standard or a European Technical Assessment Document [16].

5.4 The aims of harmonised standards established by CEN (European Committee for Standardisation) on the basis of instructions from the Commission should be explicitly and clearly defined for the product or group of products in question, stating the uses covered: harmonised standards must comply fully with instructions.

5.5 The Committee feels that the rules laid down on simplified procedures are essential; they implement a specific simplification commitment, in particular for SMEs and micro-enterprises, giving them simplified access to the CE marking system. These procedures must, however, provide equivalent levels of consumer protection in terms of health, safety and environmental-protection requirements.

5.6 The Committee emphasises the importance of the provisions of Article 46, particularly as regards risks to the health and safety of workers, and the need for an evaluation of the product concerned and its entire life cycle. The evaluation must cover all the requirements laid down by the proposed Regulation, as a means of preventing accidents in the sector caused by the use of unsuitable materials or their misuse.

[13] OJ C 241, 7.10.2002.

[14] Decision 768/2008/EC of 9.7.2008 on a common framework for the marketing of products - Regulation (EC) 765/2008 of 9.7.2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products.

[15] OJ C 120, 16.5.2008.

[16] The text of Article 4(1)(b) and the final paragraph of Article 4(1) should therefore be deleted.

5.7 The Committee calls for a review of the transitional provisions under Article 53 that fix a deadline of 1 July 2011 for the legislative changeover from the CPD to the CPR. A longer transition period is needed, given the substantial requirements in terms of information, training and behavioural changes, as well as the necessary period of adjustment to the envisaged changes in methods and procedures.

5.8 As regards the technical updates provided for in Article 51, the Committee reiterates its previous comments on the subject ([17]), regarding the 'importance of comitology procedures being as transparent as possible and more accessible to people living in the EU, especially those affected by these acts'.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([17]) OJ C 224, 30.8.2008.

Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee. Regulatory aspects of nanomaterials

COM(2008) 366 final

(2009/C 218/04)

On 17 June 2008 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

'*Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee. Regulatory aspects of nanomaterials*'

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 3 February 2009. The rapporteur was Mr PEZZINI.

At its 451st plenary session, held on 25-26 February 2009 (meeting of 25 February 2009), the European Economic and Social Committee adopted the following opinion by 170 votes to one with four abstentions.

1. Conclusions and recommendations

1.1 The EESC believes that Europe is spearheading responsible development of nanoscience and nanomaterials (N&N), thus contributing to worldwide economic and social progress.

1.2 The EESC stresses the need for rapid development of industrial and cross-sectoral applications for nanotechnologies, whilst keeping firmly in mind:

— the economic and social context;

— the legal, tax and financial aspects;

— the care that needs to be taken of the ethical, environmental, health and safety aspects throughout the lifecycle of scientific applications.

1.3 The EESC supports the principles set out in the code of conduct on nanotechnologies and considers them also to be valid for the revision of the European legal and regulatory framework for N&N.

1.4 The EESC is concerned by the rate of progress, which is still too slow, in market applications for nanotechnologies and research into the environmental, health and toxicological effects of nanomaterials.

1.5 The EESC is convinced that the complexity and rapid development of nanotechnologies, and the fact that they involve a wide range of scientific disciplines, call for a multi-disciplinary approach, especially as regards risk, within a regulatory, ethical and social framework. This is essential to providing consensual solutions for risk management, based on a reliable, complete and responsible foundation.

1.6 An optimal system of governance must keep a balance between the various aspects of the responsible development of nanomaterials. The EESC recommends that the European Observatory on Nanotechnologies be made permanent, so that it can provide analyses on sound scientific and economic bases and can examine the impact on society and the possible risks to the environment, health and safety (EHS), in cooperation with the other relevant European agencies.

1.7 The EESC believes that an integrated regulatory frame of reference is needed, as well as a system of governance, with the aim of providing clear and reliable answers to the emerging needs, particularly as regards common classification methods, metrology and testing, validation of existing protocols, new protocols, and pre-normative and co-normative research.

1.8 The EESC believes that robust action is needed in the area of interdisciplinary education and training and that this should include risk evaluation and prevention, backed up by infrastructures of excellence.

1.9 The EESC considers it important to develop a European system of benchmarking for the initiatives that are being developed in the area of risk assessment and prevention, in Europe, in the USA, in Japan and in the emerging economies.

1.10 The EESC believes that the work on technical and regulatory standardisation that is being carried out by CEN, CENELEC and ETSI should be supported, including through clear and transparent mandates from the Commission, with a view to feeding this in to the work of ISO/TC 229 at international level, thus facilitating safe world trade in nanotechnologies, nanomaterials and more complex systems involving N&N.

1.11 The EESC recommends that structured dialogue with civil society be strengthened, on a sound and transparent basis, to provide a united European voice in this field, which is vital to our future on the global stage.

1.12 The EESC asks that, in the 2009 report on the Action Plan, a chapter be expressly dedicated to:

— progress in the regulatory framework, including assessment and prevention of risks;

— efficacy and results of test protocols;

— new priorities for action, set at European and Member State level, for the sustainable production, trade and consumption of products made with nanotechnological components;

— benchmarking measures with the USA, Japan and emerging countries on risk assessment and prevention;

— structured dialogue with civil society, on a sound and transparent basis, to provide a united European voice in this field, which is vital to our future on the global stage.

2. **Introduction**

2.1 In recent years, the Commission has become the largest public funding body for N&N: it spent EUR 1.4 billion under the Sixth Framework Programme for RTD (FP6) and almost EUR 600 million in the first year of FP7 2007-2013. EUR 28 million of this latter amount were allocated to research on the safety of N&N, bringing the total allocated to that area to around EUR 80 million ([1]).

2.2 Various European technological platforms have been set up, dedicated to nanotechnological applications, such as that on nanoelectronics (ENIAC), that on nanomedicine and that on sustainable chemicals.

2.3 Worldwide public and private spending on N&N reached EUR 24 billion during the period 2004-2006. More than a quarter of this came from Europe; of this, 5-6 % ([2]) is represented by Commission funding.

2.4 The provisions under RTD FP7 2007-2013 ([3]) relating to N&N require respect for fundamental ethical principles, as set out in the Charter of Fundamental Rights.

2.5 The report on the Third International Dialogue for responsible R&D in nanotechnologies highlighted the efforts made on:

— governance in nanotechnologies;

— gaps in North-South cooperation;

— enabling instruments (metrology, standardisation, definitions and intellectual property);

— involving society;

— dialogue with the public in various countries.

2.6 The commitment of various international organisations has also been demonstrated, inter alia through the following initiatives:

— OECD Database on Human Health and Environmental Safety Research, and the launch of a Database of Research into the Safety of Manufactured Nanomaterials;

— Joint FAO/WHO Food Standards Programme, aimed at providing a neutral international forum for food safety problems relating to nanotechnologies and drawing up cooperation agreements on these matters;

([1]) See Tomellini, R; Giordani, J. (eds.). Third International Dialogue on Responsible Research and Development of Nanotechnology – Brussels, 11.-12.3.2008.

([2]) See COM(2007) 505 final, 6.9.2007: Nanosciences and Nanotechnologies: An action plan for Europe 2005-2009. First Implementation Report 2005-2007.

([3]) See Council Decision 2006/971/EC, 19 December 2006 (OJ L 400, 30.12.2006).

— OECD projects on *Safety Testing of a Representative Set of Manufactured Nanomaterials* and on *Manufactured Nanomaterials and Test Guidelines*;

— OECD project on *Exposure Measurement and Exposure Mitigation*;

— OECD project on *The role of Alternative Methods in Nanotoxicology*;

— OECD project on *Impacts and the Business Environment*

— OECD project on *Communication and public engagement*;

— OECD project on *Global Challenges: Nano and Water*;

— OECD project on *Cooperation on Risk Assessment*;

— specialised centres working together with the WHO on studying the risks to health and safety at work arising from the production and use of nanotechnologies;

— WHO/EU project on *Enhanced Policy Advice on Environment and Health in Europe – Nanotechnologies*;

— worldwide measures for the proper management of chemical products at global level, promoted by the Chemical Products section of the United Nations Environment Programme (UNEP)'s Division of Technology, Industry and Economics (DTIE);

— immediate measures promoted by the High Technology and New Materials section of the International Centre for Science and High Technology (ICS) in Trieste (in the area of evaluating nanotechnologies and the potential risks associated with their development and use);

— ISO TC229 standards for nanotechnology;

— UNIDO meeting of experts (December 2007): recommendations and specific action plan; evaluation of nanotechnologies and associated risks. Research into the ethical, legal and societal aspects of N&N.

2.7 The Royal Society's report on Nanosciences and Nanotechnology: Opportunities and Uncertainties [4] states: 'Until more is known about environmental impacts of nanoparticles and nanotubes, we recommend that the release of manufactured nanoparticles and nanotubes into the environment be avoided as far as possible'.

2.8 Nanomaterials are already present in many everyday objects [5]: self-cleaning coatings, which limit the use of detergents; depolluting agents for removing nitrogen oxides from the air; new-generation photovoltaic cells; heat insulating materials; CO_2 capture systems; nanofilters for air and water, as well as the many applications in medical diagnostics and certain non-invasive therapies.

2.9 The problem also arises from the need to adapt the protocols for assessing short and long term toxicity risks to nanomaterials and to the phenomena of their accumulation and combination with other substances in ecosystems, organic tissues and people.

2.10 Standards for and verification of the evaluation of risks in complex environments may vary between *in vitro* and *in situ* assessments: the research in this area [6] should go beyond conventional protective products, such as filters, breathing masks, protective clothing, and gloves – these articles having been tested with graphite nanoparticles of between 10 and 50 nanometres in length.

2.11 As the Commission points out – and as the EESC has often stressed – 'the "integrated, safe and responsible approach" has become the core of the EU policy for nanotechnology'. The scope of the applications and ramifications of such technologies is very wide, necessitating a broad overview to identify and make use of the overlaps and interdependencies in this discipline, which ranges from nuclear physics to plasma technology, from nanomechanics to textile production.

2.12 Given that nanoprocesses take place in nanoscopic dimensions ($10–^9$), which are hard for the uninitiated to imagine, nanomaterials require, from the outset, constructive dialogue with consumers so as to identify and avoid dangers and to allay any unfounded fears that may arise.

2.13 The EESC has already highlighted the need not only for 'speeding up the development of industrial and multi-sectoral applications and the economic, social, legal, regulatory, fiscal and financial context into which the work of innovative new businesses and professional profiles must fit', but also 'to safeguard ethical, environmental, health and safety interests throughout the lifecycle of scientific applications' [7].

[4] The Royal Society. Nanosciences and Nanotechnology: Opportunities and Uncertainties. London, 29.7.2004.

[5] Such as tennis racquets, bicycles, TV screens, many resins used in military hardware, aerospace, consumer electronics, and electro-medical equipment.

[6] See NANOSAFE2 project – first report on the dissemination of nanomaterials based on the precautionary principle.

[7] See OJ C 157, 28.6.2005, p. 22.

2.14 In a more recent opinion ([8]), the EESC reiterated the need for 'a visible, transparent dialogue with civil society, ensuring awareness based on objective evaluations of the risks and opportunities presented by N&N' and 'constant vigilance to protect ethical and environmental aspects, together with the health and safety of workers and consumers'.

2.15 In 2008, the Commission adopted a recommendation ([9]) focused on responsible N&N research. The recommendation proposed a code of conduct based on seven principles:

— **meaning:** N&N research activities should be comprehensible to the public. They should respect fundamental rights and be conducted in the interest of the well-being of individuals and society in their design, implementation, dissemination and use;

— **sustainability:** N&N research activities should be safe, ethical and contribute to sustainable development and should not harm people, animals, plants or the environment;

— **precaution:** activities should be conducted in accordance with the precautionary principle ([10]) so as to avoid any negative environmental, health and safety impact;

— **inclusiveness:** transparency and respect for the legitimate right of access to information, and openness to all stakeholders;

— **excellence:** applying the best scientific standards, including standards underpinning the integrity of research and standards relating to Good Laboratory Practices ([11]);

— **innovation:** governance of N&N research activities should encourage maximum creativity, flexibility and planning ability for innovation and growth;

— **accountability:** researchers and research organisations should remain accountable for the social, environmental and human health impacts that their N&N research may impose on present and future generations.

The recommendation provides for an annual report from the Member States on the results of implementing the code of practice and on any good practices put in place to achieve those results.

2.16 The EESC supports the principles of that code and considers them to be valid also for the revision of the European legal and regulatory framework for N&N.

2.17 The EESC is concerned by the excessively slow progress made in market applications for nanotechnologies and research into the environmental, health and toxicological effects of nanomaterials.

2.18 Whilst, as things currently stand, the level of risk associated with the exposure of workers and the public still appears to be limited, the EESC considers it essential to strengthen the channels of dialogue with the world of research and industry so that these aspects are included – with appropriate human and financial resources – in all research and applications involving nanomaterials, from the design phase on.

2.19 The EESC points out that, just as there are many disciplines and many sectors involved, there is a similarly large number of relevant Community legislative and regulatory instruments (more than 90). The transparency of Community legislation and its ease of understanding by the public may be undermined by its complexity.

2.20 The regulatory framework could be made easier to understand, in particular for SMEs, consumers and the public, through efforts to translate legislation into simple language, the development of a dedicated interactive website, participatory democracy involving civil society organisations, and the dissemination of best practice guidelines.

2.21 An optimal governance system needs to be able to maintain equilibrium between the various aspects of responsible development of nanomaterials. The EESC recommends that a permanent reference structure be developed, perhaps on the basis of the results of the Observatory on Nanotechnologies, which was launched in 2008 as a project financed by the EU ([12]): the aim is to provide reliable analyses on sound scientific and economic bases, to look at ethical issues, to foresee possible risks to the environment, health and safety (EHS), and to develop new standards.

2.22 The EESC is convinced that the complexity and rapid development of nanotechnologies, and the fact that they involve a wide range of scientific disciplines, call for a multi-disciplinary (regulatory, ethical and social) approach: this is essential if it is to be possible to provide, in terms of risk management, reliable solutions based on dependable, complete and responsible analyses that accurately collate, record and publish comprehensive information on engineered nanomaterials.

([8]) See OJ C 185, 8.8.2006, p. 1.
([9]) See Commission Recommendation, C(2008) 424, 7.2.2008.
([10]) See Article 174 (2) TEU and the *Communication from the Commission on the precautionary principle* (COM(2000) 1 final).
([11]) See Directive 2004/9/EC and Directive 2004/10/EC.
([12]) See 'Observatory nano' FP7 PROJECT.

3. **The Commission proposals**

3.1 The Commission proposes, in particular:

— reviewing documents that support implementation, particularly in relation to risk assessment, adopted within the context of current legislation in order to ensure that they effectively address risks associated with nanomaterials and make best use of the information becoming available;

— asking authorities and agencies to pay special attention to risks in relation to nanomaterials where production and marketing are subject to pre-market control;

— applying to N&N research in the EU the guidelines for a responsible and open approach set out in the code of conduct for responsible research;

— examining the possibility of making the placing on the market of devices presenting risks associated with nanomaterials subject to a systematic pre-market intervention;

— improving the Community legislative framework covering nanomaterials, especially as regards test methods and risk assessment methods;

— rapidly improving the scientific knowledge base, particularly as regards data on toxic and eco-toxic effects as well as test methods to generate such data; data on uses and exposures throughout the lifecycle of nanomaterials or products containing nanomaterials; characterisation of nanomaterials; the development of uniform standards and nomenclature and analytical measurement techniques; and occupational health aspects;

— strengthening the possibilities of using instruments at national level: safeguard clauses, health monitoring measures, and food, feed and pesticide market controls; formal objections to standards; precautionary measures or measures based on new evidence or re-assessment of existing data; vigilance procedures and mutual exchange of information; alert/early warning systems, etc.

4. **General comments**

4.1 Europe is spearheading responsible development of N&N and nanomaterials, thus contributing to economic and social progress in a challenging, competitive worldwide environment. If it is to continue doing so, the EESC believes that this process needs from the outset to be handled using a multi-disciplinary approach that enables ongoing dialogue with civil society, which is a prerequisite for its public acceptance.

4.2 Whilst appreciating the Commission's efforts to analyse the large number of existing Community measures, the EESC believes that this analysis needs to be developed further into a coherent framework to provide the transparent and user-friendly basis needed to carry out structured dialogue with civil society. The EESC has called for such dialogue on several occasions ([13]).

4.3 The EESC believes that foresight for nanotechnological risk-assessment should be developed, along with an integrated regulatory frame of reference and a joined-up system of governance at international level, to give clear, reliable, complete answers and examine the ethical impact, the possible risks for the environment and public health and safety, and possible developments in these areas.

4.4 The EESC therefore asks that the Community initiative be further developed so as to:

— ensure that there is a coherent and user-friendly framework into which the various Community regulations fit;

— identify and address the emerging needs of market operators, supervisory authorities, workers in the sector and end users, through dynamic mapping of needs and gaps and setting out what action is needed at EU and Member State level to address these;

— set up a permanent European reference structure for N&N and nanomaterials, with a European focal point for promotion and coordination ([14]) that also covers the risk assessment and prevention aspects;

— strengthen interdisciplinary education and training measures, including risk assessment and prevention, and European centres of excellence in this area;

— develop a European system of benchmarking for initiatives in the area of risk assessment and prevention, in Europe, in the USA, in Japan and in the emerging economies;

([13]) See footnotes 6 and 7.
([14]) See OJ C 185, 8.8.2006, p. 1.

— bolster the standards of European leadership in sustainable and safe nanotechnology applications, in terms of metrology and testing and validation of existing protocols, inter alia by making use of pre-normative and co-normative research;

— support the harmonisation of European technical standards, with clear and transparent mandates, with a view to feeding this in to the work of ISO/TC 229 at international level, thus facilitating world trade;

— facilitate structured dialogue with civil society, on a sound and transparent basis, to provide a united European voice in this field, which is vital to our future on the global stage.

4.5 The EESC asks that, in the 2009 report provided for in the 2005-2009 action plan, a chapter be dedicated to the progress made on the regulatory aspects of risk assessment and prevention, the efficacy of test protocols and advances made thereon, and on the new priorities for action.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions

COM(2008) 576 final — 2008/0182 (COD)

(2009/C 218/05)

On 16 October 2008, the Council decided to consult the European Economic and Social Committee, under Article 44 of the Treaty establishing the European Community, on the

'*Proposal for a Directive of the European Parliament and of the Council amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions*'

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 3 February 2009 (the rapporteur was Ms SÁNCHEZ MIGUEL)

At its 451st plenary session, held on 25 and 26 February (meeting of 25 February), the European Economic and Social Committee adopted the following opinion by 104 votes with three abstentions.

1. Summary and recommendations

1.1 The EESC has repeatedly called for the Community legislation in this area to be simplified. Overlaying the original legislation with amendments has created difficulties in applying the law, together with excessive amounts of red tape. This prevents the regulated organisations from functioning smoothly.

1.2 The EESC has also stated however that this simplification process should not involve deregulation or reduced legal certainty, which should exist throughout the EU.

1.3 The regulation of the single market and the relations between economic and social players in Europe have allowed legislation to be harmonised and have also facilitated the free movement of people and capital, without compromising the rights and obligations of the different parties involved.

1.4 For this reason, and taking into account the consequences of insufficient regulation and transparency in some of the key organisations of the single market, the EESC believes that the Commission should assess whether the proposals to simplify procedures will have positive effects alone and reduce economic costs, or whether they could have an effect on the legal certainty of concentrations occurring through mergers or divisions.

1.5 The EESC therefore believes that legislation concerning European SMEs – which comprise the main part of Europe's economic fabric – should be clearly separated from legislation applicable to large companies, especially those which raise funds on the stock market. The unanimity requirement for many of the proposed provisions must surely be intended for small and medium-sized limited liability companies, as otherwise the requirement would be unworkable.

1.6 Until legislation is clearly separated in this way, legal guarantees for shareholders, creditors and employees should remain in place, and ways of supporting SMEs should be sought to mitigate the economic burden of meeting the demands of existing legislation.

2. Introduction

2.1 One of the Commission's priorities for the internal market has been to set up a process to simplify EU law, especially the law governing the administrative burdens on European companies. Most European companies are SMEs, but many of the requirements set out in company law Directives are designed for large limited-liability companies that raise funds on the stock market.

2.2 The Spring European Council in 2007 ([1]) endorsed the action programme to simplify and reduce the administrative burdens which unnecessarily hamper the economic activities of businesses. The action programme set the objective to reduce administrative burdens by 25 % by 2012.

([1]) Conclusions of the Presidency of the Brussels European Council. Doc 7224/07. p. 9.

2.3 In terms of company law, proposals to simplify procedures have been made in two areas: material law, in the First Directive on the formation of public limited companies ([1]) and in the Second Directive on the maintenance and alteration of capital ([2]); and the Directives on procedural law ([3]), particularly as regards accounting standards and information requirements for listed companies.

2.4 Two of the Directives that have been proposed for amendment have already been the subject of simplification proposals: the Third Directive on mergers and the Sixth Directive that regulates divisions ([4]) in relation to a key issue, the involvement of independent experts when public limited companies are merged or divided. The EESC was critical on this issue ([5]), stating that the absence of an objective observer from outside the company could jeopardise the interests of third parties, creditors and employees.

3. Gist of the Commission proposal

3.1 The Proposal for a Directive, on which this opinion is based, has a direct effect on three Directives: the Third Directive on mergers, the Sixth Directive on divisions, and the Directive on cross-border mergers which was adopted most recently ([6]). It also indirectly amends the Second Directive ([7]): introducing into the law on mergers and divisions the exemption from the independent expert's report (on non-cash consideration) will affect rules on the alteration of capital set out in the Second Directive.

3.2 Generally speaking the simplification measures proposed in the three Directives relate to:

— reducing information requirements on the draft terms of mergers or divisions

— publication and documentation obligations to shareholders on proposals for mergers or divisions

— rules on protecting creditors.

3.3 The reporting requirements in both the Third and the Sixth Directives currently involve producing three reports: a report by management on the legal and economic grounds of the merger or division; an independent expert's report; and an accounting statement where the annual accounts are older than six months. All these documents have to be approved by the general meeting of each company involved in the merger or division.

3.4 The proposal reduces these requirements if shareholders unanimously agree to waive the management report, and for the accounting statement, the rules established in the Transparency Directive ([8]) will be applied where the company has listed securities.

3.5 As regards the amendment of the Second Directive relating to the alteration of capital, the proposal is to exempt companies from the obligation to produce an expert's report on consideration other than in cash.

3.6 A key proposal involving the publication of the reports on mergers and divisions recommends using new technologies and the Internet to make this information available.

3.7 On the protection of creditors, the proposal changes their current right to oppose the mergers or divisions until payment of their loans is guaranteed. However in cross-border mergers, the expert's report on consideration other than in cash must be produced, ensuring that a value is placed on this which could be enforced in the courts in the various Member States where the companies are based, and thereby protecting creditors.

4. Comments on the proposal for amendment

4.1 The EESC considers that simplifying EU legislation – and company legislation in particular – is a positive step overall, because European companies and especially SMEs which make up an important part of the economic fabric of the EU, are over-burdened with red tape. The EESC has already pointed out however that this simplification process must not under any circumstances give rise to legal uncertainty for players in the single market.

4.2 We understand the Commission's interest in protecting shareholders as owners of the company, but it should not neglect other interested parties whose rights could be affected by legal transactions. We therefore understand and support the European Parliament's position ([9]) on the issue which pointed out the need to take into account the interests of all interested parties (investors, owners, creditors and employees). The EESC has already voiced this view ([10]), and we are making the point again to try and maintain transparency and ensure that economic and social actors have confidence in the European single market.

([1]) Directive 68/151/EEC (OJ L 65, 14.3.1968, p.8), amended in 2002 by Directive 2003/58/EC (OJ L 221, 4.9.2003, p. 13).
([2]) Directive 77/91/EEC (OJ L 26, 31.1.1977, p.1), amended by Directive 2006/68/EC (OJ L 264, 25.9.2006, p. 32).
([3]) Accounting standards and transparency requirements for corporate issuers, Directive 2004/109/EC (OJ L 390, 31.12.2004, p. 38).
([4]) Directive 2007/63/EC (OJ L 300, 17.11.2007, p. 47) amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies.
([5]) EESC Opinion: OJ C 175, 27.7.2007, p. 33.
([6]) Directive 2005/56/EC on cross-border mergers of limited liability companies (OJ L 310, 25.11.2005, p. 1).
([7]) Directive 77/91/EEC.
([8]) Directive 2004/109/EC on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.
([9]) European Parliament Report A6-0101/2008.
([10]) EESC Opinion OJ C 117, 30.4.2004, p. 43.

4.3 The following criticisms should be taken into account on the proposed simplification of reporting requirements for mergers and divisions, which allow documents to be made available to shareholders and creditors on the Internet rather than being published through a register (this also applies to cross-border mergers). Firstly, this amendment cannot be seen as safeguarding either shareholders' or creditors' rights if it recommends doing away with the intrinsically public system of registering documents, and secondly it will no longer be possible to use this information as reliable evidence in the context of any dispute. We therefore believe that ensuring transparency in this type of transaction should take precedence over economic savings, which is why we consider that this principle should be safeguarded more effectively.

4.4 We do agree however that it makes sense not to duplicate the accounting reports for listed companies [1], as they are drafted in line with established procedures and as they also involve the stock exchange authorities. Yet extending this measure to other non-listed companies, when all shareholders from all companies involved unanimously agree, seems to distort the aim of the legislation. If the company accounts are already available, and comply with legislation, there is no need to duplicate them, but this is not the implication of Article 9 (ii)(b) of the Third Directive, where the need to provide a report can be waived if shareholders unanimously agree.

4.5 The proposed amendment to the Second Directive 77/91/CEE (which will be in addition to the amendments made previously) is another issue which concerns us. The proposal is the non-application of Article 10 – on consideration other than in cash and assessment by an independent expert – for mergers or divisions, and the application of specific rules on expert reports. We understand that the report establishes how much capital corresponds to each shareholder, and the capital is the amount of each company's liability to third parties. The EESC maintains its views on transparency, particularly on the safeguards that should apply to all interested parties and others affected by the transactions. Having no 'objective' report on the company's assets at the very least, as reflected in the value of the company's nominal share capital, is surely getting off to the wrong start.

4.6 Lastly, the possibility for creditors to oppose mergers or divisions until they have obtained guarantees (as long as they have evidence of an outstanding claim on the companies that are involved in the transactions), has been one of the ways of maintaining confidence in market transactions and ensuring they run smoothly. Requiring creditors to apply to the appropriate administrative or judicial authority in order to obtain adequate safeguards, and to credibly demonstrate that the satisfaction of their claims is at stake and that no adequate safeguards have been obtained from the company (Article 12(2) Directive 82/891/CEE), effectively diminishes creditor protection rules. Reversing the burden of proof in this way should make us pause to consider whether this is a sensible change to make: it will make hitherto routine market transactions more complicated, and could potentially lead to an increase in the number of transactions effected with legally binding guarantees.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

[1] Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

Opinion of the European Economic and Social Committee on the Proposal for a directive of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC

COM(2008) 627 final — 2008/0190 (COD)

(2009/C 218/06)

On 30 October 2008 the Council decided to consult the European Economic and Social Committee, under Article 47, point 2, first and third sentence, and article 95 of the Treaty establishing the European Community, on the

'Proposal for a directive of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC'

The Section for Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 February 2009. The rapporteur was Mr MORGAN.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 26 February), the European Economic and Social Committee adopted the following opinion by 156 votes to 1 with 10 abstentions.

1. Conclusions and recommendations

1.1 With the progressive application of electronic data processing to financial services one might conclude that we already have electronic money. Cheques are read and sorted electronically and debit and credit cards are read electronically by ATMs, point of sale terminals and other types of payment devices. All of these applications are based on the credit available in a bank account which may be limited by deposits or determined by the bank (e.g. for credit cards). In all cases the bank has made the investigation to determine its client's credit worthiness and bona fides and has issued chequebooks and debit and credit cards accordingly. Access to this electronic credit system depends on credit worthiness. Many sections of the community – the unbanked or the underbanked – are not eligible to participate.

1.2 Electronic money (e-M) is different. It does not depend on credit. It requires a prepayment. The prepayment is then converted into an electronic surrogate for cash stored on electronic media which are managed by an e-M issuer. The electronic media which contains the prepayment may be either portable, which usually take the form of a prepaid card, or they may be on line records and accessed via the internet. E-M enables cashless payments of (generally) smaller amounts in diverse environments such as points of sale or on line through mobile or internet communications. The possession of e-M is not directly linked to credit worthiness. All that is required is the capacity to make the prepayment.

1.3 E-M is never likely to fulfil all the needs which money satisfies. It is not likely to replace the box of EUR 500 notes kept under the bed but it should be able to handle the transactions for which we carry coins and notes on our persons. Even so, the take up so far has been very slow. Successful initiatives have been linked to information society developments. E-M should advance in parallel with the information society. It should be the money of the information society. Future take up will depend on entrepreneurial initiatives and technical innovation in the information society. The purpose of this Directive is to remove obstacles to invention and innovation. The EESC supports this objective.

1.4 In the late 1990s the European Commission saw that issuers of electronic money were confined to credit institutions, and sought to widen the scope of businesses offering these services. In order to develop the market, the Commission introduced E-Money Directive (2000/46/EC) (EMD) to facilitate access by non-credit institutions (e-M institutions) to the e-M market.

1.5 The objective of the EMD was to create a regulatory regime appropriate to the scale of risk represented by the new e-M institutions and under which technology and innovation could flourish. The outcome has not been a great success. E-M is still far from delivering the full potential benefits that were expected and it is not yet considered to be a credible alternative to cash.

1.6 As a result, the Commission has undertaken a wide ranging review of e-M developments. It has concluded that some of the provisions of the EMD have hindered the development of the e-M market, hampering technological innovation. The consultation and evaluation process identified two main concerns. The first involved the unclear definition of e-M and the scope of the EMD. The second concern related to the legal framework which involves the prudential regime and the application of anti-money laundering rules to e-M services. The conclusion was that most of the provisions of the EMD need amending, so it was decided to replace the existing Directive with a new Directive the draft of which, COM(2008)627 final, is the subject of this Opinion.

1.7 The aim of this Directive is to enable new, innovative and secure e-M services to be designed, to provide market access to new players and to foster real and effective competition between all market participants. In the view of the EESC, this initiative is timely because consumer engagement with the information society has increased exponentially since the end of the last decade and there is now a pent up and unsatisfied demand for consumer friendly e-M facilities. The Directive seeks to remove obstacles to the entrepreneurial initiatives which can satisfy that demand.

1.8 The introduction of a new regulatory regime in the financial sector is a potential issue in view of the crisis in the banking system and the general concern about the ineffectiveness of the regulation of banks. Notwithstanding these concerns, the EESC is satisfied that the proposed regime is adequate and proportionate. The new regulations do not apply to banks which were the Institutions responsible for the credit crisis; the drop in the initial capital requirement only serves to reduce the barriers to entry; the capital reserves of an e-M Institution will be proportional to those of the banks; funds representing user claims will be specifically safeguarded in a limited range of investments; the amounts of money involved are de minimis. Should e-M institutions become a real force in the payments market, there are provisions in the Directive to modify it in the light of experience.

1.9 The EESC has some concerns about consumer protection and it urges the Commission to make changes to the Directive in respect of limitations on the investment of the float, the immediate conversion of sums received into e-M, safeguarding the float in hybrid institutions and removing the fee for early redemption of e-M contracts.

1.10 Cash is anonymous. Simple cash transactions do not reveal the identity of the person making the payment. e-M schemes may be anonymous or identified. The higher stored value limit of EUR 500 should make e-M more attractive to potential users, especially the unbanked and underbanked. While rationally these limits should not represent a disproportionate exposure to money laundering, relative to what is possible with large sums of cash, some reservations remain about the limit proposed.

1.11 Coins and notes have a production cost and a handling cost for banks and merchants. It is evident that the EU public remains wedded to cash as a means of payment and a store of value. In the present period of uncertainty there is a huge increase in the number of bank notes in circulation.

1.12 On its own, this Directive will not turn the tide. What it will do is remove barriers to business and technological innovation. No authority can mandate the use of e-Money by the general public. The banks are in a position to take a lead but outside of Belgium with its Proton card, they have not made very much progress. The evidence from travel cards, phone cards and internet commerce clearly shows that information society applications have a tendency to extend the use of e-M. In addition, e-M is often the product of another business so the issuer may often be a hybrid undertaking and not dedicated to e-M alone. This linkage between e-M and other business models is seen to vital for the emergence of e-M. The Directive has been drafted to facilitate such developments and so it has EESC support.

1.13 A fundamental concern relates to the development of anti money laundering regulations. The EESC cannot accept that two directives set contradictory limits. This creates unacceptable legal confusion. If the limits stated in this Directive are to prevail, then the AML Directive must be modified.

1.14 The EESC urges all Member State to adopt positive policies when implementing the new Directive. It is important that the regulations are developed in consultation with the industry and that they be framed in such a way that they do not represent an onerous burden on either e-M issuers or their clients while the sums of money involved are minimal. According to the approach adopted, national authorities have it in their power to either support or suppress this fledgling industry. The EESC believes that the industry should be supported in all Member States.

1.15 This Directive is important. It has potentially far reaching implications. The EESC urges the present and potential actors in the e-M arena to re- evaluate their strengths, weaknesses, opportunities and threats in the light of this Directive. The market is being given a second chance.

2. **Introduction**

2.1 Paragraphs 2.2, 2.3 and 2.4 explain the main features of electronic money (e-M) and its linkage to the information society. There are a number of examples of the way in which consumer involvement with the information society is leading to the adoption of e-M.

2.2 Usage of the RFID [1] card is a case in point. The RFID chip can record monetary values and so a common application is payment for access to transport systems. Hong Kong introduced the Octopus card in 1997. It is a rechargeable contactless stored value smart card. Apart from being used as a payment system for nearly all public transport in Hong Kong, it is also used for payment at convenience stores, supermarkets, fast food restaurants, on street parking meters, vending machines, etc. The cards are used by 95 % of the population of Hong Kong aged 16 to 65. This example shows how the engagement of the consumer with an information society application leads to the wider development of e-M. London now has the Oyster contactless RFID card in general use for public transport. Users now anticipate its extension to the news agents, convenience stores and fast food outlets which cluster around transport hubs and stations. Such developments are certain to take place in both the UK and other Member States as RFID cards come to be widely adopted.

2.3 Another more wide spread example is the prepaid mobile phone account which can already be used to pay for activities as diverse as help lines for computer problems, competition entries, charitable giving, interactive games, adult entertainment and news and information services. As in the case of prepaid travel cards, prepaid phone accounts are defined as e-M when the stored value begins to be accepted by businesses other than the transport or telephone operator.

2.4 The internet also promotes e-M because e-M can satisfy two important needs. Most business to consumer applications on the internet involve a credit transaction. The unbanked are automatically excluded because they have no credit or debit card. By using an e-M card they can profit from internet benefits. There has also been a significant growth in Consumer to Consumer (C to C) transactions on the internet, stimulated by auction houses such as E-Bay. It is not possible to conduct a C to C credit or debit card transaction. The payment must be in secure e-M. This accounts for the emergence of systems such as PayPal [2] which has had a symbiotic relationship with E-Bay.

2.5 The evidence from travel cards, phone cards and internet commerce shows that information society applications extend the use of e-M. It also shows that e-M can be the by- product of another business so the e-M issuer may often be a hybrid undertaking. This linkage between e-M and another business is seen to vital for the emergence of e-M. The Directive has been drafted accordingly.

2.6 Credit Institutions such as Banks have all the necessary attributes to be e-M issuers and they operate under appropriate regulatory regimes. To some degree, credit institutions have taken the initiative. The Proton card in Belgium is the product of a banking consortium. It combines a debit card with a money card function and is in widespread use in Belgium amongst bank customers. There is some prospect that more such combined cards with a contactless e-M function based on RFID technology will come into circulation. Even so, there is an evident conflict of interest between e-M and other product lines of credit institutions such as credit and debit cards.

2.7 Figures on the limited number of fully licensed e-M institutions (20 e-M institutions and 127 entities operating under a waiver) or on the low volume of e-M issued (currently the total amount of e-M in the EU amounts to EUR 1 billion in comparison with more than 600 billion in cash) demonstrate that e-M has not yet taken off in most Member States. In addition, the amount of cash in circulation has risen steadily since the introduction of the Euro in 2002.

[1] RFID – Radio Frequency Identification – uses an electronic chip which may be incorporated into various media such as article identity tags or personal identity cards. The chip is read by a wireless reader and the card need only touch the reader. This application is described as 'contactless'. Building access cards such as those at the EESC are RFID cards.

[2] PayPal started as an e-M Institution regulated by the UK FSA. It has since converted into a Credit Institution and is now domiciled in Luxembourg.

2.8 As a result, the Commission has undertaken a wide ranging review of e-M developments. The consultation and evaluation process identified two main concerns with the existing EMD. The first involved the unclear definition of e-M and the scope of the Directive. The second concern related to the legal framework involving the prudential regime and the application of anti-money laundering rules to e-M services.

2.9 In addition, the Payment Services Directive (PSD) 2007/64/EC will come into force by November 2009. The relevance of the PSD is that it establishes a special regime for payment institutions analogous to the regime for e-M institutions. The PSD is not compatible with the EMD so unless the current EMD regime is revised this will, in due course, add to the legal uncertainty.

2.10 The outcome of all of the above is that most of the provisions of the EMD need amending, so it has been decided to replace the existing directive with a new Directive the draft of which is the subject of this Opinion.

3. Gist of the Directive

3.1 The aim of the Directive is to enable new, innovative and secure e-M services to be designed, provide market access to new players and foster real and effective competition between all market participants. It is expected that innovation in the payments market will create tangible benefits for consumers, businesses and the wider economy while creative solutions should promote rapidity of payments, convenience of use and new functionalities for the e-society of the 21st century.

3.2 The definition of e-M is clarified: 'electronic money' means a monetary value as represented by a claim on the issuer which is stored electronically and issued on the receipt of funds (Article 2.2). It does not apply to single purpose (closed loop) pre-paid instruments that can only be used in a limited way (Article 1.3, 1.4).

3.3 The scope of the new Directive facilitates market entry because it applies to issuers of multipurpose (open loop) electronic vouchers such as RFID cards and mobile phone cards and it does encompass server based e-M.

3.4 The activities of e-M institutions are more broadly defined in Articles 8 and 9. There are two dimensions. The first states that a broader range of payment services, as defined in the annex to the PSD, may be offered, including the granting of credit, the provision of ancillary services and the operation of payment systems. The second recognises that e-M issuers may undertake other activities such as retail or telecom in the normal course of business. In these latter cases it will no longer be necessary to create an arms length e-M institution. What will be needed is that the e-M funds are safeguarded in accordance with the provision of the PSD. The authorisation of such hybrid e-M institutions should promote an increase in e-M issuance.

3.5 Rights of redemption are a consumer protection feature. They are clarified in Article 5: Member States shall ensure that, upon request of the holder, issuers of electronic money redeem, at any moment and at par value, the monetary value of the electronic money held. This provision has caused problems for mobile phone operators where the prepayment was for phone services with the option of retail use but they are now covered by the provisions of Article 5.

3.6 The prudential regime generally follows the provisions of the relevant articles of the PSD. However, there are specific provisions to make the regime proportional to the risks involved. There are a number of aspects.

3.6.1 The EMD stipulated that an e-M institution should have an initial capital of EUR 1 million. This is now seen to have been excessive in relation to the risks involved and an obstacle to the formation of innovative SMEs in the e-M space. In the new draft, initial capital required is reduced to EUR 125 000.

3.6.2 In addition to the initial capital, e-M institutions must hold a float (own funds) as a proportion of their outstanding liabilities. In the EMD this was 2 %. The new requirement is 5 %, reducing as the volume grows, on the higher of the outstanding value or the monthly payments volume.

3.6.3 There are limitations on the investment of float funds representing outstanding electronic value, but only where the issuer undertakes non-payment business (Article 9).

3.6.4 The proposed anti money laundering amendments to the Third Money Laundering Directive regime are consistent with the needs of business, and industry practice. The limitation on the value of e-M to be accepted in exchange for cash at any one time is raised from EUR 150 to EUR 500 (Article 16).

3.6.5 The EMD allowed Member States to waive many of the authorisation requirements to facilitate market entry and innovation by new players. These waivers were applied inconsistently by Member States, creating an uneven playing field for market participants. Under the new regime waivers continue (Article 10) but, as specified in the relevant articles of the PSD, e-M institutions subject to waivers are not to operate across Member State borders. In other words, no 'Passporting' where waivers apply.

4. **The economic and social perspective**

4.1 The EESC is very interested in progress towards the goals of the Lisbon project. This Directive deserves our support because it supports the Lisbon goals of growth and jobs to be achieved by, inter alia, technological innovation, entrepreneurial initiative, creativity on the internet and the formation of SMEs leading to the development of the 21st century e-society.

4.2 The introduction of a new regulatory regime in the financial sector is a potential issue in view of the crisis in the banking system and the general concern about the ineffectiveness of the regulation of banks. Notwithstanding these concerns, the EESC is satisfied that the proposed regime is adequate and proportionate for the following reasons:

— The regulations are designed for the innovative SMEs of the payments community. The recent banking crisis arose from the credit exposures of the banks. E-M institutions will not be permitted to issue credit based on user funds so that risk does not arise.

— The own funds requirement (paras 3.6.1 and 3.6.2 above) makes the initial capital of EUR 125k rise proportionally with increased float value. The drop in the initial capital requirement only serves to reduce the barriers to entry. The Directive specifies significant capital requirements for larger floats.

— The capital reserves an e-M Institution will be proportional to those of the banks and funds representing user claims will be specifically safeguarded in a limited range of investments.

— The amounts of money involved are de minimis. Should e-M institutions become a real force in the payments market, there are provisions in the Directive to modify it in the light of experience.

4.3 The EESC has some concerns about consumer protection and it urges the Commission to make the following changes to the Directive:

4.3.1 Limitations on the investment of the float only apply at the moment to hybrid e-M Institutions. For the greater security of clients, these provisions should apply to all e-M Institutions.

4.3.2 E-M Institutions may not hold client moneys as deposits.. Monies received should be immediately converted into e-M. This safeguard is not spelled out in the Directive.

4.3.3 Article 9 should be amended to make explicit the requirement that the float in respect of outstanding e-M obligations should be specifically safeguarded by hybrid institutions.

4.3.4 Article 5.4 allows for no fee to be charged for redemption at the termination of a contract but Article 5.5 allows a fee to be charged for early termination. This latter provision should be removed because there is no distinction between redemption during and at the end of the contract and the outcome is likely to be a pattern of contract terminations which will mitigate against the prudential requirement to know the client.

4.4 Attitudes towards cash vary across the different cultures in the EU, and so do attitudes towards technology. Email and internet take up rates can provide some measure of the likely acceptance of e-M. Another factor will be the demography of the retail and services industries. Larger companies are more likely to accept e-M as early adopters. For these and other reasons relating to Member State psyche, it would be unwise to expect e-M take up at a uniform rate across the EU.

4.5 Of the 20 or so e-M institutions accredited to date, some 15 have been accredited in the UK. The positive policy of the UK Financial Services Authority towards e-M has contributed to this outcome. In particular, the FSA consulted the industry to ensure that the UK regulations were workable in practice. In this they were successful. The EESC urges all Member State to adopt equally positive policies in respect of the new Directive. Such policies should contribute to increasing the acceptance of e-M across the EU.

4.6 A fundamental concern relates to the development of anti money laundering regulations. The Third AML Directive contained an Article which gave Member States the freedom not to apply Customer Due Diligence measures, or to postpone them, in respect of electronic money (Simplified CDD) when the amount stored is no more than EUR 150 in a device which cannot be recharged or no more than EUR 2 500 per calendar year in a rechargeable device. The equivalent limits in both the PSD and proposed revision of the EMD are EUR 500 and 3 000. The EESC cannot accept that two directives set contradictory limits. This creates unacceptable legal confusion. If the limits stated in this directive are to prevail, then the AML Directive must be modified.

4.7 Cash is anonymous. Simple cash transactions do not reveal the identity of the person making the payment. e-M schemes may be anonymous or identified. A problem with Member State implementation of the EMD was that it often took KYC (know your client) to extremes. For low value transactions, many users will wish to preserve their anonymity. It was a feature of the UK implementation of the EMD that KYC measures did not come into play until a client had developed a material level of activity. The higher stored value limit of EUR 500 should make e-M more attractive to potential users, especially the unbanked and underbanked. While rationally these limits should not represent a disproportionate exposure to money laundering, relative to what is possible with large sums of cash, there remain some reservations about the limit proposed.

4.8 Financial inclusion is facilitated by e-M. In a society which increasingly assumes that payment will be made by debit card or credit card, the possibility of acquiring a card for cash which can then be used in credit and debit transactions is potentially very attractive. Certain groups in society could be particularly advantaged by this facility. These include immigrants, the unbanked or underbanked and, in certain circumstances, the young and the disabled. The EESC is concerned that from a consumer protection point of view, these groups are also the most vulnerable. Member States should take account of these vulnerabilities when they implement the Directive.

Brussels, 26 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Proposal for a Decision of the European Parliament and of the Council on interoperability solutions for European public administrations (ISA)

COM(2008) 583 final — 2008/0185 (COD)

(2009/C 218/07)

On 14 October 2008 the Council decided to consult the European Economic and Social Committee, under Article 156 of the Treaty establishing the European Community, on the

'Proposal for a Decision of the European Parliament and of the Council on interoperability solutions for European public administrations (ISA)'

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 29 January 2009. The rapporteur was Mr PEZZINI.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February 2009), the European Economic and Social Committee adopted the following opinion by 130 votes, nem. con. with one abstention.

1. Conclusions and recommendations

1.1 The EESC supports the Commission's initiative to launch the ISA programme, convinced that it will continue to secure and increase genuine effective interoperability in the European single market's complex new systems.

1.2 The EESC believes that that it is essential for the practical implementation of the freedoms laid down in the Treaty for interoperability mechanisms to be fully implemented, benefiting not just administrations and institutions but also the public, businesses and organised civil society in general.

1.3 There is a clear need for a specific strategy on security of personal and financial data, as the EESC has repeatedly stressed in its opinions ([1]): '*… the issue of information security cannot in any way be separated from the need to increase protection of personal data and to protect freedoms, as safeguarded by the European Convention on Human Rights*'.

1.4 The EESC stresses that users need interconnected systems that guarantee protection of individual, industrial and administrative data. A European legal system for prosecuting those abusing networks and data and imposing penalties should be set up without delay; to this end, work is needed on making the EU's legal procedures interoperable too.

1.5 The EESC feels that the measures taken are as yet insufficient to avoid market fragmentation and to give a network of interconnected, interactive and accessible public administrations a genuine pan-European dimension.

1.6 The EESC calls for the ISA programme to be flanked by a substantial Community initiative committing the Member States and the Commission to binding instruments giving new certainty and vigour to a reinforced Common Interoperability Framework.

1.7 In addition to the common framework, it is essential for the new European Interoperability Strategy to define Community policy priorities requiring efforts to be stepped up in the area of framework instruments and common services, as well as clear budget forecasts.

1.8 The EESC believes digital convergence needs to be achieved which ensures:

— fully interoperable equipment, platforms and services;

— security and reliability rules;

— identity and rights management;

— accessibility and ease of use;

— use of linguistically-neutral technical architectures and IT systems; and

([1]) See Opinion CESE on *a secure information society*, rapporteur: Mr Pezzini, OJ C 97 of 18.4.2007, p. 21.

— a major assistance and continuous-training initiative for users, particularly the weakest groups ([1]),

to prevent 'digital exclusion' and ensure high levels of reliability and confidence in the relationship between users and service providers.

1.9 The EESC feels there is a need for greater coordination and cooperation with other Community programmes helping to develop new ideas and solutions in the field of pan-European interoperability.

1.10 The EESC stresses the importance, particularly in the field of *e*government, of open software, to guarantee the security and durability of software, the confidentiality of information or payments and the availability of the source code. It feels that the use of open-source software should be encouraged as it enables software solutions which are of great value to public administrations to be studied, changed, redistributed and reused.

1.11 The EESC feels that the reference European interoperability framework needs to be consolidated under a multidimensional approach covering political aspects (a joint vision of shared priorities), legal aspects (synchronising law-making), and technical, linguistic and organisational aspects.

1.12 The EESC believes that a European method of calculating the value for money provided by interoperable PEGS put in place by public administrations needs to be introduced.

1.13 The EESC considers that an information and training campaign is a pre-requisite for the success of the initiative. European-level social and civil dialogue and regular pan-European on-line services conferences are also essential to disseminate, support and give direction to the work of administrations in the various countries in a joint development framework.

2. **Introduction**

2.1 The rapid developments in the information and communication technologies sector since the early nineties have completely transformed the interactive framework in which public administrations, the business and employment world and the public operate. The levels of integration achieved in the European internal market have given unprecedented impetus to cross-border aspects of *e*government services.

2.2 The EESC has recently stressed that 'Public authorities switching to digital services will have to modernise, by improving the quality, flexibility and quantity of the services they deliver, aiming for efficient use of public resources, cost-cutting, user satisfaction, coordination between public administrations and less bureaucracy' ([2]).

2.3 Convergence and interoperability are one of the key aspects of a European *e*government strategy, as stressed in the 2005 Manchester Declaration ([3]).

2.4 The EESC has commented on these issues several times ([4]), as well as on numerous legislative initiatives which require interoperability structures such as the Services Directive (2006/123/EC), the Public Procurement Directive (2004/18/EC), the INSPIRE Directive (2007/2/EC) and the Public Sector Information (PSI) Directive (2003/98/EC).

2.5 On a number of further occasions ([5]) the EESC has supported the Commission initiatives launching the programmes on electronic interchange of data between administrations: IDA I (1995-1999), IDA II (1999-2004) and IDABC (2005-2009), which were the precursors to the current proposal for a decision relating to the new programme: ISA - Interoperability Solutions for European public Administrations (2010-2015).

([1]) 'Weakest groups' refers both to young people and the elderly, who have little training in using the Internet, and to those who do not have the financial wherewithal necessary for access to the Internet.

([2]) See Opinion CESE on the *i2010 eGovernment Action Plan*, rapporteur: Mr Hernández Bataller, OJ C 325 of 30.12.2006, page 78.

([3]) See http://archive.Cabinetoffice.gov.uk/egov2005conference/documents/proceedings/pdf/051124declaration.pdf

([4]) See Opinion CESE on *MODINIS*, rapporteur: Mr Retureau, OJ C 61 of 14.3.2003, page 184; Opinion CESE on the *extension of the ICT programme – MODINIS*, rapporteur: Mr Retureau, OJ C 28 of 3.2.2006, page 89; Opinion CESE on the *eEurope 2002 Final Report*, rapporteur: Mr Koryfidis, OJ C 220 of 16.9.2003, page 36; Opinion CESE on the *European Network and Information Security Agency*, rapporteur: Mr Lagerholm, OJ C 220 of 16.9.2003, page 33; Opinion CESE on *i2010 – An information society for growth and employment*, rapporteur: Mr Lagerholm, OJ C 110 of 9.5.2006, page 83; Opinion CESE on *eAccessibility*, rapporteur: Mr Cabra de Luna, OJ C 110 of 9.5.2006, page 26; Opinion CESE on *E-business/Go Digital*, rapporteur: Mr McDonogh, OJ C 108 of 30.4.2004, page 23; Opinion CESE on the *EU Regulatory Framework for electronic communications networks and services*, rapporteur: Mr McDonogh, OJ C 97 of 28.4.2007, page 27.

([5]) See Opinion CESE on the *electronic Interchange of Data between Administrations (IDA)*, rapporteur: Mr Bento Gonçalves, OJ C 214 of 10.7.1998, page 33; Opinion CESE on *IDA amendments*, rapporteur: Mr Bernabei, OJ C 80 of 3.4.2002, page 21; Opinion CESE on *eGovernment services*, rapporteur: Mr Pezzini, OJ C 80 of 30.3.2004, page 83.

2.6 The EESC pointed out that 'The interoperability of information systems, the sharing and re-use of information, and the joining-up of administrative processes are essential for the provision of high quality, interactive, user-centric eGovernment services' [1], emphasising in particular the following points:

— the importance of reinforcing European initiatives, not only for the benefit of administrations and institutions, but also for that of the public, businesses and, more generally, of organised civil society;

— the need for an effective EU certification authority, in order to secure adequate levels of security for access to and the exchange of information;

— the importance of securing maximum visibility, accessibility and interoperability for end users of the networks;

— the need to promote initiatives at various levels in order to ensure continuous training of users and to open up the above-mentioned network infrastructure for the purposes of continuous training;

— the need, given the sensitivity of the data being handled, to guarantee levels of network security by means of suitable safeguards and, where necessary, secure transmission protocols, both at the central and at the peripheral level.

2.7 Moreover, the working documents accompanying the Communication on *A single market for 21st Century Europe* of 20 November 2007 – on which the EESC commented [2] – include numerous references to interoperability tools in respect of electronic interchange of data: the on-line network SOLVIT; the Internal Market Information System (IMI), the rapid alert system for dangerous products RAPEX; and TRACES, the system for traceability of live animals and a rapid alert response in the event of animal illness.

2.8 Various studies [3] have, however, revealed the existence of numerous obstacles to achieving full cross-border, cross-sector interoperability for public administrations: lack of coordination, lack of organisational flexibility, disparities between institutional responsibilities, divergent legal frameworks, different cultural and political approaches, insufficient dialogue with industry, failure to fully exploit results obtained and language barriers.

2.8.1 To these obstacles must be added problems related to security and respect for privacy, and insufficient integration between Member States' administrative procedures. As the EESC and others have repeatedly called for, there should also be a better network for the customs system.

2.9 The EESC therefore believes that coordination endeavours must be further stepped up to promote interconnectivity, interoperability and accessibility, so as to derive full benefit from the European economic area without borders, with a minimum core of common specifications and solutions and effective use of open standards.

3. **The Commission proposal**

3.1 The Commission proposal seeks – through the launch of an Interoperability Solutions for European public Administrations (ISA) programme – to facilitate efficient and effective electronic cross-border and cross-sector interaction between European public administrations, enabling the delivery of electronic public services supporting the implementation of Community policies and activities, with regard to the single market in particular, and preventing the emergence of electronic barriers which differ among Member States.

3.2 The ISA programme is intended to support:

— establishment and improvement of common frameworks in support of interoperability across borders and sectors;

— assessment of ICT implications of proposed or adopted Community legislation as well as the planning of the implementation of ICT systems in support of the implementation of such legislation;

— operation and improvement of existing common services as well as the establishment, industrialisation, operation and improvement of new common services;

— improvement of existing reusable generic tools as well as the establishment, provision and improvement of new reusable generic tools.

3.3 The financial envelope for the implementation of the ISA programme for the period 2010-2015 is set at EUR 164.1 million, of which EUR 103.5 million is for the period until 31 December 2013 as laid down in the financial programming for 2007-1013, and EUR 60.6 million for the period 2014-2015.

[1] See Opinion CESE on *eGovernment services*, rapporteur: Mr Pezzini, OJ C 80 of 30.3.2004, page 83.

[2] See Opinion CESE on *A single market for 21st century Europe*, rapporteur: Mr Cassidy, co-rapporteurs: Mr Hencks and Mr Cappellini, not yet published in the Official Journal.

[3] See www.egovbarriers.org

4. **General comments**

4.1 The EESC firmly supports the initiatives seeking to ensure full, effective operation of the enlarged European single market. It believes that it is essential for the practical implementation of the freedoms laid down in the Treaty for interoperability mechanisms to be fully implemented, benefiting not just administrations and institutions but also the public, businesses and organised civil society in general.

4.2 The EESC feels that – despite the implementation of three successive multi-annual programmes, IDA I, IDA II and IDABC – the measures taken are as yet insufficient to avoid market fragmentation and to give interconnected public administrations a genuine pan-European dimension so that they can deliver services uninhibited by barriers and free of discrimination to preserve market unity and fully implement the rights of the public and Community businesses throughout the EU.

4.3 The EESC supports the Commission's initiative to launch the ISA programme, provided that it consists of more than merely extending and renewing funding for the successive programmes which have been implemented between 1993 and the present day, and ensures a genuine, effective 'European Interoperability Strategy' and a 'European Interoperability Framework' ([1]), which are essential for an integrated single market and a competitive, sustainable European economy under the renewed Lisbon agenda.

4.4 The EESC calls for the ISA programme to be flanked by a substantial Community initiative committing the Member States and the Commission to binding instruments giving new certainty and vigour to a European Interoperability Strategy and a European Interoperability Framework which can secure certain, transparent common procedures for public and private operators and for national and cross-border users.

4.5 In addition to the common framework, the EESC believes it is essential for the new European Interoperability Strategy to define Community political priorities, so as to achieve genuine implementation of the proposed directives and regulation being prepared.

4.6 The EESC feels that there is still insufficient coordination and cooperation with other Community programmes helping to develop new ideas and solutions relating to pan-European interoperability, in particular with the Competitiveness and Innovation Framework Programme (ICT PSP) and the Seventh Community Framework Programme for RTD. It recommends that an inter-programme interoperability committee be set up, bringing together managers from all the programmes involved, to coordinate drawing-up of calls for tender.

4.7 The EESC believes that the full compatibility of new operational frameworks with the principles of pan-European interoperability should be verified right from their conception by public administrations; prior notification mechanisms could be used such as those adopted for the drawing-up of new technical standards ([2]). The main obstacle is still cultural: there are still administrations which are not yet ready and have yet to be convinced of the need to accept open technological and innovative solutions within a European interoperability framework.

4.8 The EESC considers that an information and training campaign is a pre-requisite for the success of the initiative, along with regular pan-European on-line services conferences to ensure ongoing monitoring and redirection of the work programme, for example by benchmarking of administrations at various levels.

4.9 Digital convergence calls for: interoperable equipment, platforms and services; security and reliability rules; identity and rights management ([3]); accessibility and ease of use; use of linguistically-neutral technical architectures and IT systems, along with a major continuous-training initiative for users, particularly the weakest groups, to prevent social exclusion.

4.10 The EESC stresses the importance, particularly in the field of *e*government, of 'open software', to 'guarantee the security and durability of software, the confidentiality of information or payments' and the availability of the 'source code', to 'guarantee it is maintained, stable and secure, even if the publisher goes out of business' ([4]).

4.11 The EESC believes that a European method of calculating the value for money provided by interoperable PEGS ([5]) put in place by public administrations needs to be introduced; this should take into account not just return on investment and gains in respect of property, flexibility and cutting red tape, but also, in particular, the overall value in terms of providing the public and businesses with a barrier-free, reliable single market.

([1]) See Article 8 of the proposal, COM(2008) 583 final.

([2]) See the Council Resolution of 7.5.1985 on a new approach to technical harmonisation and standards (OJ C 136 of 4.6.1985, page 1): 'agreement to early Community consultation at an appropriate level, in accordance with the objectives of Directive 83/189/EEC'.

([3]) See Opinion CESE on *network and information security*, rapporteur: Mr Retureau, OJ C 48 of 21.2.2002, page 33.

([4]) See Opinion CESE on *patentability of computer-implemented inventions*, rapporteur: Mr Retureau., OJ C 61 of 14.3.2003, page 154.

([5]) PEGS = Pan-European e-Government Services.

4.12 The EESC feels that the reference European interoperability framework needs to be consolidated under a multidimensional approach covering political aspects (a joint vision of shared priorities), legal aspects (synchronising law-making) and technical, linguistic and organisational aspects.

4.13 The EESC believes that it would be good practice for national administrations to launch a social dialogue at European level as part of the EUPAN/TUNED ([1]) informal dialogue, with staff representatives from the administrations concerned, in order to give people the information they need to be involved.

4.14 As regards new and existing generic instruments in the context of the GPSCM ([2]) defined by the Commission together with the Member States:

— roles, rights and responsibilities of data owners, providers and users need to be clearly defined in a common, cross-border dimension using a standardised, uniform joint approach;

— public administrations need to adopt this model as an integral part of their endeavours, to include in their interoperability systems joint performance-assessment systems which can be applied to cross-border flows;

— national identification, authentication and certification infrastructures need to be set up or reinforced to ensure high levels of reliability and confidence in the relationship between users and service providers.

4.15 The EESC feels that a common framework needs to be defined for CEN, CENELEC and ETSI open technical standards in this field, enabling them to be applied to all concerned.

4.16 The EESC believes that the use of open-source software should be encouraged as it allows for the study, change, redistribution and reuse of software solutions which are of great value to public administrations in terms of cost-effectiveness, verification of application of standards, operational cover beyond the limits imposed by licences and copyright, long-term sustainability of solutions adopted and adaptation to local needs.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([1]) EUPAN: European Public Administration Network – current name of the informal network of directors-general responsible for public administration in the EU; TUNED: Trade Unions' National and European administration Delegation.

([2]) GPSCM = Generic Public Services Conceptual Model.

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community

COM(2008) 762 final — 2008/0214 (COD)

(2009/C 218/08)

On 5 December 2008 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

'Proposal for a Directive of the European Parliament and of the Council amending Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community'

On 2 December 2008 the Committee Bureau instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr HERNÁNDEZ BATALLER as rapporteur-general at its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February), and adopted the following opinion by 101 votes in favour with one abstention.

1. Conclusion

1.1 The EESC reaffirms its support for the Commission's proposal, considering that the liberalisation of the 900 MHz frequency band makes Community-level legislative action necessary.

2. Background

2.1 On 25 July 2007, the Commission presented a proposal for a directive to repeal Directive 87/372/EEC [1], with the intention of removing the reservation of the 900 MHz band for GSM systems in the EU Member States, introduced under Council Directive 87/372/EEC of 25 June 1987 on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based communications in the Community.

2.2 The 900 MHz band is particularly valuable as it has good propagation characteristics, covering greater distances than higher frequency bands, and allowing modern voice, data and multimedia services to be extended into less populated and rural areas.

2.3 The proposal's objective was considered to be necessary in order to contribute to the success of the *i2010 – A European Information Society for Growth and Employment* initiative [2] and to boost competition through the use of the 900 MHz band by other technologies, offering users maximum freedom of choice between services and technologies.

2.4 In keeping with Decision 676/2002/EC, the Commission gave a mandate to CEPT to define less restrictive technical conditions. Under this mandate, conditions have been drawn up based on the principle that the 900 MHz band can coexist, and is fully compatible, with GSM and UMTS.

2.5 The EESC issued an opinion [3] in support of the proposal, considering that it would foster innovation and competitiveness, boost competition on the telecommunications market and extend consumer choice.

2.6 As a result of the discussions during the legislative procedure, on 19 November 2008 the Commission presented a new proposal for a directive [4], with a view to amending Directive 87/372/EEC.

[1] Proposal for a Directive of the European Parliament and of the Council repealing Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community.COM(2007) 367.

[2] COM(2005) 229 final.

[3] CESE 70/2008 Opinion on *Repeal of the GSM* Directive, OJ C 151 of 17.6.2008, p. 25-27. Opinion adopted at the plenary session of 16 January 2008. Rapporteur: Mr Hernández Bataller.

[4] Proposal for a Directive of the European Parliament and of the Council amending Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community.COM 2008) 762 final.

3. The Commission proposal

3.1 The present directive requires the Member States to reserve the whole 890-915MHz and 935-960MHz bands for GSM. This constraint prevents the bands from being used by pan-European systems other than GSM, that are capable of providing advanced interoperable voice, data and multimedia services with a high delivery bandwidth. These new pan-European systems, such as the UMTS system, offer capabilities beyond the GSM system and have become viable since the adoption of the directive 20 years ago thanks to technological developments.

3.2 Because the liberalisation of the use of the 900 MHz spectrum band could result in competitive distortions, particularly where certain mobile operators have not been assigned spectrum in the 900 MHz broadband, the latter could be put at a disadvantage in terms of cost and efficiency in comparison with operators that will be able to provide 3G services in that band.

3.3 The proposal defines the 'GSM system' as 'an electronics communications network that complies with the GSM standards, as published by ETSI, in particular EN 301 502 and EN 301 511'; and the 'UMTS system' as 'an electronic communications network that complies with the UMTS standards, as published by ETSI, on particular EN 301 908-1, EN 301 908-2, EN 301 908-3 and EN 301 908-11'.

3.4 Under the regulatory framework on electronic communications, and in particular Directive 2002/20/EC ([1]), Member States can amend and/or review rights of use of spectrum and thus have the tools to deal, where required, with such possible distortions. To this end, they are to bring into force the necessary measures, in particular by examining whether the implementation of the directive could distort competition in the mobile markets concerned.

4. General comments

4.1 The EESC reaffirms its support for the Commission's proposal, considering that the liberalisation of the 900 MHz frequency band makes Community-level legislative action necessary.

4.1.1 The proposal will, firstly, boost competition on the internal market and, secondly, enhance economic, social and territorial cohesion in the Union, as it will be possible to deploy UMTS networks in urban, suburban and rural areas in coexistence with GSM900/1800 networks by using appropriate values for carrier separation.

4.2 The option for the Member States to use 'ex ante' measures under the regulatory framework on electronic communications, allowing them to review these rights of use and to redistribute them in order to address any distortions, bears out the relevance of such measures, as previously pointed out by the EESC when it looked at the electronic communications framework. In the interests of the required transparency, the EESC restates the need for periods of public consultation before such measures are adopted.

4.3 The scheme set out in the proposal must benefit the entire electronic communications sector as part of a system of open and competitive markets, speeding up the industry's adjustment to structural changes and fostering a favourable environment for business initiatives and development throughout the Union, and in particular among SMEs.

4.4 Consumers must also benefit from the greater flexibility in the management of spectrum resources for wireless electronic communications, in general, under the WAPECS ([2]) approach, since this approach, as pointed out by the EESC, views technology and service neutrality as policy goals with a view to achieving more flexible and efficient spectrum use.

4.5 Lastly, the EESC hopes that the implementation of the proposal will contribute to job creation, better living and working conditions – enabling equality to be progressively achieved – proper social protection, social dialogue and the development of human resources to achieve a high and durable level of employment.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([1]) Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services. OJ L 108 of 24.4.2002, p. 21.

([2]) Wireless Access Policy for Electronic Communications Services.

Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation concerning the conservation of fisheries resources through technical measures

COM(2008) 324 final — 2008/0112 (CNS)

(2009/C 218/09)

On 16 July 2008, the Council decided to consult the European Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the

'*Proposal for a Council Regulation concerning the conservation of fisheries resources through technical measures*'

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 28 January 2009. The rapporteur was Mr SARRÓ IPARRAGUIRRE.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February 2009), the European Economic and Social Committee adopted the following opinion by 170 votes to one, with four abstentions.

1. Conclusions

1.1 The Committee believes that the simplification outlined in the Proposal for a Regulation is necessary. The Committee recognises however that this is not purely a simplification process: the Commission is also changing existing technical measures with a view to harmonisation.

1.2 The EESC considers that as some technical measures will need to be modified in the harmonisation process, biological and socio-economic scientific assessments should be carried out beforehand.

1.3 Given the highly technical nature of the measures set out in the Proposal for a Regulation, the EESC believes that these assessments should be carried out before the Committee expresses a view on the proposed changes. The new technical measures should also be tested beforehand by fishing professionals on board ship and in the fishing grounds.

1.4 The Committee believes that all the technical measures should be included in this Council Regulation to avoid having to deal with them in subsequent Commission Regulations.

1.5 The EESC fully supports the proposal that the technical measures put forward by the Commission should be evaluated on a regular basis.

2. Introduction

2.1 The proposal sets out to simplify and regionalise the existing regulatory framework for the conservation of fisheries resources through the use of technical measures.

2.2 The simplification process will involve replacing Council Regulations (EC) No 850/98 and No 2549/2000 with the Proposal for a Council Regulation under discussion here.

2.2.1 Council Regulation (EC) No 850/98 of 30 March 1998 sets out legislation for the conservation of fisheries resources through technical measures to protect juveniles of marine organisms.

2.2.2 Council Regulation (EC) No 2549/2000 of 17 November 2000 establishes additional technical measures for the recovery of the stock of cod in the Irish Sea.

2.2.3 The proposal also affects five other Regulations: No 2056/2001, No 254/2002, No 494/2002, No 2015/2006 and No 40/2008, and will no doubt affect Annex III of the annual TAC and quota regulation.

2.3 The new Proposal for a Council Regulation presented by the Commission sets out:

2.3.1 The Council's request to the Commission in June 2004 to revise the technical measures for the conservation of fisheries resources in the Atlantic and the North Sea in order to simplify them and take into account specific regional circumstances, and

2.3.2 The Commission's Action Plan for simplifying Community legislation, endorsed by the Council in April 2006, stating that all the existing technical measures disseminated in various Regulations, including the annual Regulation on fishing opportunities and the recovery plans for certain stocks, should be brought together in one Regulation.

2.4 The Proposal for a Council Regulation presented by the Commission sets out the technical measures for the North East Atlantic, Eastern Central Atlantic and waters off the coasts of the French departments of Guiana, Martinique, Guadeloupe and Réunion that come under the exclusive sovereignty or jurisdiction of France. Technical measures for the Baltic Sea and the Mediterranean are excluded from this Proposal for a Regulation as these are established in Council Regulation (EC) No 2187/2005 for the Baltic Sea and Regulation No 1967/2006 for the Mediterranean Sea.

2.5 The Proposal for a Council Regulation will apply to commercial and recreational fishing, the retention on board, the transhipment, and the landing of fishery resources where such activities are pursued in Community waters and in international waters in the different fishing zones established in the Atlantic Ocean, by Community fishing vessels and by nationals of Member States, without prejudice to the primary responsibility of the flag State.

2.6 The Regulation also applies to the storage, display or offer for sale of fishery products caught in these fishing zones, and to the import of fishery products caught outside the fishing zones by a third-country fishing vessel that do not comply with the minimum landing size of living aquatic resources established in the Council's Proposal for a Regulation.

2.7 In addition to the technical measures for the conservation of fisheries resources provided in Regulation (EC) No 850/98, the Proposal for a Council Regulation sets out all the recovery, management and long-term plans concerning fisheries resources of interest to the Community, specifically, most stocks of cod in Community waters, two stocks of hake, two stocks of nephrops, two stocks of sole, as well as plaice and sole stocks in the North Sea, whereby the conditions laid down in Regulation (EC) No 850/98 have been amended and/or augmented.

3. General comments

3.1 The EESC considers that this Proposal for a Regulation is highly technical. Simplification is clearly necessary, in line with the measures approved by the Committee in its opinion on the Action Plan simplifying Community legislation. However, it is not just a case of simplification, as the Commission is bringing in changes to harmonise current legislation and states that regional differences will be taken into account by establishing specific measures for each of the Regional Advisory Council Areas. Adopting this regional approach will also involve changing existing legislation.

3.2 The Commission's intention is that this Proposal for a Regulation should define the common guiding principles for all fishing zones and that a series of subsequent Commission Regulations will govern the purely technical aspects affecting the regions, through the comitology procedure.

3.3 The Committee believes that while it is certainly necessary to take into account the individual characteristics of the different regions of the EU when setting out technical measures, the approach suggested is not wholly appropriate, and it would be better if this Council Regulation dealt with all the technical measures, rather than looking at them separately in subsequent Commission Regulations.

3.4 The EESC believes that if this approach was taken, the technical measures would be more in line with the new Common Fisheries Policy adopted in 2002, especially in terms of the Regional Advisory Councils (RACs) which were established by Council Decision on 19 July 2004, and with the inclusion of environmental considerations such as protecting marine habitats and reducing discards, measures which are applicable specifically on a regional basis as defined by the Regional Advisory Council (RAC) Areas.

3.5 The Committee believes that before the proposed technical measures are adopted they should be tested by fishing professionals on board ship and in the fishing grounds to avoid repeating past mistakes.

3.6 Given the complexity of the text and of the proposed technical measures, the EESC considers that an annex with illustrative diagrams should be included to make the Proposal for a Regulation easier to understand.

4. Specific comments

4.1 The technical measures set out in this Proposal for a Regulation cover a broad range of objectives including the protection of juvenile fish, essentially by limiting their capture through improving the selectivity of fishing gear or fixing certain closed seasons/areas. Other measures are intended to protect certain species or ecosystems by limiting fishing effort through the adoption of closures for example, and another set of measures focuses on reducing discards.

4.2 As well as defining the scope of the legislation, the Proposal for a Regulation brings together all the measures on minimum landing sizes of living aquatic species. With regard to the scope of the proposal and the inclusion of imports, the EESC would like clarification on what will happen when the legal minimum sizes of imported products are smaller than EU minimum sizes. The Committee considers a sensible approach would be to ensure that fisheries products from third countries which are smaller than the regulation Community size cannot be put on the market within the EU.

4.3 There is a long list of different types of fishing gear, and for each type the minimum size of the net and codend is set out, as is the maximum depth to which they can be deployed. The use of codends that are not of the stipulated size and shape is prohibited - i.e. when the number of equal sized meshes around any circumference of the codend increases from the front end to the rear end, or when the codend is not made with the authorised materials and twine thicknesses.

4.4 The Committee believes that the simplification process proposed by the European Commission is both necessary and appropriate. The EESC considers however that biological and socio-economic scientific assessments should be carried out prior to implementing the harmonisation process and the changes in some of the technical measures that this will entail.

4.5 Therefore, given the highly technical nature of the measures set out in the Proposal for a Regulation, the EESC believes that these assessments should be carried out before the Committee expresses a view on the proposed changes.

4.6 Undersized living aquatic resources cannot be retained on board or transhipped, landed, transported, stored, sold, displayed or offered for sale but must be returned immediately to the sea. The EESC would like to draw the Commission's attention to the potential effect of this measure on discards. It seems contradictory that the intention is to prohibit discards, yet at the same time it is prohibited to retain certain types of catches on board.

4.7 The EESC is concerned about the potential effects of the one net rule. The Commission should take into account the fact that, in multi-species fishing where more than one net is required, fishermen would have return to port to change the fishing gear more frequently than is currently the case, incurring additional costs that would affect the fleet's already depleted profit margins.

4.8 The Council's Proposal for a Regulation states that when the quantity of undersized fish caught exceeds 10 % of the total quantity of the catches in any one haul, the vessel should move away to a distance of at least five or ten nautical miles from any position of the first haul, depending on the mesh size range admissible for that species, and throughout the next haul keep a minimum distance of five or ten nautical miles from any position of the previous haul.

4.9 The Committee is somewhat dubious about this measure as, generally speaking, the Commission has not taken into account the specific circumstances in different areas and fisheries, which could in some cases give rise to legal uncertainty, especially when it is not clear whether reference is being made to target catches or by-catches. The EESC considers that implementing different types of measures such as closed seasons/areas could have more positive effects than the Commission's proposal.

4.10 With the main aim being to protect the environment, the catching, retention on board, transhipment, storage, landing, sale, display or offer for sale of marine organisms caught using methods incorporating the use of explosives, poisonous or stupefying substances, electric current or any kind of projectile is also prohibited. The carrying-out on board a fishing vessel of any physical or chemical processing of fish to produce fish-meal or fish-oil, or to tranship catches of fish for such purposes is prohibited.

4.11 The EESC welcomes the introduction of these environmentally-friendly measures, arising from the application of the new Common Fisheries Policy adopted in 2002, and urges the Commission to ensure that all these measures are strictly enforced throughout the Community fishing fleet.

4.12 The Committee endorses the procedures proposed by the Commission to approve urgent conservation measures adopted by the Member States that will affect all Community fishing vessels, or measures applying solely to fishing vessels flying their flag. To prevent abuses by certain Member States, however, stakeholders or independent bodies should be allowed to check whether these measures are suitable and necessary.

4.13 The EESC supports the fact that the Member States and/or the Regional Advisory Councils can make proposals to the Commission on developing plans to reduce or eliminate discards into the sea and improve the selectivity of fishing gear.

4.14 The Committee also welcomes the fact that the Council's Proposal for a Regulation does not apply to fishing operations conducted solely for the purpose of scientific research as long as an authorisation issued by the flag Member State is carried on board. However, the Committee does not believe it is necessary for an observer from the coastal Member State to be taken on board during fishing operations carried out for scientific research.

4.15 The EESC fully supports the inclusion of a new measure on the evaluation of the efficiency of technical measures. This evaluation will be carried out every five years and on the basis of the information contained in this evaluation report the Commission will propose to the Council any necessary amendments.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan

COM(2008) 397 final

(2009/C 218/10)

On 16 July 2008, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

'*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan*'

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 28 January 2009. The rapporteur was Mr ESPUNY MOYANO.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February), the European Economic and Social Committee adopted the following opinion with 104 votes in favour and two abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the *Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan* presented by the Commission, which includes the proposal to develop a range of new measures and amend a number of legislative provisions. The EESC has on a number of previous occasions affirmed its commitment to sustainable development as a means of achieving environmental, economic and social development in the European Union.

1.2 The Committee wishes to emphasise both how vulnerable companies, especially small and medium-sized enterprises (SMEs) are in the current economic and financial crisis and also the need to ensure that the Action Plan is implemented in a manner that enhances efficiency and business competitiveness. The Plan should also help to revitalise the economy whilst at the same time promoting sustainable production and consumption.

1.3 The Action Plan proposed by the Commission suffers to some extent from a lack of clarity as regards content and scope. These uncertainties should be cleared up as quickly as possible so that the plan can be implemented smoothly and the economic sectors concerned can assess it correctly. The EESC thus urges the Commission to work together appropriately with the sectors concerned when drawing up its plans, and to take proper account of scientific criteria that are solid, clear and applicable in practice.

1.4 To complement the work that will need to be carried out by the different economic sectors, the EESC calls for support measures be taken, especially in the field of R+D+i, and wishes to point out that it is precisely in times of crisis that these activities need a boost.

1.5 The Commission should accept that all of the sectors concerned must be involved in drawing up its Action Plan. The EESC wishes, therefore, to state its concern at the Retail Forum, an ill-considered measure that should be rejected because it would impose conditions on suppliers without their consent and on the basis of having a strong market position. Replacing the Retail Forum with a round table involving all of the sectors concerned on an equal footing is the only acceptable and viable approach.

1.6 With regard to the eco-design proposal, the EESC wishes to draw attention to the fact that environmental requirements should be defined in terms of the aims they are supposed to achieve rather than the technical solutions that can be found through eco-design. The constant environmental improvement of products should be achieved by studying their life-cycle, which should in turn make use of a set of indicators such as greenhouse gas emissions, water consumption, the use of non-renewable energies, the reduction of biodiversity, air and soil contamination, etc. Only by giving full consideration to all of these factors, using the appropriate methodology and scientific approach, can the ideal solution be reached.

1.7 As regards the issue of labelling, the EESC would like to point out that whilst labels are an important tool, they are not the only means of informing consumers, that the ideal solution would be to harmonise provisions in this field to help achieve the stated goals and that certain sectors such as food production already have stringent requirements in the area. The EESC considers consumer education the ideal solution to raise consumers' awareness and understanding and modify their consumption patterns.

1.8 Lastly, the EESC wishes to reiterate that all of the work to be carried out by Europe's economic stakeholders under the Commission Action Plan should also apply to imported products, to prevent the emergence of a system that is discriminatory and damaging to European producers in their own internal market.

2. Gist of the Commission proposal

2.1 The European Union has taken significant steps to reach the objectives of growth and employment set in the Lisbon Strategy. The challenge is now to integrate this economic progress into a framework of sustainability; in the Commission's view, this is an issue that needs to be addressed without delay.

2.2 The Commission thus presents its strategy in the communication COM(2008) 397 final, which is intended to support an integrated Community-level approach to further sustainable consumption and production and promote a sustainable industrial policy. This strategy complements existing policies on energy use, notably the energy and climate package adopted by the Commission in 2008.

2.3 The Commission document presents an Action Plan, designed to improve the energy and environmental performance of products and to foster their uptake by consumers. The ultimate aim is to improve the overall environmental performance of products throughout their life-cycle, focusing on products that have significant potential for reducing environmental impacts. The real challenge is thus to create a virtuous circle: improving the overall environmental performance of products throughout their life-cycle, promoting and stimulating demand for better products and production technologies and helping consumers to make better choices through more consistent and simplified labelling, whilst at the same time making the European economy more competitive.

2.4 The Action Plan has eight flanking measures, as detailed below.

2.4.1 **Ecodesign for more products:** the Ecodesign Directive currently sets minimum requirements for energy-using products such as computers, heaters, televisions and industrial air-conditioning appliances; the Commission aims to use this Action Plan to extend the directive to cover energy-related products that do not consume energy during use but have an indirect impact, such as windows, for example. In conjunction with these minimum requirements, the directive will have to define the voluntary environmental performance benchmarks that environment-friendly products need to attain.

2.4.2 **Improving energy/environmental labelling:** labelling ensures transparency for consumers, by providing information on the product's energy or environmental performance. The Commission, therefore, proposes extending the obligation for such labelling to cover a wider range of products, including energy-using and other energy-related products. The list of products covered by Directive 92/75/EEC on energy labelling, which currently requires household electrical appliances to indicate their energy consumption, will firstly be extended to other products such as windows, which will have to indicate their insulating capacity. Secondly, the existing voluntary eco-labelling scheme, which rewards the most environment-friendly products, will be simplified and extended to cover services and products such as food and drinks.

2.4.3 **Incentives:** the Action Plan proposes that only products achieving a certain level of energy and environmental performance can receive incentives and be purchased by the Member States and the Community institutions, identified by labelling classes where this is obligatory and with the Member State having discretion as to when and how to allocate incentives.

2.4.4 **Promoting green public procurement:** public authorities spend 16 % of the EU's GDP on procuring goods and services. Purchasing green products and services could send a clear message to the market and could stimulate demand for products and services of this nature. The Commission, therefore, proposes a new Communication on green public procurement, providing public authorities with guidance to achieve this objective and which contains common criteria, aims and technical procurement criteria.

2.4.5 **Consistent data and methods:** the Commission considers that only on this basis can the overall environmental performance of products and their market penetration be assessed and progress monitored.

2.4.6 **Work with retailers and consumers:** A Retail Forum is being set up to promote the purchase of more sustainable products, to reduce the environmental footprint of the retail sector and its supply chain and to better inform consumers.

2.4.7 **A boost for resource efficiency, eco-innovation and for improving the environmental potential of industry:** the Commission considers resource efficiency to mean creating greater value while using fewer resources and proposes consolidating current efforts through monitoring, promotion and benchmarking measures. Further work will be carried in the field of eco-innovation, to boost its uptake as part of EU innovation policy. The Commission also proposes setting up an EU-wide environmental technology verification scheme, which would be voluntary and receive public funding, to help provide confidence in the new technologies emerging on the market. Lastly, the Commission proposes revising the current Community eco-management and audit scheme (EMAS), to help companies optimise their production processes and make more effective use of resources. The aim is to increase company participation and reduce costs to SMEs.

2.4.8 **Global measures:** the Commission's ambitions extend to the international arena, with its proposal aiming, amongst other things, to promote sectoral agreements in international negotiations on climate change, encourage good practice and cooperation in the field and boost international trade in goods and services.

2.5 The aims detailed in the Action Plan are accompanied by three legislative proposals:

— to extend the Ecodesign Directive,

— to revise the Ecolabel Regulation, and

— the EMAS Regulation, and

to produce a communication on green public procurement.

3. General comments

3.1 The EESC very much welcomes this ambitious European Commission initiative, which represents a step towards achieving a Community sustainability model and wishes to point out that the sustainability of the Community model has already been considered in a number of studies and opinions drawn up by this institution, amongst which the following should be highlighted:

— The Biennial Progress Report of the EU Sustainable Development Strategy ([1])

— The Impact of European environmental rules on industrial change ([2])

— Eco-friendly production ([3]).

3.2 The concept of sustainability requires the integration of three fundamental pillars: the environmental, social and economic pillars. The EESC endorses the Action Plan's aim to improve the environmental impact of products throughout their life-cycle but also wishes to point out that the other pillars – covering the social and economic aspects – should not be sidelined, if the desire is genuinely to contribute to the model's sustainability.

3.3 The situation today

3.3.1 Having studied the issue for some years, the Commission decided in July 2008 to launch this Communication on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan.

3.3.2 Europe's industrial economy is undoubtedly facing an exceptional challenge and requires a new production and consumption model based on sustainability. The proposal's ambition should not, however, lead us to overlook the timing of the proposal to develop the strategy and adopt the flanking legislative measures. All of the world's economies are currently experiencing financial crises, which they are combating by adopting measures at the national, Community and multilateral levels, although the effect of these measures will not be immediate.

3.3.3 Given these sensitive circumstances, which are still being worked on, the Committee wishes to draw legislators' attention to the potential effects of this package of measures on the real economy at which it is aimed – industry and consumers. Without losing sight of its laudable aims, which can be achieved in the medium term, the proposal should be sensitive in the short term and not create uncertainty or saddle the industrial economy with additional burdens.

3.4 Akey aspect of such a wide-ranging initiative is the clarity and detail with which its messages are conveyed; it would, therefore, be desirable for the Commission to identify more clearly which economic sectors are affected by this proposal and in what specific areas. Lastly, the EESC wishes to emphasise that the Commission Action Plan does not pay sufficient attention to the methodology and scientific basis needed to achieve a common impact assessment system and prevent the proliferation of schemes that call into question the principles of the internal market and confuse the consumer.

3.5 The EESC welcomes the Commission's proposal to offer generous incentives to support the efforts companies will have to make to adapt to the new circumstances. This will mean that, in line with the 'polluter pays' principle, those who strive to improve the environment and especially sustainable production and consumption, will receive support.

3.6 Whilst the Action Plan proposed by the Commission will inevitably require European producers to make considerable efforts to adapt and improve, the EESC wishes to draw attention to the need to provide for rigid compliance with the new obligations that are laid down. The Commission should, therefore, ensure that imported and EU products are treated equally on the Community market, to avoid situations of discrimination and preferential treatment that unfairly penalise European producers. The EESC thus considers there to be a need for a prior study that pays close attention to the internal market and which also aims to ensure that products from third countries are treated on a completely equal footing with EU products.

3.7 One of the Action Plan's key aspects is the Retail Forum. Although the Committee endorses the stated aim (achieving the sustainable use of limited natural resources), it considers that setting up a working forum led by the retail industry is not the best means of achieving this.

([1]) Rapporteur: Mr Ribbe; OJ C 256, 27.10.2007.
([2]) Rapporteur: Mr Pezzini; OJ C 120, 16.05.2008.
([3]) Rapporteur: Mr Darmanin, OJ C 224, 30.08.2008.

3.7.1 Consequently, given the current market situation (few retailers who nonetheless wield considerable power, whilst among producers there is a large number of small and medium-sized enterprises), the only result is to exert pressure on suppliers and discriminate between products. In order to ensure a smooth and balanced functioning of the retail forum, it would make more sense to frame its working methods. The retail forum should gather all of the parties of the supply chain concerned (producers, retailers, the logistics sector, consumers and academia) on an equal footing to ensure that they work together to find solutions.

3.7.2 The platform should also promote voluntary measures in areas such as measuring methods and taking steps to improve sustainable consumption throughout the chain.

3.8 With regard to the Ecodesign Directive, the EESC wishes to state its concern at the vagueness of the definition of 'energy-related products'. It should be clearly indicated what is meant by this and precisely what products will be covered by the proposal, because this is the only way of ensuring a minimum level of legal certainty in the economic chain.

3.9 The Commission Action Plan contains new provisions for product labelling. In this regard, the EESC would suggest that environmental labelling should be better promoted in order to increase its uptake by industry. The EESC wishes to point out in this regard that the most appropriate solution would be to standardise labelling provisions to help ensure compliance with the objectives that are set.

3.9.1 Furthermore, some sectors such as the food and drinks industry already have very demanding labelling requirements due to the nature of their products, which are covered by specific regulations.

3.9.2 As it has done on other occasions, the Committee would point out that there are other means of informing consumers, such as websites and freephone numbers, that are just as helpful to achieving the Commission's aims. A study would need to be carried out of product labelling, addressing both form and content. And more should be done to standardise the data used in product labels and markings, as this could promote trade, help consumers and bring advantages for producers too. More generally however, the EESC views consumer education as the ideal solution to raise the awareness and understanding of consumers and therefore to modify their consumption patterns.

3.10 The Committee regrets that the Commission does not offer a more decisive boost for research, development and innovation (R+D+i), as a measure to support its Action Plan. It is especially in times of crisis that research work must be continued and the EESC therefore calls for R+D+i activities to be strengthened in all areas linked to sustainable production and consumption.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on a Community Ecolabel schemes

COM(2008) 401 final — 2008/0152 (COD)

(2009/C 218/11)

On 11 September 2008 the Council decided to consult the European Economic and Social Committee, under Article 175(1) of the Treaty establishing the European Community, on the subject

'*Community Ecolabel scheme*'

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 28 January 2009. The rapporteur was Ms GAUCI.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 26 February), the European Economic and Social Committee adopted the following opinion by 157 votes to 2 with 4 abstentions.

1. Conclusions and recommendations

1.1 The EU Ecolabel should remain a voluntary instrument. The voluntary character of the scheme allows it to set high and ambitious standards which only allow for the promotion of products and services with a high environmental performance.

1.2 The Committee insists that the management of the scheme be improved, allowing it to be run in a more business-like way.

1.3 The Committee agrees with the Commission that the number of product groups as well as of licence holders has to be substantially increased.

1.4 The Committee believes that an Ecolabel on all food products, fresh and processed, would be the first step towards a genuine greening of the supply chain. The Committee however believes that the Ecolabel of foodstuffs should only be granted if the whole life-cycle of the product is taken into account. The proposal does not make clear which types of food product the Commission believes should be covered by the regulation.

1.5 The Committee believes that packaging should only be included in the ecolabel criteria, where it is relevant for the individual product group.

2. Introduction

2.1 In July 2008 the Commission published its Proposal for a Regulation on a Community Ecolabel scheme. The Proposal is designed to replace Regulation (EC) No 1980/2000 of 17 July 2000 on a revised Community Ecolabel award scheme.

2.2 This is not a new subject for the European Economic and Social Committee (EESC). The Committee expressed its views on the original proposal [1] and has also made numerous suggestions on the future course of the scheme as part of other recent opinions [2].

2.3 The drafting of this opinion has also benefited from the various inputs provided by the competent bodies, European interest groups and companies involved in the scheme. In particular, the EESC benefited from the presentations of different business representatives, environmental NGOs and consumer organisations that participated in a hearing organised in the Committee's premises.

3. General Comments

3.1 The state of the environment gives rise to increasing concerns.

Modern production and consumption patterns have contributed to a greater demand for energy and resources which are used in an unsustainable way, thus challenging the objective to mitigate the negative impact of human activity on the environment, health and natural resources.

3.2 Economies today therefore face a great challenge in integrating environmental sustainability with economic growth and welfare in order to correct errors of the past.

[1] OJ C 296, 29.9.1997, p. 77.

[2] Opinion of the European Economic and Social Committee on Eco-friendly production, OJ C 224/1, 30.8.2008.

3.3 The financial crisis that has hit economies worldwide should not water down efforts to mitigate the impact of climate change and to protect the environment. On the contrary, the greening of the supply chain should be seen as a starting point that should progressively apply to all industrial sectors.

3.4 In this context, sustainable consumption and production maximises businesses' potential to transform environmental challenges into economic opportunities and provides a better deal for consumers.

3.5 The challenge is to improve the overall environmental performance of products throughout their life-cycle, to boost the demand for better products and production technologies and to help consumers in making informed choices.

3.6 As a consequence, the Committee supports a multi-criteria, third-party accredited ecolabel based on 'life cycle thinking' [1] that can be one component of those policy instruments [2].

3.7 The Committee is strongly in favour of initiatives aimed at developing a Community policy of sustainable production and consumption, fully mainstreamed into other Community policies, with a view to developing a 'green market' to ensure that these products and services respond to clear, common definitions and are genuinely available in all the Member States.

3.8 The experience gained from the use of the ecolabel scheme justifies amendments to the Regulation in force.

The current shortfalls of the scheme as it stands today can be summarised as follows:

i. slow progress of the scheme;

ii. a low awareness of the label;

iii. a low uptake of the scheme by industry;

iv. an overly bureaucratic process for criteria-setting and management;

v. products and services that have the most significant environmental impacts and the highest potential for improvement are not covered by the current product groups;

vi. differences in market conditions within the Community;

vii. the proliferation of other ecolabelling schemes.

The Committee will give its views on these weaknesses under the Section 'Specific comments' where it discusses the measures proposed by the Commission to improve the scheme.

3.9 Finally, the successful implementation of the EU Ecolabel scheme is also of great importance since it is the only product-related and demand-driven voluntary policy instrument to pursue the cause of sustainability.

4. **Specific comments**

4.1 The EU Ecolabel is a voluntary instrument and should remain so. The voluntary character of the scheme allows it to set high and ambitious standards for criteria which only allow for the promotion of products and services with a high environmental performance as opposed to products and services that do not take on board the need to reduce the environmental impact.

The Ecolabel is meant to provide end consumers with specific environmental information on the end product in order to make easy and informed environmental choices. However, the Committee underlines that the Ecolabel should not become or should not be used as a pretext to erect new barriers to trade among products with the same functions and performances.

4.2 The Committee insists that the management of the scheme be improved. The bureaucratic processes embedded in the scheme need to be rationalised, allowing it to be run in a more business-like way.

In other words, who does what needs to be more clearly defined.

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[1] Life cycle thinking is the process of taking into account, as far as possible, all resources consumed and all environmental and health implications that are associated with the life cycle of a product (good or service), considering for instance the extraction of resources, production, use, transport, recycling, and waste treatment and disposal. This process helps to avoid the 'shifting of burdens', i.e. of impacts or resource consumption, among life cycle stages, geographic areas, and environmental and human health problem fields, such as Climate Change, Summer Smog, Acid Rain, or Resource Depletion etc. Life Cycle Assessment (LCA) is the standardised quantitative method for compilation and evaluation of the inputs, outputs and the potential environmental impacts of a product system throughout its life cycle (ISO 14040 ff).

[2] The importance of an ecolabel scheme has already been emphasised in earlier policy documents such as the Commission's Communication on Integrated Product Policy and the 6th Environmental Action Programme.

4.3 As far as possible, the role of national authorities should focus on the proper enforcement of the Regulation and undertake market surveillance in accordance with the Commission proposal.

4.4 The bureaucracy linked to criteria development for product groups and to application procedures needs to be reduced whilst at the same time keeping the ambition level high.

In addition, Ecolabel criteria should also ensure that products that bear the Ecolabel flower are not detrimental to health, safety or any other social aspects.

4.5 The Committee calls for clarity of criteria and uniformity in minimum requirements throughout the internal market with regard to labelling systems for eco-products. This is in order to secure fairness in green consumer choices, uniform controls throughout the EU and respect for the principle of free movement for genuinely green products. The European Ecolabel (European flower) should be further marketed and should be able to co-exist with national and sectorial labelling systems, insofar as such labels are also based on sound science and are consistent with the rest of the European regulatory framework.

4.6 Furthermore, criteria on substances should be based on risk assessment.

A simple list of preferred or undesired chemical substances based on their hazard classification alone, without any scientific or legal reference, leads very often to confusion and discrimination. Thus, it is arguable whether criteria such as 'hazardous materials' should even be included on an ecolabel at all: an environmental label cannot substitute official EU legislation applicable in this field, such as Directive 67/548/EEC ([1]).

4.7 Moreover, the Committee believes that local considerations have sometimes influenced general criteria. It is not always true that current criteria, considered in a specific ecolabel and defined at European or national level, are the ones that lead to the lowest environmental impact in a local situation.

For example, water use may have a greater impact in southern Europe than in northern Europe.

The Committee therefore supports the development of criteria which are not subject to strong local impact variations.

4.8 Criteria documents have to be much more user-friendly, with a standardised format. The Committee therefore believes that the European Commission should initiate a template for standardised and user-friendly criteria documents, thus enabling companies and public purchasers to save time and resources when they draft specifications in accordance with the Ecolabel criteria.

4.9 The Commission argues that the number of product groups as well as of licence holders has to be substantially increased, targeting those areas of highest environmental impact and where the possibility of improvement is highest.

While the Committee welcomes this idea in principle, the scope of ecolabelling should not be extended indefinitely.

4.9.1 Many European industries have felt pressurised to provide interested parties with environmental information. Pressure to do so comes from the EU and the individual member states and is expressed in the wish for products to carry some marking or at least to give an indication of their environmentally friendly credentials. These industries are responding to the increased awareness and the demand for environmental information by professional users and consumers. The concept of ecolabelling ([2]) is certainly appropriate for markets where the consumer can generally be assumed to be uninformed or non-expert and where the competing products are well defined.

4.10 A more successful Ecolabel will, above all, depend on a substantially increased marketing budget, helping to disseminate relevant information both for the attention of businesses and consumers.

4.10.1 As mentioned previously, the Ecolabel scheme suffers on the one hand from low consumer awareness.

The average consumer is either not aware of the existence of the Ecolabel scheme or is not sufficiently informed about the parameters taken into account in granting it. Thus, the environmental choice of a consumer is not for the time being appropriately encouraged by means of information campaigns.

([1]) Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances.

([2]) The European Ecolabel is a type I Ecolabel. An ISO Type I ecolabel is an ecolabel which respects the ISO 14024 requirements.

4.10.2 On the other hand, businesses also need to be further alerted about the advantages linked to the use of the Ecolabel. The scheme will thus be reinforced and businesses can save time and resources by not having to search for information on how to obtain the Ecolabel.

4.11 The Committee is still of the opinion that the development of the number of criteria for product groups adopted and the number of ecolabels awarded to date should not be judged negatively, given the short period in which the regulation has been in force. The German 'Blue Angel' (1977) and the 'Nordic Swan' (1989), which are now firmly established in their home markets and to some extent also abroad, initially faced similar disappointments and set-backs. They too were 'slow starters'.

4.12 The Committee is also convinced that, given the trade barrier implications of the national schemes, the future of environmental labelling lies with strengthening the EU scheme. To achieve this, an effort should be made to harmonise as much as possible the criteria of these national ecolabel schemes.

5. **Some comments on the articles of the draft regulation**

5.1 With regard to the assessment procedure as such, the Committee believes that article 7.2 providing for a 'shortened criteria development procedure' may permit watered-down backdoor entry to the EU scheme. It is essential that stakeholders are assured of similar high standards of transparency and stakeholder consultation.

5.2 Food and drink products (together with pharmaceuticals and medical devices) are excluded from the scope of the existing Regulation (EC)1980/2000 in order to avoid potential conflicts with existing EU food legislation, regulating, *inter alia*, aspects such as food safety, hygiene and labelling of foodstuffs.

5.3 The Commission is now proposing to extend the scope of the Ecolabel Regulation to a limited fraction of food and drink products, i.e. processed food, products of fishing, aquaculture. The majority of food and drink products would remain excluded ([1]).

([1]) Article 2 (scope) of the EC proposal reads: 'Concerning food products as defined in Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council, it shall only apply to processed food and to the products of fishing and aquaculture.'

5.4 Furthermore, Article 7 (3) and Article 9 (10) state that, with regard to processed food, the Ecolabel '*relates only to the environmental performance of processing, transport or packaging of the product*.' In other words, the environmental assessment for these food and drink products is limited to a few restricted stages in their life-cycle, i.e. processing, packaging, and transport.

5.5 The Committee disagrees with this fragmented EC proposal for two reasons.

5.5.1 First, the Committee is concerned that this disrespect of the life-cycle principle, which is fundamental to the EU Ecolabel legislation as well as to all international standards on life-cycle assessment, would result in biased environmental assessments and, in turn, in misleading information to consumers.

Numerous scientific studies, including the EIPRO and IMPRO studies conducted on behalf of the EC, conclude that critical environmental impacts of food and drink products arise both at the agricultural production stage and at the consumption stage.

It is questionable as to why these very significant life-cycle stages are excluded from the assessment.

5.5.2 Second, it is not understandable that processed food should fall under the scope of the revised Ecolabel scheme, while fresh food would be excluded.

5.5.3 The Committee fears that consumers would be confused and misled by such a patchwork of incoherent information on food and drink products.

5.5.4 The Committee believes that an Ecolabel on all food products, fresh and processed, would be the first step towards a genuine greening of the supply chain: food and drinks production has a high environmental footprint that Ecolabel criteria can help to mitigate.

Furthermore, from a trade viewpoint, an Ecolabel for food products would help a free movement of goods that bear the Ecolabel. Indeed, global players who comply with the Ecolabel criteria will be able to market their products without being hindered by local Ecolabel awards that coexist with the European Ecolabel flower. The European Ecolabel will be an adequate guarantee for the environmental performance of a food product which would not put into question local preferences while it promotes an EU-wide standard of low environmental impact.

5.5.5 The proposal does not make clear which types of food product the Commission believes should be covered by the regulation. The reference to Regulation 178/2002 in the second paragraph of Article 2 does not clarify the issue, since the article does not provide a definition of processed food products. Regulations 852/2004 and 853/2004, on the other hand, do provide a definition both processed and fresh food products. It is also unclear what is meant by 'products of fishing and aquaculture'.

There is a serious risk that the proposal would weaken the Ecolabel's trustworthiness. Also, we cannot support the inclusion of food products, as proposed in the present draft.

5.5.6 The link made between the regulation on organic production and the Ecolabel regulation seems inappropriate. The wording in Article 9(10) could lead to confusion among consumers, instead of helping them to make an environmentally sensible choice. There is a real risk that the trustworthiness of both labels will be weakened. For instance, it does not make sense that a given product can be labelled in three ways: (1) with the organic label and the Ecolabel; (2) with the organic label alone; or (3) with the Ecolabel, along with information stating that the Ecolabel only covers processing, packaging and transport.

5.5.7 It is apparent from Article 6(4) that the emphasis of the Ecolabel criteria lies on the environment, including health and safety aspects. It is important to clarify what the term health means in this regulation. In the case of food products, this raises a whole range of problem issues relating to health and diet. These need to be dealt with in specific terms, including the issue of how information is to be provided to consumers.

The above-mentioned problems should be resolved before any statement is made on whether, and in what way, food products should be covered by the Ecolabel.

5.5.8 In this context, the Committee believes that packaging should only be included in the ecolabel criteria, where it is relevant for the individual product group: packaging should not be seen as a 'product' because it cannot be considered in isolation from the product it contains.

Brussels, 26 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council concerning trade in seal products

COM(2008) 469 final — 2008/0160(COD)

(2009/C 218/12)

On 25 September 2008 the Council decided to consult the European Economic and Social Committee, under Article 251 of the Treaty establishing the European Community, on the

'Proposal for a Regulation of the European Parliament and of the Council concerning trade in seal products'

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 28 January 2009. The rapporteur was Mr NARRO.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 26 February), the European Economic and Social Committee adopted the following opinion by 95 votes to 59 with 30 abstentions.

1. Conclusions

1.1 The EESC welcomes the Commission's initiative to bring about the harmonised regulation of trade in seal products. The current state of affairs in this area is unsustainable, and significant changes should be promoted at international level.

1.2 Given the lack of a specific legal basis in the Treaty for dealing with animal welfare issues, the Committee considers the choice of Article 95 of the TEC 'fragmentation of the internal market' to be the right one under which to take legislative action in this field. Community case-law confirms the legitimacy of this decision.

1.3 The Committee proposes delaying the entry into force of the derogations system, and suggests that the Commission present a detailed progress report in 2012 on laws governing seal hunting, to serve as the basis for the possible granting of derogations from 2012 onwards.

1.4 The ban should be complete during the first three years of application of the new arrangements, with the sole exception of hunting by Inuit communities for subsistence purposes.

1.5 In order to ensure that the measures set out in the proposed legislation are feasible, it is crucial that the Commission be able to set up effective systems for scrutiny. Scrutiny cannot be managed exclusively by the State applying for a derogation. The Commission must ensure that the stipulations of the relevant legal provisions are properly applied in the field.

1.6 The Committee calls on the Commission to carry out studies into the possible effects of climate change on species conservation.

2. Introduction

2.1 The group of animals known as Pinnipeds covers a total of 33 species of seal, sea lion, fur seal, elephant seal and walrus. These are mammals of varying size, which gather in large numbers to reproduce on either land or ice.

2.2 Although environmental organisations [1] have begun to warn of a sharp fall in the seal population due, among other factors, to the effects of climate change, hunters' organisations and the governments of countries where seals reproduce deny there is any threat to the species' conservation. They point to the 15 million or so seals that can be hunted. In recent years, the debate on seal hunting has focused on animal welfare issues, leaving species conservation aspects in the background. The EU has specific legislation on seal conservation [2].

2.3 Commercial seal hunting takes place in Canada, Greenland, Namibia, Norway and Russia. All these countries have introduced different laws to govern the practice. The absence of reliable data on seal populations and the numbers of animals killed annually has been acknowledged by the European Food Safety Authority (EFSA). According to data supplied by the national authorities of each country, the country where most seal hunting takes place is Canada,

[1] IFAW technical briefing 2008/01.
[2] Directive 92/43 of 21 May 1992.

with some 300 000 animals killed annually. According to Canadian government data ([1]), 275 000 seals were hunted in 2008, with a total of 17 000 licences being granted. Far behind Canada come Greenland ([2]) and Namibia ([3]), accounting for 160 000 and 80 000 animals killed each year respectively.

2.4 Seals are killed and skinned in two European Union countries, Finland and Sweden. Seal products are manufactured in the United Kingdom (Scotland). This activity is not of a commercial nature within Community territory, as it is in Norway or Canada, but has the dual purpose of recreation and controlling fish-eating populations.

2.5 Seals are killed in order to use their skins for coats, blubber for oils, meat for animal feed, and genitals – increasingly appreciated in Asia – for producing aphrodisiacs.

2.6 There are different ways of killing seals. The most commonly used are guns and hakapiks (a type of club with a hook and a hammer head). This implement, although of rather primitive and crude appearance, is considered by scientists to be the most effective means of quickly stunning and killing seals.

2.7 In a scientific opinion published in 2007 ([4]), the EFSA pointed out that 'seals can be […] killed rapidly and effectively without causing avoidable pain [or] distress …'. It recognises, however, that in practice humane and effective killing does not always occur. The various national laws are responsible for regulating the size and ways of using the hakapik, together with firearm calibre and ammunition velocity.

3. **Summary of the Commission proposal**

3.1 On 26 September 2006 the European Parliament adopted a declaration ([5]) requesting the European Commission to regulate the import, export and sale of products from two types of seal: harped and hooded seal. The declaration also called for special consideration for traditional Inuit seal hunting.

3.2 The Parliamentary Assembly of the Council of Europe adopted a recommendation on seal hunting inviting its members to ban all cruel hunting methods that do not guarantee the instantaneous death of animals.

3.3 Over the last few years, Belgium, the Netherlands and Slovenia have adopted national laws to prohibit the manufacturing and placing on the market of seal products. Other EU countries have also decided to regulate in this area, and national legislation is currently being drafted.

3.4 In early 2007 the European Commission conducted a consultation with stakeholders which closed with the scientific opinion presented by the EFSA ([6]). In April 2008 the European Commission's Directorate-General for the Environment published a study on the potential impact of banning seal products.

3.5 On 23 July 2008 the European Commission published a proposal for a regulation ([7]) concerning trade in seal products. Articles 95 and 133 of the Treaty establishing the European Community provided the legal basis. Article 95 concerns the fragmentation of the internal market, while Article 133 focuses on the common commercial policy. The criteria for using the legal basis provided by Article 95 have been established in the case-law of the Court of Justice.

3.6 The European Commission's draft regulation prohibits the placing on the market, import in, export from and transit through the Community of seal products. However, it sets up a system of derogations allowing for exceptions from the general rule, provided that a series of animal welfare conditions, set out in the regulation ([8]), are met. These conditions aim to ensure that seals are killed and skinned without avoidable pain, distress and any other form of suffering.

3.7 The European Commission grants an automatic exemption for traditional hunting for subsistence purposes by Inuit communities. The implementing legislation will establish appropriate measures for ensuring the origin of seal products.

3.8 Every five years, the Member States will send a report to the Commission outlining the actions taken to enforce the regulation.

4. **General comments**

4.1 The EESC warmly welcomes the European Commission's initiative to bring about the harmonised regulation of acceptable methods of seal hunting and of placing seal products on the market.

([1]) *Seals and Sealing in Canada*, Facts about Seals, 2008.
([2]) Greenland home rule 2006.
([3]) EFSA opinion on *Animal Welfare aspects of the killing and skinning of seals*, December 2007.
([4]) EFSA Scientific Opinion of 6 December 2007, EFSA Journal (2007) 610, pp. 1-122.
([5]) European Parliament Declaration 38/2006.
([6]) EFSA Scientific Opinion of 6 December 2007, EFSA Journal (2007) 610, pp. 1-122.
([7]) COM(2008) 469 final.
([8]) Article 4(1) of the draft regulation.

4.2 The draft regulation focuses on animal welfare, and does not address the species conservation issue. European environmental organisations have emphasised the need to include conservation aspects in the legislative text. However, the EU has robust conservation legislation and has specific tools for seal conservation that are complementary to the measures included in the proposal.

4.3 It is clear that climate change (and especially the melting of polar ice) will directly affect living and reproduction conditions for seals. For this reason, the European Commission is urged to carry out relevant scientific studies and assessment in order to provide real data on the potential negative effect of climate change on the seal population and, if appropriate, to review and adopt Community instruments in the area of conservation.

4.4 The Treaty establishing the European Community does not provide the EU with a specific legal basis for regulating animal welfare aspects. The lack of an explicit legal basis has prompted the EU to bridge the gap by using other, but equally legitimate, legal bases to address this issue. In this case, the controversial Article 95 'fragmentation of the internal market' enables the EU to harmonise legislation with an animal welfare background, a concept which has been described in Community case-law as being a matter of 'general interest'. In its opinion on cat and dog fur [1], the EESC accepted this legal basis for legislation on animal welfare questions, and emphasised that it complies with the trade rules drawn up by the World Trade Organization.

4.5 The absence of Community scrutiny in this area, the lack of data (officially acknowledged by the EFSA), and the underlying economic interest make it difficult to obtain an accurate, undistorted view of seal hunting outside the EU. The possible changes to legislation in the countries where seals are killed, to comply with the new Community criteria, will not necessarily, in practice, bring about a significant improvement in the conditions under which seals are killed.

4.6 The blanket prohibition, accompanied by a system of subsequent derogations, entails an innovative instrument which could constitute a valuable precedent for future Community law-making. Consequently, the EESC does not entirely reject the Community derogations scheme, but calls for its implementation to be delayed, so that during the first three years of application of the regulation the ban would be complete, with the sole exception of Inuit communities, whose livelihoods depend on seal hunting. This delay would enable the EU to take the technical steps needed to create a more detailed and robust derogations system than that sketched out in the original proposal, would facilitate scrutiny and provide further evidence on which to assess the possible granting of derogations.

4.7 The submission of a Community report in 2012 on the changes made to national laws on sealing hunting, practical implementation and monitoring mechanisms could be of considerable assistance in enabling the Community authorities, from that date onwards, to evaluate the progress made and decide whether to grant derogations. The lack of data argues for greater efforts by the Community to compile all relevant and necessary data.

4.8 The EESC hopes that the Commission's legislative proposal will provide a real incentive for those countries where seal hunting is carried out to gear their laws and practices to more 'humane' ways of killing seals. The present situation regarding the killing of seals cannot be sustained, and progress must be made on the necessary changes, although the limits to the EU's powers in this area are recognised.

4.9 The EESC draws attention to the need for the Member States to adopt a system of effective, dissuasive and proportionate penalties, in order to guarantee the reach and effectiveness of the new legislation on seal hunting. An effective system of penalties will help to strengthen the internal market and protect consumers.

5. **Specific comments**

5.1 Although the draft regulation does not enter into the rights or wrongs of seal hunting, the EESC should comment on a number of questions that crop up regularly in this regard. Firstly, it must be unequivocally stated that killing seals cannot be defined as a fisheries activity, but rather as hunting of mammals. Secondly, the claim that seals are to blame for declining marine resources, and more specifically of cod banks, is questionable. There is no scientific research to back this argument, which is used to justify seal hunting in some countries. The complexity of the marine ecosystem is such that clear-cut claims of this kind cannot be made.

5.2 In its proposal, the Commission makes no distinction between large- and small-scale seal hunting. The Commission's thinking is quite right, given that the ultimate purpose of the proposal is based on animal welfare considerations. Introducing specific exceptions for European countries where small-scale seal hunting is carried out cannot be justified from the animal welfare point of view, and could put the international legality of the entire proposal into question.

[1] OJ C 168, 20.7.2007, p. 42.

5.3 Monitoring work in this area is particularly difficult and complex, and has to be done under highly adverse weather conditions. Monitoring must identify the actual number of animals killed and the degree of compliance in the field with the relevant legal provisions. A monitoring system run entirely by a country applying for a derogation would not immediately seem to be the best way of guaranteeing the independence of the process. The EU should set up a team of experts to carry out *in situ* monitoring in countries applying for derogations. Countries wishing to export to the Community market should be responsible for funding this European body of inspectors. In this way, the EU would have more information for evaluating the effectiveness of the certification and labelling scheme.

5.4 The setting up of a certification and optional labelling system in countries applying for a derogation is a response to the feelings of European citizens, which have been expressed repeatedly and reflected in the public consultation conducted by the European Commission. The certification and labelling initiatives must in any case be backed up by general bans on the placing on the market of seal products. Otherwise, it is doubtful that the animal welfare objectives pursued by the Commission in its proposal will be achieved.

5.5 The certification requirements must be set out in the regulation's implementing legislation in such a way as to provide a precise definition of certification and labelling conditions. In the past, the lack of precision in this area has given rise to imprecise labelling that confuses and misleads consumers. Products can often be found on the market that have been manufactured using seal products but are labelled as 'marine oil' or 'fish oil'. It is crucial that product labels should indicate not only the species of seal from which they come, but also the origin of the animal.

5.6 The committee that is to assist the European Commission in the procedure for granting derogations should facilitate the involvement of all organisations and operators concerned by the procedure.

Brussels, 26 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)

COM(2008) 402 final — 2008/0154 (COD)

(2009/C 218/13)

On 11 September 2008 the Council decided to consult the European Economic and Social Committee, under Article 175 of the Treaty establishing the European Community, on the

'Proposal for a Regulation of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)'

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 28 January 2009. The rapporteur was Mr PEZZINI.

At its 451st plenary session, held on 25–26 February 2009 (meeting of 25 February), the European Economic and Social Committee adopted the following opinion by 166 votes to 5 with 5 abstentions.

1. Conclusions and recommendations

1.1 The EESC sees the review of the Community Environmental Management and Audit Scheme (EMAS) as a key opportunity to give the Community voluntary scheme fresh impetus, ensuring that it is established once and for all as a benchmark of excellence and a communication and marketing tool for organisations to use in respect of production or product life cycles, fully integrated with other environmental policy instruments.

1.2 The EESC feels that the proposed legislation is still too complex. A further creative effort is needed to establish the conditions necessary for EMAS to be recognised by the market as providing environmental added value of excellence and benefits and burdens which are commensurate with its purpose, particularly for smaller organisations and businesses, as well as full international validity, cutting red tape and technical and administrative costs, which are still too high.

1.3 The EESC believes that it would be a major step forward for the Community to become aware of the obligations and burdens for the individual user deriving from the application of the various environmental protection rules, and the potential benefits and tax relief arising from adoption of EMAS.

1.3.1 It is also important for public authorities with decision-making and monitoring powers to raise awareness in this connection.

1.4 Organisations, particularly small ones, need to be given incentives to participate in EMAS: by offering them easier access to available funding and information and to public institutions; by establishing and promoting technical assistance measures; by simplifying procedures and mechanisms; and by reducing technical costs and burdens for registration and management.

1.5 In the EESC's view, EMAS should become a genuine 'benchmark of excellence' and guarantee of environmental quality which also enhances products' value, with due regard for connections with the Eco-label regulation.

1.6 The EESC is firmly in favour of clear shouldering of individual responsibility by an organisation or business when participating voluntarily in EMAS, in undertaking to submit to requirements and monitoring and in enjoying benefits. It therefore opposes any form of collective responsibility where an entity has responsibility in the name or on behalf of others, although clusters and networks promoting and facilitating use of EMAS – particularly of a cross-border nature – are to be encouraged.

1.7 The EESC stresses the importance, to promote EMAS, of ongoing, systematic stakeholder involvement at Community, national and regional level as a pre-requisite for the achievement of any EMAS environmental objective, with clearly-defined proactive, preventive goals.

1.8 The EESC welcomes the identification by the Commission of a number of key indicators relating to factors such as:

— efficiency and energy-saving,

— land use and conservation,

— water and air,

— emissions,

— waste treatment,

— preserving biodiversity,

to be activated with a reinforced but user-friendly system with cost-effective environmental reporting.

1.8.1 The EESC believes that when rules were being established for cutting red tape for organisations, Member States could have been required to exempt certified EMAS sites from further environmental requirements laid down in addition to the EMAS statement, which are still demanded, sometimes out of unnecessary harassment and sometimes because of bureaucratic inertia.

1.8.2 Since the procedures laid down for EMAS certification provide for more careful treatment of the environment in all respects, charges for registering EMAS certification should be abolished, particularly for organisations operating in areas where there is a considerable carbon footprint ([1]), i.e. greater exploitation of the environment, from the production and manufacturing chain.

1.9 The EESC feels it is important for EMAS to be better promoted and given more support at Community level, drawing on the Competitiveness and Innovation Framework Programme (CIP) ([2]) and EIB and Structural Funds resources, and at national level as regards public procurement, tax relief, keeping registration and renewal fees down and de-taxation of reinvested profits.

1.10 The EESC calls for a closer link between the proposed legislation and all the environmental policy instruments and rules with which the legislation has to coexist and be coordinated, avoiding overlaps and duplication.

1.11 The EESC is firmly convinced that EMAS certification, widely disseminated and supported with an image and substance of excellence, can help considerably to:

— make employees, employers and the general public more aware of environmental issues;

— increase sustainable production;

— encourage sustainable trade;

— disseminate sustainable consumption.

1.12 The EESC feels in this connection that it is important to harness the role of EMAS-registered businesses in promoting and introducing EMAS in the chain of clients and suppliers in the European single market, generating a virtuous circle of the culture and practice of sustainable development.

1.13 The EESC stresses the importance of the EMAS certification process it has launched for its site. It encourages the other European institutions to do likewise and set a good example.

2. **Introduction**

2.1 The development of voluntary instruments should be seen as a major part of Community environment policy. The Commission itself admits that 'these tools have a great potential but have not been fully developed ([3]).'

2.2 Voluntary environment instruments can bring major benefits when they:

— enable corporate social responsibility values to be implemented,

— implicitly acknowledge differences between businesses and between organisations,

— offer businesses and organisations greater flexibility in achieving their objectives,

— reduce the overall costs they have to bear to comply with rules,

([1]) For instance, where the industry value (Gross Value Added — GVA) exceeds the national/Community average by more than 10 (?) percentage points. For example, in Italy 16 out of over 100 NUTS III provinces have an industry GVA of over 35 %, while the national and Community average is 22 % (EUROSTAT data).

([2]) Particularly under its first pillar: entrepreneurship.

([3]) Cf. COM(2007) 225 final — Mid-term review of the Sixth Community Environment Action Programme.

— simplify procedures and eliminate red tape, without creating new, complex self-reference management and monitoring structures or requiring them to be created,

— encourage technological innovation in businesses and organisations which is environmentally friendly and will maximise competitiveness,

— send the market, the authorities and the public a clear message and picture,

— reduce/remove other Community/national red tape,

— are accepted as useful on international markets.

2.3 In addition to EMAS, noteworthy voluntary instruments adopted and fine-tuned by the EU include the Eco-label ([4]), the Environmental Product Declaration (EPD) and the Life Cycle Assessment (LCA), Green Public Procurement (GPP) ([5]), the Energy Star mark ([6]) and voluntary agreements ([7]), Agenda 21 and the EN ISO 14001 standard.

2.4 Synergies with other environmental policy instruments have become increasingly effective: for instance synergy with the Environmental Management System (EMS) defined in EN ISO 14001 ([8]) – with 35 000 certifications – based on an essential commitment by top business management to comply with legislation, ensure ongoing improvement and prevent pollution.

2.5 Moreover, in the context of the Sustainable consumption and production and sustainable industrial policy action plan ([9]) – on which the EESC is drawing up an opinion – EMAS is presented as an instrument working in synergy with:

— the Eco-label,

— the Directive concerning integrated pollution prevention and control (IPPC),

— the Emissions Trading Directive,

— the Seveso II Directive,

— Directive 2005/32/EC on ecodesign requirements for energy-using products, and sectoral directives, which apply specific product requirements with EPD and LCA schemes ([10]).

2.6 Since 1992 the EESC has believed that the Community eco-management and audit scheme (EMAS) plays a significant role of stimulating and increasing environmental protection, welcoming the 'proposed 'system' for improving environmental protection, particularly since the environmental policy objectives are to be achieved with company resources, incentives for careful handling' ([11]) and improved, more widely-disseminated information and the involvement of all employees.

2.7 Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 replaced the 1993 Regulation, extending the possibility of certification to all 'sites', following a review which 'builds on … the trend in Community environmental policy to emphasise voluntary instruments and the responsibility of all stakeholders in promoting sustainable growth' ([12]). The EESC welcomed this ([13]).

2.8 In particular, the EESC reiterated that fundamental elements of EMAS should be:

— voluntary participation,

— shared responsibility for environmental protection,

— ongoing, effective management of environmental effects,

([4]) Cf. Council Regulation (EEC) No. 880/92 and Regulation (EC) No. 1980/2000 of the European Parliament and of the Council.
([5]) Cf. Communication from the Commission - Public procurement for a better environment, COM(2008) 400 final; .Directive 2004/18/EC and Directive 2004/15/EC.
([6]) Cf. Regulation (EC) No. 106/2008 of 15 January 2008, office equipment; while Energy Star is a voluntary mark.
([7]) Cf. COM(2002) 412 final. The Communication specifies the minimum requirements that voluntary agreements have to meet to be "in the interests of the Community".
([8]) The 1996 edition of the standard was revised in 2004. The new EN ISO 14001:2004 edition includes major improvements.
([9]) Cf. COM(2008) 397.
([10]) LCA = Life Cycle Assessment; EPD = Environmental Product Declaration.
([11]) OJ C 332, 16.12.1992, p. 44.
([12]) OJ C 209, 22.7.1999, p. 14.
([13]) Cf. footnote 3.

— credible, transparent results,

— it complements other environmental policy instruments in the framework of promotion of sustainable development,

— broadest possible involvement of all employees in businesses, organisations and public authorities, and of the public.

2.9 Other objectives that EMAS can help to achieve are:

— cost reduction, particularly as regards supplies, through savings on materials and energy and water consumption,

— lower risk for employees, with potential benefits in terms of insurance and confidence as regards entrepreneurs and investors,

— possible beneficial effects on competitiveness, by securing wider acceptance on the part of consumers and the market, and by boosting demand for certified products,

— wider public procurement markets, particularly as regards technical specifications of environmental excellence,

— greater involvement of employees and participation in the mid- to long-term development of the organisation,

— greater care on the part of credit agencies and fast-track options as regards requests for financing, particularly through cooperatives and guarantee schemes.

2.10 The EESC therefore welcomes the Commission's initiative to launch a review of the current legislation regulating voluntary participation in EMAS, so that its full potential can be unleashed.

3. The Commission proposal

3.1 The proposed review of the Community eco-management and audit scheme (EMAS) seeks – by means of a new Regulation repealing Regulation (EC) No. 761/2001 and Decision 2001/681/EC and Decision 2006/193/EC – to:

— increase the positive environmental impact of the scheme by improving performance of organisations participating in EMAS and by increasing the uptake of the scheme;

— reinforce the obligation for organisations to comply with all applicable legal requirements relating to the environment and on environmental reporting on the basis of core performance indicators;

— harmonise procedures for accreditation and verification;

— enlarge the geographical scope to organisations from outside the EU;

— reduce administrative burdens and simplify registration procedures;

— reduce registration fees for SMEs;

— establish deregulation, particularly for renewal of EMAS registration;

— oblige Member States to consider incentives such as tax incentives;

— simplify the rules for the use of the EMAS logo;

— promote EMAS through information campaigns at EU and national level and other activities such as the establishment of an EMAS award;

— draw up guidelines on best practice in environmental management.

4. General comments

4.1 The EESC sees the review of the Community Environmental Management and Audit Scheme (EMAS) as a key opportunity to give the Community voluntary scheme fresh impetus, ensuring that it is established once and for all as a benchmark of excellence and a communication and marketing tool for organisations to use in respect of production or product life cycles, fully integrated with other environmental policy instruments.

4.2 The EESC feels that the proposed legislation is still too complex and that a further creative effort is needed to establish the conditions necessary for market mechanisms to recognise the environmental added value of EMAS, and for public authorities to simplify the entire administrative framework and encourage more environmentally-friendly product design, providing for new forms of protection, particularly for SMEs.

4.3 The EESC calls for greater coordination between the proposed legislation and all the environmental policy instruments and rules, avoiding overlaps and duplication.

4.3.1 The EESC calls for a new 'recital' to be included in the proposal, specifying the directives and regulations under which EMAS registration must be accepted as valid to comply with their requirements, without causing an unnecessary, costly increase in burdens for organisations and businesses.

4.4 The EESC stresses the importance of ongoing, systematic stakeholder involvement as a pre-requisite for the achievement of any environmental objective. This involvement must be interpreted in the widest sense, including all decision-makers at all stages in the process, and all forms and tools possible for training and educating authorities, businesses, trade unions, trade associations and consumers, as well as interested individuals.

4.4.1 The EESC believes that appropriating the environmental dimension as an intrinsic value and encouraging environmental protection initiatives will lead to more sustainable production and models.

4.5 In this regard the EESC believes that EMAS should be promoted through information and communication campaigns targeting various groups of stakeholders, including central and local public bodies and authorities, smaller businesses and organisations, the public, consumers and all levels of the education system.

4.6 In particular, organisations, especially small ones, need to be given incentives to participate in EMAS: by offering them easier access to available funding and information, public institutions and green public procurement; by establishing and promoting technical assistance measures; by simplifying procedures and mechanisms; and by reducing burdens and technical costs of assessment, registration and management.

4.6.1 The EESC feels that the Commission proposal still falls short here.

4.7 In the EESC's view, the costs of EMAS assessment, registration and management should be much lower, particularly for smaller bodies, and funding should be available in this regard under the Competitiveness & Innovation Framework Programme (feasibility projects) and from the EIB and/or the European Regional Development Fund.

4.7.1 Bodies operating in highly industrialised areas or areas with a large carbon footprint should be given incentives such as free registration or simplified administrative procedures ([14]) to sign up to EMAS, while the technical checks and monitoring phases should remain the same.

4.8 The EESC stresses the importance of EMAS being recognised as a benchmark of excellence for organisations and businesses which also enhances products' value on both the internal and international markets, with due regard for connections with the Eco-label Regulation.

4.9 The EESC is in favour of clear shouldering of individual responsibility by an organisation or business when participating voluntarily in EMAS, in submitting to requirements and monitoring and in enjoying any benefits.

4.10 The EESC therefore opposes any collective arrangement whereby one body is given responsibility in the name or on behalf of others which it has brought together in a group, as this procedure would lower the level of excellence of the benchmark, which EMAS must preserve. However, clusters and networks – particularly those of a cross-border nature – are to be encouraged to promote and facilitate use of EMAS and to provide assistance.

([14]) For example, where it is not necessary, move the environmental statement back from one to three years; exempt the body from the environmental statements required by local-authority boards of health and reduce the burdens imposed by some industrial accident bodies.

4.11 In this connection the EESC attaches importance to the identification of a number of key indicators relating to factors such as efficiency and energy-saving, use and conservation of land, water and air, emissions, waste treatment and preserving biodiversity, to be backed by a reinforced but user-friendly and cost-efficient environmental reporting system. This could operate directly by computer transmission, through a web portal, to keep costs and burdens down, especially for smaller bodies ([15]).

4.12 The EESC feels it is important for EMAS to be better promoted and given more support: at Community level, drawing on the CIP and EIB and Structural Funds resources; and at national level as regards tax relief, an obligation for contracting authorities to introduce GPP parameters, reduced registration and renewal fees and de-taxation of profits reinvested in EMAS-related technological innovation.

4.13 The EESC is concerned at the excessively high number of national/regional structures which are appointed by the Member States:

— competent registration bodies,

— accreditation bodies,

— authorities responsible for regulatory control,

— environmental verifiers.

The EESC feels there is a need for Community guidelines to simplify the situation here.

4.14 In addition to endorsing the use of competent structures which already exist under the provisions on marketing products on the internal market ([16]), the EESC recommends use of existing mechanisms as regards CEN-ISO technical standardisation and energy-efficiency of buildings. This would avoid creating new, costly posts and structures which are likely increasingly to widen the gap between the public and European integration.

4.15 In any case, the EESC can see a substantial need for an increase in Community funding for training and assistance for national and regional authorities and potential EMAS users, and to produce practical, user-friendly guides, especially for smaller bodies.

4.16 The EESC believes that disseminating and supporting EMAS certification with an image of excellence through a widely-used, widely-endorsed procedure will considerably and tangibly help to achieve:

— sustainable production,

— sustainable trade,

— sustainable consumption.

4.17 The EESC recommends measures to enhance and support the role of EMAS-registered businesses and organisations in promoting and introducing voluntary means of participating in the Community eco-management and audit scheme, targeting clients and suppliers in horizontal and vertical production chains in the European single market, generating a virtuous circle of the culture and practice of sustainable development.

4.18 The EESC is currently making extensive preparations to activate EMAS certification for its site and encourages the other European institutions to do likewise, providing sustainable, significant examples for all bodies in the EU which might be interested in EMAS certification.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([15]) The *e*government programme could be useful in this regard.
([16]) Cf. Decision 768/2008/EC of 9 July 2008 on a common framework for the marketing of products, and Regulation 765/2008/EC of 9 July 2008.

Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation on the protection of animals at the time of killing

(COM(2008) 553 final — 2008/0180 CNS)

(2009/C 218/14)

On 19 November 2008 the Council decided to consult the European Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the:

'Proposal for a Council Regulation on the protection of animals at the time of killing'

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 28 January 2009. The rapporteur was Frank ALLEN.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February), the European Economic and Social Committee adopted the following opinion by 161 votes to five with eight abstentions.

1. Conclusions

1.1 The EESC welcomes this proposal from the Commission. It is a significant step in the right direction and has the potential to improve the welfare of animals during the process of slaughter.

1.2 The committee welcomes the proposal that the slaughterhouse operator be given full responsibility for the welfare of animals during the slaughter process with the requirement to implement standard operating procedures, the introduction of certificates of competence and the need to appoint an animal welfare officer.

1.3 The committee emphasises that the Official Veterinarian must have the key supervisory role to ensure the full implementation of correct animal welfare procedures during the process of slaughter. The Official Veterinarian should be notified immediately of any changes in the standard operating procedures.

1.4 In particular the Official Veterinarian should be responsible for regularly checking to ensure that monitoring at slaughter procedures are being properly implemented.

1.5 The proposal to allow derogation in the case of the ritual slaughter of animals is totally inconsistent with the objectives for animal welfare during the slaughter process contained in this proposed Regulation.

1.6 The committee very much welcomes the new procedures for depopulation and emergency killing. In particular the requirement to establish an action plan to ensure compliance with the rules of this Regulation before commencement of the operation is most important. The publication of an evaluation report within one year after the end of the depopulation is a very welcome proposal.

2. Introduction

2.1 Animal welfare considerations have increased in importance in the EU and this is significant in a society that claims to be an advanced civilised one.

2.2 In 2004 and 2006 two scientific opinions from the European Food Safety Authority (EFSA) suggested revisiting the existing Directive 93/119/EC.

2.3 Specific problems have been identified with EU legislation such as the lack of consistent methodology for new stunning methods, also the lack of clarity of responsibilities for slaughterhouse operators and managers. There is also a need for proper training of personnel involved in animal slaughter.

2.4 There is a need for clarity as regards the welfare conditions applying to animal slaughtered for disease control purposes. Welfare rules should apply as much as possible where animals have to be killed in an emergency situation so as to avoid delay and unnecessary suffering by the animal.

2.5 It is necessary to make animal welfare better understood and integrated into the preparation and handling of animals before slaughter.

2.6 Directive 93/119/EC will be repealed and replaced by the proposed regulation but the scope of the legislation will remain unchanged.

2.7 In changing from a directive to a regulation, the proposal provides for a uniform and simultaneous application throughout the EU consistent with the single market.

3. **Commission proposal**

3.1 This Regulation lays down rules for the killing of animals kept for the production of food, wool, skin, fur or other products and for related operations.

3.2 A derogation will be allowed in the case of an emergency killing to prevent unnecessary pain and suffering to the animal or where full compliance would result in an immediate risk to human health and safety.

3.3 This Regulation will not apply where animals are killed:

a) during approved scientific experiments,

b) during hunting activities,

c) during cultural or sporting activities,

d) by a veterinarian in the course of their work,

e) to poultry and hares and rabbits by the owner for their personal consumption.

3.4 Animals shall be spared any avoidable pain, distress or suffering during slaughter and related operations. Operators must take all necessary measures to ensure that animals are properly provided for and handled with the minimum of stress before slaughter.

3.5 According to Art. 4(1), animals shall only be killed using a method which ensures instantaneous death, or after stunning.

3.6 A derogation may apply where animals can be killed without prior stunning where such methods are prescribed by religious rites, provided such killing takes place in a slaughterhouse. Member States may decide not to apply this derogation.

3.7 A list of the methods of stunning and a detailed description of the technical specifications is contained in Annex 1 and stunning must be carried out in accordance with these methods. Checks on the efficiency of the stunning process must be carried out on a sufficiently representative sample of animals to ensure that the process operates properly and consistently.

3.8 Community codes of good practices concerning the stunning methods set out in Annex 1 may be adopted in accordance with the procedure referred to in Article 22(2). This procedure was established by a Council decision of 1999 which lays down the procedure for the Commission to exercise the powers conferred on it to implement legislation by means of a regulatory committee. Each member state will have a representative on the committee and it will be chaired by a representative of the Commission.

3.9 Operators shall draw up and implement standard operating procedures (SOP) to ensure that killing and related operations are carried out in accordance with article 3(1). This SOP shall be made available to the Competent Authority upon request. As regards stunning, the SOP shall take into account the manufactures recommendations and instructions for the use of the equipment. Furthermore an immediate backup facility must be available in the event of a problem with the stunning equipment.

3.10 A certificate of competence will be necessary for those involved in killing and related operations in the slaughter house:

a) the handling and care of animals before they are restrained,

b) the restraint of animals for the purpose of stunning or killing,

c) the stunning of animals,

d) the assessment of effective stunning,

e) the shackling or hoisting of live animals,

f) the bleeding of live animals,

g) the killing of fur animals.

3.11 Instructions involving the use and maintenance must accompany products marketed as restraining or stunning equipment in a manner which ensures the highest level of animal welfare with particular reference to categories or weights of animals as well as a suitable method to monitor the efficacy of the equipment.

3.12 Annex II clearly sets out the requirements for the construction, layout and equipment of slaughterhouses. For the purposes of this Regulation the competent authority in the member state (which is defined in Article 4 of the Regulation (EC) No 853/2004) shall approve each slaughterhouse that fulfils the relevant criteria.

3.13 Operators shall ensure that the operational rules for slaughterhouses set out in Annex 3 are complied with. Notwithstanding Article 3(1), the following methods of restraint shall be prohibited:

a) suspended or hoisting animals by their feet or legs,

b) mechanical clamping of the legs or feet of animals,

c) breaking legs, cutting leg tendons or blinding animals,

d) severing the spinal cord, such as by the use of a puntilla or dagger,

e) the use of electric currents that do not stun or kill the animals under controlled circumstances, in particular, any electric current application that does not span the brain.

However, points a) and b) shall not apply to the shackles used for poultry.

3.14 Operators shall implement a monitoring at slaughter procedure to verify and confirm that animals for slaughter are effectively stunned in the period between stunning and confirmation of death and this must include the name of the person responsible. A separate monitoring procedure must be put in place for each slaughter line where different stunning equipment is used.

3.15 Operators shall designate an Animal Welfare Officer for each slaughterhouse who will be responsible for ensuring that the rules contained in this regulation are properly implemented. A derogation shall apply to slaughterhouses slaughtering less than 1 000 livestock units or 150 000 units of poultry per year.

3.16 The proposal aims at making the competent authority performing killings for disease control purposes (such as avian influenza or foot and mouth disease) more accountable to the public as regards the welfare of the animals sacrificed. In particular, the proposal will require better planning, supervision and reporting.

3.17 In the case of emergency killing, the person in charge of the animals concerned shall take all the necessary measures to kill the animal as soon as possible.

3.18 Each Member State shall appoint a national reference centre which will include the provision of permanent and competent support to official inspectors and to provide technical and scientific expert.

4. **Specific comments**

4.1 The derogation for small slaughterhouses contained in art. 14 is adequate and necessary to ensure that small slaughterhouses can continue to operate and service local markets.

4.2 The role of the official veterinarians should be expanded so that they have a supervisory role in animal protection rules contained in this regulation with particular reference to overseeing the role of the animal welfare officer. Any changes made to the SOP should immediately be notified to the Official Veterinarian.

4.3 An expert scientific group should be established to examine and draw up good codes of practice for the stunning methods contained in Annex 1.

4.4 The proposal in art. 4(2) to allow a derogation on ritual slaughter is inconsistent with the overall objective of the regulation which is to improve the protection of animals at slaughter. Innovative technology such as the Stun Assurance Monitor allows those who wish to slaughter with prior electrical stunning in compliance with Halal rules to accurately monitor how much electrical charge is given to an animal. This ensures that it is properly stunned but still alive prior to slaughter. The monitor records each stun carried out and the voltage given to the animal. It has a real contribution to make to animal welfare. Furthermore the introduction of a labelling system indicating the method of slaughter would encourage the use of the Stun Assurance Monitor. It is important that the Commission would actively support research into systems that would convince religious groups with regard to stunning thereby protecting animal welfare at slaughter.

4.5 It is important that codes of good practice be drawn up in agreement of the various stakeholders and subject to commission approval.

4.6 Small slaughterhouses have recently had to incur significant expenditure in order to upgrade to comply with the 'hygiene package'. To avoid threatening their viability, funding should be made available towards expenses incurred by compliance with this regulation.

4.7 The establishment of reference centres should be compatible and linked to existing scientific and research facilities in the member state. It is important that no duplication takes place and that adequate financial resources are provided to ensure the effective operation of the system. Training programmes should be harmonised at EU level.

4.8 In drawing up codes of practice on the handling and care of animals due regard must be given to the views of persons who have at least five years uninterrupted practical experience in the handling and care of animals and should be combined with the academic viewpoint on how animals should be handled and cared for. Courses for certificates of competence in this area should also note this point of view.

4.9 Until December 31 2014 member states should issue certificates of competence without formal examination to persons demonstrating five years uninterrupted experience after a positive assessment by the Official Veterinarian.

4.10 In particular the committee welcomes art. 4(1) as being most important. This Article specifies that animals shall only be killed using a method which ensures instantaneous death or after stunning.

4.11 The Committee welcomes the proposal in art 8 that stunning equipment shall not be placed on the market without appropriate instructions concerning their use and maintenance in the manner which ensures optimal conditions for the welfare of animals. Research should be carried out to ensure that an automatic monitoring system be available. The regulation does not specify what manner of licensing shall apply to ensure that stunning equipment placed on the market is independently verified to justify the claims of the manufacturers.

4.12 The Committee is of the view that imports from third countries should meet equivalent standards in order not to distort competition. This matter is referred to in Art 10 but it needs to be made stronger and clearer. Also there must a declaration of intent that such a policy will be implemented.

4.13 The Committee welcomes the main principles contained in the proposed regulation.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — A Common Immigration Policy for Europe: Principles, actions and tools

COM(2008) 359 final

(2009/C 218/15)

On 17 June 2008 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

'*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A Common Immigration Policy for Europe: Principles, actions and tools*'

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 December 2008. The rapporteur was Mr PARIZA CASTAÑOS. The co-rapporteur was Ms BONTEA.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February), the European Economic and Social Committee adopted the following opinion by 130 votes to one with four abstentions.

1. Conclusions: Managing Immigration

1.1 The EESC has proposed that the Council of the European Union abandon the unanimity rule for immigration policy and adopt decisions by qualified majority and by co-decision with the Parliament, and considers that immigration legislation should be included in the Lisbon Treaty under the ordinary procedure. Taking into account the current circumstances, which could delay the adoption of the Lisbon Treaty, the Committee would like to reiterate its proposal for the Council to adopt the 'bridging' procedure to speed up the entry into force of the qualified majority and co-decision system.

1.2 In its opinions the Committee has taken the view that immigration policy and legislation should fully respect the **human rights** of all people, equal treatment and non-discrimination. To strengthen this objective, **the EESC proposes that two new common principles should be included: Fundamental Rights, and the Rule of Law and Fundamental Freedoms.**

1.3 The EESC underlines the need for the European Commission and the Member States to set up and develop a mechanism for **consulting all relevant stakeholders**, primarily the social partners (trade unions and employer organisations) but also civil society, immigrant associations, academic experts and international organisations. In order to structure this participation and enhance the EESC's role, the Committee has adopted an opinion [1] on setting up the **European Integration Forum.**

1.4 Several years have passed since the Commission proposed setting up an Open Method of Communication (OMC), which was supported by the EESC [2] and the Parliament but not adopted by the Council. The EESC supports the Commission's proposal for a **common methodology**, and considers this to be an initial step towards establishing an **open method of coordination.** In the Committee's view, common principles should be converted into **common objective indicators**, which should form part of **national immigration profiles.** Each Member State will draw up an annual report and the Commission will produce an annual summary report, which it will forward to the European Parliament. **The EESC considers that it too should be consulted in this process**. On the basis of the Commission report, the **Spring European Council** will make a political assessment and draw up recommendations.

1.5 The social partners, civil society organisations and national parliaments will be involved in drawing up the annual reports for each Member State, in line with national procedures. The EESC wishes to highlight the need to publish, promote and raise public awareness of this annual report.

[1] See the EESC opinion on 'Elements for the structure, organisation and functioning of a platform for the greater involvement of civil society in the EU-level promotion of policies for the integration of third-country nationals'; rapporteur: Mr Pariza Castaños (OJ C 27, 3.2.2009).

[2] See the EESC opinion on the 'Communication from the Commission to the Council and the European Parliament on an open method of coordination for the Community Immigration Policy', and the 'Communication from the Commission to the Council and the European Parliament on the Common Asylum Policy, introducing an open coordination method'; rapporteur: Ms zu Eulenburg (OJ C 221, 17.9.2002).

1.6 The Committee considers that the open method of communication is the appropriate instrument for guaranteeing coherence between national policies and should be used to ensure that the Member States move forwards together to secure the aims set at Tampere and thus create a European area of freedom, security and justice. The OMC should be implemented **without delaying the legal framework** provided for in the Treaty and confirmed at the Tampere and Hague Councils.

1.7 The EESC would like the EU to have suitable, highly harmonised legislation, so that immigration can be channelled through legal, flexible and transparent legal procedures in which third-country nationals are fairly treated, with comparable rights and obligations to those enjoyed by EU citizens.

1.8 The Committee considers that cooperation between the authorities and the social partners would enable a considerable number of people who are today working illegally to regularise their administrative situation so that their job is legalised.

1.9 Cooperation and solidarity between Member States, including a strong financial component, needs to be improved. Effective use should thus be made of the funds of the General Programme for Solidarity and Management of Migratory Flows (2007-2013), as a means of sharing the burden and supplementing national budgetary resources.

2. Introduction

2.1 The aim of the communication is to encourage the Council to adopt a set of common political principles to guide the development of future immigration policy and is part of a wider political process to develop the policy foundations for the adoption of the new multi-annual programme for freedom, security and justice policies, which will replace the Hague Programme, and will be adopted during the Swedish presidency in the second half of 2009.

2.2 The French Presidency has attempted to secure the Council's approval of the European Pact on Immigration and Asylum [1] in order to give fresh political impetus to these policies and improve intergovernmental cooperation.

[1] See European Council conclusions 14368/08.

3. General comments

3.1 The EESC welcomes this Commission communication, which seeks to improve cooperation and co-ordination in the EU on immigration policy and considers that it is important to enhance the added-value of a common European immigration policy, together with the proactive role that the Commission must play.

3.2 The Committee should have been consulted by the French Presidency on the European Pact on Immigration and Asylum. The EESC considers that the Commission's approach emphasises the need to strengthen the Community method and that the Council's conclusions emphasise intergovernmental cooperation. The Committee welcomes the idea of closer cooperation between governments and suggests to the Council that, in the process of developing immigration policies, the Commission's right of initiative should be supported and that the Parliament and the EESC should play a more active role.

3.3 The communication notes that a common immigration policy is a key priority for the EU. The policy should be guided by a co-ordinated, integrated approach at the European, national and regional levels, and developed in partnership and solidarity between Member States and the Commission. The communication proposes adopting a set of **common, politically binding principles** to be agreed by the Council and then developed by means of **specific measures**. This would be accompanied by a **common methodology and a monitoring mechanism**.

3.4 The EESC broadly supports these objectives.

3.5 The EESC has proposed [2] that the Council of the European Union should abandon the unanimity rule for immigration policy and adopt decisions by qualified majority and by co-decision.

3.6 In its opinions the Committee has taken the view that immigration policy and legislation should fully respect the **human rights** of all people, equal treatment and non-discrimination, and therefore shares the Commission's view that immigration policies 'should build on the **universal values** of human dignity, freedom, equality and solidarity espoused by the EU, including full respect of the Charter of Fundamental Rights and the European Convention on Human Rights'.

[2] See the EESC opinion on the 'Communication from the Commission to the Council and the European Parliament: The Hague Programme: Ten priorities for the next five years - The Partnership for European renewal in the field of Freedom, Security and Justice'; rapporteur: Mr Pariza Castaños (OJ C 65, 17.3.2006).

3.7 When the Lisbon Treaty comes into force it will be the first time in the history of European integration that the Charter of Fundamental Rights has been officially recognised as legally binding on Member States and the EU institutions when adopting and implementing Community law. Both the EU institutions and the Member States will have to ensure that all policies, including those relating to the area of freedom, security and justice, respect fundamental rights.

3.8 Moreover, Article 47 TEU, as set out in the Lisbon Treaty, recognises that *'The Union shall have legal personality'*; and Article 6.2 of the same Treaty stipulates that, based on its new personality, *'The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms'*.

3.9 The EESC has proposed ([1]) that the Commission, Parliament and the EU Council promote, within the field of external policy, **an international legal framework for migration** on the basis of the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. This international legal framework should include the main ILO conventions and the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, which has not yet been ratified by the EU Member States, despite the fact that the EESC adopted an own-initiative opinion ([2]) proposing that this be done.

3.10 To strengthen this objective, **the EESC proposes that two new common principles should be included: Fundamental Rights; and the Rule of Law and Fundamental Freedoms.**

4. Specific comments on the basic principles

4.1 The Commission is proposing **ten common principles** for the development of a common immigration policy, grouped under three headings: **prosperity, solidarity and security**.

4.2 The EESC notes, however, that the principles derived from fundamental rights are missing; as the immigration policy and legislation (admission, borders, visas, return, conditions of residence, etc.) of the EU and its Member States should respect human dignity and fundamental rights, the EESC suggests that a new heading should be added entitled **Human Rights, including two new principles:**

Principle A: Fundamental Rights

4.3 In their immigration policies, the EU and its Member States should respect the European Union's Charter of Fundamental Rights, in order to combat racism and discrimination and strengthen the principle of equal treatment. Respect for these principles should form the basis for drafting EU legislation on immigration.

4.4 In a recent opinion ([3]), the EESC stated that the rights and obligations for third-country nationals – set out in the proposal for a Directive for the single procedure (COM(2007) 638 final) on equal treatment regarding salaries, working conditions, freedom of association, education and professional development – is a good starting point for future common legislation on immigration.

Principle B: The Rule of Law and Fundamental Rights

4.5 Taking into account the Member States' agreement that the EU should sign up to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the EESC believes that the legal guarantees contained in this convention should be included in the common principles for immigration policy, to ensure that all immigrants have effective access to the rights and guarantees provided by the Rule of Law while they are resident in the EU.

5. Common basic principles for the future development of a common immigration policy (European Commission proposal)

5.1 **Prosperity:** the contribution of legal immigration to the socio-economic development of the EU.

5.2 The communication highlights the contribution that legal immigration has made to the EU's socio-economic development. The EESC has repeatedly commented on the positive effects of immigration for host societies in Europe, taking into account the challenges of the Lisbon strategy. The Committee therefore hopes that the limitations entailed by the transitional periods affecting nationals of the new Member States will soon be abolished.

([1]) See the EESC opinion on 'EU immigration and cooperation policy with countries of origin to foster development'; rapporteur: Mr Pariza Castaños (OJ C 44, 16.2.2008).

([2]) See the EESC opinion on 'the International Convention on Migrants'; rapporteur: Mr Pariza Castaños (OJ C 302, 7.12.2004).

([3]) See the EESC opinion on the 'Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State', rapporteur: Mr Pariza Castaños (OJ C 27, 3.2.2009).

5.3 The section on **prosperity** contains three principles:

Principle 1: Clear rules and a level playing field

5.4 The EESC would like the EU to have suitable, highly harmonised legislation, so that immigration can be channelled through flexible and transparent legal procedures in which third-country nationals are fairly treated, with comparable rights and obligations to those enjoyed by EU citizens.

5.5 It is essential for the EU to cooperate with the countries of origin in order to manage migratory flows. The EESC has recently adopted two opinions [1] proposing that collaboration between countries of origin and European host countries should be improved.

5.6 The common visa policy should be applied in a more flexible way, as it often hinders the management of legal migratory flows.

Principle 2: Matching skills and needs

5.7 Against the backdrop of the Lisbon strategy, immigration for economic purposes should respond to a common needs-based assessment of EU labour markets, addressing all skills levels and sectors in order to guarantee the principle of Community preference.

5.8 As regards the evaluation of the needs of 'qualified workers' in the EU and Member States up to 2020, in a recent opinion [2] the EESC made a number of proposals relating to the 'Blue Card' Directive.

5.9 As regards the development of 'immigration profiles' providing information on the participation of immigrants in the national labour market, in the Committee's view, there is a need to improve national and EU data on migratory flows and labour markets; the EESC considers that the concept of 'immigration profiles' should be flexible and take worker adaptability into account.

5.10 The EESC would like to highlight the importance of knowledge of languages and professional training for immigrant workers – which are essential to ensure they are able to find work and are better able to adapt to changes in labour markets – together with the need to recognise professional qualifications acquired outside the EU.

5.11 The EESC agrees with the Commission on the objective of promoting entrepreneurship among immigrants. The obstacles that still exist in national legislation on immigration must be overcome, however, if this objective is to be achieved.

5.12 As immigrant workers are most at risk of losing their jobs, it is essential to develop measures to bring more people into employment, with a particular focus on women and particularly disadvantaged individuals.

5.13 The EESC considers that in order to combat illegal employment, the measures envisaged in the Directive on sanctions against employers should be used together with incentives and active policies to regularise and legalise the employment of immigrants. For this to be achieved, both national and EU legislation on immigration must be more flexible and more closely linked with labour market trends, since it is necessary to develop and consolidate consultation with the social partners and a proper social dialogue.

5.14 Compliance with ILO regulations must be ensured, especially the ILO Conventions on migrant workers (C97 and C143).

Principle 3: Integration is the key to successful immigration

5.15 The EESC has produced a number of opinions [3] promoting integration policy, and is therefore pleased that integration is one of the principles underpinning immigration policy. The '**common basic principles**' which were adopted

[1] See the following EESC opinions:
— on 'EU immigration and cooperation policy with countries of origin to foster development', rapporteur: Mr Pariza Castaños (OJ C 44, 16.2.2008),
— on 'Migration and development: opportunities and challenges', rapporteur: Mr S. Sharma (OJ C 120, 16.5.2008).

[2] See the EESC opinion on the Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, rapporteur: Mr Pariza Castaños (OJ C 27, 3.2.2009).

[3] See the following EESC opinions:
— on 'Elements for the structure, organisation and functioning of a platform for the greater involvement of civil society in the EU-level promotion of policies for the integration of third-country nationals'; rapporteur: Mr Pariza Castaños (OJ C 27, 3.2.2009);
— on 'Immigration, integration and the role of civil society organizations'; rapporteur: Mr Pariza Castaños (OJ C 125, 27.5.2002);
— on the 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment'; rapporteur: Mr Pariza Castaños (OJ C 80, 30.3.2004);
— on 'Civil society participation in the fight against organised crime and terrorism'; rapporteurs: Mr Rodríguez García-Caro, Mr Pariza Castaños and Mr Cabra de Luna (OJ C 318, 23.12.2006).

by the Council in 2004, should form the basis of integration policies, and the first of these refers to integration being a two-way or reciprocal process (between the immigrants and the host society). The Committee shares the Commission's objective that European societies '*should enhance their capacity to manage immigration-related diversity and enhance social cohesion*'.

5.16 The Committee supports the Commission proposals and considers that consolidating the EU Framework for Integration will require fresh political impetus from the Council. The EESC has proposed the concept of 'civic integration' which is based on 'bringing immigrants' rights and duties, as well as access to goods, services and means of civic participation progressively into line with those of the rest of the population, under conditions of equal opportunities and treatment' ([1]). It is therefore essential to ensure that immigrants are more involved socially and politically at the local, national and European levels. The Committee produced an opinion for the European Convention ([2]), proposing that third-country nationals who are long-term residents should be granted **EU citizenship**.

5.17 The Commission is currently coordinating a national network of contact points which is proving a very positive experience. The EESC underlines the importance of exchanging and analysing the experience and good practices of Member State authorities and the fact that the Council will set up an **Open Method of Coordination**, which will require developing **suitable statistical systems and common indicators** that Member States should use when evaluating the results of integration policies.

5.18 '*Integration programmes*' must be developed for '*newly arrived immigrants*' including a linguistic dimension (learning the language), a cultural and civic dimension (commitment to fundamental European values) in the framework of '*specific national procedures*' such as '*integration curricula, explicit integration commitments, welcome programmes, national plans for citizenship and integration, civic introduction or orientation courses*'.

5.19 In collaboration with the Dublin Foundation and the social partners, the Committee analysed the working conditions of immigrant workers ([3]), and concluded that diversity in the workplace increases opportunities for both companies and workers; and that collaboration with the social partners should complement legislation and public policy at work.

5.20 In a number of opinions the Committee has proposed that the rights of immigrants should be included in European legislation, and that immigrants should be informed about their rights and responsibilities (under the law of the host country).

5.21 Bearing in mind that in the Member States some rights depend on the length of time immigrants have lived in the country, the EESC agrees with the Commission that immigrants should have non-discriminatory and full access to healthcare, social protection, social security and pension rights. The European Pact on Immigration and Asylum also states that certain rights should be guaranteed, such as access to 'education, work, security, and public and social services'.

5.22 In its opinion on the Green Paper the Committee proposed that the various rights ([4]) should be recognised.

5.23 The EESC has in a number of opinions ([5]) proposed that Directive 2003/86/EC on the right to family reunification be amended, because it is highly restrictive, does not respect fundamental rights and forms an obstacle to integration.

5.24 Furthermore, the **European Integration Forum** should be set up - before March 2009 - as proposed by the EESC ([6]) and endorsed at the preparatory conference of April 2008. The Member States should assist the Forum's members in taking up their duties.

([1]) See the EESC opinion on 'Immigration, integration and the role of civil society organisations', rapporteur: Mr Pariza Castaños; co-rapporteur: Mr Melícias (OJ C 125, 27.05.2002).

([2]) See the EESC opinion on 'Access to European Union citizenship'; Mr Pariza Castaños (OJ C 208, 3.9.2003).

([3]) See the EESC opinion on 'Immigration in the EU and integration policies: cooperation between regional and local governments and civil society organisations ', rapporteur: Mr Pariza Castaños (OJ C 318, 23.12.2006).

([4]) The right to social security, including healthcare;
- The right to have access to goods and services, including housing, under the same conditions as nationals;
- Access to education and vocational training;
- The recognition of degrees, certificates and qualifications in the context of Community law;
- The right to the education of minors, including funding and study grants;
- The right to carry out teaching and scientific research in accordance with the proposal for a Directive;
- The right to free legal aid in cases of need;
- The right of access to a free placement service (public service);
- The right to be taught the language of the host society;
- Respect for cultural diversity;
- The right to free movement and residence within the Member State.

([5]) See the following EESC opinions:
- on the 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment', rapporteur: Mr Pariza Castaños (OJ C 80, 30.3.2004),
- on the 'Green paper on an EU approach to managing economic migration', rapporteur: Mr Pariza Castaños (OJ C 286, 17.11.2005),
- on 'Immigration in the EU and integration policies: cooperation between regional and local governments and civil society organisations', rapporteur: Mr Pariza Castaños (OJ C 318, 23.12.2006),
- on the 'Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment', rapporteur: Mr Pariza Castaños (OJ C 27, 3.2.2009).

([6]) See the EESC opinion on 'Elements for the structure, organisation and functioning of a platform for the greater involvement of civil society in the EU-level promotion of policies for the integration of third-country nationals'; rapporteur: Mr Pariza Castaños (OJ C 27, 3.2.2009).

5.25 **Solidarity:** coordination between Member States and cooperation with third countries.

5.26 The Commission proposes improving political solidarity. The section entitled Solidarity and Immigration hinges on three principles:

Principle 4: Transparency, trust and cooperation

5.27 The common immigration policy should be founded on a high level of political and operational solidarity, mutual trust, transparency, shared responsibility and joint efforts from the European Union and its Member States. The EESC endorses these principles and wishes to highlight the need to move beyond the intergovernmental sphere to ensure that the EU institutions are involved in the common immigration policy.

5.28 There is a need to improve the distribution of information and mutual trust and to adopt more coordinated approaches, monitor the impact of national measures beyond national borders and develop interoperable systems, taking into account the activities of EUROSUR.

5.29 In a recent opinion [1], the EESC supported the European Commission's initiatives to ensure that Member States improve their statistics on immigration.

Principle 5: Efficient and coherent use of available means

5.30 Solidarity should include a strong financial component that takes into account the specific situation of the external borders of certain Member States. Consequently, effective use should be made of funds provided under the General Programme for Solidarity and Management of Migratory Flows (2007-2013), as means of sharing the burden and of supplementing national budgetary resources.

5.31 The EESC produced an opinion [2] criticising the approach adopted in policies on the management of migratory flows and proposed an approach that takes account first and foremost of individuals as holders of basic human rights.

5.32 Particular attention should be paid to urgent needs, such those generated by a massive influx of immigrants. The Committee also wishes to point out that there are sometimes humanitarian emergencies that require the EU's solidarity.

5.33 The EESC supports the endorsement of the Budgets Committee of the European Parliament of an amendment to the 2009 EU Budget to allocate financial resources for the establishment of a 'Solidarity Mechanism' to enable burden sharing among EU Member States. This includes allocation of funds for the European Refugee Fund, the promotion of other resettlement schemes and funds for the EU's Frontex agency to enable it to extend its maritime missions in Southern Europe on a permanent basis with effect from next January.

Principle 6: Partnership with third countries

5.34 The EESC has drawn up two opinions [3] proposing a new approach for European policies: immigration policy should be managed in cooperation with the countries of origin, to ensure that migration is a factor for development in those countries. This would mean reformulating many aspects of these policies, including those concerning admission criteria and migrants' opportunities for mobility.

5.35 The Committee therefore welcomes this principle, because managing migratory flows requires partnership and cooperation with third countries.

5.36 The brain-drain must be limited, training and education improved and local labour markets strengthened. Decent work must be promoted, the development potential of remittances realised and irregular immigration prevented.

5.37 In conjunction with those Member States that are interested, mobility partnerships should be established with third countries, paving the way for legal emigration to Europe.

5.38 Possibilities for circular migration should be provided, through legal and operational measures granting legal immigrants the right to priority access to further legal residence in the EU.

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[1] See the EESC opinion on the 'Proposal for a Regulation of the European Parliament and of the Council on Community statistics on migration and international protection', rapporteur: Ms Sciberras (OJ C 185, 8.8.2006).

[2] See the EESC opinion on the 'Proposal for a Decision of the European Parliament and of the Council establishing the European Refugee Fund for the period 2008-2013 as part of the General programme Solidarity and management of migration flows — Proposal for a Decision of the European Parliament and of the Council establishing the External Borders Fund for the period 2007-2013 as part of the General programme Solidarity and management of migration flows — Proposal for a Council Decision establishing the European Fund for the Integration of Third-country Nationals for the period 2007-2013 as part of the General programme Solidarity and management of migration flows — Proposal for a Decision of the European Parliament and of the Council establishing the European Return Fund for the period 2008-2013 as part of the General programme Solidarity and management of migration flows'; rapporteur: Ms Le Nouail-Marlière (OJ C 88, 11.4.2006).

[3] See the following EESC opinions:
— on 'EU immigration and cooperation policy with countries of origin to foster development'; rapporteur: Mr Pariza Castaños (OJ C 44, 16.2.2008).
— on 'Migration and development: opportunities and challenges'; rapporteur: Mr Sharma (OJ C 120, 16.5.2008).

5.39 Association agreements should include aspects of social security, covering, amongst other things, the possibility of transferring acquired social rights, especially pension rights, to countries of origin.

5.40 **Security:** effectively combating 'illegal immigration'

5.41 In previous opinions [1], the EESC has warned that '...Some clarification is needed when the term "illegal immigration" is used to refer to individual migrants. Although it is not lawful to enter a country without the required documents and authorisation, those who do so are not criminals. (...) Irregular immigrants are not criminals, even though their situation is not legal'. The real criminals are those individuals who illegally traffic in people and those who exploit illegal immigrants.

5.42 The section on **security** contains four principles:

Principle 7: A visa policy that serves the interests of Europe and its partners.

5.43 The EESC would like to know whether the Commission has sufficient data to assess the impact of visa policy on reducing illegal immigration. The requirement for people in some third countries to have a short-term visa can reduce illegal immigration from those countries, but can also increase the number of individuals falling victim to trafficking networks and people-smugglers. Furthermore, visa policy can be seriously discriminatory as a result of restricting mobility and the consular authorities must therefore manage the issue carefully, acting swiftly, in a transparent manner, and ensuring that no corruption is possible.

5.44 The Committee agrees that uniform Schengen European visas should be adopted, and that common consular centres serving a number of Member States could be created.

Principle 8: Integrated border management

5.45 With a view to preserving the integrity of the Schengen area without internal border controls, the Commission proposes that the 'integrated management' of strategies for checks at the EU's external borders be strengthened and developed.

5.46 The operations of FRONTEX should be strengthened; an integrated system of border checks should be developed, using the 'new technologies', and the potential of the European Commission's Seventh Framework Programme should be realised. It is crucial that FRONTEX develop and enhance further its coordination and support roles in respect of Joint Operations and its ability to react rapidly to the needs of Member States at the external borders. In the future the EU will decide on the operational Command and Control of FRONTEX considering the implications of national and international law.

5.47 Cooperation with third countries needs to be built up and the development of their migration management and control capacities supported.

5.48 The Committee wishes to highlight the need to preserve the Schengen area, with no internal border checks and to strengthen cooperation and solidarity between Member States when managing the EU's external borders.

5.49 The EESC also supports the creation of a one-stop-shop at land borders, where each traveller is subject to one check by one authority.

5.50 The large-scale and constant influx of immigrants to a given EU region is primarily a **humanitarian problem** that the national authorities must remedy with the help and support of the EU. Some European regions such as the islands of Malta, Lampedusa and the Canaries face specific problems because due to their southerly location they form mid-way points for irregular immigration and sometimes receive more immigrants than they can cope with. It is, therefore, crucial that the European Union has a system of solidarity in place, including operational burden sharing in relation to Member States facing recurrent and massive arrivals of illegal immigrants by combining European and pooled national resources.

5.51 The EESC would like to see the effectiveness of border checks matched by respect for the right to asylum, because many people in need of international protection reach the EU's external borders illegally. The Committee will be adopting another opinion [2] on the Common European Asylum System.

5.52 The EESC supported [3] the creation of FRONTEX and the future establishment of a European border guard and of a European border guard school, because border checks should be carried out by officials who have a specialist understanding of people trafficking and considerable technical know-how.

[1] See notably the EESC opinion on the 'Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration', rapporteur: Mr Pariza Castaños (OJ C 149, 21.6.2002).

[2] See the EESC opinion of 25 February 2009 on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Policy plan on asylum - an integrated approach to protection across the EU'; rapporteur: Mr Pariza Castaños, co-rapporteur: Ms Bontea (Not yet published in the Official Journal).

[3] See the EESC opinion on the 'Proposal for a Council Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders'; rapporteur: Mr Pariza Castaños (OJ C 108, 30.4.2004).

5.53 The Agency's tasks should include coordinating rescue services – especially sea rescues – to prevent the use of risky immigration networks and help people who are in danger as a consequence of using such networks.

Principle 9: Stepping up the fight against illegal immigration and zero tolerance for trafficking in human beings

5.54 The Commission proposes tackling undeclared work and illegal employment via preventive measures, law enforcement and sanctions. Protection and support for victims of human trafficking should be enhanced and collaboration with countries of origin and transit improved

5.55 The Committee considers that combating irregular immigration is the task not only of border guards but also of the European labour markets, which in some sectors and in some countries offer irregular immigrants undeclared work. The EESC recently adopted an opinion [1] in which it endorsed the Commission directive sanctioning employers that take on irregular immigrants, highlighting the importance of the social partners and immigrants' working conditions.

5.56 Irregular immigration will also decline when the EU and the Member States have legislation on the admission of new immigrants that is more open and flexible, as the EESC has proposed in a number of opinions.

5.57 The Committee supports the Commission, which wants to ensure that illegally residing third-country nationals have access to services that are essential to guarantee fundamental human rights (e.g. education, especially of children, and basic health care).

5.58 The EESC considers that the existence of hundreds of thousands of irregular immigrants in the EU represents a challenge for the EU and for its Member States. Compulsory return cannot be the only answer, because people's dignity and humane treatment must always be guaranteed. Nor is this policy financially viable. The Committee has thus proposed, in other opinions that [2] *'Within the framework of policy coordination, the Commission should urge the Member States to prepare regularisation measures, averting the risk of irregular immigration being considered as a "back door" to legal immigration. In regularising the situation of those involved, consideration should be given to the degree to which they have settled in social and employment terms*'. In the Committee's view, cooperation between the authorities and the social partners would enable a considerable number of people who are today working illegally to regularise their administrative situation so that their job is legalised.

5.59 The lack of effective controls at external borders is often exploited by criminal networks that traffic in human beings and have no qualms about putting people's lives at serious risk in order to increase their illegal profits. In another opinion [3], the EESC pointed out that the authorities must protect victims, in particular the most vulnerable, such as children, and victims of trafficking for sexual exploitation, with the same energy with which they combat criminal networks that traffic in and exploit human beings.

5.60 The Committee is extremely concerned at the use of biometric systems, which could be used in a discriminatory manner and could breach people's right to privacy.

Principle 10: Effective and sustainable return policies

5.61 The Commission considers that return policies are an indispensable component of the EU's policy on illegal immigration and that indiscriminate large-scale regularisations of illegally staying persons should be avoided, *'while leaving open the possibility for individual regularisations based on fair and transparent criteria*'.

5.62 The Commission proposes giving a European dimension to returns policies by ensuring the full mutual recognition of returns decisions. In its opinion [4], the EESC considered that, whilst no common immigration and asylum legislation exists, the mutual recognition of returns decisions is highly problematic if respect for the fundamental rights conferred under the rule of law is to be guaranteed.

5.63 In that opinion, the Committee proposed that the most successful return policies are those that offer adequate incentives and which are managed in conjunction with the International Organisation for Migration (IOM) and specialist NGOs.

5.64 The EESC was not consulted during the process of drawing up the directive on returns, but agrees with human rights organisations that claim that some of its provisions (the duration of confinement in detention centres, the lack of legal protection, the inadequate treatment of minors, etc.) **are not consistent with fundamental rights and the rule of law.**

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[1] See the EESC opinion on the 'Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals', rapporteur: Ms Roksandić, co-rapporteur Mr Almeida Freire (OJ C 204, 9.8.2008).

[2] Notably the EESC opinion on the 'Green Paper on a Community return policy on illegal residents', rapporteur: Mr Pariza Castaños (OJ C 61, 14.3.2003).

[3] See the EESC opinion on the 'Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities', rapporteur: Mr Pariza Castaños (OJ C 221, 17.9.2002).

[4] See the EESC opinion on the 'Proposal for a Council Decision setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals'; rapporteur: Mr Pariza Castaños (OJ C 220, 16.9.2003).

5.65 Steps must be taken to ensure that the countries of origin readmit their nationals - because they are obliged under international agreements to do so - and current readmission agreements should be assessed in order to improve their implementation and to draw lessons for the negotiation of future agreements.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Policy plan on asylum: an integrated approach to protection across the EU

COM(2008) 360 final

(2009/C 218/16)

On 17 June 2008, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

'*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Policy plan on asylum: an integrated approach to protection across the EU*'

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 December 2008. The rapporteur was Mr PARIZA CASTAÑOS and the co-rapporteur was Ms BONTEA.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February 2009), the European Economic and Social Committee adopted the following opinion by 134 votes to one with six abstentions.

1. Conclusions

1.1 The EESC agrees with the general objectives put forward by the Commission, but would draw attention to the gulf between those objectives and European legislation, as well as national laws and practices.

1.2 The Committee believes that in this case, as with other European policies, aspirations and values have been replaced by rhetoric, and too often practice and laws conflict with values.

1.3 The EESC believes that the second phase of the construction of the CEAS should address the shortcomings of the first phase. A critical review of the first phase should therefore be carried out before the second phase begins.

1.4 Bearing in mind that in the second phase of developing the Common European Asylum System (CEAS), the Council of the European Union adopts decisions under the ordinary procedure and by co-decision with the EP, the EESC fervently hopes that progress can be swifter and the legislation of higher quality. The Committee welcomes the fact that in this communication the Commission gives a commitment to adopting a number of policy and legislative initiatives.

1.5 The EESC considers that European asylum policies should be harmonised and the CEAS completed in a manner that ensures a high degree of quality, without lowering international levels of protection. Harmonisation will always retain a degree of discretion for national legislation but should never be used to reduce current levels of protection in the Member States. Harmonisation should instead serve to improve legislation in those Member States where protection is inadequate.

1.6 The new legislation should allow asylum seekers access to the labour market and training.

1.7 The EESC is calling for the work of NGOs specialising in asylum and refugees to be recognised and for these NGOs to be given full access to the procedures and places connected with their activities.

1.8 The Committee welcomes the fact that the EU has given fresh impetus to the development of the Common European Asylum System through the European Pact on Immigration and Asylum ([1]).

2. Introduction

2.1 The Common European Asylum System (CEAS) is developing in two different phases. The first of these began at the **Tampere European Council** (1999), following the adoption of the Treaty of Amsterdam, which gave an EU dimension to immigration and asylum policies. This first phase ended in 2005.

2.2 In the **first phase** progress was made on developing a number of asylum directives, improving the level of cooperation between Member States, and on some aspects of the external dimension of asylum.

([1]) See Council document 13440/08.

2.3 The most important legislative measures are: Directive 2005/85 on procedures for granting or withdrawing refugee status, Directive 2003/9 on reception conditions for asylum seekers, and Directive 2004/83 on standards for qualification and status as refugees and the content of the protection granted. Regulatory changes have also been made in other fields, such as in determining the State responsible for examining an application (Dublin Convention and Regulation); EURODAC, and Directive 2001/55 on temporary protection.

2.4 In the area of cooperation between Member States, a series of activities have begun which are carried out by EURASIL, a group of national experts over which the Commission presides. A financial solidarity instrument has also been set up, with the creation and renewal of the European Refugee Fund.

2.5 In the external dimension of asylum, progress has been made in fields such as supporting third countries which have large numbers of refugees (the Regional Protection Programmes are particularly important) or resettling refugees in the EU.

2.6 The **second phase** of constructing the CEAS began with the **Hague Programme** (adopted in November 2004), which sets 2010 as the deadline for achieving the main objectives of the CEAS:

— Establishment of a common asylum procedure

— Developing a uniform status

— Improving cooperation between Member States

— Giving European asylum policy an external dimension.

2.7 As a preliminary to the adoption of new initiatives, in 2007 the Commission produced a **Green Paper** [1] to launch a debate between the different Institutions, Member States, and civil society.

2.8 The EESC submitted an important opinion [2] on the Green Paper which responded to the Commission's questions and included several proposals to develop the Common European Asylum System.

2.9 The Commission has used the comments made on the Green Paper to draw up the **Policy Plan on Asylum**. This opinion should therefore be read alongside the opinion that the Committee produced for the Green Paper.

3. General comments

3.1 The Commission presented its communication on asylum at the same time as the communication on immigration. The Committee is pleased that the DG JLS at the Commission has for several months now differentiated between services, as it will allow a greater level of specialisation, taking into account that in the field of asylum, legislation and international conventions place requirements on EU Member States.

3.2 The EESC believes that the second phase of the construction of the CEAS should address the shortcomings of the first phase. A critical review of the first phase should therefore be carried out before the second phase begins. The Committee shares the critical view of the Commission, but believes that the European Council and Member States should also recognise the errors and address the shortcomings of the first phase.

3.3 The main problem in the first phase was that the legislative measures which were adopted allowed too much scope for the measures to be interpreted by national legislation, meaning that Member States have ended up with very different policies and legislation. The necessary degree of harmonisation has not therefore been achieved.

3.4 It is the Member State authorities who decide whether to accept or reject applications for asylum, using national legislation which is not harmonised; keep to their own, different traditions on asylum policy; evaluate the situation in the countries of origin in different ways; there is a lack of common European practice. As a result, the levels of protection provided by different Member States vary greatly, which is why there are still secondary movements of refugees within the EU.

3.5 The Commission notes that '*the agreed minimum common standards have not created the desired level playing field* [3]'. The EESC believes it is the unanimity rule, which the Council has used until recently, that has brought about this disappointing situation. The Committee considers that the ordinary procedure, together with co-decision, should be used for common asylum policy to overcome the constraints of the Treaty. The hope is that more progress will be made on harmonisation during the second phase.

[1] COM(2007) 301 final, submitted on 6 June 2007.

[2] See the EESC opinion on the 'Green Paper on the future Common European Asylum System', rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8.2008).

[3] Point 3 of the Policy Plan on Asylum.

3.6 The EESC notes that the quality of the protection provided by the EU must be improved. As was stated in the opinion on the Green Paper, the construction of the CEAS should be governed by *'the underpinning idea …. to make the European Union a single protection area for refugees, based on the full and inclusive application of the Geneva Convention and on the common humanitarian values shared by all Member States'* ([1]).

3.7 The Committee therefore believes that the harmonisation of European asylum policy and the construction of the CEAS should be carried out without diminishing or weakening international protection standards. The EU should develop a common legislation without compromising protection standards in any way, so that it will be Member States with insufficient levels of protection that have to change their legislation.

3.8 The Member States will always have a degree of discretion when implementing EU asylum legislation, but the EESC will only support EU legislation that provides a high level of protection and reduces the scope for interpretation which, as is currently the case, might prevent the legislation from being applied correctly. The legislative measures in the second phase of the construction of the CEAS should establish a set of quality protection standards which uphold the principles of the Geneva Convention, and ensure that the asylum system is available for all those who need it.

4. Specific comments on the new legislative instruments

4.1 Directive on reception conditions

4.1.1 The Directive on reception conditions now in force gives the Member States considerable latitude in important areas, as noted by the Commission. This means that reception conditions in the EU are very different.

4.1.2 The EESC endorses the Commission's proposal to achieve more harmonisation in order to avoid secondary movements. The Committee gives details of these proposals in its opinion on the Green Paper.

4.1.3 The Committee also welcomes the new Directive's inclusion of reception standards for people seeking subsidiary protection; its inclusion of procedural guarantees on detention; and the fact that it makes identifying and meeting the needs of vulnerable people easier. The EU should in particular protect those, often women and children, who have suffered torture, rape, abuse or other types of violence.

4.1.4 In various opinions ([2]) the EESC has proposed that the new legislation should allow asylum-seekers access to the labour market and to training. The EESC underlines the special importance of ensuring a simplified and more harmonised access to the labour market, ensuring that actual access to employment is not hindered by additional unnecessary administrative restrictions, without prejudice to Member States' competences.

4.1.5 The social partners, in the different spheres, could also work together with refugees and asylum seekers to help them access jobs and training. Cooperatives and other forms of social economy, educational establishments and specialised NGOs could also provide support.

4.1.6 It has also recommended changes that would safeguard family reunification, improve conditions for education, especially for educating children, and provide full access to healthcare ([3]).

4.1.7 Finally, the Directive should make it clear that the reception conditions must be guaranteed in equal measure to all asylum seekers, regardless of whether or not they are at a reception centre.

4.2 Directive on asylum procedures

4.2.1 The Commission has indicated that it will propose amendments to the Asylum Procedures Directive because this has not achieved the desired degree of harmonisation between the Member States. The EESC endorses the introduction of a single common asylum procedure that, as the Commission puts it, leaves *'no space for the proliferation of disparate procedural arrangements in Member States'* ([4]). It also supports the fixing of mandatory procedural guarantees.

4.2.2 However, the EESC believes that changes made to the Asylum Procedures Directive should be substantial. This is one of the Directives that gives most discretion to the Member States, which approved it with the clear intention of each maintaining their existing systems.

([1]) See the EESC opinion on the 'Green Paper on the future Common European Asylum System', rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8.2008), point 1.1.

([2]) See the EESC opinions:
- on the 'Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States', rapporteur: Mr Mengozzi, co-rapporteur: Mr Pariza Castaños (OJ C 48, 21.2.2002),
- on the 'Civil society participation in the fight against organised crime and terrorism', rapporteurs: Mr Rodriguez Garcia-Caro, Mr Pariza Castaños and Mr Cabra de Luna (OJ C 318, 23.12.2006),
- on the 'Green Paper on the future Common European Asylum System', rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8.2008).

([3]) See the EESC opinion on 'Health and Migrations', rapporteur: Ms Cser, OJ C 256, 27.10.2007.

([4]) Point 3.2 of the Policy Plan on Asylum.

4.2.3 Setting up the CEAS requires more streamlined procedural legislation that provides better guarantees, ensures that decisions are equitable and increases security during appeals procedures.

4.2.4 The EESC repeats the points it made in its opinion [1] on the Green Paper, namely that:

— asylum-seekers must have access to an interpreter; and to

— free legal assistance if necessary;

— reasons must be given for administrative decisions;

— appeals against decisions to expel must have suspensive effect, to ensure that asylum seekers may not be expelled during an administrative or judicial appeal procedure; and that

— NGOs may assist asylum seekers without any restrictions, at all stages of the procedure.

4.2.5 Asylum seekers are still held in detention centres in a number of Member States, notwithstanding reservations expressed by the Committee and protests from NGOs. The EESC reaffirms its position opposing the detention of asylum seekers, because this should be an exceptional measure. Asylum seekers and their families should be allowed to live decently in an appropriate social setting.

4.2.6 The Committee calls for greater transparency regarding detention centres, for the Office of the United Nations High Commissioner for Refugees (UNHCR) to be informed about conditions in such centres and about detainees and for those detained to be able to receive assistance from NGOs.

4.2.7 The Geneva Convention guarantees the right to apply for asylum, and the Committee has therefore advised against using lists of 'safe countries' and 'safe third countries' that may limit the options for each application to be examined individually.

4.2.8 The EESC notes again that the treatment and guarantees given to asylum-seekers at borders must be the same as those given to asylum seekers presenting a request on the territory of a Member State.

[1] See the EESC opinion on the 'Green Paper on the future Common European Asylum System', rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8.2008).

4.3 Directive on minimum standards for attaining refugee status

4.3.1 Nor has the Directive on minimum standards harmonised decision-making and the level of protection. There are still wide differences within the EU, which means that some people, under the same conditions, may be accepted as refugees in certain Member States and refused in others. The same applies to subsidiary protection.

4.3.2 Subsidiary protection is replacing the granting of refugee status. The Committee considers that a single procedure should never mean that subsidiary protection undermines refugee status under the Geneva Convention.

4.3.3 The EESC believes that a 'one-stop shop' system could streamline procedures. If appropriate, recognition of refugee status must be considered first, followed by subsidiary protection.

4.3.4 The Committee advocates drawing up minimum EU standards on refugee status and subsidiary protection in order to ensure a minimum level of protection in all the Member States and to narrow the current differences.

4.3.5 Subsidiary protection complements refugee status, but the level of rights should be similar, and the Committee therefore agrees with regard to respecting the right of family reunification, access to the labour market and economic benefits.

4.3.6 Status must really be the same across the whole EU, so as to reduce the discretionary power of the Member States. Conditions of access to subsidiary protection must be more clearly defined, as the Commission proposes, so that the same criteria are used across the EU to grant either type of status. The Committee proposes harmonising to the highest level, as opposed to reducing levels in the Member States with the strongest humanitarian tradition.

4.3.7 The EESC also highlights the importance of better defining the legislative measures to assist vulnerable people. Procedures must be adapted for them so that their needs are immediately identified, assistance is provided more promptly and they can be sure to receive every guarantee of legal assistance and help from specialised NGOs.

4.3.8 The EESC has reservations about the possibility of non-state parties being considered responsible for protection. The Member States should not be able to avoid this responsibility or delegate it. The involvement and support of non-state actors should take place under the supervision and responsibility of the Member States.

4.3.9 Nevertheless, the work carried out by specialised NGOs and other social actors for refugees and their families should be recognised and should receive the necessary support from the public institutions. The EESC calls for the role played by NGOs specialising in the fields of asylum and refugee protection to be recognised and for such NGOs to be given full access to all procedures and forums related to their work.

5. **Resolving difficulties**

5.1 Effective access to the possibility of requesting asylum is mentioned by the Commission, both in the Green Paper and in its Communication on the Policy Plan on Asylum. The EESC believes this to be a matter of prime importance. It is necessary to guarantee that people who need international protection can submit a request for asylum in an EU Member State.

5.2 In its Communication, the Commission mentions the fact that current levels of asylum applications are at a historic low. The Committee does not believe that this fall is due to conflicts in the world being resolved and human rights being improved, but rather to the increase in barriers being set up by the EU to prevent people needing international protection from reaching EU territory.

5.3 The Committee calls on the EU to demonstrate greater commitment in the fight against criminal networks trafficking in human beings, but considers that some policies to 'combat illegal immigration' are producing a serious asylum crisis in Europe. The EURODAC visa system, FRONTEX, penalties imposed on transport companies, readmission agreements with third countries and cooperation agreements for fighting illegal immigration are all creating new problems for people who need protection to present an asylum application. The EESC has said in several opinions [1] that the fight against illegal immigration should not create new problems in relation to asylum, and that officials responsible for border control should receive appropriate training so as to guarantee the right to asylum.

5.4 The EESC supports the proposals made by UNCHR to set up teams of asylum experts to help in all border control operations in the EU.

5.5 The EESC is against the EU or Member States concluding repatriation or border control agreements with countries that have not signed the main international legal instruments for defending asylum rights. It is also opposed to any return or repatriation measure that is not carried out under conditions of complete security and dignity.

5.6 People whose need for protection has not been examined by a Member State should not be returned or expelled unless there is a guarantee that their needs will be examined in the third country under a just procedure that meets international protection standards.

6. **European Asylum Support Office**

6.1 In order to establish the CEAS, it is necessary for legislative harmonisation to be accompanied by substantial cooperation between the Member States. This practical cooperation will improve with the setting-up of the **European Asylum Support Office** (EASO) proposed by the Commission, which the EESC supports.

6.2 The CEAS must be able to clearly identify the differences in asylum practices between the Member States, as well as the differences in their legislation, and to propose the necessary changes. It must also have the authority to draw up joint guidelines on the interpretation and application of the various procedural and substantial facets of the EU asylum *acquis*, as the Commission proposed in its Green Paper.

6.3 The Office could become an important centre for exchanging good practice, and for developing training activities on asylum, in particular for border officials. It could also be a centre for monitoring and analysing the results of the new measures that the EU is developing in relation to asylum. And it could be a place from where the joint teams of asylum experts could be set up and managed.

6.4 The CEAS will have to practise networking, collaborate with EURASIL and maintain close ties with UNHCR and specialised NGOs. The European Parliament and the EESC must be informed and consulted on EASO's activities.

[1] See the EESC opinions:
- on the 'Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration' rapporteur: Mr Pariza Castaños (OJ C 221, 17.9.2002),
- on the 'Proposal for a Council Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders' rapporteur general: Mr Pariza Castaños (OJ C 108, 30.4.2004),
- on the 'Proposal for a Council decision amending Decision No. 2002/463/EC adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO programme)' rapporteur: Mr Pariza Castaños (OJ C 120, 20.5.2005),
- on the 'Green Paper on the future Common European Asylum System', rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8.2008).

7. Solidarity between the Member States and the external dimension

7.1 Solidarity between the Member States

7.1.1 The Hague Programme indicates that one of the objectives of the CEAS is to support the Member States that are facing more pressure on their asylum systems, which means improving cooperation and solidarity mechanisms. The Commission also proposes to make certain changes, both to the Dublin II Regulation and to EURODAC. It is necessary to improve the balance of asylum requests and to reduce secondary movements.

7.1.2 The EESC notes that the Dublin Regulation was designed on the assumption that asylum systems in the Member States are similar, which is not yet the case. It is unacceptable to move asylum seekers from a country with better procedural guarantees to a country with poorer guarantees. In its opinion on the Green Paper [1], the Committee notes that '*asylum seekers should be free to choose in which country to submit their asylum applications and that, for this reason, Member States should apply forthwith the humanitarian clause set out in Article 15(1) of the Regulation*'.

7.1.3 In accordance with a UNHCR recommendation, the Dublin Regulation should contain new provisions on defining family members, the suspensive effect of appeals and time limits for transfers. In addition, the time limit within which the asylum seeker can be detained awaiting transfer must be drastically cut.

7.1.4 The Committee has certain reservations about the Commission's recommendation in relation to the EURODAC system that data on refugees held by national authorities be unblocked, because this could conflict with the right to privacy and reduce the protection that many people need.

7.1.5 The EESC endorses the Commission's proposal to set up teams of experts on asylum issues that would provide temporary assistance to the Member States in certain circumstances, and case-working when Member States' asylum systems are overloaded.

7.1.6 The European Refugee Fund must be used to improve the financial support given by the EU to Member States that are heavily burdened by illegal immigration and asylum seekers.

7.1.7 Solidarity between EU Member Status should be improved, given that some small States such as Malta are receiving more asylum seekers than they can cope with.

7.1.8 Solidarity can be demonstrated through policies to redistribute refugees between EU Member States, through working together with EASO and through the manner in which the European Refugee Fund is managed.

7.1.9 The EESC supports the pilot projects presented at the European Parliament which promote the voluntary relocation of refugees and asylum seekers within the EU.

7.2 External dimension

7.2.1 The vast majority of refugees live in developing countries (of the 8.7 million refugees recognised by UNHCR, 6.5 million live in developing countries). The EESC would like the European Union to take on new responsibilities for supporting and helping developing countries and improving their ability to protect people.

7.2.2 The **Regional Protection Programmes** offer one option which the EESC is considering, but there are only a few of these and they are in an experimental phase. Evaluation of these programmes should lead to new proposals for expanding and converting them into a new mechanism with which the EU can take action to improve the situation of refugees worldwide. In its opinion on the Green Paper, the Committee '*queries the final objective underlying the establishment of reception centres in certain countries, such as the new independent States (Ukraine, Moldova, Belarus), which seem far from able to guarantee reception conditions for asylum seekers. The EESC therefore emphasises that these programmes would appear to be intended not so much to improve protection for refugees as to reduce their chances of presenting themselves at EU borders*'.

7.2.3 Another important mechanism which the EU must use to demonstrate its commitment is the **resettlement of refugees**. Resettlement means inviting people who have been granted refugee status by third countries to take up permanent residence in an EU Member State. Resettlement was first advocated by the EU at the European Council meeting of November 2004, and since then some, though very few, resettlement programmes have been carried out. UNCHR has pointed out that only 5 % of the resettlement places provided in 2007 were in the EU and only seven Member States had resettlement programmes.

[1] See the EESC opinion on the 'Green Paper on the future Common European Asylum System', rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8.2008).

7.2.4 The EESC calls on all the Member States to become actively involved in developing resettlement programmes, and supports the introduction of a joint programme so that resettlement of refugees in the EU is not a symbolic act but is extensive enough to become an effective mechanism for redistributing refugees in the world. European resettlement programmes will have to be developed in collaboration with UNCHR and specialised NGOs.

7.2.5 The Committee agrees that it is necessary to facilitate entry into the EU for people who need protection, but border control systems must respect the right to asylum and the visa regime should be applied flexibly.

7.2.6 The Committee notes that the joint processing of applications outside the EU, in embassies or consular services of the Member States, could in fact have a positive outcome, in that it could assist in the fight against human smuggling and curb the resultant loss of life at sea. Although it is not anticipated that joint processing would result in any reduction of standards vis-à-vis the processing of asylum application, eliminating any risks of such processing should be seriously addressed.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Green Paper — Migration & mobility: challenges and opportunities for EU education systems

COM(2008) 423 final

(2009/C 218/17)

On 3 July 2008, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

'*Green Paper — Migration & mobility: challenges and opportunities for EU education systems*'

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 December 2008. The rapporteur was Mr SOARES.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February), the European Economic and Social Committee adopted the following opinion by 142 votes to one with six abstentions:

1. Introduction

1.1 The Green Paper on 'Migration & mobility: challenges and opportunities for EU education systems' (COM(2008) 423 final) addresses a major challenge facing education systems today, which - whilst not new - has become more serious and more widespread in recent years: the fact that there are a large number of children in schools from a migrant background living in a precarious socio-economic situation.

1.2 The Commission feels that it would be valuable to consult the relevant players about education policy for children from a migrant background. They would be invited to make their views known about:

— the policy challenge;

— good policy responses to this challenge;

— the possible role of the European Union in helping Member States address these challenges; and

— the future of Directive 77/486/EEC.

1.3 The EESC deems this to be a complex, difficult issue that could be approached in a number of different ways, all of which are valid and important. Nevertheless, and because of the methodology adopted, the Committee will only attempt to respond to the five questions that have been posed, in addition to making some general comments.

2. General comments

2.1 The EESC fully agrees with the Green Paper's introduction, which describes the presence of large numbers of migrant pupils as a challenge rather than a problem. The text makes a fair assessment of the issue and addresses almost all aspects of it.

2.2 Nevertheless, by using definitions as broad as 'children from a migrant background', 'children of migrants' and 'migrant pupils', covering children from third countries as well as from EU Member States who do not however live in their country of origin, the Green Paper runs the risk of making people's circumstances look homogeneous, when in fact substantially different situations are involved.

2.3 Indeed, it is universally acknowledged that being a European citizen is not at all the same thing as being the national of a non-EU country. The Commission itself accepts that using this definition is risky and points out that European citizens, unlike third-country nationals, are able to move freely within the European Union. It appears to justify its decision, however, by accepting the criteria used by the sources of the data collected (PIRLS and PISA) [1].

2.4 The EESC understands the Commission's approach which consists of seeking to cater for all children whose parents' nationality is not that of the host society, because all children need support particular to their situation. The Committee would, however, prefer this issue to be addressed using the two-pronged approach referred to above: children of European citizens on the one hand and children of third-country citizens on the other.

[1] PIRLS: 'Progress in International Reading Literacy Study', a study carried out by the International Association for the Evaluation of Educational Achievement (IEA); PISA: 'Programme for International Student Assessment', a study coordinated by the OECD.

2.5 This opinion does not specifically address the phenomenon of migration; it focuses instead on the role of education systems in improving immigrant integration, primarily the integration of migrant children. It does, however, take account of a number of EESC opinions on immigration issues, which form a significant body of theory [1].

2.6 There is a close link between successfully integrated immigrant populations and the education to which migrant children have access and their achievements at school. This link is undeniable and can have a strong influence on the success of European social cohesion policy, the stability of our democracies and even long-term economic development.

2.7 The earlier and the more successfully migrant children and young people are integrated into schools, the better they will do at school and in further education. It is, therefore, worth emphasising the importance of pre-school education in securing the tools needed for educational and social success.

2.8 Nevertheless, whilst the data clearly show that the results achieved by children from a migrant background who attend school from early childhood are consistently better, this does not mean that such pupils are more likely to go to university or find decent work.

2.9 Furthermore, the freer and better informed future career choices are, and the more that is invested in attempting to secure educational success for migrant children and young people, the better the social, economic and political outcome will be.

2.10 Schools are the best places for integration, because it is there that the first social contacts are made outside the family. If, instead of helping to mitigate the influence of migrant families' socio-economic backgrounds, they reject, discriminate or segregate, it will be hard to achieve successful integration and society as a whole will suffer as a consequence.

2.11 This is why the idea of schools catering predominantly or solely for migrant children should be rejected, even though the motives might appear at first glance to be laudable. Schools should reflect the social make-up of their community and not form a ghetto for any group. The physical and social segregation of pupils from a migrant background into schools especially designed for them usually goes hand in hand with, or is a consequence of, segregated living arrangements.

2.12 As key players in the educational process, education authorities should pay special attention to teachers because they have a direct responsibility for pupils' educational achievements. Attractive, well-remunerated careers and above all initial and continuous training that takes account of this new situation are of key importance for achieving good results [2].

2.13 It would, therefore, be useful to increase the number of teachers from more diverse ethnic and cultural backgrounds, because their example could provide encouragement and help improve their pupils' self-esteem. This would require a review of the teacher recruitment criteria and procedures, and resources would need to be earmarked for this.

2.14 Knowledge of the national language is a prerequisite for success at school. This question has not been adequately addressed, because knowledge of a language has been confused with the ability to communicate. Targeted support in this area, steps to ensure children start school as early as possible (from early childhood), interaction between schools and pupils' parents with a view to enabling them also to take classes in the national language - these are some strategies worth adopting to deal with this problem, which is one of the most complex issues today.

[1] From over 50 EESC opinions on the subject, the following in particular are of interest here: *Communication on the open method of coordination for immigration and asylum policy*, rapporteur: Ms zu Eulenburg (OJ C 221, 17.9.2002); *Conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service*, rapporteur: Mr Pariza Castaños (OJ C 133, 6.6.2003); *Proposal for a Regulation of the European Parliament and of the Council establishing a programme for financial and technical assistance to third countries in the area of migration and asylum*, rapporteur: Ms Cassina (OJ C 32, 5.2.2004); *Communication on immigration, integration and employment*, rapporteur: Mr Pariza Castaños (OJ C 80, 30.3.2004); *Access to European Union citizenship* (own-initiative opinion), rapporteur: Mr Pariza Castaños (OJ C 208, 3.9.2003); *International Convention on Migrants* (own-initiative opinion), rapporteur: Mr Pariza Castaños (OJ C 302, 7.12.2004.); *Immigration in the EU and integration policies: cooperation between regional and local governments and civil society organisations*, own-initiative opinion, rapporteur: Mr Pariza Castaños (OJ C 318, 23.12.2006); *EU immigration and cooperation policy with countries of origin to foster development* (own-initiative opinion), rapporteur: Mr Pariza Castaños (OJ C 44, 16.2.2008); *Elements for the structure, organisation and functioning of a platform for the greater involvement of civil society in the EU-level promotion of policies for the integration of third-country nationals* (exploratory opinion), rapporteur: Mr Pariza Castaños (OJ C 27 of 3.2.2009); *Integration of minorities – Roma*, rapporteur: Ms Sigmund, co-rapporteur: Ms Sharma (OJ C 27 of 3.2.2009); *Common Immigration Policy for Europe: Principles, actions and tools*, rapporteur: Mr Pariza Castaños, CESE 342/2009 of 25.2.2009 (Not yet published in the Official Journal).

[2] See the EESC opinion entitled *Improving the Quality of Teacher Education*, rapporteur: Mr Soares (OJ C 151, 17.6.2008).

2.15 Involving migrant parents throughout the educational process, ensuring their interaction with families from within the local community and valuing their knowledge and experience are all factors in helping integrate pupils and, more broadly, migrant communities into both school and community life. It is, therefore, important that schools have auxiliary teaching staff and cultural mediators ([1]).

3. The EESC's contribution

3.1 The Green Paper raises 4 issues, on which it bases the following set of questions:

'A. ***The policy challenge:***

What are the important policy challenges related to the provision of good education to children from a migrant background? In addition to those identified in this paper, are there others that should be taken into account?

B. ***The policy response:***

What are the appropriate policy responses to these challenges? Are there other policies and approaches beyond those listed in this paper that should be taken into account?

C. ***The role of the European Union:***

What actions could be undertaken via European Programmes to impact positively on the education of children from a migrant background? How should these issues be addressed within the Open Method of Coordination for Education and Training? Do you feel that there should be an exploration of possible indicators and/or benchmarks as a means to focus policy effort more strongly on closing the gaps in educational attainment?

D. ***The future of Directive 77/486/EEC:***

Taking into account the history of its implementation and bearing in mind the changed nature of migration flows since its adoption, play a role in supporting Member States' policies on these issues? Would you recommend that it be maintained as it stands, that it should be adapted or repealed? Would you propose alternative approaches to support Member States' policies on the issues it addresses?'

3.2 The policy challenge

3.2.1 Probably the greatest policy challenge facing Europe today is to create an inclusive education system in a society that is increasingly less inclusive, whether this is due to the growing gulf between rich and poor and the concomitant increase in social exclusion, or because - where immigration is concerned - migratory policies have become tougher across the board. Particular attention should be paid to the socio-economic situation of people from a migrant background because educational opportunities are heavily influenced by situations where people are disadvantaged socially.

3.2.2 No analysis of the enormous challenge of integrating millions of immigrants through education is possible without taking the following aspects into account: the legal status of foreign citizens, which affects their access to the standard compulsory education system ([2]); procedures for legalising the situation of migrants without papers; barriers to family reunification; and criteria for granting visas, which sometimes breach basic human rights (such as the requirement to undergo DNA tests to prove a family relationship), amongst other measures.

3.2.3 At a time when education policy decisions are being taken which affect millions of children and young people from a migrant background, these global issues should not be overlooked. Schools cannot be established or developed in isolation from the surrounding social framework. They are a reflection of that society, although they can also make a decisive contribution to changing it.

3.2.4 Specifically, educational reforms which treat education as a business like any other, bringing the language of business into schools (calling pupils and parents 'consumers/users', and teachers 'service providers') and which promote a form of assessment based solely on pupils' individual performance, do not help children to integrate successfully. Education should instead be redefined as a fundamental human right for all children and young people.

3.2.5 Bearing in mind that education is still the responsibility of national governments, the greater challenge will be to see whether the European Union is able in practice to coordinate the policies needed to achieve the highest possible degree of integration. The paradox between acknowledging that the phenomenon of migration has Community-wide repercussions, on the one hand, and the fact that policies are still being drawn up at national level, on the other, will only be resolved when the political will emerges to coordinate these policies more closely.

([1]) These and other ideas can be found in the report published in April 2008 entitled 'Education and Migration - Strategies for integrating migrant children in European schools and societies. A synthesis of research findings for policy-makers' by the NESSE network of experts (network of experts in the social aspects of education and training supported by the European Commission) (http//www.nesse.fr-nesse-nesse_top-activites-education-and-migration).

([2]) In Germany, the legal status of 'foreign citizen' frequently leads to exemption from the universal obligation to attend school regularly. According to Article 14 of the Charter of Fundamental Rights of the European Union, however, 'Everyone has the right to education (…) and to receive (…) free compulsory education'.

3.2.6 The European Union thus faces the challenge of acknowledging that the difficulties in managing the phenomenon of mass migration will be hard to solve on a state-by-state basis and it will have to put in place the policy instruments needed to achieve this, in order to cope with the increasing numbers of students from outside the EU studying in European education systems.

3.2.7 The disadvantages facing people from a migrant background carry over into adult education too. Such people tend to participate less in continuous training and the courses they are offered usually concentrate on the acquisition of language skills. Educational establishments focusing on adult education should endeavour to open up their courses to the entire target population. People from a migrant background must be taken into account in the entire range of courses on offer. Adult education will, therefore, have to be broadened to include subjects such as culture, politics and family-planning, as well as health, social skills, etc.

3.2.8 Another policy challenge that could affect any decision arises from the current economic crisis. Rising unemployment, problems facing social security systems, which in some countries are jeopardising the very models of social protection, could give rise to racism and xenophobia which completely run counter to the values of a democratic Europe. Both schools and the community of which they are a part should monitor these phenomena closely, not only to prevent them, but to act if and when necessary.

3.3 **The policy response**

3.3.1 Member States' primary responsibility is to respect their commitment to ensure that immigrants are integrated into society. Where children and young people are concerned, this means not only providing everyone with access to the education system, guaranteeing that no selection criteria based on social status come into play, but also working to ensure that educational success is considered to be a right for migrant pupils/children.

3.3.2 To this end, the educational response must be based on:

— a high-quality education system open to everyone and free of charge;

— a policy which respects ethnic, socio-cultural, economic and gender differences, amongst other things, and which is able to capitalise on existing potential;

— respect for the specific features of each migrant community, which should be taken into account when planning curricula, with a view to broadening schools' intercultural horizons;

— a body of teaching staff able to meet the needs of pupils from other countries, who are given the support and continuous training required to meet their educational goals and who have support from auxiliary staff fluent in the languages and cultures of the communities represented in their schools. To this end, it would be useful to step up the presence of multidisciplinary teams in schools (introducing wide-ranging school social programmes, for example);

— improved access to the World Wide Web as a teaching support for migrant children, because this is a crucial tool for academic success in the EU. It would, therefore, be a good idea to propose setting up youth clubs and community centres with Internet access, developing either partnerships with local libraries supported by local authorities or partnerships with businesses willing to donate old computer equipment, etc.;

— a 'sustainable' education system: language promotion should not be confined to the earliest years of a child's life or to pre-school education. It should be continued throughout a child's education and should not be limited to the language of the host country. Acquiring technical and professional language requires a multi-disciplinary approach and the appropriate training of teachers in all subjects. As well as courses in the language of the host country, courses must also be provided in the languages spoken by pupils' families. Preserving and promoting multilingualism should form part of every school's core curriculum;

— promotion of a 'mentor/buddy' programme in which pupils are invited to pair up with older and more experienced pupils;

— establishment of a platform for dialogue between migrant and native children, because this could help to break down prejudice and strengthen integration;

— involvement of the migrant pupils' parents: parents have a particularly important role to play and should therefore become more familiar with the education system and the opportunities for professional training. They should also be invited to express their views;

— a complete range of adult education courses for people from a migrant background, whether or not they are parents of pupils, for the reasons given above ([1]); and

([1]) See point 3.2.7 above.

— promotion of 'intercultural' skills, which would include awarding study grants and financial support to reduce educational disadvantages (measures not limited to pupils from a migrant background).

3.3.3 Moving beyond general responses that should take account of the particular features of the migrant population, such as access to health systems and the labour market and decent housing, the need for sector-specific responses in education should be highlighted, such as a review of educational material to ensure that migrants are not presented in a negative light, extracurricular activities to improve integration, access to the education system from early childhood, the necessary resources for initial and continuous teacher training and the recruitment of qualified auxiliary staff, where possible from a migrant background, etc.

3.3.4 Civil society involvement is not only desirable, but also a reliable indicator of the quality of social and educational democracy and a key factor in immigrant integration. Parents' associations and social players involved in education can help build up a society and a form of citizenship which are inclusive, respect differences and understand the value of strong social cohesion.

The policy adopted by a number of countries, granting legalised immigrants the right to vote in local elections, should be supported and encouraged, because it is an acknowledgement of immigrants' integration into the host community and strengthens people's sense of belonging.

3.4 **The role of the European Union**

3.4.1 When adopting and implementing the new Lisbon Treaty, the European Union should ensure that Member States continue to stand by policies for integrating immigrant populations, guaranteeing in particular children's right to education and to learn their mother tongue and the right of the parents of migrant pupils to play a role here, in order to improve their skills and to support their children in decisions and procedures concerning their education.

3.4.2 The European Union could encourage the Member States to use the Open Method of Coordination in this context could produce comparative studies and research programmes to help collate and disseminate good practice and support pioneering initiatives that provide early warning of issues emerging at European level, which are sometimes harder to detect at national level alone. A number of practical proposals for achieving these aims are set out in the points which follow.

3.4.3 Setting indicators and benchmarks, aimed at focusing efforts on eliminating not only failure at school but also the objective problems that migrant pupils might encounter in their particular circumstances, could be an extremely valuable policy measure. To prevent pupils leaving school early and attending school irregularly, what is needed instead are programmes that help create social activities at school.

3.4.4 Suggestions for the benchmarks to be used under the Open Method of Coordination include: the socio-economic status of the pupils concerned, whether or not they are from a migrant background; the completion of studies (compulsory education) by pupils, whether or not they are from a migrant background; the proportion of teaching staff from a migrant background; the intercultural skills of the teaching staff; the education system's capacity to allow social mobility; the promotion of multilingualism in the public education system; and how open education systems are for all children and young people, etc.

3.4.5 It is also very important to ensure that the European Parliament is directly involved in devising, monitoring and assessing proposals and measures aimed at eliminating exclusion and marginalisation in the European Union.

3.5 **The future of Directive 77/486/EEC**

3.5.1 Directive 77/486/EEC constituted a major step forwards in placing the right to education for all migrant children firmly on the political agenda. Nevertheless, whilst this is true and should be acknowledged, it cannot be denied that the directive only applied to the children of European citizens and based its approach to integration entirely on the issue of language use. Furthermore, the directive's implementation has been patchy and thirty years after its entry into force, it has still not been fully transposed into the legislation of the EU's current Member States.

3.5.2 Directive 77/486 is historically and politically outmoded and does not meet today's needs for integration and should therefore be substantially amended, taking account of developments in the phenomenon of migration itself. Whilst the EU and the Member States' must remain fully committed to the issue of language-learning, the EESC considers that a directive on this issue should go much further and encompass other aspects, if it intends to be a tool for achieving the social, economic and political integration of migrants and their children.

3.5.3 The future directive should take account of the fact that the complexity of integrating migrants into the host community goes far beyond ensuring their children are integrated into the education system, but that the latter process plays a crucial role in the success of the former.

3.5.4 This being the case, the future directive should not only consider the issues surrounding language (which remains a key issue), but also address the integration of children and young people into education systems in a more comprehensive and consistent manner.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Proposal for a Council Recommendation on a European action in the field of rare diseases

COM(2008) 726 final — 2008/0218 (CNS)

(2009/C 218/18)

On 28 November 2008, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

'*Proposal for a Council Recommendation on a European action in the field of rare diseases*'

The Section for Employment, Social Affairs and Education, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 February 2009. The rapporteur was Ms CSER.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February 2009), the European Economic and Social Committee adopted the following opinion by 162 votes to 4, with 8 abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the proposal for a Council Recommendation, and endorses the harmonised EU approach to identifying, defining and classifying rare diseases.

1.2 The EESC agrees that national and regional centres of expertise should be designated and their participation in European Reference Networks encouraged and fostered.

1.3 The EESC endorses the support given to coordinated research currently being carried out into rare diseases and the steps to promote both this research and coordination projects aimed at making the best use of limited funding, together with a move towards closer international cooperation.

1.4 As regards pooling expertise at European level, the EESC recommends that intellectual property rights be taken into account and suitable guarantees offered.

1.5 The EESC supports the idea of drawing up national plans, but feels that 2011 is too early for the plans to be prepared in the requisite detail.

1.6 The EESC is pleased that national and regional centres are to be identified by 2011; however, this will depend on the national plans being adequately prepared.

1.7 The EESC recommends that coordination and information flows be established across Europe, and that shared and standardised technical terminology be developed. It would also be useful to prepare a handbook to facilitate dialogue between different professional cultures, covering the particular features of the sector in hand.

1.8 The EESC recommends that a special communication and reporting system be developed to enable a reference network and 'mobile service' to function in such a way that all concerned have access to the information they need.

1.9 The EESC is pleased that sociological research is also to play a role in pinpointing the needs arising in connection with rare diseases.

1.10 The EESC recommends that all Member States establish their own centres for rare diseases, able to play a part in coordinating research and medical institutions, healthcare providers and governments.

1.11 The EESC recommends that national centres for rare diseases deal with tasks relating to data compilation, accreditation, methodology and coordination.

1.12 The EESC recommends making national strategies on rare diseases an integral part of national public health programmes.

1.13 The EESC recommends developing long-term sources of funding rather than using project-based funding, in order to ensure a more efficient, productive use of resources and to protect patients' rights more effectively.

1.14 The EESC recommends looking into the involvement of patients' associations, professional organisations, other civil society organisations and the social partners here, and analysing and evaluating scope for using reference centres located in other Member States, taking patients' rights and interests into account.

1.15 The EESC recommends further analysis of healthcare professionals' commitment and activities in this field, involving professional organisations, civil society organisations and the social partners with a view to ensuring that the requisite guarantees are in place.

1.16 In order to reduce inequalities in healthcare, the EESC suggests looking at conditions for ensuring a balanced use of resources, given that the recommendation sets the goal of providing healthcare for patients suffering from all rare diseases.

1.17 The EESC supports the creation of an EU Advisory Committee on Rare Diseases (EUACRD), and recommends that, in addition to representatives of the Member States, the healthcare industry, patients' organisations and experts, the social partners and other organisations of the civil society, should be involved; otherwise it will not be possible to develop a national strategies, which is one of the prerequisites for implementing the recommendation.

1.18 The EESC recommends that international health policy support the initiative of the European Day of rare diseases, with a view to it becoming an international event.

1.19 The EESC agrees that a report on implementation should be compiled five years after adoption of the recommendation, but insists that the requisite changes be made during implementation, taking patients' rights into account. The EESC would like to be involved in the continuous evaluation of such implementation.

2. **General comments**

2.1 Background

2.1.1 Rare diseases, including genetic diseases, were the subject of a Community action programme covering the period from 1 January 1999 to 31 December 2003 (Decision No 1295/1999/EC of the European Parliament and of the Council of 29 April 1999 adopting a programme of Community action on rare diseases within the framework for action in the field of public health (1999 to 2003)); in this, rare diseases are defined as illnesses which do not affect more than 5 out of every 10 000 people in the EU. Regulation (EC) No 1431/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products is also based on this definition.

2.1.2 Because of their low prevalence and their very specific nature, rare diseases call for a global approach based on special, combined efforts to prevent significant morbidity or avoidable premature mortality, and to improve the quality of life and socio-economic potential of those affected.

2.1.3 The group working on the European reference network on rare diseases set up by the European Commission will have to develop basic principles and treatment, as well as criteria for the European reference centres. These issues are also dealt with in the 6th and 7th R&D Framework Programmes.

2.1.4 In 2014 the World Health Organisation (WHO) is planning to adopt the 11th version of the International Classification of Diseases, which likewise includes rare diseases. The WHO has requested that the EU's task force on rare diseases act as an advisory body in the codification and classification of rare diseases.

2.1.5 A uniform definition of rare diseases in all Member States would significantly enhance the EU's contribution to its collaboration with the WHO, and give the EU a stronger role to play in solving health problems in the rest of the world.

2.1.6 The European Health Strategy, adopted in 2007, sets high-quality diagnosis, treatment and information as key priorities for persons affected by rare diseases.

3. **Specific comments**

3.1 Rare diseases: definition and occurrence

3.1.1 Rare diseases call for a global approach based on special, combined efforts to prevent significant morbidity or avoidable premature mortality, and to improve the quality of life and socio-economic potential of those affected.

3.1.2 As much as 6 % of the EU's total population is affected at some time during their lives by between 5 000 and 8 000 distinct rare diseases; in other words, 29-36 million Europeans are already or will be affected by a rare disease.

3.1.3 The frequency of most rare diseases is extremely low – 1 in every 100 000 persons or even lower. Patients with very rare diseases and their families are particularly isolated and vulnerable.

3.1.4 The age at which the first symptoms appear varies considerably; about half of rare diseases appear at birth or during childhood, whereas the remaining half can appear during adulthood. Most rare diseases are genetic diseases, but they can also result from environmental exposure during pregnancy or later in life, often in combination with genetic susceptibility. Some are rare forms or rare complications of common diseases.

3.2 Lack of recognition and awareness of rare diseases

3.2.1 Rare diseases differ widely in severity and in expression. Persons suffering from rare diseases have a significantly lower life expectancy. Many such diseases are complex, degenerative and chronically debilitating, whilst others are compatible with a normal life - if diagnosed in time and managed and/or treated properly. Several disabilities often co-exist, with many functional consequences. These disabilities enhance the feeling of isolation, possibly resulting in discrimination and reducing any educational, professional and social opportunities.

3.3 Lack of policies on rare diseases in the Member States

3.3.1 Although rare diseases heavily contribute to morbidity and mortality, they are invisible in health care information systems due to the lack of appropriate coding and classification systems. The lack of specific health policies for rare diseases and the scarcity of expertise translate into delayed diagnosis and difficult access to care. National healthcare services for the diagnosis, treatment and rehabilitation of people with rare diseases vary significantly in respect of availability and quality. People from Member States and/or regions within Member States have unequal access to expert services and to orphan drugs.

3.3.2 There are wide variations in the resources available in each Member State for research, diagnosis and treatment, and the dispersal of such resources means that they are not used efficiently, as a result of which many patients are either treated too late or not at all.

3.3.3 Particular expertise is required in the diagnosis and treatment of rare diseases. Due to insufficient resources, there are major discrepancies, and many patients suffer the consequences of incomplete or inaccurate diagnoses.

3.3.4 Given the specific nature of rare diseases – the low numbers of patients and the lack of relevant knowledge and skills – international cooperation is essential and offers added value. Probably no other area of public health offers so much potential for effective, valuable cooperation between the 27 Member States with their differing approaches, as has been acknowledged by decision-makers at European and national level, as well as by all parties concerned. Pooling limiting resources could help achieve better results. Data compilation practices, in terms of the type of data compiled and timing, vary from one country to another; there are also differences in terms of notification requirements. In some cases, such requirements apply to the entire population; in others, there is only sporadic compilation of data. Consistent data and information are vital for formulating and implementing health policies which are both effective in ensuring prevention and financially viable; they also contribute to research at national and EU level. Equally important is providing those concerned with access to the relevant data and information.

3.3.5 It is especially important to improve quality of life for patients suffering from rare diseases and their families, and to ensure that they are suitably integrated into society and labour markets, given that their lives are a constant struggle to overcome physical and mental challenges and the differences between them and other people.

3.3.6 In the EU Member States there are numerous NGOs and civil society initiatives to inform patients suffering from rare diseases, disseminate existing scientific and clinical knowledge, and improve access to affordable and appropriate treatments and medicines, all of which ultimately contribute to the socio-economic integration of such patients. These civil society initiatives are not backed up by enough resources, do not benefit from coordinated, balanced government support, and are not part of an organised network; as a result, patients' rights are constantly undermined. There is no systematic cooperation between patients, their families, civil society organisations, specialists and the social partners. There are sizeable inequalities and accumulated difficulties in terms of the care provided and access thereto.

3.3.7 The diagnosis and treatment of rare diseases are extremely costly procedures. For treatments requiring new technologies or high levels of specific expenditure, it is essential for each Member State to set and apply the highest possible ceiling for funding.

3.3.8 In 2008 the European Commission published a communication on rare diseases, preparation for which involved a wide-ranging consultation procedure completed in February of the same year.

3.3.9 Responses to the consultation procedure confirmed the need for Community-wide measures. The proposed Council recommendation focuses on three areas:

— identifying and codifying rare diseases, and creating a European system to codify and classify rare diseases to support recognition of each one. In the course of preparing a new version of the International Classification of Diseases, the Commission is collaborating with the WHO, given that compared to elsewhere in the world, it is in the EU that various types of rare diseases are most likely to be identified;

— setting fundamental principles and policy guidelines for use in the formulation of national action plans; supporting and encouraging the development of national health policies on rare diseases, aimed at securing equal access to prevention, diagnosis, treatment and rehabilitation, as well as the general accessibility of such services.

— The Council Recommendation set out in the draft Communication envisages the following:

  — Member States are to draw up national plans on rare diseases;

  — mechanisms enabling the definition, codification and classification of rare diseases are also to be put in place;

  — research into rare diseases is to be promoted, for example through cross-border cooperation, making full use of EU research cooperation potential;

  — centres of expertise should be identified and their participation in European Reference Networks encouraged;

  — overall statistics should be compiled on expertise on rare diseases in the Member States;

  — measures should be taken to ensure the involvement of patients and organisations representing them; and

  — closer cooperation is needed in all fields where Community action offers added value in developing joint policy guidelines and ensuring their mutual recognition throughout Europe. This could involve specific measures relating to research, reference centres, access to information, incentives to develop orphan drugs, screening, etc., as elements constituting a minimum common strategy on rare diseases (e.g. pilot programmes, research and development, and steps to monitor implementation of Regulation (EC) No 141/2000 on orphan drugs).

3.3.10 The purpose of the Communication is to support the development of a comprehensive common European strategy to ensure effective recognition, prevention, diagnosis, treatment and research in the field of rare diseases, strengthen cooperation between Member States and provide back-up for European information networks and patients' organisations. A high level of human health protection must be ensured in the definition and implementation of all Community policies and activities. This will in turn contribute to the overarching goal - an improvement in the health situation, and therefore an increase in Healthy Life Years, a key Lisbon Strategy indicator. However, for this to happen, it is vital to ensure greater consistency between Community programmes and initiatives such as the EU's Community public health programmes, the research and development framework programmes, the strategy on orphan drugs, the directive on cross-border healthcare, and other current and future measures at national and EU level.

3.3.11 The proposal for a Council recommendation suggests there is a need for Member States to draw up comprehensive, integrated national strategies on rare diseases by the end of 2011 and involve patients and patients' representatives in all stages of policy and decision-making processes. Their activities should be actively promoted and supported, especially financially.

3.3.12 The EESC is in favour of drawing up comprehensive, integrated national strategies, but feels that the timing should be reconsidered to enable the strategy to take patients' interests into account. For this to happen, centres for rare diseases should be set up in the Member States to work on methodology, data compilation, accreditation and coordination.

3.3.13 In the interests of ensuring an information flow at EU level and promoting research, as well as identifying and developing reference centres, shared and standardised technical terminology must be adopted and developed together with diagnostic and therapeutic protocols. The recognition of such protocols and terminology would not only benefit patients but also healthcare professionals and providers; it would therefore be useful to prepare a practical handbook, to facilitate dialogue between different professional cultures on rare diseases, their diagnosis and treatment.

3.3.14 Identification and development of a European reference network and provision of a 'mobile service' requires specific communication activities and a reporting system so that everyone concerned genuinely has access to the relevant information.

3.3.15 Given that this new set-up for research structures and the provision of services is likely to generate intellectual property, it is vital to take appropriate measures to ensure legal protection.

3.3.16 The EESC welcomes the first European Day of rare diseases held on 29 February 2008, and backs the initiative to introduce a world day of rare diseases, thus setting in motion an international development which would help considerably to boost the effectiveness of research and treatment. The EESC feels that it is absolutely vital to communicate effectively, to promote intercultural dialogue, above all to overcome linguistic barriers, and to remedy shortcomings in technical conditions so that those concerned (patients, their dependents, healthcare service providers, civil society organisations and the social partners) have access to adequate and accurate information.

3.3.17 In several of its previous opinions, the Committee emphasised the key role played by civil society and the social partners in preserving the values of the Community, and in applying such values to deliver genuine improvements. It therefore feels it is vital for stakeholders from organised civil society and the social partners to be given an appropriate role to play in achieving the objectives set out in the Communication on rare diseases. Given that civil society and the social partners generate the resources used to fund public health expenditure, they should be given a strategic role in distributing such resources.

3.3.18 In order to reduce inequalities in healthcare, and in view of the exceptional nature of the expenditure involved, the EESC suggests looking at conditions for making balanced use of resources, given that the recommendation sets the goal of providing healthcare for patients suffering from all rare diseases. The availability of resources varies from one Member State to another, and there are huge discrepancies between the number of persons theoretically entitled to treatment and those who actually receive it.

3.3.19 The EESC is in favour of coordinated research and of steps to identify and establish reference centres, given that this would be an excellent opportunity for the EU to help solve international health problems, in keeping with the objective set out in the White Paper entitled 'Together for Health: A strategic approach for the EU 2008-2013', namely that the EU should play a more effective international role.

3.3.20 Setting up the EUACRD permanent advisory committee is an important step towards achieving this objective. Alongside Member States' representatives, experts, patients' organisations and representatives of the healthcare industry, the EESC recommends that civil society and the social partners be involved in the work of the advisory committee on a permanent basis. Without their involvement, it will not be possible to devise a national strategy, which is one of the prerequisites for implementing the recommendation.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Proposal for a Council Directive amending Directive 2006/112/EC as regards reduced rates of value added tax

COM(2008) 428 final — 2008/0143 (CNS)

(2009/C 218/19)

On 28 August 2008 the Council decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the

'Proposal for a Council Directive amending Directive 2006/112/EC as regards reduced rates of value added tax'

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 February 2009. The rapporteur was Mr SANTILLÁN CABEZA.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February), the European Economic and Social Committee adopted the following opinion by 171 votes in favour with seven abstentions.

1. Conclusions and recommendations

1.1 The EESC approves the technical amendments, many of them essential, that the proposal for a directive makes to Directive 2006/112/EC. However, it regrets the limited scope of the proposal resulting from the lack of political consensus.

1.2 As previously said, the application of VAT to energy-saving and environment-friendly services and goods is an aspect that needs to be considered.

1.3 With regard to reduced VAT for supply of services consisting in the renovation, repair, alteration, maintenance and cleaning of housing, the EESC questions whether it is appropriate to remove the reference to 'social' housing. In any case, since the application of reduced rates is not compulsory, this is a decision to be taken by each Member State.

1.4 The introduction for all Member States of the option of applying reduced VAT to restaurant and catering services – which some Member States reject – has as its purpose to establish equal conditions, since the risk of distorting competition under existing arrangements is low. The EESC approves the exclusion of alcoholic beverages from application of the lower rate.

1.5 Where 'minor repair of movable tangible property' is concerned, Member State laws will have to specify which services are to benefit from the reduced rate, given the broadness of the terms used.

1.6 The EESC proposes that dietetic products for certain illnesses should be declared to be exempt from VAT (see point 4.8.6 of the present opinion).

1.7 The EESC suggests that the proposal's criterion be changed to include car repair and maintenance services in Annex III in the terms indicated in point 4.8.5.1 of the present opinion.

1.8 The EESC agrees with the application of reduced rates to broader categories of goods and services insofar as this is compatible with the specific budget resources available in the Member States, the economic situation and the interests of the internal market between the Member States of the European Union.

1.9 The EESC welcomes the Commission's efforts to move towards full harmonisation of VAT, while regretting the lack of a political decision on the part of the EU Council.

2. Introduction

2.1 The proposal for a directive to which the present opinion refers consists of **additions and technical adaptations** to the 2006 directive, hereafter the 'VAT Directive' ([1]).

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347 of 11.12.2006).

2.2 According to the Commission, the purpose is to introduce a number of urgent reforms to resolve 'legal and political problems which have arisen either because of divergent interpretations of the directive or because of a lack of a level playing field for all Member States as regards the possibility for Member States to apply reduced rates in those areas where the proper functioning of the internal market is not affected'.

2.3 The aim is to grant more autonomy and certainty as well as equal treatment to the Member States.

2.3.1 Although it is not aimed exclusively at SMEs, which are one of the priority action areas under the Lisbon strategy, it will have positive effects for them, since the sectors at issue include many SMEs and the proposal will give legal certainty on the continued application of VAT reduced rates in these sectors.

2.4 Four types of changes are made to the VAT Directive:

— insertion of locally supplied services including the introduction of permanent, updated provisions on the labour-intensive services listed in Annex IV that will expire on 31 December 2010. Annex IV will in consequence be deleted;

— deletion of articles or paragraphs of a temporary nature or relating to specific situations in Member States that no longer apply;

— improvements to the drafting;

— changes to the drafting of Annex III, containing the 'list of supplies of goods and services to which the reduced rates referred to in Article 98 may be applied'.

3. **The new Annex III**

3.1 Changes in drafting or additions to specific categories.

3.1.1 Category 3: **pharmaceutical products**. Inclusion of 'and absorbent hygiene products' which covers feminine sanitary protection and children's nappies.

3.1.2 Category 4: **equipment for the disabled**. Addition of 'apparatus and electrical, electronic or other equipment and means of transport …, as well as the leasing or hiring … of such goods'. The Proposal now includes also equipment or apparatus specially designed or adapted for disabled people (e.g. Braille keyboards, specially adapted cars).

3.1.3 Category 6: **books**. Inclusion of 'audio books, CD, CD-ROMs or any similar physical support … '. Extension to books on CD, CD-ROM or any similar physical medium that predominantly reproduce the same textual information content as printed books.

3.1.4 Category 8: **radio and television broadcasting services**. Clarification that the taxable services are the supplies themselves, not reception of them.

3.1.5 Category 9: **supply of services by writers, etc**. Clarification that the category also covers 'those remunerated by means of the royalties due to them'. The text has been rephrased because royalties are not the taxable services, but the consideration for certain services.

3.1.6 Category 16: **funeral undertaking services or cremation services**. The new wording is intended to separate the object of the definition from the quality of the supplier.

3.1.7 Category 18: **street cleaning, waste treatment, etc**. Inconsistencies are removed by granting the reduced rate to three additional services not included under the existing wording: 'purification and recycling of waste water', 'sewage' and 'waste recycling and services leading to reuse'.

3.2 Extension of supplies relating to the housing sector and some non-commercial buildings.

3.2.1 The modification of Category 10 and the addition of new Category 10a are intended to:

— give greater room for manoeuvre to the Member States by deleting the reference to 'housing provided as part of a social policy';

— add 'renovation, repair, and cleaning of housing' (currently in Annex IV) and its maintenance;

— extend the reduced rate to services consisting in renovation, repair, alteration, maintenance and cleaning supplied in 'places of worship and of cultural heritage and historical monuments'.

3.3 Inclusion of two new categories

3.3.1 Restaurant and catering services

3.3.2 Category 12 of the existing Annex III (which is not amended) covers:

'Accommodation provided in hotels and similar establishments, including the provision of holiday accommodation and the letting of places on camping or caravan sites'.

3.3.3 The new Category (12a) covers:

'Restaurant and catering services excluding the supply of alcoholic beverages'.

3.3.3.1 There are two reasons for this addition: a) the need to treat all Member States equally, and b) because these services fulfil the same criteria as the other locally supplied services added.

3.3.4 Locally supplied services

3.3.4.1 These new categories cover five cases:

'*19) supply of gardening or landscaping services and maintenance of gardens;*

20) minor repair of movable tangible property, including bicycles and tricycles of all types but excluding all other means of transport;

21) cleaning and maintenance services of movable tangible property;

22) supply of domestic care services, such as home help and care of the young, elderly, sick or disabled;

23) personal care of the kind provided in hairdressing salons and personal grooming establishments'.

3.3.4.2 These Categories include services which already appear in the present Annex IV, which establishes temporary arrangements until 31 December 2010, but also include some new services of a similar nature.

4. **Comments**

4.1 The EESC thoroughly discussed the subject of the present opinion when it examined the Commission's Communication of 5 July 2007 on VAT rates other than standard VAT rates [1], which was in turn based on a study submitted by Copenhagen Economics.

4.2 In its opinion [2], the EESC highlighted the following aspects:

— VAT is used by the Member States to achieve purely fiscal goals.

— Reduced rates are a response to political and social criteria.

— VAT harmonisation remains a pipedream, justifying (according to the Commission) an attempt at harmonisation for activities that have a cross-border impact or comply with accepted Community policy criteria.

— It must be ensured that any reductions in VAT rates are **genuinely** based on social grounds.

— Simplification and transparency make the task of businesses and controls by the authorities easier.

— Putting the 'mirage' of a definitive regime on the back burner, greater autonomy must be granted to the Member States to set reduced rates for **local services**.

4.2.1 The comments made in that opinion are still entirely valid.

4.3 The proposal for a directive makes only partial and urgently needed changes to the current arrangements. As the Commission explains, it does not seek to carry out an in-depth revision of the existing directive, on which the debate 'has only started'. It does however address issues of social and economic importance, such as VAT on restaurants, labour-intensive sectors, and locally supplied services.

4.4 Technical amendments

The purely technical amendments generally merit the EESC's support insofar as they are necessary, improve the drafting, and clarify controversial aspects.

4.5 Amendments regarding the housing sector

[1] COM(2997) 380 final, of 5 July 2007.

[2] EESC opinion on the *Communication from the Commission to the Council and the European Parliament on VAT rates other than standard VAT rates*, OJ C 211 of 19.8.2008, p. 67.

4.5.1 Supply and construction of housing

4.5.1.1 Permanent application to all types of housing – not only that forming part of a 'social policy', as stipulated in the current Category 10 – significantly broadens the scope of VAT reductions. This change is backed up by the argument that the Member States have interpreted the meaning of 'social policy' in different ways and also because of the rules of the place of taxation of these supplies, which sets the taxation at the place where the property is located.

4.5.1.2 Although this achieves harmonisation, it may be wondered if this blanket approach goes too far, bearing in mind the impact of the reform ([1]). Does applying a reduced rate to all housing, of whatever price and for whatever purpose, achieve a socially and economically desirable objective?

4.6 Repair of housing and other buildings

4.6.1 Renovation and alteration were already included in Annex III for housing as a part of social policy and renovation and repair of private dwellings, and cleaning in private households was already included in Annex IV. Quite rightly, 'places of worship and of cultural heritage and historical monuments' are added.

4.6.2 Moreover, the exclusion of 'materials which account for a significant part of the value of the services supplied' is removed. The proposal is therefore to make it possible to all to include such supply under the reduced rate, when the goods are part of the service supplied.

4.6.2.1 The EESC views both these amendments as reasonable.

4.7 Reduced VAT in restaurant and catering services

4.7.1 Reduced VAT in the restaurant and catering sector is a sensitive issue that has been long discussed and continues to be opposed by some Member States.

4.7.2 According to the Commission's Impact Assessment ([2]), the bars, restaurants and catering services sector represents 6.1 % of private consumption ([3]) and 1.9 % of added value. It also accounts for 3.3 % of total employment ([4]). The HOTREC trade association indicates that the sector contains 1 600 000 establishments ([5]).

4.7.3 As the EESC has already pointed out, the rate applied to the sector affects what is a quintessentially local service, but also influences how tourism is spread between the Member States. This state of affairs, together with the fact that VAT on restaurants is a major source of revenue, complicates the adoption of a single criterion in the EU, and this has not yet been achieved ([6]).

4.7.3.1 For tourism, the effects are likely to differ between Member States. Moreover, for the hotel sector (similar to restaurant services from an internal market perspective) currently eligible for reduced VAT rates, the Commission is not aware of VAT driven distortions. Furthermore the restaurant cost does not seem to be the major part of a holiday package.

4.7.4 The current arrangement, based on temporary provisions under Directive 2006/112/EC, entails significant disparities: 11 Member States already apply lower rates on the basis of specific derogations ([7]), while the other 16 are refused this possibility. The proposed amendment therefore moves towards a general levelling-out in this area.

4.7.5 The exclusion of alcoholic beverages is necessary in the interests of consistency with existing provisions governing their purchase in establishments for subsequent consumption ([8]).

4.7.6 It should in any case be borne in mind that the application of reduced rates is not mandatory, but a possibility available to Member States.

4.8 Locally supplied services ([9])

4.8.1 The new Categories 19 to 23 cover a wide range of services, some of which are already included in the existing directive under temporary provisions: consequently, if the text were not to be amended, they would attract the normal VAT rate from 1 January 2011.

([1]) In all, the construction sector represents 6.2 % of added value (EU-27), with house building accounting for half of this percentage, i.e. 3.1 %.

([2]) SEC(2008) 2190. Brussels, 7.7.2008.

([3]) EU-25 (all Member States except Bulgaria and Romania).

([4]) EU-27. If hotels are added, it accounts for 4.4 % of total employment.

([5]) Hotels, Restaurants and Cafés in Europe. The figure refers to all three sectors. HOTREC puts the number of people employed in them at 9 000 000 minimum.

([6]) While some Member States, such as France, favour applying the reduced rate that already pertains in other countries, Germany – amongst others – opposes this, as it opposes any extension of the scope of reduced VAT rates.

([7]) They are: Greece, Spain, Ireland, Italy, Cyprus, Luxembourg, the Netherlands, Austria, Poland, Portugal and Slovenia.

([8]) Directive 2006/112/EC, Annex III, Category 1 covers: 'Foodstuffs (including beverages but excluding alcoholic beverages) …'

([9]) Local services – including a major portion of labour-intensive services – represent 4.8 % of private consumption (EU-25, excluding Bulgaria and Romania) and 2.1 % of added value. They are considered to have little economic weight, except in the case of building repairs.

4.8.2 There is in general no risk of distortion of competition in this type of service, which employs a sizeable number of people.

4.8.3 The inclusion of gardening and related services seems justified, as they share the same characteristics as the other services.

4.8.4 Repair of 'movable tangible property':

a) the criterion defining 'minor' repairs is retained;

b) however, by introducing an important conceptual change, a general definition is chosen instead of the specific mention of certain goods (such as bicycles, footwear, etc.). **Movable** property is that which can be transported from one place to another (according to the definition in the Spanish civil code), and the interpretation of **tangible** property is that established in several European legal systems. The new category is very broad, so national legislation will have to specify the types of property to which the directive applies according to each country's body of law, although the EESC suggests not placing restrictions on the different types of service.

4.8.5 Car repair and maintenance:

— In view of the major financial efforts being made by the European Union and the Member States in support of the car industry, it would seem necessary to explicitly include car repair and maintenance among locally supplied services, in order to boost the purchasing power of European motorists, enhance the quality and safety of cars on the road, and safeguard employment in this sector.

4.8.5.1 The following changes to Annex III of the proposal are therefore suggested:

— (8)(20) After '… tricycles of all types', replace 'but excluding all other means of transport' with 'private and industrial motor vehicles';

— (8)(21) After 'tangible property', add 'including those for private and industrial motor vehicles'.

4.8.6 Special foods for certain illnesses:

— Dietetic foods for certain illnesses, such as phenylcetonuria or coeliac disease, should be considered to be exempt from VAT.

4.9 Labour-intensive services

4.9.1 These services are already included in the locally supplied services (section 4.8).

4.9.2 In general, this entails work done by – compared to the overall economy – a larger part of low-skilled men or women in temporary employment. More favourable tax treatment may promote greater employment stability for them.

4.9.3 With regard to the effects, Copenhagen Economics provides some data on estimated GDP increase as a result of VAT reduction on locally supplied services and restaurants because of shifts to the formal economy from DIY and the black economy.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Facing the challenge of higher oil prices

COM(2008) 384 final

(2009/C 218/20)

On 13 June 2008 the European Commission decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the

'*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Facing the challenge of higher oil prices*'

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 February 2009. The rapporteur was Mr CEDRONE.

At its 451st plenary session, held on 25-26 February (meeting of 25 February 2009), the European Economic and Social Committee adopted the following opinion by 162 votes to 6 with 12 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee shares the Commission's concern regarding the immediate and worrying inflationary impact of oil prices on certain sectors and on the most vulnerable parts of the population. Rising oil prices have a direct influence on the cost of heating and transport and, indirectly, of food: these items account for the bulk of spending in poorer households.

1.2 The problem demands robust and urgent action, but also raises a sensitive broader issue. Support for poor families must necessarily be provided through direct income support rather than, for example, tax measures (such as cutting tax on oil products) that would influence market prices by cushioning the impact of oil price rises.

1.3 The EESC attaches great importance to the market being allowed to perform its proper function of taking note of the rise in oil prices and identifying the appropriate responses to the situation.

1.4 The price increases should spur all operators to make suitable savings in a commodity that has become more expensive, by replacing dearer goods with less expensive ones and matching production and consumption in a way that allows savings to be made wherever technically possible. As mentioned above, poorer families must be protected, but only by means of direct financial support, without distorting the market signals that must be left free to perform their natural function of restoring balance.

1.5 As the Commission argues, similar strategies should also be put in place to help those economic sectors that have been hardest hit by oil price rises. This applies first and foremost to the fisheries sector, but more broadly to all sectors geared to meeting food demand, together with transport.

1.6 Here again, any measures that are necessary to avoid excessively damaging economic reactions should take the form of direct aid, and not tax measures (tax cuts) that would artificially depress prices which, on the contrary, must reflect the growing scarcity of oil resources.

1.7 Regarding the macro-economic impact on developing countries, comprehensive support plans must be devised, especially for the weakest economies, primarily through financial measures to support the implementation of energy-saving policies. Once again, support measures – including ambitious ones – are needed, but they must not have the effect of obscuring the signals that the markets must always be free to follow.

1.8 The Committee is convinced that strong political responses are required of the European Union.

1.9 Firstly, in this as in other cases, the unified presence of a body such as the European Union, which accounts for a fifth of world production, can have a weight and role of the first importance. Precise proposals, prepared on a common basis by a body of such weight at world level cannot be easily ignored. Matters are quite different when European initiatives are taken in isolation from each other, sometimes even appearing to contradict each other.

1.10 In a situation such as the present one, in which steep rises in a basic raw material are possible, a proposal for consultation and dialogue at world level between all major stakeholders would appear to be the precondition for any further initiatives. A world conference of producer and consumer countries might be envisaged.

1.11 Secondly, there must be a clear commitment to creating a single European energy market. Europe has been built on a foundation of major single market projects: in coal and steel, atomic energy and agriculture, and subsequently, from January 1993, in goods, services and capital; lastly, in 1999, monetary union was introduced. The time is ripe to add specific action on the energy market.

1.12 This would also have the effect of removing this key sector from the destructive pressures of speculation which, as is generally accepted, does perform an essential market regulation function within natural limits, but which beyond these limits contributes to complete disorganisation and absolute insecurity.

1.13 The European energy market must be made transparent and placed under the control of the appropriate authorities: price volatility must be curbed significantly. This can be achieved in part through targeted information and by regulating strategic stocks. Proper regulation of such an important market as the European one could not but have a powerful effect at world level.

2. **Proposals**

2.1 The EU must therefore look to its original roots (the ECSC and Euratom treaties) and finally create an *internal energy market*, a need which is now more urgent than ever in order to forestall risks and repercussions in economic and social terms, amongst others.

2.2 The EU should equip itself with suitable decision-making instruments (putting the procedure recently introduced by the French Presidency, in response to the financial crisis, on an 'institutional' footing) so that it can guide internal energy policy and speak with a single voice at international meetings where these policies, including those concerning oil, are decided. This should begin with the supply price, taking it out of the hands of speculators.

2.3 The Union must convert the individual countries' national oil stock policies into a common, transparent policy, thereby giving greater security to supply policy.

2.4 It must apply common steps, such as harmonised tax measures for oil products in order to limit the losses to the hardest-hit economic sectors, and agree on direct income support for consumers, especially the most vulnerable. A proportion of company profits could be used for this purpose.

2.5 It must take more decisive action to regulate competition in the sector (currently almost entirely lacking, since the supply market operates as an oligopoly) and weigh up the possibility of applying an administered prices policy, at least during the most acute periods, or measures to narrow the often unjustified gap between production and consumption prices. This is a situation in which consumers are impotent and defenceless.

2.6 It should use a common fund to support research and development on alternative sources of energy in order to reduce oil dependency, especially in the transport sector – beginning with the automotive sector – by means of a sharp increase in investment in this area. Tax relief, for example, could be granted to investment, or oil companies could even be obliged to set aside a part of their profits for this purpose.

2.7 Deflation arising from the sudden fall in the price of crude oil and the recession must be prevented from causing worse damage than inflation. Due to inertia (or market flaws?), inflation has persisted, even after the fall in the price of crude, masking the possible arrival of deflation.

3. **Introduction**

3.1 The Commission has finally decided to tackle the issue of higher – or rather fluctuating – oil prices, in the light of events over recent months arising from financial speculation and falling stock markets. These higher prices have generated inflationary pressures within the EU. The ECB and the Federal Reserve have reacted quickly to these pressures, and their counter-measures have dampened inflationary pressures but have curbed economic growth.

3.2 Only recently have restrictive monetary strategies been reviewed in order to deal with the global financial crises. The financial crisis has nevertheless produced a strongly recessionary climate that has nothing to do with oil, and as a result the inflationary pressure caused by oil has been sharply reduced. The momentum towards rising oil prices will, in consequence, be lost.

3.3 The other most significant consequence is the shift in purchasing power from consumer to producer countries, which may be offset by an increase in imports by them from the consumer countries (such imports rose by an annual average of 26 % between 2002 and 2007, a much higher rate than for general world imports).

3.4 As will be seen more clearly in the summary, the Commission looks at a number of aspects of this question, while others are virtually ignored or underestimated (e.g. the effects of speculation, the presence of types of oligopoly in the sector, easily leading to 'cartels' with all the ensuing consequences, etc.).

3.5 The EESC therefore needs to assess the communication frankly and objectively, highlighting its strong and weak points in order to make recommendations and proposals on how to cushion the inflationary impact on prices and production costs.

3.6 Moreover, it should also point to EU policy shortcomings, its weakness at international level, its division over the main reasons for the lack of oil 'market' control and the speculation which has targeted it.

3.7 One further comment needs to be made: in the light of oil price trends – sharply downward compared to July 2008 – the title of the Commission's communication should be amended. In any case, the content of the present opinion takes account of the increasingly familiar fluctuations in oil prices, and not only of the price peaks.

4. Summary of the communication

4.1 The causes of higher prices

4.1.1 The Commission argues that the **oil price spike** of recent months can only be compared with that of the 1970s, that consumer prices follow crude oil prices, and that current levels stand above the peak reached in the early 1980s.

4.1.2 The Commission also considers that the current **high oil prices** stem primarily from a structural change in supply and demand, due to increasing consumption (especially in China and India), shrinking oilfields, the lack of responsiveness on the part of state companies in OPEC countries, the refinery capacity restraints in some countries, the weakening dollar, etc.

4.2 Impacts on the EU economy

4.2.1 The most serious repercussions include the rise in inflation, and the knock-on effect on energy prices; even when raw material prices fall the same very frequently does not happen with consumer prices.

4.2.2 The worst effects are on households, especially low-income ones, albeit to different extents in different European countries, leading to increasing economic imbalance and loss of purchasing power, in turn causing greater poverty.

4.2.3 There are also serious consequences for businesses and for growth. The Commission mentions in particular that the worst hit sectors are agriculture, transport and fisheries. It is hoped that this will stimulate greater interest in research and expanding renewable energies.

4.3 Macroeconomic impacts on developing countries

4.3.1 Oil-importing developing countries will suffer increasingly serious consequences because of rising inflation for both the general public and businesses.

4.3.2 The consequences are aggravated in these countries because of the effect on food prices, public finances, etc., while in oil-exporting underdeveloped countries, capital has accumulated and this poses special macroeconomic policy challenges in view of the frequently inadequate management of oil revenues.

4.4 Policy responses from the EU

4.4.1 EU responses are based on the assumption that these prices will remain high in the medium to long term: appropriate responses, such as those indicated in the 'climate change and renewable energy package' are needed, along with others for the completion of a fully-fledged internal energy market.

4.4.2 There is an immediate need for efforts to mitigate the impact on consumers, especially the poorest households; suggestions range from the tax arrangements for oil products to the proposal for a summit between producer and consumer countries, or boosting supplies to oil-importing countries.

4.4.3 Suggestions for **medium term** structural responses focus on strengthening the dialogue with key oil producing countries, monitoring the degree of 'competition' in the sector, assessing transparency on stocks, revising Community legislation in this area (stocks), examining tax measures in favour of low carbon emission sources, channelling the profits of oil extracting industries to investment, considering taxing such profits, and stepping up dialogue between the EU and developing countries.

4.4.4 Suggestions for longer term structural solutions include: reaching political agreement between EU countries on climate change and renewable energy; improving energy efficiency; introducing structural changes to make the transport and fisheries sectors more efficient; granting direct tax incentives or subsidies to encourage energy saving in households; and much greater diversification of EU energy supplies.

5. **Comments**

5.1 The communication from the Commission was drawn up in the wake of the alarming oil price 'peak' early last summer. It should however be pointed out that the present-day economy is used to sudden and major changes in outlook, sometimes in rapid succession.

5.2 In contrast with the events of a few months ago, the world economy is now dominated by the worrying prospect of recession. According to International Monetary Fund (IMF) forecasts, this is also likely to affect all the emerging countries, which in recent times (roughly the last thirty years, following the end of what has been described as the 'golden age' of contemporary capitalism) had embarked upon a period of growth that was clearly and durably faster than that of the advanced nations.

5.3 Against this backdrop, the fall in oil prices from the high points in July 2008 (that were entirely unprecedented in either nominal or real terms) to the lower levels in November 2008 which, net of inflation, are back to those of 25 years ago, may be more than a one-off incident. The main concern at present among economists is that a deflationary spiral may be triggered, which would of course not spare the oil market.

5.4 It would be advisable to avoid making long-term predictions about the possible exhaustion of available reserves in the ground. This is a recurring fear, which has been around for decades – but may be unjustified. A recent edition of *The Economist* (21 June 2008) pointed out that known oil reserves should, at present production rates, last another 42 years (which is far from negligible – there is no knowing what may happen, especially in terms of scientific and technological innovation over the next 42 years). It also noted, however, that identified reserves in the Middle East have remained the same for many years: as the magazine pointed out, this could mean that new discoveries tend to offset the oil that is produced and consumed, or that estimates of reserves are not very accurate. It should nevertheless be underlined that the calculation is based on present production rates. The problem does not hinge, however, so much on the exhaustion of long-term reserves, as on the likelihood of future crises, arising from short-term imbalances in supply and demand, and in particular following possible interruptions in production in strategic areas.

5.5 Surveying for new reserves and sources is, and must be, a continuous process. The oil shocks of the 1970s, that count among the last century's most important events, are especially instructive and relevant in the present context. These shocks were caused by supply restrictions imposed by the producer nations rather than spontaneous market phenomena as the current imbalances seem to be. In any case, the dramatic price rises at that time triggered a search for new sources, using highly innovative production methods.

5.6 Closer attention to market developments resulting from any mismatch of supply and demand must be constantly maintained.

5.7 In the wake of the stringent monetary policies adopted from the early 1980s onwards, most prominently by the Reagan and Thatcher governments in the US and UK respectively, and based on the thinking of Milton Friedman's monetarist 'Chicago school', interest rates rose steeply, prompting those holding reserves to review their own priorities. They judged that keeping available oil reserves underground would be highly damaging to their interests on account of the corresponding loss of profit. Rising interest rates contributed significantly to the breakdown of the oil cartel in the mid-1980s.

5.8 A careful analysis should take account not only of information drawn from geological or technological knowledge in general but also from the results of economic analysis; on this basis, if the scarcity of resources and an excess of demand over supply causes price rises, such rises will in turn affect availability of resources, often helping to redress imbalances. It should be borne in mind that, in such cases, prospecting for new oil deposits may affect particularly sensitive ecological zones and sites (e.g. the North Pole). Alternative sources should be sought in order to prevent this from happening.

5.9 A further comment, of a methodological nature, is in order before seeking out the causes of the recent price rises. The most precise information possible on the situation that must be tackled is unarguably a precondition for any action strategy. A renowned Italian economist, Luigi Einaudi, warned that we 'must know in order to decide'.

5.10 The EESC also calls for a clearer picture of how the oil market works. The fears arising from the major fluctuations in oil prices are based on statistics essentially focusing on monitoring of daily prices on the markets. For example, one of the best known methodologies is that used by the IMF in calculating the APSP (average petroleum spot price), an unweighted average of Brent, Dubai and WTI prices, the latter being the American price.

5.11 It may be helpful to indicate the average crude import values, which can be derived from the foreign trade statistics of at least the main importing countries. There is every likelihood that a knowledge of crude oil supply conditions is considerably more reliable than the picture provided by day-to-day market prices.

5.12 The EESC would argue that a sound analysis of the reasons for the recent steep increase in oil prices, and the even more recent dramatic fall, must be based on the real underlying trends in the world economy.

5.13 It notes, however, that the communication makes no mention of the contribution certainly made by the powerful speculative pressures to the uncontrolled increase in oil prices. Without this speculation, prices of 147 dollars in July, falling to some 60 dollars in October 2008, would be highly unlikely to occur.

5.14 Looking at movements in underlying structural data, however, it can be stated that world energy consumption has now durably passed the 10 million tonnes of oil equivalent, and this increase is underpinned by an increase in global GDP that is historically unprecedented in terms of absolute volume, if not also in relative intensity.

5.15 However, the chances of a recession, deriving from the crisis on the world financial markets, must be assessed. In any case, the fact that for four years in a row, from 2004 to 2007, world production has grown by 5 % annually, fuelled largely by the surge in the emerging economies, must not be underestimated. First and foremost come China and India, but they are not alone: even Africa is reviving and growing at an annual rate of 6-7 %; Russia is staging a come-back as a world giant; everywhere, the international scene is in a state of flux.

5.16 World GDP, calculated in real terms on the basis of 2007 prices, rose from 53 million million dollars in 2003 (calculated – quite rightly in our view – in terms of PPP, purchasing power parity, rather than market exchange rates) to 65 million million in 2007, representing an increase of 12 million million dollars. This is the equivalent of a US-sized economy being added to the world economy in just four years.

5.17 An annual increase of 5 % means that, if this rate of growth is maintained (which is not necessarily impossible), world production would increase two-fold in ten years and four-fold in twenty – in other words, in one generation. This outlook may seem unreal, but it shows how we are entering into a completely new phase in economic history.

5.18 The communication rightly recalls that, as in every other period of history, energy is a vital ingredient of growth. One of the main effects of the present very strong economic growth is therefore the powerful pressure exerted on energy sources.

5.19 As mentioned earlier, attention should be drawn to the effects of large-scale speculation on the oil market; it has the effect of amplifying movements whose underlying causes are, however, undoubtedly of a structural nature.

5.20 To understand price fluctuations, it is worth bearing in mind that at present, one third of energy consumed comes from oil.

5.21 A closer examination of the available data on oil market prices throws up some surprising results, which do not tally with the Commission's claims (source: inflationdata.com /inflation/inflation_Rate/Historical_Oil_Prices_Table.asp, Financial Trend Forecaster).

5.22 An analysis of the data reveals that, between the 1940s and the mid-1970s, oil prices in real terms – i.e. net of general inflation affecting overall price trends – remained basically unchanged, at slightly over 20 dollars a barrel. This is shown by all the relevant available sources.

5.23 For almost thirty years (the period subsequently known as the 'golden age' of contemporary capitalism, which the prominent historian Eric Hobsbawm described as the most intensive phase of economic development so far experienced by humanity on such a great scale), the world economy's enormous growth was not constrained by scarce energy resources: supply was clearly able to meet booming demand.

5.24 The oil shocks of the 1970s – the first in connection with the October 1973 Yom Kippur war, the second with the Ayatollah Khomeini's revolution in Iran – notoriously triggered steep prices rises which can, according to the Commission, be put down to a successful attempt by the OPEC cartel to control production.

5.25 In the EESC's opinion, however, other factors were also involved in the crisis and sudden rise in prices, first and foremost the period of serious monetary disturbances culminating in the declaration of dollar non-convertibility in August 1971. These disturbances arose from the excessive US balance of payments deficits, which made it impossible to maintain the Bretton Woods monetary system of stable exchange rates. The dollar crisis was reflected in strong inflationary pressures which eventually came to bear largely on the oil market. Lastly, it should be remembered that in the early 1970s the global economic situation was marked by a marked upward surge in production, generating strong demand-driven pressure on the entire raw materials market.

5.26 We believe that, compared with the current situation, the differences are greater than the similarities. Usually there is only the very strong growth of the world economy. No major market manipulations can be detected other than speculative operations, although these are very different to the action of the OPEC oil cartel, which was officially present at proper international conferences.

5.27 The EESC does not believe that even the present dollar stockpile, especially in China and Japan, has much in common with the proliferation of similar currency reserves between the late 1960s and early 1970s. China and Japan are not at all keen to suddenly or rashly throw their enormous dollar reserves onto the market.

5.28 The extremely tough monetary policies conducted by the major western countries led, especially from 1986 onwards, to a price collapse. It is worth pointing out that, again in real terms, average prices for the seven years from 1993-1999 stood at 23 dollars per barrel, exactly the same as forty years earlier (1953-1959), following powerful growth in the world economy and in demand for oil.

5.29 The EESC agrees with the Commission's view that the acceleration of world economic growth is no less significant for being concentrated in the emerging economies and no longer in the advanced ones. This development seems to have triggered an underlying trend towards increases in nominal and real prices from around a moderate 30 dollars per barrel in 2003 (the year in which the 'strong' phase in the world economic situation began) to today's level of 60 dollars, practically twice as much. It is true that between 2003 and 2007 the dollar lost a quarter of its value against the euro, which is why oil prices in euros did not double, although they did rise by 50 %.

5.30 This is the case even if last July's peak of 147 dollars was probably the result of a speculative bubble; if the peak was the product of speculation, then a return to rising prices may be expected in the near future when speculators again begin buying oil at what they consider a good price. World oil industry players, whose powerful influence should at least be curtailed and made more transparent, now consider a price around the 80 dollars per barrel level to be a 'natural' one, in other words at a perceptibly higher level than at the beginning of the upward phase (around 30 dollars in 2002-2003).

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the following proposals Proposal for a Council Regulation amending Regulation (EC) No 1083/2006 on the European Regional Development Fund, the European Social Fund and the Cohesion Fund concerning certain provisions relating to financial management

COM(2008) 803 final — 2008/0233 (AVC)

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1080/2006 on the European Regional Development Fund as regards the eligibility of energy efficiency and renewable energy investments in housing

COM(2008) 838 final — 2008/0245 (COD)

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1081/2006 on the European Social Fund to extend the types of costs eligible for a contribution from the ESF

COM(2008) 813 final — 2008/0232 (COD)

(2009/C 218/21)

On 9 and 15 December 2008, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

'Proposal for a Council Regulation amending Regulation (EC) No 1083/2006 on the European Regional Development Fund, the European Social Fund and the Cohesion Fund concerning certain provisions relating to financial management'

'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1080/2006 on the European Regional Development Fund as regards the eligibility of energy efficiency and renewable energy investments in housing'

'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1081/2006 on the European Social Fund to extend the types of costs eligible for a contribution from the ESF'

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 February 2009. The rapporteur was Mr CEDRONE.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February), the European Economic and Social Committee adopted the following opinion by 164 votes to two with 14 abstentions.

1. Conclusions and recommendations

1.1 The Committee notes the three above-mentioned proposals put forward by the Commission in the context of the current financial crisis, aimed at stimulating the real economy during this economic downturn by adapting and simplifying certain Structural Fund provisions.

1.2 The Committee endorses these proposals, subject to the observations set out below.

2. Reasons

2.1 The Committee has argued strongly for several years in favour of the administrative simplification of Community legislation and for it to be adapted to real needs on the ground. The Committee therefore welcomes the proposals drawn up by the Commission, which would enable the EU Structural Funds to react more effectively to the challenges posed by the current economic and financial crisis.

2.2 The Committee points to other existing administrative and financial problems as regards Structural Fund management; it encourages the Commission to draw up proposals to resolve these problems pertaining to levels of project pre-financing; excessive payment periods; the sustainability of the proposed projects; and the de minimis rules.

2.3 The Committee stresses the need for the administrative simplification sought to truly bring about a rapid release of available funds so as to have an immediate positive impact on the recovery of the real economy.

2.4 The Committee also hopes that the funds released as a result of these measures can be prioritised as far as possible to benefit SMEs (e.g. construction industry SMEs, in the case of the proposal on energy efficiency in housing), as well as social economy organisations.

2.5 Finally, the Committee calls on the Commission to swiftly wrap up its deliberations on the issue of Structural Fund simplification in order to speed up the responsiveness of cohesion policy in the face of the current economic crisis and beyond.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

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