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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

453RD PLENARY SESSION HELD ON 13 AND 14 MAY 2009

Opinion of the European Economic and Social Committee on 'Research and development: in support of competitiveness'

(Exploratory opinion)

(2009/C 277/01)

Rapporteur: **Ms DARMANIN**

On 27 June 2008, the Czech presidency requested the European Economic and Social Committee to draw up an exploratory opinion on

Research and development: in support of competitiveness.

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 24 April 2009. The rapporteur was Ms DARMANIN.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 14 May), the European Economic and Social Committee adopted the following opinion unanimously.

1. Conclusions and recommendations

1.1. The EESC calls for a redefinition of Competitiveness and advocates that long term Competitiveness can no longer be calculated on the sole measure GDP but rather on a wider outlook that includes the sustainability factors of social, economic and environmental perspectives. The EESC believes that within the current economic climate we need to start focusing on Sustainable Competitiveness for the future.

1.2. The EESC identifies innovation as being a critical part of sustainable competitiveness based on the pretext that sustainability is a process and evolving measure, and hence innovation is what can hone such a process. Furthermore, Research and Development are a very important aspect of the innovation process.

1.3. The EESC identifies in this opinion a number of inhibitors to the research and innovation approach. Overcoming such inhibitors requires a long-term vision and an investment for

the future. The EESC hence recommends the following initiatives to be taken up so as to minimise the effect of such inhibitors:

- The harmonisation of innovation opportunities and programmes within the European Union. Currently an array of opportunities for motivating innovation exist within the EU, however these opportunities are often disjointed and not visibly coordinated. Thus the EESC believes that there ought to be greater effort for a coordinated approach to innovation within the Commission and other bodies managing innovation programmes.
- Minimising the information overload and providing a more coherent and simple way of accessing innovation and research details and opportunities. The EESC does take note that there have been efforts to reduce the overload of disjointed information however more needs to be done. Particularly for the benefit of SMEs information needs to be targeted, simple, effective and coordinated.

- Investing further in the education systems by reinforcing programmes such as Erasmus and Comenius, whereby students are required to have access to and avail of education outside their country of origin. The EESC believes that the fundamental stage whereby change can be permanently achieved is at primary and secondary education, therefore opportunities such as the above mentioned programmes are an important milestone in the formation students.
- Include entrepreneurship as an integral part of the educational curriculum. The entrepreneurial mindset is important both in the research field and also in industry, therefore this mindset can be brought about by ensuring that the education system thoroughly focuses on developing entrepreneurial minds.
- Improve the chances of economic survival for young entrepreneurs engaged in novel high-tech processes or products.
- Setting the conditions of employment of young researchers not only to a dignifying level but also one that will attract the best people to the profession. The EESC recognises that there may be differences between Member States in terms of conditions related to research professions but emphasises that there should be a concerted cross European effort to address this issue.
- Engaging all Member States as important players in the Innovation process thereby benefiting of the potential of the EU 27 and not only of the more experienced players in the field of RDI.
- Reinforcing structures in which there is constant cross experiences between academia and industry.

1.4. EESC acknowledges that research and innovation are not only a question for universities and special department in the companies, but for everybody. There are enormous resources in all people at the work places, and the concept employee driven innovation has to be developed further. The concept has to be taken under consideration in the cooperation at work places, the question of life long learning and the work in work councils.

1.5. The EESC believes that within the new Lisbon Agenda after 2010 there should not only be a target for the investment in RDI by the Member States, but also a target for GDP expenditure on education, which the EESC believes is an important catalyst for innovation. Hence the EESC recommends that within the new Lisbon Agenda for after 2010 there ought to be targets set as follows:

- 7 % of GDP for education from primary to higher education;
- 1 % of GPD for public R&D;
- 2 % in private R&D investments.

1.6. The EESC also affirms that countries and companies with a high degree of sustainable production, strong new technology and production building on a high degree of Eco-efficiency will be the most competitive in the future. The EESC recommend that EU takes Eco-efficiency in consideration as a mainstreaming factor in the policies of education, research and innovation, industrial policy, transport policy, energy and climate policy and social- and employment policy and support a stringent and stronger cooperation between the different political areas.

1.7. The Committee sees a serious danger in the context of the current financial and economic crisis: that many companies could be forced to trim their R&D activities as well, responding by halting recruitment, which would condemn university graduates to unemployment. In this grave crisis, the Committee therefore calls on the Commission and the Member States to counteract this threat of unemployment for young scientists and engineers by having state-supported research institutions adopt an anti-cyclical recruitment policy and by continuing to encourage the study of technology and science disciplines.

2. Competitiveness

2.1. In the EESC's view it is essential to relaunch EU competitiveness entailing specific choices and substantially increased resources, with the full involvement of all scientific and technical expertise and structures across the Community. Only through efficient synergy between a newly relaunched innovation policy and the full range of Community policies, can the European Union catch up and lay the foundations for a new development model based on the growth of its own export capabilities vis-à-vis emerging countries that can rely on low labour costs.

2.2. The EESC believes that the focus of competitiveness within Europe should be broadened, and hence go beyond the measure of the GDP of the Member States. A shift to a more holistic perspective of competitiveness, with emphasis on sustainable competitiveness is therefore required. There are various measures for achieving such competitiveness, which can be used as tools. The Reference Document of Paradiso Project (done by members of the Club of Rome) in fact highlights a number of such measures. The EESC emphasises that a new measure, which takes existing tools into consideration, needs to be adopted. This new measure should address the concepts of sustainable social applications, sustainable economic scenarios and sustainability for our planet.

2.3. Given the recession in the industrialised world and the negative prospects for EU economy, the Committee intends to assist in identifying the responses that will be required to overcome this crisis. For this reason, the EESC welcomes the Czech Presidency's proposal to prepare an exploratory opinion on Research and Development: in support of competitiveness.

2.4. The Committee is convinced that from a negative phase like the one we are living there may emerge as protagonists, and quickly recover, only those enterprises that will be able to be competitive in the markets of high quality traditional products and high technology. The only way to safeguard the future is a greater commitment to research and innovation. It is obvious that those who have invested in research in the past now have the appropriate structures and human resources, and therefore have better chances of overcoming the crisis earlier and more successfully than those who neglected this commitment.

3. Research, Development and Innovation

3.1. The EESC recognises that research and development are drivers of innovation. Industrial innovation needs to be addressed in this particularly sensitive period that Europe is going through. In order to respond to the economic downturn and the growing recession, the EESC believes it is essential to kick-start an innovative process to drive progress towards a 'real factor for competitiveness', based on a number of fundamental pillars that can effectively relaunch the European industrial system, by making active use of the advantages provided by the enlarged internal market. These pillars are:

- research, innovation and entrepreneurship;
- support for investment; and
- a strong and renewed commitment to training.

3.2. It now seems clear that the admittedly huge efforts have been made within the EU in the field of research and innovation. Nevertheless further investment is needed when set against the needs imposed by the depth of the crisis. The EESC would like to see greater commercialising efforts for innovation results achieved through the research Programmes. Furthermore the EESC advocates further transparency in the fund allocation process and in the evaluation process.

3.3. Furthermore, the European Economic Recovery Plan of the European Commission provides further stimulus for innovation. This is highlighted by the allocation of future funds to 'The Green Cars Initiative'; 'The Energy Efficient Buildings Initiative'; and 'The Factories of the Future Initiative'. All of which are intended to further stimulate research in these three areas, which have been affected by this economic crisis.

3.3.1. Europe has invested heavily in the structures that foster Research and Technological Development (RTD) and this is evidenced by the number of existing structures and programmes within the various central, national and regional systems.

4. The Knowledge Triangle

4.1. It is clear that for effective innovation and RTD in industry, the three components of the knowledge triangle need to be effectively engaged within the whole process.

4.2. According to the Committee, a fundamental objective will be to obtain a high level of cooperation between public and private research, university studies and the industry, which appears to be essential to creating a virtuous circle for European competitiveness.

4.3. A specific opinion on these themes entitled 'The Cooperation and Transfer of Knowledge between Research Institutions, the Industry and SME: an Important Pre-requisite for Innovation' (INT/448) has been recently adopted. The purpose of this opinion is to carry out an in-depth examination of the present phase, with respect to the results obtained and the perspectives, by drawing attention to the obstacles to be overcome via a quick and efficient transfer of knowledge between two worlds, which have been too remote from and uncommunicative with each other for too long.

4.4. In this framework for cooperation between the scientific world and industry, the EESC has supported and welcomed the establishment of research Consortia with joint public and private funding, such as the scheme proposed in the recent Joint Technology Initiatives (JTI), which the Committee has viewed positively, calling for its speedy implementation and widespread application⁽¹⁾. The Committee has defended the extension of these initiatives to other sectors, since they not only define the public/private partnerships and the equal allocation of resources from the outset, but also offer university structures, public and private research centres and scientific representative bodies the possibility of becoming members of these enterprises.

4.5. At this point, the EESC would like to reiterate its urgent call, made in a previous opinion (INT/335), for an active coordination and consolidation tool for relations between the academic world and business, which has already been identified in the European Institute of Technology (EIT). The Committee considers the full functionality of this Institute, through the availability of the necessary financial and human resources, to be urgent.

4.6. The EESC considers the above mentioned role of communitarian coordination in the field of technology, through genuine cooperation and interface between universities and industry, to be vital. This is the decisive factor for developing the type of innovative products and processes which are essential to the competitiveness of the EU industrial system.

5. The inhibitor to effective uptake of research and development for innovation

5.1. In order to gain a more accurate picture of Europe's current position within the sphere of innovation, we need to analyse the current inhibitors to the stimulus of innovation.

5.2. The EESC identifies a number of such inhibitors; more traditionally these can be described as follows:

- education institutions being less prone to stimulating young people in taking up research careers;

⁽¹⁾ OJ C 204, 9.8.2008, p. 19; OJ C 44, 16.2.2008, p. 11; OJ C 44, 16.2.2008, p. 15; OJ C 44, 16.2.2008, p. 19; OJ C 44, 16.2.2008, p. 22.

- the dismal conditions of young researchers compared to their counterparts in other countries such as the US and also compared to other professions is a great deterrent to attracting good young researchers to the profession;
- research institutions being less in touch with the industry's economic requirements;
- industry not necessarily taking up innovation opportunities identified by research institutions.

5.3. At a deeper level, the EESC identifies some additional inhibitors:

- entrepreneurship is an inclination that is not stimulated and sufficiently trained within the European culture starting from European schools; hence support for young entrepreneurs and the economic preconditions and chances for young high-tech companies of surviving the first five years dwindling small and thus to not provide sufficient stimulus;
- the academic culture may not be conducive to the type of research that fosters competitiveness;
- the industrial culture may not be conducive to the exploration of change and proactivity;
- a lesser involvement within innovation programmes and research and development from some a number of EU member states, particularly the 12 which recently joined the EU.

6. An essential factor for innovation and competitiveness: vocational training

6.1. The availability of highly professional human resources with training options, which are at least equivalent to the highest international standards, is a pre-requisite for translating the programmes and priorities defined at Community level into a high level of competitiveness.

6.2. Human capital is indeed the most important resource for research and development. From its inception, the European Union has always acknowledged the need to include education and culture in the European integration process. Article 127 of the Treaty of Rome (Article 150 TEC) states that 'the Community shall implement a vocational training policy which shall support and supplement the action of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training'.

6.3. There were many statements of intent but little practical action on vocational training until the 1980s. This trend was reversed with the birth of Eurydice, the official network for gathering, monitoring and disseminating information on education systems and policies in Europe. A legal basis was identified in 1985 for education policy, interpreting the concept of 'vocational training' in broad terms to cover all forms of teaching in preparation for a profession, trade or occupation, including higher education.

6.4. This can be seen as the point when attention to training became a priority issue for Community policies and materialised in the first Community programmes (COMETT, ERASMUS, LINGUA for higher education and PETRA, EUROTECNET and FORCE for vocational training).

6.5. An illustration of their impact on the role of training at Community level is provided by ERASMUS which, despite some initial obstacles from certain Member States, has over a twenty-year period enabled nearly 1 500 000 young people and 250 000 teachers to spend a period studying or teaching in a university in a country other than their own, with a positive impact on carrying forward the entire European integration process.

6.6. Following a lengthy period of proposals, concerning all levels of training from primary school to university under the Lisbon Strategy, in March 2000 the European Council set the European Union the strategic goal of becoming the 'most competitive and dynamic knowledge-based economy in the world', followed in 2002 by the Barcelona European Council which restated this important role and setting itself the objective of making European educative and training systems 'a world quality reference by 2010'.

6.7. The EESC recognises that a research career can be taken up only by very talented young people; hence such people should be attracted to this profession. Researchers, universities and society in general have invested in the acquisition and development of the specialised knowledge. Hence it is essential that the policy not only maximises such investment but also ensures that the investment is not in vain. Furthermore, a long term planning for funding of research institutions is a must. These incentives have already been outlined in another EESC opinion ⁽²⁾.

7. From an SME perspective:

7.1. Further inhibitors exist at the SME level, and the EESC believes the main one to be the fact that SMEs do not have enough resources to invest in research and exploit innovative ideas and opportunities for research. There are different types of opportunities but the abundance of information and opportunities is in itself an additional inhibitor because it is alienating.

7.2. The EESC nevertheless reiterates the importance of creating a favourable context for direct SME participation in EU research and innovation initiatives, as foreseen in the important actions of the 'Capacities' programme of the VII Framework Programme, given how numerically widespread they are, and their importance in terms of new job creation.

⁽²⁾ OJ C 110, 30.4.2004, p. 3.

7.3. SME participation is often made difficult by the lack of procedures appropriate to their size, a factor that, alongside the risk capital required during the start-up phase, constitutes the key reason for their difficulties in participating. Indeed, whereas large businesses have appropriately structured offices and the necessary information to submit requests for programme funding, small businesses often decide against submitting requests when faced with the excessive bureaucracy involved in submitting requests, preparing contracts and subsequent administrative management.

7.4. All these factors make it difficult to attain a strategic goal set out in all EESC opinions on the participatory role of SMEs, whereas the latter have massive innovative potential. The EESC once again calls for the simplification of the rules required for SME participation. They have considerable creative potential and constitute a fundamental presence, given their proximity to the expectations and demand for new products emerging from civil society.

8. Further observations

8.1. In fully accepting that an important commitment to research and innovation is a component of all modern economies, we cannot forget that the very process has to be based on strictly environment-friendly production, rigorous protection of our values system and a solid defence of the European social model.

8.2. In order to turn a new policy founded on research and innovation into reality and allow the European system to regain its competitiveness vis-à-vis other advanced economies and emerging countries, we have to make a strategic commitment and substantially increase resources, both human and economic in order to enable Europe to reach a high level of global scientific excellence.

8.3. The EESC also underlines that the prerequisite for innovation and competitiveness is appropriate vocational training and education delivered by training institutions from primary school to university, in order to win young people over to scientific careers, which would ensure human resources with a high level of professionalism and motivation, based on training opportunities of the highest international standards.

8.4. European Commissioner for Economic Affairs, Joaquín Almunia, has provided the 27 Member States with data on the 'intermediate economic forecast' which has caused great concern. That forecast confirms that Europe faces a deep recession, with an average contraction of GDP of 1,8 %. In the case of Euro area countries, the forecast is equally worrying for those countries

which have always driven the European economy, such as Germany (- 2,3 %). Ireland has been seriously affected by the financial crisis (- 5 %), as have Spain and Italy (- 2 %) and France (- 1,8 %). According to this forecast, the fall in European GDP will have a disastrous effect on employment, bringing the unemployment rate to 8.2 %, with 3,5 million job losses and a public deficit that in 12 out of 27 Member States will be higher than the 3 % established by the Maastricht Treaty, with higher rates in Ireland (11 %), Spain (6,2 %) and France (5,4 %).

8.5. This data refers to January 2009 but already seems far removed from present reality. The Commissioner has already spoken on this issue on several occasions, sounding the alarm on the gradual and steady deterioration in the economy and forecasts that 6 million jobs would be lost by 2010. In a speech to the EESC, Commissioner Almunia stated that judging by the most recent data, the January economic forecast would have to be reviewed downwards.

8.6. In order to measure the still existing gap and the distance from the target required for economic recovery at the Community level, we have only to compare the investments made in Europe and the United States. The USA has consistently invested 3 % of its GDP in research, whilst the European Union invests under 2 %, with some Member States still far below the 3 % target established by the Lisbon Strategy. And today in this new period of recession, even this target seems completely insufficient in quantitative terms.

8.7. This negative scenario clearly reveals just how much Europe is lagging behind and the extent of the effort needed to regain an adequately high level of competitiveness in an international industrial scenario that is changing rapidly, mostly due to the emerging economies.

8.8. Europe should, therefore know how to take advantage of the positive gains from investment in knowledge (research and development, education, vocational training) in terms of competitiveness and also from the growth of the industrialised economies, and move decisively in that direction.

8.9. Reports show that companies get more out of their research if they cooperate with the employees, develop their competences and organize the work places in a way that ideas from the employees can develop and be transformed to actual policy of the company.

8.10. The employee driven innovation has put companies in a better position and spared the companies for lots of money and increased their competitiveness. The concept must be supported, and can be useful when we talk about not working harder but smarter.

Brussels, 14 May 2009.

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

Opinion of the European Economic and Social Committee on 'The impact of legislative barriers in the Member States on the competitiveness of the EU'

(Exploratory opinion requested by the Czech presidency)

(2009/C 277/02)

Rapporteur: **Mr Joost van IERSEL**

In a letter dated 27 June 2008, Mr Alexandr Vondra, the Czech Deputy Prime Minister with responsibility for European Affairs, acting on behalf of the Czech Council Presidency, requested the European Economic and Social Committee to draw up an exploratory opinion on

The impact of legislative barriers in the Member States on the competitiveness of the EU.

The Section for Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 April 2009. The rapporteur was Mr van IERSEL.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 14 May) the European Economic and Social Committee adopted the following opinion by 198 votes to four with 10 abstentions.

1. Conclusions and recommendations

1.1. The Internal Market as an overall political objective to promote economic growth and jobs, and to create sustainable development is at the core of the European integration process. The Single Market is very successful in that it has lifted a tremendous number of legal barriers to the benefit of citizens and consumers, of business and of society at large ⁽¹⁾ Against this backdrop, the rule of law is an essential principle.

1.2. But quite contrary to a usual saying that the Internal Market is completed economic dynamics require continuous efforts to create a real Single Market for public and private economic actors across the EU. Moreover, EU legislation has not yet brought about an effective functioning of the Internal Market in important fields, such as finance and energy. Given the current situation, an effective legal framework for the financial sector is urgently needed.

1.3. In the worst recession in living history and systemic crisis in the financial markets, recovery of trust and confidence in Europe are crucial. In order to solve the crisis, current policies should be re-examined, in particular in the financial sector. To turn the risks of protectionism and the renationalisation of policies and to safeguard open markets in the EU and beyond, the EU urgently needs to set a clear political course. The EESC calls for a continuous firm commitment of the Council and the Member States against protectionism and market fragmentation.

1.4. Measures to soften the impact of the crisis, such as direct state intervention in or state ownership of banks as well as specific fiscal and financial stimuli, however necessary in the current crisis, must not undermine agreed mid- and long-term EU goals, or jeopardise existing successful framework conditions, including rules applying to rescue and restructuring aid. Otherwise, the possibility for wide scale distortions to competition would be created. At the same time, it is important to learn from the crisis what regulations and financial measures need to be put in place in order to achieve a long term sustainable development.

1.5. The sharp economic downturn asks for a robust, resilient and fair environment for European business and workers in order to promote economic growth, innovation, job creation, social progress and sustainable development. The Lisbon-Gothenburg Agenda ⁽²⁾ remains a cornerstone for growth and employment and to promote vitality and innovation within the EU as well as at world scale.

1.6. In this respect, better lawmaking and all related initiatives at EU level, the quality of correct transposition and enforcement in the Member States and at regional level are of paramount importance. The principal actors, i.e. the Commission, the European Parliament, the Council and the Member States themselves, have to remain fully committed to these objectives.

1.7. For good governance, besides governmental actors, business and business organisations, social partners and organised civil society must do their share and feel co-responsible and accountable in the whole process.

⁽¹⁾ For an overview of the remaining obstacles to the Single Market, see the EESC-SMO study under http://www.eesc.europa.eu/smo/news/index_en.asp.

⁽²⁾ The Gothenburg Council Summit in June 2001 added an environmental dimension to the Lisbon Agenda.

1.8. European integration is also positively served by new chapters as the New Approach and the 2008 Goods Package, the reduction of unjustified administrative burdens and the recognition of professional qualifications.

1.9. Recent developments once again confirm the EESC's long-standing call for the Commission, as guardian of the treaties, to receive more resources, instead of being hampered, as often happens, so that it can effectively ensure that national legislation is consistent with agreed legal requirements in the EU.

1.10. The ongoing implementation of the Services Directive in 2009 will open new avenues to the benefit of citizens and companies. However, there should be effective monitoring to avoid lower social, quality, environmental and safety standards.

1.11. The lifting of legal barriers, and the way it is realised, requires, especially today, a better communication strategy at EU level and in the Member States. Such communication must enhance the credibility of the EU and foster trust among citizens and companies against euro-scepticism.

1.12. Lifting legal barriers, better lawmaking and agreed framework conditions within the EU will also underpin the position of the EU in negotiations with other trading blocks, in the WTO and in the Doha-round.

1.13. Finally, the EU can learn from its history that hard times may also lead to beneficial steps forward. The crisis of the seventies and the early eighties of last century confirmed the political willingness to an EMU, and it produced in 1985 the Single Act which was the basis for 'Europe 1992', the way to the completion of the Internal Market.

2. Introduction

2.1. The present exploratory opinion, which the EESC is drafting at the request of the Czech Presidency on 'Legislative Barriers to Competitiveness' is focusing on achieving an Internal Market free of (unjustified) administrative obstacles and based on better regulation. The Single Market is about offering to European citizens and businesses certainty and security in the legal environment in view of the free movement of persons, goods, services, and capital across the EU.

2.2. In its programme, the current (Czech) Presidency concentrates in particular on the timely and correct implementation of the Services Directive and on a further removal of trade barriers between Member States in accordance with the Internal Market Strategy Review. These objectives are rightly seen in the broader perspective of National Reform Programmes and the Lisbon Strategy, and its review and possible adjustment in 2010.

2.3. The same framework encompasses the relationship between Better Regulation ⁽³⁾, improved use of impact assessments, and ongoing implementation and evaluation of measures to reduce the administrative burdens of enterprises as well as support for a Small Business Act for Europe and a sustainable EU industrial policy, including an appropriate innovation policy.

2.4. These intentions and proposals have to be accomplished in the midst of a very sharp economic downturn ⁽⁴⁾. They make clear that the Presidency, in line with views of the Commission, envisages in its Programme to maintain strategic outlines as defined in more promising times. The Presidency is thus also aiming at giving new impulses to the mandate of the new Commission.

2.5. It wants to keep earlier drafted strategic policies on track whatever short-term measures are to be taken to absorb substantive sudden shocks in the economy affecting sectors, investments and jobs.

2.6. Lifting restraints to spontaneous further development of business in Europe is the main focus of this Opinion. In that sense, strengthening competitiveness has to be defined as reinforcement of the level playing field in the EU by making the common legislative base as effective as possible.

2.7. A cornerstone in this process is the agreed Better Regulation agenda with its focus on the quality of legislation, impact assessments, simplification, the introduction of new rules where appropriate and the reduction of the administrative burdens by 25 % by 2012 ⁽⁵⁾.

2.8. The present Opinion focuses on removing legal barriers and on effective regulation restoring trust in the markets, keeping in mind the increasingly global dimensions of competitiveness. The better the regulatory framework for the Internal Market functions, the more resilient the EU's position on the world scene will be.

2.9. On a number of areas the EESC has already expressed its views. As the question of competitiveness is extremely broad, this Opinion focuses on a selection of topics that are particularly pressing in the current situation.

⁽³⁾ OJ C 24, 31.1.2006, p. 39.

⁽⁴⁾ See the recent report by the OECD arguing in favour of continued regulatory and precompetitive reform in the current context of the crisis (Going for Growth 2009).

⁽⁵⁾ See in particular the Third Strategic Review of Better Regulation in the EU, COM(2009) 15 final.

2.10. Impressive improvements have been made in realising the Internal Market. But at the same time it is also undeniable that there still is a substantial lack of harmonisation in specific fields - energy, finance, the potential flagship Community patent (!) and a need for action in the social field. Ongoing individual governments' actions - legislative, and administrative practices - require permanent attention from a European viewpoint ⁽⁶⁾.

2.11. Lack of desirable harmonisation or governments' actions often creates substantial nuisances for large companies and damaging obstacles to Europe-wide investments of small and medium-sized enterprises.

2.12. SMEs are a vital part of the all-over European competitiveness. Large companies are indispensable to maintain European strength. But because of outsourcing, the fragmentation of business processes, and the supply and added value chain, SMEs are the main creators of jobs. They are as a rule sufficiently flexible to adjusting to required sustainable production, and they are often, especially as partners in the value-added and supply chain, at the root of inventions and new systems that promote sustainable and ecological production.

2.13. Legal barriers do not only affect business but also the cross-border movement of workers ⁽⁷⁾. It is important to ensure that fundamental rights and rules on the labour market are applicable to all workers ⁽⁸⁾.

3. Context and general comments

3.1. The Single Market is a dynamic concept. Its content and the creation of a level playing field for economic actors in Europe are defined by appropriate EU policy objectives and guaranteed by European law. Objectives and rules are also adjusted in due course as a result of changing circumstances. If necessary and appropriate, suitable specific measures for the protection of workers should be adopted as soon as possible, making it clear that neither economic freedoms nor competition rules take precedence over fundamental social rights.

3.2. The current economic downturn affects us all economically and socially. It affects also the position of Europe as a world player. Unusual times may ask for unusual approaches and

solutions - e.g. sensitive State aid approved 'to remedy a serious disturbance in the economy of a Member State' ⁽⁹⁾ following 'emergency' guidance by the Commission ⁽¹⁰⁾ - but agreed framework conditions must not be jeopardised and each intervention should be adequately motivated.

3.3. National regulation is often designed to respond to all sorts of challenges in a national context. Also against that backdrop, continuing programmes related to lifting existing and potential legislative barriers between the Member States is necessary and should be encouraged.

3.4. Short term motivations, especially today, can easily undermine the political willingness to act accordingly. Open or hidden protectionism lies in wait. A clear plea to carry on what has been set in motion regarding legislative barriers is all the more needed. The better we pave the way now, the more resilient the European economy will be later on.

3.5. The current situation requires undoubtedly invigorated efforts to define transparent new framework conditions in the field of finance and energy.

3.5.1. In the ongoing financial crisis, national states have regained ground as central players in the economic system by providing significant 'emergency' aid to major financial institutions. Besides the potential impact on public finances, this approach may lead to distortions of competition, if State aid rules are not respected ⁽¹¹⁾ and put the more virtuous banks at a disadvantage.

3.5.2. While the EESC does not question the need for a prompt intervention in these exceptional circumstances, it is important to closely monitor ⁽¹²⁾ the evolution of the situation in order to safeguard the present cohesiveness, the rule of law, and the level of competition within the European market, all factors that are crucial for citizens and the economy.

⁽⁶⁾ See in this context the recent illustrative brochure 'When will it really be 1992?' by the Dutch employers' federations (VNO – NCW, MKB – published in December 2008). 1992 was at that time announced as the year of the completion of the Internal Market.

⁽⁷⁾ OJ C 228, 22.9.2009, p. 14.

⁽⁸⁾ See EESC opinion on 'Identification of outstanding barriers to mobility in the internal labour market', OJ C 228, 22.9.2009, p. 14, point 1.5.

⁽⁹⁾ See Article 87.3 (b) of the EC Treaty. This is a deliberate switch of legal basis from Article 87.3 (c) which is usually applied. It gives more room for financial support to the Member States and may lead to distortions. Hence, 'these deliberate, authorised distortions must be constantly and closely monitored by the Commission, and corrected as soon as the economic situation returns to normal', see opinion OJ C 228, 22.9.2009, p. 47.

⁽¹⁰⁾ OJ C 16, 22.1.2009, p. 1.

⁽¹¹⁾ OJ C 270, 25.10.2008, p. 8, OJ C 10, 15.1.2009, p. 2, OJ C 72, 26.3.2009, p. 1.

⁽¹²⁾ 'Monitor' is used here, and also in 4.2.1 and 4.2.6.2 in general terms without detailed definition of the role and mandate of the Commission. These vary according to the legal instruments used in concrete cases.

3.5.3. New framework conditions and legal provisions are needed. They have to focus on a European – or at least at European level tightly coordinated – surveillance of the banking sector, on indispensable regulation, and on actually diverging policies vis-à-vis banks ⁽¹³⁾. The EESC stresses the need of better regulation and control of the financial sector as proposed by the *de Larosière Report* on behalf of the Commission under the Czech Presidency ⁽¹⁴⁾. European supervision should, besides the banking sector, also include the insurance sector.

3.5.4. The forthcoming discussion on the legal financial architecture must also take as a strategic goal a trustworthy framework for the future resilience of the European economy at large. This broader perspective is so far underexposed.

3.5.5. Energy as a core raw material for all society can be in many respects – prices, public intervention, degree of liberalisation, competition, and others – a vast source of (unwanted) legal barriers which impede a true level playing field with possibly negative effects in other industrial sectors. The lifting of such structural and legal barriers to internal trade and investment should be a very important motivation in creating a common market for energy.

3.6. The Open Method of Coordination (OMC) ⁽¹⁵⁾ has aroused high expectations regarding the possibility of coordinating national actions. Such soft approach leaves much room to the Member States, additional source for legal barriers. A more structured approach would be welcome.

3.7. In this respect an important subject for discussion is whether in specific cases EU-directives or regulations should be chosen as the most appropriate legal base for harmonisation. Equally, the EESC stresses that a further promotion of standardisation resulting, among others, in a transparent environment and improvement of interoperability is in many cases most profitable.

3.8. Barriers to a competitive environment in Europe are manifold. They can be essentially grouped into various categories which have to be tackled in their own way:

3.8.1. A first category includes simply existing obstacles facing both citizens and companies that wish to operate in another Member State. This type of barriers can originate from national legislation, regulations or administrative procedures that do not depend on EU legislation and its transposition *per se*, and are thus difficult to predict *ex ante* by a business planning to operate trans-border.

3.8.2. European integration does not necessarily lead to a reduction of national rules, in many cases quite the contrary. Very often, such (additional) national rules cause supplementary barriers. Moreover, in the actual economic situation special legal provisions can easily have a protectionist effect.

3.8.3. Another type of barrier can derive from existing initiatives such as one-stop-shops for businesses, which are already in place, but do not fully function as expected. This can be caused by a lack of adequate resources or by other types of problems, such as the availability of information only in the language of the country concerned.

3.8.4. A fourth type of barrier is constituted by desirable initiatives to create a level playing field, but which are either not undertaken or incompletely carried out. This type of barrier flows from insufficiently respecting European legislation or regulations by Member States ⁽¹⁶⁾.

3.8.5. Specific barriers to be mentioned are, amongst others, caused by the split between Eurozone Members and the other Member States, obligatory working languages in Member States and diverging tax regimes and tax bases.

3.9. A number of the above mentioned barriers are a by-product of the features of national administrative and legislative systems. That should lead to a strong emphasis on convergence in the treatment of trans-border problems.

3.10. Specific financial stimulus can, if not properly coordinated and in particular respecting the EU state aid rules, create new barriers. The EESC insists that in all cases the *acquis communautaire* – regulations as well as instruments – is to be respected.

3.11. Dedicated networks between EU and national administrations such as the Enterprise Europe Network, SOLVIT, the European Competition Network, and on-line platforms to exchange best practices, focussed on lifting undue barriers, are very welcome.

3.12. The lack of cooperation and mutual information between national administrations on the implementation of EU law is a very serious problem. In this context, the EESC is currently preparing an opinion on the Internal Market Information (IMI) initiative ⁽¹⁷⁾.

⁽¹³⁾ OJ C 224, 30.8.2008, p. 11.

⁽¹⁴⁾ See the *de Larosière Report* on financial supervision in the EU, 25 February 2009.

⁽¹⁵⁾ This method provides a framework for cooperation between EU Member States in the policy areas that fall within their competences, such as employment, social protection, social inclusion, education, youth and training. It is a typically intergovernmental policy tool. For further details: http://europa.eu/scadplus/glossarty/open_method_coordination_en.htm.

⁽¹⁶⁾ OJ C 325, 30.12.2006, p. 3.

⁽¹⁷⁾ See COM(2008) 703, and also OJ C 325, 30.12.2006, p. 3.

3.13. Moreover, increasing communication between national administrations should provide an additional check on potential (hidden) barriers resulting from national rules and obligations in specific areas.

3.14. In a similar vein, training and preparation of national civil servants dealing with EU legislation is key. That requires adequate resources for keeping skills up-to-date. This is particularly relevant in view of the increased emphasis on and use of evidence-based policy-making tools, such as impact assessments, and the measurement of administrative burdens.

3.15. The EESC has argued in several Opinions that an effective monitoring of the application of EU rules and agreements by the Commission in the Member States is indispensable.

3.16. For good governance of the Single Market, besides governmental actors, business and business organisations, social partners and organised civil society must do their share and feel co-responsible and accountable in promoting framework conditions for a level playing field in Europe. Instruments are: practical experience, exchanges of good practices, self-regulation, social dialogues at various levels, communication and information, and others.

4. Specific issues

4.1. Better Lawmaking

4.1.1. Better lawmaking is a crucial strategy for a resilient business environment. The Better Lawmaking agenda as defined in 2.7 is the core driver of this strategy.

4.1.2. Better lawmaking has to do with both the selection of topics to be harmonised at EU level and the method of lawmaking, e.g. via regulations, detailed directives or framework directives. Legal barriers between Member States can remain intact when directives are too ambiguous or prescribe only minimum norms.

4.1.3. On various occasions the EESC welcomed the focused overhaul of Community legislation by the Commission. Such an overhaul may add to adjustments to changing circumstances and to the abolition of existing legal barriers.

4.1.4. It must be acknowledged that certain topics are not suitable to be harmonised due to diverging legislative frameworks in Member States. In those cases potential legal barriers have to be specifically examined.

4.1.5. It is worth noting that the European Commission is successful in carrying out impact assessments whereas there remain serious deficiencies at Member States level in this field. This undermines the level playing field for business and for mobility at large.

4.1.6. Impact assessments are a very useful tool, both in fighting overregulation and in view of new rules. They entail a growing awareness in the Commission, the European Parliament and the Council. The EESC insists that the Council and the EP respect impact assessments and their updates during the whole legislative process

4.1.7. Impact assessments require an overall and integral approach not only to technical aspects of goods and services, but including also by-effects such as environmental and consumer interests. On the other hand, in environmental and consumer legislation, the need for a competitive industry should always be taken into consideration. In successful impact assessments stakeholders of all kinds have their place.

4.2. Implementation and enforcement ⁽¹⁸⁾

4.2.1. A correct and timely implementation and enforcement on the ground is an inextricable aspect of better lawmaking. Practical evidence shows that both unsatisfactory and excessive implementation (goldplating and cherry picking) are a main source of legal barriers, transborder problems and protectionism. Therefore the resources and tools needed to monitor and enforce EU legislation at the Member State level should also be carefully appraised.

4.2.2. Subsidiarity must be respected. However, this should not be a one-sided track. The EU has to abstain from interference in national procedures and administrative systems, indeed. But the Treaty requires also that the EU safeguards the goals of the Union and guarantees the functioning of the market according to the agreed rules. Problems that businesses, other organisations and citizens experience on the ground can only be solved satisfactorily under that condition.

4.2.3. In other words, the relation between Community rules and subsidiarity is a subtle one. The EESC is of the opinion that in the process of deepening integration, the right balance between the necessary respect for national administrative traditions and systems, and EU monitoring should be defined and applied according to the agreed objectives.

4.2.4. In this respect a special case in point are the local and regional entities which in a number of Member States are responsible for the implementation of EU law. These entities have to take EU law correctly into account.

⁽¹⁸⁾ OJ C 24, 31.1.2006, p. 52.

4.2.5. Another vast and important field is public procurement. Notwithstanding the implementation of the directives of 2004, traditional practices and administrative procedures, including legal barriers that inhibit cross-border competition in public contracts are still in place. Public procurement requires continuous attention while respecting collective bargaining between social partners.

4.2.6. The EESC considers that governance in view of lifting legislative barriers in the EU has to be improved considerably:

4.2.6.1. Existing feedback on the practical application of legislation is still unsatisfactory ⁽¹⁹⁾.

4.2.6.2. As an indispensable part of the rule of law the monitoring by the Commission should systematically be extended to implementation and enforcement of EU-law. This issue requires special attention and political debate.

4.2.6.3. Besides, it is desirable that evaluation networks among national administrations ⁽²⁰⁾ are introduced where they do not yet exist and that administrative skills in Member States are fostered.

4.2.6.4. In the same perspective, the EESC fully endorses the recent establishment of the Subsidiarity Monitoring Network by the Committee of the Regions in order to facilitate the exchange of information between the EU and local and regional entities.

4.2.6.5. The Commission must guarantee that national regulators apply EU rules similarly in a coordinated way.

4.2.6.6. The desired governance mentioned in 4.2.6. must also be applied equally in the case of non-legal barriers which often arise from existing administrative practices.

4.3. *The Single Market for Services*

4.3.1. Europe is at a turning point as regards the Internal Market for Services. The state of transposition and implementation of the Services Directive, foreseen for the end of 2009, must be closely followed to ensure that no new barriers and discrepancies are added at the national level. However, there should be no lowering of social, quality, environmental and safety standards here. The implementation of the EU Services Directive requires that administrative staff be properly trained (languages, intercultural skills).

⁽¹⁹⁾ The European Commission proposes a number of information sources including contact points for complaints such as the Europe Direct call centre, Eurojus, the national SOLVIT centres, the European Consumer Centres, the Enterprise Europe Network and the Your Europe portal.

⁽²⁰⁾ The EESC draws the attention to the Internal Market Information system (IMI), which the Commission developed to facilitate mutual information between national administrations on EU legislation.

4.3.1.1. The current approach taken by the European Commission to support the Directive's transposition at the national level appears to be effective and should be further encouraged.

4.3.2. As regards specific aspects of the Services Directive, the freedom of establishment and trans-border activities is a key ingredient to create the right environment for European business ⁽²¹⁾.

4.3.2.1. Feedback from concerned stakeholders seems to suggest that despite the existence of ad hoc measures facilitating the establishment of business in another Member State, there is still room for improvement.

4.3.3. Another issue that needs addressing is the approach to be taken in the areas that are not currently covered by the Services Directive.

4.3.3.1. Some sectors such as financial services, electronic communications, and audiovisual services are regulated separately, while other areas are not regulated at the EU level.

4.3.3.2. The latter can exhibit significant differences across Member States and thus generate potential unexpected barriers. Hence, there is a need for increased coordination among national governments to avoid taking conflicting approaches on specific issues directly affecting the EU's business environment.

4.3.4. Moreover, it has to be stressed that nowadays the line between goods and services is increasingly blurred. Hence, a correct implementation of freedom of establishment and trans-border activities in services will also be highly beneficial for the manufacturing industry.

4.3.4.1. Even in the presence of a full and correct transposition of the Services directive, European institutions and Member States should keep the sector under close watch to address pending issues and prevent new obstacles from emerging. As most progress in creating a level playing field has been achieved in the market for goods, lessons learned in that field can offer valuable insights on how it is best to proceed for tackling remaining barriers in services.

4.4. *The New Approach, the 2008 Goods Package and standardisation*

4.4.1. The New Approach to technical harmonisation and standards ⁽²²⁾ and its ongoing review is one of the most tangible successes in lifting barriers to competitiveness in the Internal Market.

⁽²¹⁾ OJ C 221, 8.9.2005, p. 11.

⁽²²⁾ Launched in 1985, the New Approach to technical harmonisation and standards constitutes a turning point for EU legislation on the Internal Market. It was adopted as a response to the complex legislative environment resulting from a set of detailed rules put in place to create and complete the Internal Market for goods.

4.4.2. Under current circumstances, it is of utmost importance to maintain the method of the New Approach and to avoid undoing achieved results through protectionist moves.

4.4.3. It is also worth taking stock of the application and use of the principle of mutual recognition. Particular consideration should be given here to the extent to which sustainable development from an economic, social and environmental point of view could be guaranteed. Furthermore it is essential to monitor the real impact of the 2008 'Goods Package', which intends to ensure that mutual recognition is effective.

4.4.4. Another field is standardisation that is normally based on voluntary measures and not on legislation. The clear contribution of standardization to European economic integration draws attention to pending issues that still hamper efforts in the Internal Market as well as the EU's competitive position on the global scene.

4.4.5. In other instances, it is the absence of standards in a given field that provokes (legal) barriers, such as in public procurement where a lack of consensus among industry players has a negative impact on competition in the EU. This is for instance evident when companies initiate a 'battle of the standards' to establish or defend a monopolistic position on the market, at the detriment of competition and consumers' choice. In those instances, the possibility of intervening at EU level to facilitate an agreement among the concerned parties should be foreseen.

4.4.6. Hence, the EESC stresses the need to increase standardisation efforts in certain areas such as public procurement, IT and communication services. However, to avoid distortions in the process, it is crucial to take all relevant stakeholders on board when establishing a standard. In this respect, ongoing initiatives such as the work of NORMAPME on standardisation and SMEs should be further encouraged.

4.5. *The reduction of unjustified administrative burdens*

4.5.1. A flagship policy of the European Commission is the 2007 Action Programme on measuring administrative burdens to simplify the regulatory environment for business.

4.5.1.1. Using the Standard Cost Model, originally adopted in the Netherlands, the EU is currently finalising the measurement of the burdens generated by EU legislation ⁽²³⁾.

⁽²³⁾ This approach – often labelled as the fight against 'red tape' – aims at identifying and measuring all administrative burdens for firms deriving from EU legislation, in order to find options for reducing 25 % of these burdens.

4.5.1.2. The appointment of the Stoiber Group - a High Level Group of 15 experts - to put forward concrete reduction proposals is an additional step towards the concretisation of this initiative.

4.5.2. The programme for the reduction of administrative burdens is increasingly gaining ground at national level and most Member States have already committed to measure and reduce administrative burdens at home.

4.5.2.1. At this point, it is absolutely crucial to coordinate national measurement and reduction strategies across Europe and between the EU and national level for the success of the exercise.

4.6. *The recognition of professional qualifications*

4.6.1. To make the Internal Market function effectively, in addition to the free traffic of goods and services, a free movement of professionals has to be endorsed. In line with decision taken in the Research Council as regards the mobility of researchers, a wider application to other professionals is needed.

4.6.2. The recognition of professional qualifications within the EU is a complex matter that goes beyond the issue of legal barriers; it needs to be addressed because in several respects it is directly linked to the problem of (hidden) barriers in the Internal Market.

4.6.3. Recently, there has been a major breakthrough in this field with the establishment of the European qualifications framework, the so-called fifth freedom, i.e. the mobility of researchers. The EESC welcomes this significant step forward.

4.7. *Other initiatives*

4.7.1. Due to the length and cost of traditional judicial procedures, alternative dispute settlement mechanisms make a valuable contribution to solving conflicts arising from cross-border activities.

4.7.1.1. However, little is known on the state of play as regards the use and access to these tools among business and citizens. It is a pity that non-binding recommendations of the Commission in this field are only applied in a limited number of Member States.

4.7.1.2. It would be worth exploring the matter more in depth and see how it can be supported and promoted on the ground as an additional means to reduce existing barriers and problems.

4.7.2. When it functions effectively, the SOLVIT network is rightly praised for ability to quickly resolve and prevent additional problems from emerging. Each Member State should ensure that the resources and staffing committed to national Centres adequately meet existing needs ⁽²⁴⁾ and that interested parties are aware of the network's existence and functions.

4.7.3. The role of the Enterprise Europe Network (now replacing the former Network of Euro Info Centres - EICs) is also key to support, in particular SMEs, and improve the environment in which they operate. As a matter of fact, the Enterprise Europe Network often represents the face of Europe for operators at the local level.

4.7.3.1. Previous studies ⁽²⁵⁾ found that while the former network of EICs generally provide quality services, the feedback

mechanisms between the Centres and the European Commission do not always function well. This aspect should be appraised again to take adequate intervention where the problem persists.

4.7.4. Complaints about legal barriers can also be addressed directly to the European Commission. This additional communication channel should be adequately publicised.

4.7.5. The current state of self- and co-regulation initiatives has also an impact on the environment of business and they can contribute to lift existing barriers. It is desirable to deepen the knowledge about self- and co-regulation in order to disseminate best practices ⁽²⁶⁾.

Brussels, 14 May 2009.

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

⁽²⁴⁾ OJ C 77, 31.3.2009, p. 15.

⁽²⁵⁾ Renda A., Schrefler L. and Von Dewall F. (2006), Ex post evaluation of the MAP 2001-2005 initiative and suggestions for the CIP 2007-2013, CEPS Studies.

⁽²⁶⁾ The EESC has set up a database dedicated to European self- and co-regulation initiatives together with the Secretariat General of the European Commission:
<http://eesc.europa.eu/self-and-coregulation/index.asp>.

APPENDIX

**to the opinion
of the European Economic and Social Committee**

The following Section Opinion text was rejected in favour of an amendment adopted by the assembly but obtained at least one-quarter of the votes cast:

Point 3.1

The Single Market is a dynamic concept. Its content and the creation of a level playing field for economic actors in Europe are defined by appropriate EU policy objectives and guaranteed by European law. Objectives and rules are also adjusted in due course as a result of changing circumstances.'

Reason

cf. EESC Opinion SOC/315.

Result

Amendment adopted by 125 votes to 76, with nine abstentions.

Opinion of the European Economic and Social Committee on 'Education and training needs for the carbon-free energy society'

(Exploratory opinion)

(2009/C 277/03)

Rapporteur: **Mr IOZIA**

By letter of 23 October 2008, the European Commission asked the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an exploratory opinion on

Education and training needs for the carbon-free energy society.

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 15 April 2009. The rapporteur was Mr IOZIA.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May), the European Economic and Social Committee adopted the following opinion by 161 votes to 7 with 5 abstentions.

1. Conclusions and recommendations

1.1. The Committee recognises that education across all age groups and training for technicians and graduates has a crucial role to play in moving towards a zero-emissions society. Countering progressive global warming has been acknowledged as a priority by governments and the scientific community. It is incumbent on the most developed countries, which are responsible for the bulk of emissions, to make the biggest strides and support developing countries in pursuing environmentally and socially sustainable development policies.

1.2. Despite solemn commitments (2003 Kiev Declaration, UN Decade of education for sustainable development 2005-2014), government and local authority initiatives on education and training have been totally insufficient, with the exception of a few significant examples.

1.3. The European Commission is committed to promoting energy efficiency in the Member States, cutting consumption, reducing the energy dependency on third countries, building trans-national grid interconnections – by simplifying connection protocols – and laboriously constructing a unified EU position so as to speak with one voice. While there has been notable progress in recent years, genuine civil society involvement has been lacking and only quite modest progress has been made in education and training. The Committee welcomes the move back to a dedicated energy DG and hopes to see more effective coordination of EU action to combat climate change, under the responsibility of a single authority.

1.4. Several countries have seen a proliferation of initiatives aimed at disseminating information and raising awareness, largely on the initiative of NGOs devoted to this specific goal. At the hearing organised by the Committee, attended by the Energy Commissioner, Andris Piebalgs, some of these experiences were presented, such as Terra Mileniul III, Eurec, the Collodi Foundation (Pinocchio could be an ideal character to endorse children's environmental education), Arene Ile-de-France and KITH (Kyoto in the home). Trade associations such as the EBC (European Builders Confederation), social housing bodies including CECODHAS and fuel cell manufacturers, such as Fuel Cell Europe, are also making an important contribution to the dissemination of information on the potential offered by the market.

1.5. The Committee is convinced that more and better efforts need to be made by means of a wide range of key players in society:

- Educators: we need to entrust teachers with increasing the environmental knowledge and awareness of the younger generation. Environmental education should not only be on the school curriculum, but should also be an element of lifelong learning studies (L.L.L.).
- Local authority administrators: who can influence both land-use decisions and school programmes for the younger generation, integrating into their administrative programmes the elements needed to create a low-carbon society. The prominence given to the European *Covenant of Mayors* initiative in which over 300 mayors have undertaken to support energy-saving and efficiency in their areas demonstrates the importance and potential of action at this level.

- Business (particularly SME) associations: all regional associations should offer a service to companies to facilitate information and training projects. In Spain, there have been successful trials of 'mobile classrooms', i.e. specially equipped buses which companies can hire to deliver training courses at the company's premises. The project, jointly operated by companies and involving the council of Leon y Castilla has trained 5 600 workers in the renewable energy sector.
- Trade union organisations: The TUC, for example, has launched a pilot project called *Green Workplaces*, which has already delivered significant results by signing consumption- and emissions-cutting agreements with certain businesses and institutions. Incorporating energy efficiency programmes into collective bargaining, with shared objectives to be rewarded if achieved, could become a smart way of increasing revenue and profit.
- NGOs: the expertise of environmental organisations, coupled with the teaching experience of teachers and scientists, constitutes a crucial added value. Courses for teachers, companies and public administrators could be organised in agreement with local authorities.
- Architects and building engineers, who have a huge contribution to make, both in terms of new buildings and in upgrading the housing stock.
- Public authorities: increasing the share of *green public procurement*, i.e. public contracts with ever more exacting environmental criteria, could help to steer the market in the right direction.
- Member State governments, by following through on their solemn commitments with substantial action on supporting environmental education.

1.6. Investing in low greenhouse gas emission (GHG) energy is a win-win situation. Several million new high-quality jobs will be needed to achieve the goals of containing emissions, reducing dependency on external suppliers, developing innovative technologies and research.

1.7. As it is not possible to stipulate the content of curricula at EU level, it would be worth designing a quality benchmarking system.

1.8. Developing skills and getting children interested in environmental activities, including outside school, whilst allowing them to choose the initiatives, will lead to a change in lifestyles and also a rediscovery of the value of social interaction. By turning off the TV, children could rediscover childhood games with their friends.

1.9. The majority of actions to be taken fall under the responsibility of the Member States, local authorities, institutions, the productive and social systems and more generally, the public. There could, however, be an important role for the EU in encouraging and promoting the full range of necessary measures.

1.10. Consumer education: Directive 2006/32 needs to be strengthened and extended both in general terms and specifically as regards its provisions on disseminating information to consumers on the energy efficiency of various goods and services, to enable them to be *responsible citizens*. The Commission should include within documentation detailing the national energy plans information on the education, training and information initiatives planned by each Member State.

1.11. Importance of the construction sector: the new directive proposed by the Commission will enhance the energy efficiency of the building stock. The Commission could launch an EU programme to encourage and incentivise radical advances in the up-skilling of technicians.

1.12. Public procurement: this can have a huge influence on enhancing energy efficiency. Significant and exacting energy efficiency requirements should be included in all construction contracts, so that the energy-saving criterion becomes one of the principal elements on which to assess such tenders. Specific training should be envisaged for the public officials concerned.

1.13. In view of the multidisciplinary nature of the issue, specific courses should be planned to train the trainers. The establishment of a European network of national clean-energy education forums, built upon the existing clean-energy organisations and initiatives, could provide a national information channel for suitable programmes and materials, and facilitate the integration of clean energy into school curricula. The Committee supports the establishment of this network.

2. Introduction

2.1. The conference of environment ministers meeting in Kiev in 2003 made the following solemn declaration: *'We recognize that education is a fundamental tool for environmental protection and sustainable development. [...] We invite all countries to integrate sustainable development into education systems at all levels, from pre-school to higher education [...], in order to promote education as a key agent for change'*.

2.2. In December 2002, the 57th session of the United Nations General Assembly, proclaimed the years 2005 to 2014 to be the United Nations Decade of Education for Sustainable Development, in cooperation with Unesco and other relevant organisations.

2.3. Commissioner Piebalgs has stated that: *'We have to develop a society that uses the earth's resources in a manner that ensures the long-term survival of future generations and to do so in a manner that provides us increasing health, peace and prosperity. This is a huge challenge; it will require major societal change; indeed, a third industrial revolution'*.

2.4. While the concentration of CO₂ in the atmosphere remained constant for thousands of years at 260 ppm, it is now close to 390 ppm, and this level is rising by about 2 ppm every year. If significant measures are not taken to contain emissions, by 2050 the level will reach 550 ppm. With that degree of concentration, international agencies and the IPCC believe that average global temperatures could rise by up to 6 °C during the twenty-first century.

2.5. Conscious of its own responsibility as one of the major polluters, Europe will come to the Copenhagen conference with its house in order, ready to obtain equally robust commitments from its major international partners. While the recent establishment of an energy DG was a very important step, it would be logical to bring climate change issues under one single authority.

2.6. Clearly, to attain the desired results, a general effort is needed from every single member of society, whilst educational measures are needed from school – or better still pre-school – age to raise awareness and bring people on board. The problem of global warming should be addressed alongside the more general issues of limited resources and sustainable development.

2.7. At the public hearing, the KITH representative had an effective line to round off his speech, paraphrasing John F. Kennedy: *'Ask not what our planet can do for you but what you can do for our planet'*. Such a change of mentality will be the key to the future of humanity.

3. Importance of education and training in a low-carbon society

3.1. The aim of a low-carbon society requires the rapid development of a network of infrastructure, particularly that which is aimed at 1) ensuring that the public is properly informed on issues regarding CO₂ emissions, 2) training a sufficient number of technicians at various levels, specialised in the new sector of carbon-free technology, and 3) investing in research and development in this field. Traditional patterns of behaviour are often a barrier to practices that are more compatible with reducing CO₂. For this reason, training measures must be introduced here as well. Furthermore, technical and scientific education is necessary for the general public; training of technicians is obviously a prerequisite so that development of the sector is not stifled by a lack of suitably qualified technicians. Among the low carbon technologies in

which it will be necessary to train a sufficient number of technicians and engineers, we should not overlook the nuclear sector, which will remain for many years to come a low-GHG-emission energy source. In this sector it is vitally important that the public receive full, transparent information on the advantages and disadvantages of nuclear power.

3.2. Initiatives in which children are encouraged through play to develop an awareness of environmental protection, by means of mini competitions based on the environmental impact of domestic activities are particularly useful. The children bring to school a list of actions carried out by the family day-to-day, and learn to quantify the total savings made in terms of energy or CO₂ emissions by making a number of small everyday gestures. They compete amongst themselves, whilst involving, informing and increasing the awareness of their parents as regards good practice.

3.3. This education must begin in primary schools. This is undoubtedly useful in instilling awareness of environmental problems in young people, together with new energy-saving patterns of behaviour. However, this awareness should then be progressively built up to the highest technical level possible in all secondary schools, particularly schools providing a technical/scientific education, with the dual aim of moulding a more knowledgeable society and providing many young people with a specific grounding that might steer them to choose a profession related to curbing CO₂ emissions.

3.4. Europe is in the midst of a global economic crisis. One possible way out of it would be to develop high-tech sectors in the field of environmental protection. Reducing CO₂ emissions is clearly one such example, being applicable in numerous key sectors of advanced economies, such as the car industry, public passenger and goods transport, construction and even electricity production, which is often associated with possible savings in terms of greater energy efficiency.

3.5. The speed with which European industry will be able to move towards the new technologies, compared to other players in the world economy, could be crucial to Europe's economic future.

3.6. While several EU countries are world leaders in a range of technologies linked to energy saving and low CO₂ emissions, recent investments made in other parts of the world (e.g. by the US government in the car industry) could quickly put Europe in a very dangerous position on the back foot.

3.7. In any case, there is a need to reduce the sharp differences that exist between the Member States both in terms of production and innovation capacity in this field and as regards the quality of secondary and tertiary education in these sectors, whilst encouraging exchanges between Member States in high-tech training.

3.8. The difficulty in introducing harmonised teaching standards for environmental education at EU level should not stop us disseminating knowledge by tapping into the potential of the more advanced countries. A quality benchmarking system should be introduced to raise the average EU level.

3.9. The EU programmes ManagEnergy, Intelligent Energy Europe, Comenius and Leonardo da Vinci, geared variously towards training, advice and education, constitute important contributions to the development of a Europe that makes optimum use of its human and environmental resources.

3.10. The establishment of a European network of national clean-energy education forums, built upon the existing clean-energy organisations and initiatives, could provide a national information channel to connect educators with suitable programmes and materials, and facilitate the integration of clean energy and the environment into national curricula.

3.11. The EU should therefore move quickly to develop the low-carbon technology sector, in a consistent and coordinated manner. Crucial to this is the training of a critical mass of experts capable of fostering the development of the sector in the coming decades.

3.12. With the breaking down of language barriers, education and training in secondary schools and universities can and should be coordinated at EU level. There are already examples in Europe of cooperation between universities: the EUREC agency, which runs a European Masters in renewable energy, in conjunction with universities in Germany, France, the UK, Greece and Spain, and the International Masters in technology for reducing greenhouse gas emissions, jointly run by the University of Perugia (Italy), Liège University (Belgium) and Malardalen University in Vasteras, Sweden (www.masterghg.unipg.it). These schemes should be extended and funded by the EU, and geared towards specific subjects, as part of a coordinated plan to train a new generation of highly-skilled technicians in all of the key economic sectors.

3.13. At university level, the advent of specific degree and diploma courses in sustainable development (not only CO₂ issues, but energy-saving, the production of clean energy, etc.) should be accompanied by a substantial increase in funding for research in the field. Indeed, an advanced standard of teaching is not possible unless the teachers are involved in international research projects in their field.

4. Education: examples to follow

4.1. There are some excellent examples in Europe and worldwide of educational initiatives aimed at fostering environmental protection and in some cases, reducing CO₂ emissions.

4.2. The Jackson School of Geosciences within the University of Texas at Austin has for several years been running a cooperation programme with primary and secondary schools in Texas, known as GK-12. Public money is used to fund courses for teachers and students (the teachers also receive a small financial incentive of USD 4 000 per year).

4.3. In Europe there have been many similar initiatives. For example, the British government has a website encouraging people to calculate their carbon footprint and giving advice on ways to reduce it (<http://actonco2.direct.gov.uk/index.html>).

4.4. The Île de France Regional Council recently (2007) organised and funded an integrated project on environmental education and sustainable development (EEDD), aimed at encouraging specific educational initiatives and bringing together associations with a view to coordinating initiatives within the region.

4.5. The EU's Young Energy Savers project will produce a series of fun and engaging cartoons, directed by leading animators, showing children that, just like the cartoon characters, they too can make small but effective efforts to reduce their carbon footprint.

4.6. The school, the home and the workplace are the best places to target educational measures to increase knowledge and awareness. Only by promoting mass behavioural and lifestyle changes will it be possible to meet the ambitious but necessary targets set.

4.7. Mechanisms and instruments should be created to enable young people to pursue their own environmental activities outside school. Young people have innovative skills and are enthusiastic about change, but often wish to act independently. Many young people do not engage with activities devised by adults, as their minds are stimulated in different ways.

5. Professional training for technicians and high-level professionals

5.1. This will create millions of new jobs in Europe and worldwide.

5.2. A report was published in September 2008 by the UNEP, ILO, IOE and ITUC entitled *Green Jobs: Towards decent work in a sustainable, low-carbon world*. As regards the EU, this fascinating study projects that between 950 000 and 1,7 million jobs could be created by 2010 and between 1,4 million and 2,5 million jobs by 2020, depending on whether a standard or advanced strategy is adopted. Between 60 % and 70 % of these jobs would be in the renewables industry and at least a third would be high-skilled jobs.

5.3. Taking into account all of the technology and activity involved in energy-efficiency and saving; waste management and recycling; water provision and its efficient management; and sustainable, innovative transport, the investment required, which could generate a significant number of jobs, could run to hundreds of billions of dollars.

5.4. It is clear from the foregoing that scientific and professional training has a central role to play in preparing workers for the future.

5.5. To stem the downward trend – despite current national budgetary difficulties – major financial aid is needed to foster *green jobs*. Substantial public incentives are needed to promote training courses for young people and professional development courses for existing workers.

5.6. Industries, trade unions, non-governmental organisations and public authorities should work together, holding dedicated national conferences, to find the solutions best suited to national conditions to foster educational initiatives and professional training in the most innovative sectors and specifically, in a low-carbon society.

5.7. During the public hearing, emphasis was placed on the importance – particularly as regards public administration – of information activities and technical support targeting managers and public officials, aimed at helping them achieve more effective

work organisation, be aware of the availability of low carbon products and technologies, and establish a reasonable level of rules for *green procurement*.

5.8. In the construction industry, significant energy savings are achievable, with a consequent reduction of emissions. Buildings account for 40 % of energy use, of which 22 % could be saved. Some 41,7 % of workers (with considerable variations from country to country) have low-level qualifications, and training them would be prohibitively costly for small companies. This is why we should encourage initiatives such as the mobile classroom project in Spain, in which workers can receive training in eco-friendly building technologies without having to be away from the workplace for long periods. Social housing bodies have promoted a series of initiatives aimed at informing housing administrators and users. The *Energy Ambassadors* project involves training staff at local authorities, NGOs and social organisations to become so-called *energy ambassadors*, who initially act as energy contact persons within their own organisation and then go on to disseminate their knowledge to the public.

5.9. One of the professions that can have a positive impact on emissions is architecture, in which a new cultural approach is gaining ground: Rather than basing design on the idea of satisfying artificial lifestyles heavily based on the use of machines and electricity, there is a move towards adapting lifestyles and living environments to the requirements dictated by natural rhythms. It is also important to foster specific technical knowledge on the features of innovative materials that enable energy savings.

Brussels, 13 May 2009.

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

Opinion of the European Economic and Social Committee on 'The Greening of Maritime Transport and Inland Waterway Transport'

(Exploratory opinion)

(2009/C 277/04)

Rapporteur: **Dr BREDIMA**

By letter of 3 November 2008, the European Commission asked the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an exploratory opinion on

The Greening of Maritime Transport and Inland Waterway Transport.

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 15 April 2009. The rapporteur was Dr BREDIMA.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May), the European Economic and Social Committee adopted the following opinion by 182 votes to 3 with 3 abstentions.

1. Conclusions

1.1. This exploratory opinion examines 'greening' of the environment of oceans, as well as rivers, whilst preserving the competitiveness of the transport industry, in line with the Lisbon Strategy. 'Greening' of the environment of oceans and rivers can be achieved through a holistic policy promoting 'green' investment and creating 'green employment'. The EESC maintains that green economy is not a luxury. It, therefore, welcomes such an approach.

1.2. Maritime transport is the backbone of globalisation carrying some 90 % of world trade and 90 % of the EU's external trade and 45 % of the intra-EU trade (in terms of volume). Inland navigation plays an important role for the European internal transport as the modal share of river transport accounts for 5,3 % of the total inland transport in the EU. Both modes are competitive, sustainable and environmentally friendly.

1.3. The EESC urges the Commission to make a distinction in future referrals and to consider inland navigation as an inland transport mode.

1.4. The EESC believes that the environmental performance of maritime transport and inland navigation should be seen against the performance of EU land transport and the pollution originating from land-based sources. It reiterates that EU measures concerning environmental pollution should be applicable to leisure boats and, if possible, naval vessels as well. Such measures should be applicable to all ships (irrespective of flag), as practical and cost effective as possible. They must also be based on a sound environmental, technical and socio-economic assessment.

1.5. In the European Year of Creativity and Innovation (2009) the EESC believes that the EU industry should become the leader in innovative research of green technologies for ship and port design and operations. The European Commission should examine the commercialisation of European green technologies in other parts of the world. This initiative will have the additional

benefit of creating more employment in the EU ('green jobs'). Intelligent investments in greener systems for ships, energy efficiency and ports will speed up recovery from the world economic crisis.

1.6. The EESC suggests that a balance between legislation and industry initiatives can achieve better results. It urges the Commission to examine how it can capitalise on best practices at EU level. 'Going green' to preserve the environment is good business and can generate more jobs. There is no conflict between sustainable maritime and inland waterways transport and profitability.

1.7. The EESC could serve as the official 'communicator' of new green policies to the organised European civil society towards achieving the development of a 'green culture'. It can be the European forum raising the environmental awareness of the organised civil society. Until we achieve the 'green ship', the 'green fuel' and 'the green port', we should change the way we think and act on a daily basis and acquire a more ecological conscience.

1.8. In terms of CO₂ emissions maritime and inland navigation transport are recognised as the most efficient form of commercial transport. Promoting inland navigation can assist the main environmental EU policy objectives. Its more extensive use is key to reducing CO₂ emissions of the transport sector.

1.9. Maritime transport will continue to grow in the foreseeable future to service the ever growing world trade, and thus its emissions. Consequently, its total emissions are bound to increase. Significant reductions can be achieved via an array of technical and operational measures.

1.10. In considering emission trading schemes (ETS) for maritime transport the competitiveness of the European shipping industry in the global market should not be adversely affected. A global scheme would be much more effective in reducing CO₂ emissions from international shipping than an EU scheme or an other regional scheme.

1.11. The application of ETS is considerably more complicated in the maritime transport than for aviation, and in particular on tramp shipping. A levy on carbon (bunker fuels), or some other form of levy, could be as 'effective' and far simpler to operate in maritime transport if applied internationally.

1.12. Standardisation of education and training concepts for crews of inland navigation vessels, comparable to standards in maritime transport will be beneficial, in particular for the transport of dangerous goods.

2. Recommendations

2.1. Although maritime and inland waterways transport are competitive, sustainable and environmentally friendly modes of transport, the Commission should examine the potential for further improvements through synergies between regulatory actions and industry initiatives.

2.2. The EESC notices that there is a need to improve the infrastructure of ports and canals so as to accommodate larger ships, eliminate port congestion and maximise quick port turn-around.

2.3. Member States individually and collectively should have adequate arrangements in place in terms of preparedness, means and facilities to respond, combat and mitigate the effects of pollution in the EU waters.

2.4. The EESC urges the Commission to study the industry and other environmental initiatives and examine how it can capitalise on these best practices reducing air emissions from vessels at EU level.

2.5. In order to reach the 'green ship' and 'green port' of the future, the Commission should support the EU industry to become the leader in innovative ship and port technology research.

2.6. The EESC calls on the Commission to examine commercialisation of European green technologies in other parts of the world. This initiative will have the additional benefit of creating more employment in EU countries ('green jobs').

2.7. The EESC proposes enhanced logistics such as shorter routes, fewer voyages with empty cargo holds/tanks (ballast voyages) and adjustments for optimised arrival times as a means of reducing ship emissions.

2.8. The EU must support the IMO efforts to provide global regulations for international shipping and to address the need for capacity building in the implementation of flag State responsibilities.

2.9. Most accidents in the transport sector are due to human error. The well-being of seafarers on board (living and working conditions) is a must. Therefore, every effort should be exerted in instilling a safety and corporate social culture.

2.10. The quality of marine fuels impacts human health. The EESC believes that for the industries involved should be an issue of corporate social responsibility to take voluntarily further steps to protect the environment and improve the quality of life for the society at large.

2.11. The expansion of the world liquefied natural gas (LNG) fleet poses significant challenges in terms of well trained and certified officers to man it. The shortage of qualified officers calls for actions to increase the levels of recruitment and training.

2.12. Activities and incidents in the high seas may impact EU waters. The EESC suggests the utilisation of the EMSA Pollution Preparedness and Response Service, its Stand-by Vessel Oil Recovery Service and its Satellite Monitoring and Surveillance Service. They offer enhanced capabilities of detection, prompt intervention and cleaning up actions. Appropriate funding of EMSA will reinforce its coordination capabilities.

2.13. Programmes of recruitment, education and training for inland navigation crews, in particular in the field of transportation of dangerous goods, should be developed to attract youngsters and maintain the necessary skills in the sector.

3. General Introduction

3.1. This exploratory opinion is based on two axes: 'How to green the environment of oceans as well as rivers whilst preserving the competitiveness of the transport industry'. The question is posed in the context of the Communications on 'Greening Transport' ⁽¹⁾ and on 'Strategy for the internalisation of external costs' ⁽²⁾. The package contains a strategy which aims at ensuring that prices of transport better reflect their real cost to society, so that environmental damage and congestion can gradually be reduced in a way that boosts the efficiency of transport and, the economy as a whole. These initiatives, which support the environmental dimension in line with the Lisbon/Gothenburg Strategy are welcomed by the EESC.

3.2. For inland navigation the strategy announces the internalisation of external costs. For maritime transport, where internalisation has yet to begin, it commits the European Commission to act in 2009 if the International Maritime Organisation (IMO) has not agreed concrete measures to reduce greenhouse gas emissions by then. For maritime transport, the strategy will be developed in line with the new European Integrated Maritime Policy.

⁽¹⁾ COM(2008) 433 final, SEC(2008)2206.

⁽²⁾ COM(2008) 435 final.

3.3. The European Parliament and European Council have stressed the importance of a sustainable transport policy, particularly in the context of combating climate change. They maintain that transport will have to contribute to reducing greenhouse gases.

3.4. The EESC points out that maritime transport, including short-sea shipping, is a mode of transport that should be strictly distinguished from inland waterways from an economic, social, technical and nautical point of view. There are wide and crucial differences between the markets in which these modes operate, the social rules and circumstances that apply to them, measurement of weights and engines, carrying capacity, routes and structure of waterways. Maritime and air transport are manifestly global transport modes, whereas inland waterways on the continent of Europe are generally placed in the category of so-called inland transport, which also includes European road and rail transport ⁽³⁾. Therefore, the EESC urges the Commission to make a distinction in documents and referrals and to consider inland navigation as an inland transport mode.

4. The Context of Climate Change

4.1. Global warming, the impact of air pollution on human health and limited world oil supply are major incentives for EU policy to render the transport sector less dependent on fossil fuels. Consumption of fossil fuels emits carbon dioxide (CO₂), which is the predominant greenhouse gas (GHG). Hence, current environmental policies focus almost exclusively on efforts to abate CO₂ emissions. However, the most important non-CO₂ greenhouse gas is methane gas (CH₄) emitted from the livestock sector.

4.2. The EESC believes that the environmental performance of maritime and inland waterways transport should be seen against the performance of land transport and the pollution originating from land-based sources. It reiterates ⁽⁴⁾ that there is a need for a holistic approach that should take into consideration the availability of technology to reduce emissions, the need to encourage innovation, the economics of world trade and the need to avoid the negative effects of an increase of CO₂ emissions when reducing other pollutants, i.e., to minimise the unintended consequences between policies.

4.3. Measures to reduce emissions from maritime and inland waterways transport should be practical, cost effective and applicable to all ships (irrespective of flag), including leisure boats and, if possible, warships ⁽⁵⁾. They must also be based on a sound environmental, technical and socio-economic assessment. Furthermore, legislation aimed at achieving marginal greenhouse gas

savings, at considerable cost, may well lead to a modal shift to other less environmentally friendly modes of transport. The result would have an overall negative impact on global warming.

4.4. One aspect of green policies often overlooked is their economic benefit. Indeed, the 'green economy' is one of the ways to get out of the world crisis. Emerging green economy is generating new employment opportunities ⁽⁶⁾. Commissioner Dimas stated that 'green investments' will generate 2 million jobs in the EU in the next decade. Hence, 'green economy' is not a luxury.

4.5. Further reductions in CO₂ emissions by maritime and inland waterways transport are possible, but they can only be marginal, as goods will need to be moved regardless of any additional charges, which in any case will be borne by the consumer.

5. 'Greening' of Maritime Transport

5.1. Increasing industrialisation and liberalisation of economies have expanded world trade and the demand for consumer goods. The EU Maritime Policy Action Plan ⁽⁷⁾ places particular emphasis on maritime transport as a competitive, sustainable and environmentally-friendly mode of transport.

5.2. The environmental record of shipping has been improving steadily for many years. Operational pollution has been reduced to a negligible amount. Significant improvements in engine efficiency and hull design have led to a reduction of emissions and an increase in fuel efficiency. In light of the volume of goods carried by ships, the share of maritime transport to the global CO₂ emissions is small (2,7 %) ⁽⁸⁾.

5.3. The melting of sea ice in the Arctic Region is progressively opening up opportunities to navigate on routes through the Arctic waters ⁽⁹⁾. Shorter trips from Europe to the Pacific will save energy and reduce emissions. The importance of the Arctic route was highlighted in the EESC opinion on an 'Integrated Maritime Policy for the EU' ⁽¹⁰⁾. At the same time, there is a growing need to protect and preserve its marine environment in unison with its population and to improve its multilateral governance. New maritime routes in this region should be examined with caution until a UN environmental impact assessment is carried out. In the short and medium term, the EESC would suggest to consider this region a natural conservation area. Therefore, a balancing act would be advisable at EU and UN level between the several parameters of this new route. Further benefits are expected from the extension of the Panama Canal, due to be completed by 2015.

⁽³⁾ The term 'waterborne', which can apply to both modes, refers only to the medium by which the transportation is conducted. It does not denote the mode of transport and environmental policy implications. The fact that DG TREN has included road and rail transport, but not inland waterways, under the heading of inland transport does not alter this fact.

⁽⁴⁾ OJ C 168 of 20.7.2007, page 50; OJ C 211 of 19.8.2008, page 31.

⁽⁵⁾ See footnote 4.

⁽⁶⁾ UNEP *Green Job*.

⁽⁷⁾ SEC(2007) 1278.

⁽⁸⁾ IMO: Updated 2000 Study on Greenhouse Gas Emissions from Ships.

⁽⁹⁾ COM(2008) 763.

⁽¹⁰⁾ OJ C 211 of 19.8.2008, page 31.

5.4. Maritime transport is highly regulated by more than 25 major international Conventions and Codes. MARPOL73/78 is the main international Convention covering prevention of maritime pollution by ships from operational or accidental causes ⁽¹¹⁾. It is also regulated by comprehensive EU legislation, notably the ERIKA I and II packages and the Third Maritime Safety Package (2009). The legislation has enhanced greatly maritime safety, pollution surveillance and, where appropriate, intervention to prevent or mitigate consequences of incidents.

5.5. The recently revised MARPOL Convention Annex VI on prevention of air pollution from ships introduces stricter limits of emissions of Sulphur Oxide (SO_x), Particulate Matter (PM) and Nitrogen Oxide (NO_x). Significant reductions of CO₂ emissions from ships, can be achieved via an array of technical and operational measures. Several of these measures can only be applied on a voluntary basis. Speed reduction (slow steaming) is the most efficient measure with immediate significant effect. Nevertheless, its implementation will be dictated by the demands of the trade.

5.6. The EESC believes that better results can be achieved with a balance mix of legislation and industry initiatives, such as the pioneering objectives of the Hellenic Marine Environment Protection Association (HELMEPA) ⁽¹²⁾, the 'Poseidon Challenge Award' ⁽¹³⁾, the 'Floating Forest' ⁽¹⁴⁾ and the 'Green Award Foundation' ⁽¹⁵⁾.

5.7. In considering an emissions trading scheme (ETS) for maritime transport the competitiveness of the European shipping industry in the global market should not be adversely affected, otherwise it would conflict with the Lisbon Agenda. Before decisions are taken, the Commission has to come with clear answers to the following questions: what will be the environmental benefit from the introduction of such a scheme in international shipping and how will the scheme work in practice in an industry as international as shipping? Against this background, a global scheme under IMO would be much more effective in reducing CO₂ emissions from shipping than an EU scheme or other regional scheme.

5.8. The political pressure to incorporate shipping into the EU ETS by 2013 is obvious. The application of ETS is far more complicated in the maritime transport than for aviation, and in particular on tramp shippings due to the practicalities of world maritime trade which render ETS calculations very difficult. International shipping is predominantly occupied in carrying cargoes in constantly changing trading patterns all over the world. Most of the EU vessels have as port of loading or discharge non EU

ports which are determined by the charterer. Ships are not homogeneous, so a benchmark is difficult to be established. Shipping is characterised by many small companies making the administrative burden of an ETS very heavy. Many ships, in the tramp sector which comprises the larger part of shipping, call in the EU only occasionally. Refuelling of ships during voyages may take place in non EU ports and fuel consumption between ports is based on estimates only. In the circumstances, several countries could be involved in the allocation of ETS emissions: e.g. the country of shipowner, ship operator, charterer, cargo owner, cargo receiver. Moreover, an EU ETS scheme for maritime transport would have to be applied on all vessels visiting EU ports, with a real possibility of retaliation measures by non EU countries not applying the ETS on behalf of their flagged ships.

5.9. A levy on carbon (bunker fuels), or some other form of levy, could be as 'effective' and far simpler to operate in maritime transport. In addition, it will be easier to secure that funds thus raised will indeed be spent in 'greening' initiatives.

5.10. In the foreseeable future ship propulsion systems will continue to dominate with carbon-based fuels. Gas as an alternative fuel will be used more widely when distribution infrastructures become available. Feasibility studies for fuel cells powered by natural gas report a significant reduction in CO₂ emissions. Moreover, future IMO work will focus on reduction of noise from ships.

5.11. It is unlikely that enough sustainable biofuel will become available to shipping or that hydrogen and carbon capture and storage will have a significant impact on shipping in the next two decades. Wind technology, like Skysails, and solar energy will not power ships alone, but may contribute alongside engines. Use of shore-side electricity (cold ironing) will allow more environmentally friendly operations in the port. Nuclear propulsion requiring a special infrastructure for emergency response is not a viable option for merchant ships.

6. 'Greening' of Inland Navigation

6.1. Inland navigation plays a non negligible role for the European internal transport as the modal share of river transport accounts for 5,3 % of the total inland transport in the EU reaching sometimes in regions with big waterways more than 40 %. It is a reliable, cost-effective, safe and energy-efficient mode of transport. Promoting inland waterway transport can help to meet the main environmental EU policy objectives. Its more extensive use is key to reducing CO₂ emissions of the transport sector. This goes hand in hand with the EU policy to address the issue of excessively congested roads.

⁽¹¹⁾ Prevention of pollution from ships will be further enhanced by the future implementation of recent international Conventions on Anti-fouling Systems, Ballast Water, Removal of Wrecks, Bunkers and on Recycling of Ships (to be adopted in 2009).

⁽¹²⁾ HELMEPA, established in 1981, served as a model for the creation of CYMEPA, TURMEPA, AUSMEPA, NAMEPA, UKRMEPA, URUMEP and INTERMEPA.

⁽¹³⁾ Established by the International Association of Independent Tanker Owners (Intertanko) in 2005.

⁽¹⁴⁾ Established in the UK, info@flyingforest.org.

⁽¹⁵⁾ Established in the Netherlands, www.greenaward.org.

6.2. Traditionally inland navigation has been regulated by the rules of the Central Commission for the Navigation on the Rhine (CCNR) by which high technical and safety standards have been introduced. Legislation based upon the Mannheim Treaty is applicable in the Rhine riparian countries. It contains regulations for the safety, liability and pollution prevention. Due to these high standards inland navigation is characterised by a highly unified level of quality and safety of the equipment of the vessels and training of its crews. Based upon the rules resulting from the Mannheim Treaty, the EU recently introduced comprehensive technical and operational requirements for inland navigation vessels in the Directive 2006/87/EC.

6.3. EU legislation ⁽¹⁶⁾ sets emission limits to the quality of fuel used by inland navigation vessels. The European Commission ⁽¹⁷⁾ proposal regarding the sulphur content in fuel intended to introduce reductions of the sulphur content for both maritime and inland vessels. Inland navigation was in favour of lowering the sulphur content of fuel in one single step from 1 000 ppm to 10 ppm. The European Parliament recently accepted this proposal from the inland navigation sector and decided to lower the sulphur content in one single step to 10 ppm as from 2011. In the not too distant future inland navigation may benefit from the use of zero-emission systems, such as fuel cells. The new inland barge 'CompoCaNord', the newly built Futura tanker ship in Germany and the Dutch near-zero emission Hydrogen Hybrid Harbour Tug are concrete examples. Moreover, new legislation ⁽¹⁸⁾ regulates the transport of dangerous goods by road, rail or inland navigation within or between Member States.

6.4. The recent EU enlargement has extended the inland waterways network from the North Sea to the Black Sea through the

linkage of the Rhine and Danube rivers. Europe's inland waterways offer great potential for reliable freight transport and compare favourably with other modes, often confronted with congestion and capacity problems.

6.5. It would be unrealistic to treat inland navigation like national activities that can be regulated through domestic or regional legislation. Croatian, Ukrainian, Serbian and Moldavian flag inland navigation vessels are already operating on EU rivers and canals and the liberalisation of the Russian river transport and access of EU operators to it, and vice versa, will also add an international dimension to EU inland navigation as well.

6.6. One of the most important conditions and challenges for the reliability of inland navigation is the improvement of the physical infrastructure that will remove bottlenecks and necessary maintenance. The EESC recalls its previous opinion ⁽¹⁹⁾ and hopes that actions under the NAIADES ⁽²⁰⁾ project will revitalise inland navigation and would make it possible to fund infrastructure development projects.

6.7. In internalising external costs inland navigation as a relatively little used transport mode should not be the forerunner. Any policy to impose a carbon levy in inland navigation is bound to face legal difficulties because on the Rhine according to the Mannheim Convention (1868) no charges are applicable. In practical terms, 80 % of the current inland navigation takes place in the Rhine basin. The EESC notes that the incompatibility of legal regimes between the Rhine Treaty and the Danube Treaty creates problems in the environmental legislation of the Danube: It suggests to step up EU efforts for future uniformity of rules (environmental, social, technical) as a means of facilitating inland navigation.

Brussels, 13 May 2009.

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

⁽¹⁶⁾ Directive 2004/26/EC, OJ L 225 of 25.6.2004, page 3.

⁽¹⁷⁾ COM (2007) 18.

⁽¹⁸⁾ Directive 2008/68/EC, OJ L 260 of 30.9.2008, page 13.

⁽¹⁹⁾ OJ C 318 of 23.12.2006, page 218.

⁽²⁰⁾ COM(2006) 6.

Opinion of the European Economic and Social Committee on 'Road transport in 2020: organised civil society's expectations'

(Exploratory opinion)

(2009/C 277/05)

Rapporteur: **Mr SIMONS**

On 24 November 2008, the Czech presidency of the European Union wrote to the European Economic and Social Committee under Article 262 of the Treaty establishing the European Community requesting an exploratory opinion on

Road transport in 2020: organised civil society's expectations.

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 15 April 2009. The rapporteur was Mr SIMONS.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May 2009), the European Economic and Social Committee adopted the following opinion by 89 votes in favour, to 33 with 17 abstentions.

1. Conclusions and recommendations

1.1. In line with the further information received from the Czech presidency, the Committee has restricted the scope of this opinion to goods transport by road. Commercial passenger transport by road would require a separate opinion.

1.2. All forecasts indicate that there will be sharp, double-digit increase in goods transport by road from now until 2020. Growth is expected to stagnate over the next few years as a result of the current economic downturn, but that will have no appreciable impact on the position in 2020.

1.3. If the growth expected by 2020 does kick in, then it is vital, among other things, to pursue with all necessary vigour the co-modality approach to transport policy in order to achieve an integrated transport policy based on economic, social and ecological principles, advocated in the Transport White Paper and endorsed by the Committee in its opinion of 15 March 2007.

1.4. The expected growth also brings with a range of difficulties that are already engaging supranational authorities, governments, stakeholder groups and the general public. These include rising levels of CO₂ emissions, transport-sector dependence on fossil fuels, the shortage of safe infrastructure, and guaranteed sound (working) conditions for drivers.

1.5. To address these difficulties, the Committee feels it vital to generate a sense of urgency among all concerned, thereby securing the support that is so essential.

1.6. The Committee feels that, in terms of essential measures, more needs to be done to tackle CO₂ emissions at source, among other things by stepping up the development of new-generation, low-energy engines.

1.7. As for the commercial transport sector's dependence on fossil fuels, the Committee considers it vital to put in place a well-financed research and development programme to explore how sustainable energy can be deployed in this sector.

1.8. Tax-related measures to promote products and/or measures geared towards alternative propulsion techniques and the reduction of CO₂ emissions are also, in the Committee's view, a step in the right direction. This might include a quicker phase-out of older models of goods vehicles.

1.9. In addition to technical innovations and similar investments, swift action is needed to expand the requisite infrastructure to handle the expected growth, including, for example, providing a sufficient number of properly equipped, secure and guarded parking areas and service stations. These must be such that drivers are able to comply with – and actually relax during – their statutory break and rest periods. In particular, drivers must be protected against theft, aggression and other forms of crime. Universally applicable standards (structural design, services provided, parking guidance systems) must be developed and introduced without delay in service stations and parking areas – not only on motorways. The improvements to parking areas and service stations may be funded via lorry tolls. An added advantage of such measures is that, in the current downturn, investments of this kind can also stimulate economic activity.

1.10. As a profession, driving needs to be kept attractive through guaranteed sound (working) conditions, including, not only on paper but also in practice, regular working hours and harmonised driving time and rest periods. The Committee feels that monitoring of the social legislation covering this sector should also be harmonised at a high level across the EU and, when necessary, subject to sanctions. The Committee thinks that social dialogue between employers and workers at both national and EU level is vital to the smooth operation of the sector.

1.11. The Committee is firm in its belief that the proposals set out in this opinion must not only serve to generate a sense of urgency but must above all also be a catalyst for prompt and speedy action to tackle the expected growth in a sustainable way.

2. Introduction

2.1. With the Czech Republic poised to assume the EU presidency for the first half of 2009, the Czech transport minister, Mr Aleš Řebíček wrote to the secretary-general of the European Economic and Social Committee, Mr Martin Westlake, on 24 November 2008.

2.2. In his letter, Mr Řebíček noted that good cooperation between the Czech transport ministry and the EESC was vital for the optimum execution of the Czech presidency agenda.

2.3. The Czech presidency has therefore requested an exploratory EESC opinion on *Road transport in 2020: organised civil society's expectations*. This is a key political issue and is closely tied in with ongoing developments on the Eurovignette file and with the TEN-T agenda due for publication shortly.

2.4. To garner the views of stakeholders from various sectors of society quickly, the Committee felt that a hearing was needed at which their representatives would be able to express their opinions.

2.5. The stakeholder views expressed at the hearing are appended to the opinion ⁽¹⁾.

2.6. For the purposes of this exploratory opinion, the term 'road transport' will, in line with the further information received from the Czech presidency, be taken to mean goods transport by road. Commercial passenger transport by road would require a separate opinion.

2.7. This qualification does mean, however, that the conclusions drawn here – on infrastructure, for instance – must be handled with the necessary care as they do not include the additional dimension of private passenger transport, which is the main use to which infrastructure is put.

2.8. The Czech presidency's request to examine the prospects for the road transport market from now until 2020 becomes all the more important in the light of the findings of the European Commission's 2001 Transport White Paper mid-term review, where a 50 % growth in freight transport (in kilometre-tonnes) in the EU-25 is forecast by 2020 and the point is made that, in the EU-27 in 2006, around three-quarters (73 %) of internal freight was transported by road.

2.9. In terms of kilometre-tonnage, rail accounts for 17 % of freight transport, with inland waterways and pipelines each taking a 5 % share. Steps should therefore be taken to increase the share of these transport modes and of short sea shipping.

2.10. If correct, the projected increase in transport levels by 2020 – involving a doubling of international road transport, i.e. a rise at twice the rate of that for national road transport – will significantly impact a number of areas. Inadequate infrastructure, resulting in congestion is a case in point here. Unless drastic action is taken, there will be a sharp rise in CO₂-emissions, noise and energy consumption. Moreover, if current policy remains unchanged, the working and overall conditions for drivers will deteriorate, making the profession itself less attractive.

2.11. Clearly, these areas must be deemed bottlenecks and fundamental choices will need to be made that are vital to securing the smooth operation of the single market in the road transport sector.

2.12. The situation is complicated by the fragmented nature of the road transport market. Some 900 000 businesses within the EU are affected, more than half of which may be classed as small businesses. Although some consolidation is in evidence in terms of the actual numbers of businesses involved, the size of those businesses is on the increase. Also, there is little cohesion in the road transport market, not least among small businesses that operate on their own and have little inclination to work together with others. The result is poor logistics – and major potential for improving standards in the sector.

⁽¹⁾ Appendices to opinions are not published in the EU Official Journal. In this case, the appendix may be accessed via the EESC website: www.eesc.europa.eu.

3. General comments

3.1. Eurostat figures for 2006 indicate that, in 25 of the 27 EU countries, the share of road transport, measured in kilometre-tonnes, was over 50 % compared with other modes (rail, inland waterway and pipelines). In Estonia and Latvia more than 60 % of total freight was transported by rail. According to the same Eurostat study, the railways also took a share of more than 60 % in Switzerland too.

3.2. Moreover, 85 % of freight tonnage transported by road involves distances of less than 150 km. Distances of more than 150 km account for 15 % of the transported freight tonnage.

3.3. These figures also show the strength – and indeed flexibility – of road haulage, given that for short distances there are few alternatives.

3.4. Over longer distances in particular and depending on the kind of freight involved, alternatives to road haulage do exist for internal transport in the form of rail and inland waterways, provided that an at least equivalent standard of service can be guaranteed and that the unavoidable transshipment costs are kept at an acceptable level. The internalisation of external costs could play a role in this connection.

3.5. Short sea shipping is a possible alternative for sea-accessible routes, provided customs and administrative barriers are removed and, again, that the transshipment costs can be kept in check.

3.6. Data from the European Commission's *European Energy and Transport* report and the NEA research institute indicate that gross national product – and thus transport – are set to increase sharply between now and 2020 unless steps are taken to break the link between these two factors, as it was already acknowledged in the mid-term review of the Transport White Paper.

3.7. Forecasts for international freight transport show that, by 2020 and taking 2005 as a base year, increases are expected of:

- 33 % for transport within western Europe,
- 77 % for transport within eastern Europe,
- 68 % for transport from western to eastern Europe, and
- 55 % for transport from eastern to western Europe.

Given the sector's fossil fuel dependency, this expected growth in goods transport by road by 2020 will have a major impact on energy reserves.

3.8. Freight transport is thus, broadly speaking, expected to rise. Over the next few years, however, because of the credit crunch and the resultant economic recession, the increases will be lower than expected, but action will still be needed to tackle the situation. 2020 is still a good ten years hence, and the impact of recession is thought unlikely to persist until then.

3.9. The expected growth in transport is a corollary of economic growth within the EU and must take place against the backdrop of a more integrated market that is also underpinned by harmonised measures such as rigorous monitoring and sanctions.

3.10. Alongside the development of alternatives and investment, the Committee endorses as a necessary step the European Commission's plan a move away from an aggressive policy of modal shift to one centred on co-modality⁽²⁾, i.e. the optimum use of each transport mode and the most effective possible interplay between all modes, with the long-term aim of securing a high level not only of mobility, but also of environmental protection.

3.11. Meeting on 15 March 2007⁽³⁾, the Committee endorsed the aims of the revised white paper, which seeks to optimise all modes of transport, on their own and in combination, enhancing the specific potential of each one, and stressed the need to make maritime, inland waterway and rail transport more competitive.

3.12. To handle the expected growth, it is vital to secure the support and cooperation of stakeholders. A hearing with the relevant international umbrella organisations from civil society was thus a useful way to garner their views. These views could then be included in the exploratory opinion.

3.13. One conclusion to be drawn from the freight transport growth expected by 2020 is the need to expand the physical infrastructure for all inland transport modes. For short sea shipping, action is above all needed to remove customs and administrative barriers.

⁽²⁾ On page 4 of the mid-term review of the 2001 Transport White Paper (COM(2006) 314 final), the Commission defines co-modality as 'the efficient use of different modes on their own and in combination will result in an optimal and sustainable utilisation of resources'.

⁽³⁾ Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council and the European Parliament - Keep Europe moving - Sustainable mobility for our continent - Mid-term review of the European Commission's 2001 Transport White Paper (COM(2006)314 final), OJ C 161, 13.7.2007.

3.14. Moreover, if road freight transport grows as expected, action will be needed to address the concomitant impacts, such as CO₂ emissions, traffic accidents and energy consumption, and the consequences for society, not least the lack of a sufficient number of guarded and properly equipped parking areas and service stations.

3.15. Progress is also needed on issues such as empty trips, harmonised, checks and fines, genuine single market integration, enhanced efficiency not least through modular systems where appropriate, quicker border checks, logistic blueprints for the actual transport itself, and studies on cruising speeds and better tyres.

3.16. At the same time, the Committee recognises that, for the period after 2020, a more visionary policy will be needed. It therefore calls on the Commission, the Council, the European Parliament and the sector itself to address this issue in the upcoming debate on the future of transport announced for 2010 by transport commissioner, Mr Antonio Tajani.

4. Specific comments

4.1. For the expected rise in international road freight transport to take place and given the (limited) scope to absorb that rise through other transport modes, the Committee considers it vital to develop an appropriate strategy at both international and national level.

4.2. Action is needed to put in place and upgrade the physical road and transport infrastructure (removal of bottlenecks) at both European and national level. Appropriate consideration will thereby have to be given to the lack of – and thus the need to increase numbers of – guarded, properly equipped and secure parking areas and service stations.

4.3. Attention is drawn here to the Commission communication *Strategy for the internalisation of external costs* and the forthcoming Committee opinion on the subject ⁽⁴⁾.

4.4. As a profession, driving needs to be kept attractive through guaranteed sound (working) conditions, including, not only on paper but also in practice, regular working hours and harmonised driving time and rest periods. The Committee feels that monitoring of the social legislation covering this sector should also be harmonised across the EU. In the case of non-compliance with the legislation, sanctions – particularly in the form of financial deterrents – should be introduced and applied. The Committee thinks that social dialogue between employers and workers at both national and EU level is vital to the smooth operation of the sector.

4.5. Over the past few years, western European road haulage companies have established subsidiaries in countries such as Poland, the Czech Republic and Hungary. Together with long-established national road haulage firms, these outsourced subsidiaries handle the vast majority of road haulage between western and eastern Europe – with the trend continuing upward.

4.6. Given the expected growth, the Committee calls for a resolution of the administrative and physical bottlenecks that may hamper intermodality. It takes the view that all transport modes need to be able to operate as effectively as possible, always bearing in mind the need for a level playing field.

4.7. Similarly, the Committee feels that moves to deal with the expected growth in transport levels must be accompanied by enhanced moves on energy and the climate. As the Committee pointed out in its opinion on the mid-term review of the Transport White Paper, priority must be given to reducing dependency on fossil fuels – and also to cutting CO₂ emissions, above all by taking action at source, such as improving engines to emit less CO₂ (Euro V and VI and new-generation, low-energy engines).

4.8. Research findings indicate that, if the increase continues apace and contingent on the economic growth scenario, CO₂ emissions are set to rise by between 17 and 55 % between now and 2020. Overall CO₂ emissions are set to fall from 2040 onwards. The Committee is concerned about these figures. It is essential to draw on all available knowledge and make every possible effort to devise measures – even ones that are not immediately obvious – to cut CO₂ emissions in the period from now until 2020 too. These measures might include a quicker phase-out of older models of goods vehicles and the earmarking of funds obtained through the internalisation of external costs.

4.9. The Committee thinks that, despite the impossibility of any short-term reduction in road haulage dependence on fossil fuels, additional efforts are needed to find longer-term alternatives. In the opinion mentioned above, the Committee also stressed the need to put in place a well-financed research and development programme to foster the use of sustainable energy.

4.10. According to the Commission's energy efficiency action plan ⁽⁵⁾, there is potential to save an estimated 26 % on transport-sector energy consumption by 2020.

4.11. What, then, can be done to reduce the adverse impacts of road haulage? The Committee feels it is vital to improve the organisation of logistical processes, thereby also enhancing the performance of goods transport by road.

⁽⁴⁾ COM(2008) 435 final, 8.7.2008 and TEN/357 'Internalisation of external costs'.

⁽⁵⁾ Communication from the Commission: Action Plan for Energy Efficiency: Realising the Potential COM(2006) 545.

4.12. The Committee also considers moves to build up support and raise awareness as the most important keys to success. Carrots and sticks should both be deployed here. Actions should include rewards in the form of financial incentives or subsidies for investments in sustainable lorries and buses, a modulated approach to road toll rates and/or other kinds of levies, and similar tax-related measures to promote products geared towards alternative propulsion techniques and 'green' lorries and buses, and rigorous regulative measures.

4.13. Lastly, the Committee would recommend that, in terms of technological and management development, the road transport

sector would do well to conduct a benchmarking study, thereby making it possible to draw on measures applied in other sectors.

4.14. The Committee recognises that there is no more time to lose. It thus firmly believes that, in addition to generating a sense of urgency, the proposals set out in this opinion, and any other relevant suggestions, also – and above all – need to be implemented effectively. Prompt and speedy action must therefore be taken to tackle the expected growth in a sustainable way.

Brussels, 13 May 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on 'Involvement of civil society in the Eastern Partnership'

(Exploratory opinion)

(2009/C 277/06)

Rapporteur: Mr VOLEŠ

In a letter dated 12 January 2009, Ms Milena Vicenová, Ambassador and the Permanent Representative of the Czech Republic to the European Union, asked the European Economic and Social Committee to draw up an exploratory opinion on

Involvement of civil society in the Eastern Partnership.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 April 2009. The rapporteur was Mr VOLEŠ.

At its 453th plenary session, held on 13 and 14 May 2009 (meeting of 13 May), the European Economic and Social Committee adopted the following opinion by 160 votes to 15 with 18 abstentions.

1. Conclusions and recommendations

1.1. The EESC welcomes and supports the proposal to create the Eastern Partnership as an upgraded form of collaboration with the countries of the European neighbourhood policy to the east. The partnership must be based on sharing common democratic values and respect for human rights, which includes social and civil dialogue and recognition of the important role of civil society organisations in democratic societies.

1.2. The programme of cooperation within the Eastern Partnership must provide tangible help to the partner countries, particularly at the present time, when their economies are being hard hit by the global economic crisis, with grave social consequences. The Eastern Partnership should also help strengthen the institutions and lead to the peaceful resolution of existing conflicts.

1.3. The Eastern Partnership does not resolve the issue of prospective EU membership for which some of the participant countries are striving. Where partner countries manage to harmonise their laws with the relevant EU legislation in a particular sector, they should be able to acquire a privileged status enabling them to participate without voting rights in the creation of the EU sectoral acquis, in a way to that of the European Economic Area countries.

1.4. Implementation of the Eastern Partnership should draw on the lessons learned from five years of the European Neighbourhood Policy:

— Cooperation between the EU and the partner countries in drafting measures to implement Action Plans at national level should be improved

— Civil society, including the social partners, should be involved in putting together Action Plans and monitoring their implementation

— The schedule for joint subcommittee meetings on cooperation in sectoral issues, set up under partnership and cooperation agreements, should be adhered to and civil society should be involved in monitoring the implementation of their conclusions

— Conditions for inclusion in Community and agency programmes should be clearly defined so there is an incentive to assume the relevant part of the *acquis*

— Civil society should have a say in choosing issues to be discussed at thematic platforms; these should primarily be matters such as good governance, rule of law, the principles of the social market economy and its regulatory framework, social and civil dialogue, migration, protection of intellectual property rights, energy security, poverty eradication, barriers to mutual trade, crossborder cooperation, environmental protection and people-to-people contacts.

1.5. The inclusion of the partner countries in the Eastern Partnership must be contingent upon their willingness and readiness to share common values with the EU, to respect fundamental human rights and freedoms and to nurture social and civil dialogue. This applies to Belarus in particular.

1.6. The Eastern Partnership should not give rise to new dividing lines in Eastern Europe and should enable the inclusion of third countries in areas where the EU and Eastern Partnership share common interests, such as energy security, migration and environmental protection. Many of the Eastern Partnership's priorities are the subject of a strategic partnership between Russia and the EU. The EESC suggests involving the civil society of Russia, Turkey and perhaps other countries in discussions on issues of common interest within the civil society forum and thematic platforms.

1.7. Mobility and people-to-people contacts must be stepped up if the Eastern Partnership goals are to be achieved. The EESC supports the relaxing of visa regulations for certain groups of citizens from the partner countries with a view to the incremental dismantling of requirements as and when the security interests of both sides permit.

1.8. The EESC is ready to play its part in implementing the Eastern Partnership by supporting civil society in the partner countries and offers to make available the experience it has gained from creating networks of organised civil society in a number of countries and regions, including the eastern neighbours. The EESC calls on the European Commission and the Council to give it a key role in the instigation of an Eastern Partnership civil society forum. This would be a flexible and open network of EU and Eastern Partnership civil society, meeting once a year and operating via working groups and teams which would address specific topics and issue proposals for programmes and projects to secure the partnership's objectives. The full and effective involvement of civil society in this forum should be supported by appropriate funding.

1.9. At the bilateral level, the EESC will foster the creation of mechanisms enabling the social partners and other civil society organisations to join in the consultation process for implementing EU bilateral programmes with the partner countries, including during the formulation and implementation of national action plans, and when assessing their results.

1.10. In order for civil society to assume its responsibility, the EESC calls on the Commission to make sure that civil society organisations are included in the Comprehensive Institution-Building Programme (CIB) and twinning programmes funded from the appropriate ENPI heading.

1.11. The EESC is ready to join with civil society organisations from the partner countries in all four thematic platforms, since these concern problems that the Committee is heavily involved with and on which it has drawn up a number of opinions and recommendations.

2. Introduction and gist of the proposal to create an Eastern Partnership

2.1. The Committee welcomes the Czech presidency's request for it to draft an exploratory opinion on how civil society can be drawn into the Eastern Partnership based on the proposal put forward by the European Commission in its Communication of 3 December 2008 ⁽¹⁾.

2.2. The European Neighbourhood Policy, which was a response to the 2004 EU enlargement, upgraded relations between the EU and neighbours at the eastern border ⁽²⁾ and notched up a string of successes in strengthening the bonds between them. At the same time, however, expectations were not fully met – especially those of countries that harbour greater ambitions vis-à-vis the EU.

2.3. Poland and Sweden grasped the initiative and at a meeting of EU foreign affairs ministers on 26 May 2008 put forward a proposal to set up the Eastern Partnership as an improved version of the ENP. The proposal met with the support of the Czech presidency, which made it one of its priorities.

2.4. The European Commission published its communication on the Eastern Partnership on 3 December that year. Following adoption by the Council at its meeting in March ⁽³⁾, the Eastern Partnership will be proclaimed at the EU summit meeting with the Eastern Partnership countries in Prague on 7 May 2009.

2.5. The aim of the Eastern Partnership is to give the partner countries more support than hitherto as they strive to align themselves with the EU. It will provide them with the help they need in the areas of: the introduction of democratic and market-oriented reforms, the rule of law, good governance, respect for human rights, respect for and protection of minority rights, and the principles of the market economy and sustainable development.

2.6. The Eastern Partnership will be mostly implemented at the bilateral level, where the aim will be to conclude Association Agreements ⁽⁴⁾, assuming there is sufficient headway on democracy, the rule of law and human rights ⁽⁵⁾. Association Agreements will include the creation of a deep and comprehensive free trade area.

⁽¹⁾ Communication from the Commission to the European Parliament and the Council: Eastern Partnership, 3.12.2008, COM(2008) 823 final.

⁽²⁾ In this opinion, '(Eastern) partners' refers to the countries of Eastern Europe and the Southern Caucasus at which the European Neighbourhood Policy is targeted: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

⁽³⁾ EU Council conclusions of 19-20.3.2009, 7880/09.

⁽⁴⁾ Negotiations on such an agreement are already underway with Ukraine and this could serve as the template for the other partner countries.

⁽⁵⁾ The spotlight here falls especially on Belarus, where progress to date has been inadequate.

2.7. The multilateral level envisages the creation of four thematic platforms, for 1) democracy, good governance and stability, 2) economic integration and coherence with EU policies, 3) energy security, and 4) people-to-people contacts. The multilateral framework will strengthen ties between partnership countries and offer the prospect of a neighbourhood economic community. **Flagship initiatives** ⁽⁶⁾, which would be funded by international financial institutions, the private sector, and various donors, should provide tangible results in the area of cooperation.

2.8. A summit of heads of state and government of the EU and Eastern Partnership countries should be held every two years, in addition to an annual meeting of foreign affairs ministers, a biannual meeting of senior officials according to particular platforms, and experts meeting in working groups.

2.9. The European Commission and the Council are counting on civil society involvement in achieving the Eastern Partnership objectives and propose the creation of a civil society forum (CSF) to dialogue with public administrations. The Commission has asked the Committee of the Regions and the EESC to join in the discussions of the thematic platforms on democracy, good governance and stability and on people-to-people contacts.

2.10. Funding for the Eastern Partnership will be increased from EUR 450 million in 2008 to EUR 600 million in 2013, which will require extra funding, which should be sourced from the ENPI budget.

3. How to make the Eastern Partnership a vehicle for better implementation of the ENP

3.1. The EESC views the Eastern Partnership as a new strategic framework for the ENP's eastern dimension and as a manifestation of solidarity with people in Eastern Europe. It must be grounded in the sharing of common values, support for fundamental human rights and freedoms, good governance and the building of a democratic society in which civil society is an essential ingredient. The political will of the partner country governments to promote a dialogue with civil society and to foster a dialogue between the social partners should be one of the indicators for deploying the cooperation instruments and programmes which the Eastern Partnership offers.

⁽⁶⁾ These include a programme for integrated border management, an instrument for SMEs, support for regional electricity markets, energy efficiency and renewables, developing the southern energy corridor and cooperation in averting natural disasters.

3.2. The deepening global financial and economic crisis is jeopardising the economic development and stability of the EU's neighbours to the east. It is important, in the EESC's view, that the Eastern Partnership cooperation programme and the funding allocated in the ENPI be directed in such a way that, in addition to supporting long-term structural reforms, it helps the partner country governments stabilise the economic and social situation and eradicate the damage the crisis has done to the most vulnerable sections of society.

3.3. The aim of the Eastern Partnership is to help the countries of Eastern Europe modernise in line with EU standards without offering an immediate prospect of membership, which should not, however, temper the ambitions of certain countries regarding their future relations with the EU. In order to increase their motivation to implement reforms and EU standards more vigorously, the EESC recommends that the partner countries be offered the prospect of acquiring a privileged status, once they have implemented the acquis in agreed specific sectors. In this way they could, similarly to the countries of the European Economic Area ⁽⁷⁾, join in the single market, be involved in Community and agency programmes and participate (without voting rights) in discussion of new EU legislation at expert level.

3.4. The Eastern Partnership should be viewed as an instrument through which the EU can help Azerbaijan and, over the long term, Belarus fulfil the conditions for WTO membership. The fact that all the other countries of the Eastern Partnership have become WTO members creates an appropriate framework for establishing multilateral dialogue which focuses not only on the bilateral liberalisation of trade between the EU and individual countries but also on the regional liberalisation of trade between the Eastern Partnership countries themselves. Establishing a Neighbourhood Economic Community based on the EAA model ⁽⁸⁾ should be a priority as soon as the Eastern Partnership is launched.

3.5. The EESC recommends that the lessons learned from implementing the ENP from 2004 to 2008 ⁽⁹⁾ be incorporated in implementing the Eastern Partnership policy. These can be summarised as follows:

3.5.1. Civil society should be consulted as part of the impending negotiations on the association agreements between the EU and the partner countries, especially as regards its role and the possible creation under these agreements of joint consultative committees between the civil societies of the Eastern Partnership partner countries and the EU.

⁽⁷⁾ Norway, Lichtenstein and Iceland.

⁽⁸⁾ COM(2008) 823 final, p. 10.

⁽⁹⁾ See the findings of the project of the Research Center of the Slovak Foreign Policy Association undertaken with the support of the F. Ebert Stiftung and published in *The Reform of the European Neighbourhood Policy: Tools, Institutions and a Regional Dimension* (Duleba, Najšlová, Benč and Bilčík, 2009).

3.5.2. Action Plan priorities should be planned and executed at national level by the governments of the partner countries in collaboration with the European Commission and other stakeholders (political players, the social partners, civil society and local and regional governments) to ensure the broadest support for their implementation. Action plans should include measures that allow civil society to be involved more effectively in the consultation process, including ensuring that EU documentation is translated into the languages of the partner countries.

3.5.3. The Joint Consultative Committees for cooperation on sectoral issues, set up on the basis of the partnership and cooperation agreements and intended as a mechanism for channelling information and feedback within the ENP, have convened infrequently and irregularly (in some cases not at all). Their success has therefore been limited. Subcommittees should be obliged to sit and their monitoring should also be made mandatory. Representatives of the institutional platforms which are to be constituted in the Eastern Partnership (Euronest, Civil Society Forum and local and regional assemblies) should be invited to monitor the work of subcommittees and of national bodies in implementing the Action Plan priorities. Progress should be gauged on clear, commonly agreed, transparent and quantifiable evaluation criteria and civil society should be able to take part in the defining such criteria and evaluating their application.

3.5.4. The Eastern Partnership provisions should include more clearly defined sectoral instruments. The criteria for partner countries acceding to a given sectoral programme or agency should be clearly framed so that the country in question knows the conditions it has to meet to participate in European programmes and agencies.

3.5.5. The thematic platforms should enable the EU, Member States and the partner countries to share best practices regularly and to pinpoint joint multilateral projects in the relevant areas. Thematic platforms could examine matters such as:

- protecting intellectual property rights;
 - eradicating poverty;
 - energy security and efficiency;
 - respecting food safety standards;
 - protection from dangerous goods imported from third countries;
 - protecting the environment, public health, plants and animals, and
 - crossborder cooperation.
- Civil society organisations belonging to the civil society forum should have a say in choosing and discussing these themes. Civil society organisations must be given appropriate funding if they are to carry out such tasks.
- 3.6. The EESC takes the view that the participation of partner countries in the cooperation programme under the Eastern Partnership must be contingent upon the adoption and full recognition of common values such as fundamental human rights and freedoms, good governance, and dialogue with an independent civil society and the social partners. The EESC notes that this especially applies to Belarus and its inclusion in the Eastern Partnership.
- 3.7. It is important, in the EESC's view, that the Eastern Partnership should not create new dividing lines in Eastern Europe and that it remain open to the involvement of representatives of third countries where shared interests are in play. Many of the Eastern Partnership's priorities are covered by the strategic partnership between Russia and the EU. There could, for instance, be dialogue on energy security issues, migration problems, the environment and other regional or global problems where tangible results will only be achieved if Russia, Turkey and possibly representatives from the countries of Central Asia are involved. The EESC proposes that civil society representatives from these third countries be invited to take part in the negotiations on these issues in the civil society forum or other platforms.
- 3.8. The Eastern Partnership should be an initiative which complements the Black Sea Synergy. While each pursues separate objectives and uses different instruments, they share a number of important areas of activity. It is therefore vital to strengthen coordination in both initiatives so as to avoid any duplication of activities.
- 3.9. It is very important, if the Eastern Partnership goals are to be achieved, to step up people-to-people contacts. Mobility is a major issue in both bilateral and multilateral relations. The ultimate goal of scrapping visa restrictions with these countries must be achieved gradually by relaxing requirements for students, businessmen, regular visitors to the EU countries and family members, and by cutting fees for issuing visas. For this, the relevant agreements must be concluded with the partner countries.
- principles of the rule of law;
 - principles of a social market economy and its regulatory framework;
 - good governance;
 - combating corruption and the black economy;
 - social problems, including gender equality;
 - migration and people-to-people contacts;
 - fostering social and civil dialogue;
 - dismantling barriers to mutual trade;

3.10. The EESC proposes conducting a dialogue with the partner countries, Member States, social partners and civil society on matters relating to the labour market, including the development and the mobility of labour force as well as on the adoption of joint measures to combat illegal employment and the violation of the ILO's important conventions.

4. Civil society organisations in the Eastern Partnership countries

4.1. The historical, political and socio-economic situation is different in each of the six Eastern Partnership countries, yet their civil societies have many common traits born of a shared history during Soviet times, when civil society organisations were merely the extended arm of the ruling Communist Party.

4.2. The collapse of the Soviet Union gave these countries the opportunity to gain independence, but also led to a slump in their economies. Implementation of the economic reforms designed to turn centrally planned economies into market ones was slow and patchy, with political instability and power struggles aggravating the situation. In at least four of the countries (Moldova, Armenia, Azerbaijan and Georgia), matters were made worse by armed conflicts with neighbours or with break-away regions.

4.3. Despite economic growth at the end of the 1990s and since 2000, the situation in these countries remains shaky, further compounded by the heavy blow delivered by the current economic crisis. There are deep social divides and a large section of the population lives from the grey economy or has emigrated in search of work abroad. The prime obstacles to modernisation and development – red-tape, inflated regulation and the corruption that goes with it – persist.

4.4. Recent years have seen a space for civil society activities gradually opening up in all the partner countries and there has even been a slight improvement, under pressure from the EU and the international community, in Belarus. The ENP and its instruments, allied with activity from the International Labour Organisation, are helping social dialogue to gradually find its feet and become institutionalised in the partner countries. There is still a long way to go in meeting EU standards on the following: the impartiality of the judicial system, the division of powers and responsibilities between central and local public authorities, correct interpretation and respect of civil rights and freedoms, and independence of the media. Governments are dragging their feet when it comes to accepting social pluralism, the independence of the social partners and civil society organisations and their right to social and civil dialogue designed to strengthen society as a whole.

4.5. In the last five years, the EESC has looked at the state of civil society in all the partner countries from a number of angles

– freedom of association, registration and tax laws and procedures, freedom of expression and the operation of tripartite consultations – and has drafted a whole series of recommendations ⁽¹⁰⁾.

4.6. Participants at the conference on Social and Civil Dialogue in the Black Sea Synergy and the Eastern Partnership, held by the EESC in collaboration with the ILO on 2 and 3 March 2009, affirmed that while all the countries had tripartite dialogue in theory, in reality it was woefully ineffective. It is also proving impossible to install social dialogue at regional or sectoral level. All those taking part noted the need to involve civil society effectively in both regional initiatives.

4.7. Situation of the various civil society players

4.7.1. Employers' organisations

All the partner countries have organisations such as chambers of commerce and business associations which have traditionally represented businesses and offered them services. As the reforms progressed and the need grew for employers to join together to take part in the dialogue of social partners, employers' organisations were formed that bring together large companies and unions. Still plagued by a raft of difficulties, these organisations lack unity and compete with one another; many are insufficiently representative. In some countries, especially those where the state sector continues to dominate the economy (Belarus, Moldova and Azerbaijan), they are closely allied with the government and are therefore hampered in opposing or voicing independent criticism of its policy. This puts a considerable damper on their interest and readiness to engage in the social dialogue.

4.7.2. Trade unions

4.7.2.1. Traditional Soviet-style unions have undergone reforms in most of the partner countries and have embraced with varying degrees of success the principles of freedom, democracy and independence, which international and European trade union movements fight for. New trade unions have been set up in Belarus and Ukraine. However, there is still a long way to go before the independence of workers' organisations can be taken for granted, as evidenced by government meddling in certain countries, the subject of a number of complaints to the ILO alleging violations of union rights.

⁽¹⁰⁾ Opinions of the EESC: 'Wider Europe — Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours', OJ C 80, 30.3.2004, p. 148-155; 'Belarus Civil Society', OJ C 318, 23.12.2006, p. 123-127; 'The EU's relations with Moldova: What role for organised civil society', OJ C 120, 16.5.2008, p. 89-95; 'EU-Ukraine: a new dynamic role for Civil Society', OJ C 77, 31.3.2009, p. 157-163; 'Setting up civil society organisations networks in the Black Sea region', OJ C 27, 3.2.2009, p. 144-151; and REX/241 - Civil society involvement in implementing the ENP Action Plans in the countries of the Southern Caucasus, rapporteur Mr Adamczyk, May 2009, not yet published in the Official Journal.

4.7.2.2. Although the ILO's core conventions have been ratified in all the countries, those on collective bargaining and freedom of association, in particular, have been infringed, as evidenced in difficulties in registration and curtailment of the right to strike. Fundamental rights are abused in companies, including the sacking of trade union officials.

4.7.2.3. Generally speaking, however, progress has been made and this has enabled the unions to play a beneficial role in bolstering democratic processes in the partner countries.

4.7.3. NGOs

4.7.3.1. The number of civil society organisations has risen in all the partner countries. They concern themselves with European integration, social issues such as migration, education, healthcare, the social economy, combating poverty and corruption, protecting consumer rights and championing those of farmers and craftsmen. These organisations are part of European and international networks and played an active part in defending democratic values in the revolutions in Ukraine and Georgia.

4.7.3.2. NGOs in all the countries have to contend with a raft of problems due to governments' mistrust of civil society, especially when they cannot control them and so seek to cramp their independence by legislative means. Short of funding, independent NGOs are forced to seek foreign aid and are then criticised for promoting foreign interests against those of their own country. Many of the partner countries have pro-government NGOs which are put forward for various civil society platforms.

4.7.3.3. The situation is gradually improving, however, as is the awareness of the need for civil dialogue, not least due to the exchange of information and experience and the creation of various civil society networks. Ukraine has made great strides forward in dialogue between the government and NGOs active in supporting European integration.

5. The role of the EESC in the Eastern Partnership

5.1. The EESC wishes to continue performing its role in reinforcing the position, capacities and development of regional and national networks of organised civil society in the partner countries so that they can be engaged as effectively as possible in bilateral and multilateral programmes and instruments to achieve the Eastern Partnership's aims.

5.2. In recent years, the EESC has garnered valuable experience in setting up civil society networks at regional and national level, in Euromed, ACP, the Caribbean, Central America, Mercosur, China, India and Brazil. It is also a partner in Joint Consultative Committees created by the Association Agreements with Turkey, Croatia and, in the future, with FYROM. The EESC's work has helped to bolster civil society in all of these regions and countries.

5.3. The EESC decided to adopt a similar approach in its relations with the countries of Eastern Europe and the Southern Caucasus. It set up an Eastern Neighbours Contact Group in 2004, carried out a comprehensive analysis of the situation and capabilities of civil society organisations in the partner countries and established direct contacts with them. It organised a number of joint events, including setting up a conference on social dialogue and civil society as in the Black Sea Synergy and the Eastern Partnership.

5.4. The EESC calls on the Commission and the Council to allocate it a key role in ensuring the active participation of civil society organisations in the Eastern Partnership's institutional structures. When creating the Eastern Partnership civil society forum, it could be useful to call on the EESC's important experience and know-how in this field, as well as its contacts with civil society organisations and the social partners and their regional and national networks in the partner countries and within the EU. The Eastern Partnership CSF should be set up without delay following the official launch of the initiative in the second half of 2009.

5.5. The Eastern Partnership CSF should be operational and elastic in character and bring together representative, democratic and independent civil society organisations from both the EU and the partner countries that represent employers, workers and other NGOs. These could bring a tangible added value to the implementation of this initiative. The CSF could meet at least once a year, alternately in the EU and one of the partner countries. It could set up working groups and teams to address specific clusters of problems (see point 3.5.5) under the forth operational level of the Eastern Partnership by establishing specific panels, and draft proposals and recommendations for EU representatives and partner country governments. The organisation and administration would be provided by a secretariat within the EESC drawing on funding from the relevant heading of the ENPI.

5.6. The EESC will continue to support the establishment of institutions which bring together civil society organisations, including the social partners, in the partner countries and enable their effective involvement in the consultation process, for laying down joint priorities of Action Plans and the European Neighbourhood Partnership Instrument, in defining essential actions at national level, and in the monitoring, feedback and subsequent evaluation of progress achieved. The CSF could act as a suitable platform for sharing best practices regarding the role of civil society in national decision-making processes and in the development of social dialogue.

5.7. Once Joint Consultative Committees comprising EU civil society and that of the countries in question are established on the basis of Association Agreements, they too could be brought into the process.

5.8. Civil society organisations must be afforded the necessary support and help to perform these very demanding tasks. The EESC therefore recommends that the Commission include not only the civil service in the Comprehensive Institution-Building programme (CIB), but also civil society organisations to which

partner organisations from the EU countries could impart their experience in twinning programmes.

5.9. The European Commission has invited the EESC to take part in the thematic platforms on democracy, good governance and stability and on people-to-people contacts. The EESC is convinced that it has the capacity and experience to be invited also to join the two remaining platforms on economic integration and energy security. It recommends that the civil societies of the partner countries and CSF also be included in these platforms.

Brussels, 13 May 2009.

President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on 'Civil society involvement in implementing the ENP Action Plans in the countries of the Southern Caucasus: Armenia, Azerbaijan and Georgia'

(2009/C 277/07)

Rapporteur: **Andrzej ADAMCZYK**

At its plenary session on 15-16 February 2007, 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:

Civil society involvement in implementing the ENP Action Plans in the countries of the Southern Caucasus: Armenia, Azerbaijan and Georgia.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 April 2009. The rapporteur was Mr Andrzej ADAMCZYK.

At its 453rd plenary session on 13-14 May 2009 (meeting of 14 May), the European Economic and Social Committee adopted the following opinion by 151 votes to 2, with 1 abstention:

1. Conclusions

1.1. The Southern Caucasus is extremely diverse in terms of ethnicity, language, history, religion and politics. This, together with the ongoing territorial conflicts and centuries of foreign domination mean that the question of constructing an independent State, a national identity and defending independence absorb a lot of energy, not least for civil society organisations.

1.2. Neither the social partners nor other civil society organisations have so far played an adequate role in drawing up or implementing the Partnership and Cooperation Agreements, which came into force in 1999, or the 2007-2011 action plans linked to the European Neighbourhood Policy, since the start of the negotiations on these matters.

1.3. Both the implementation of the action plans and the foreseen negotiations of Association Agreements as bilateral instruments, and the multilateral Eastern Partnership initiative represent an opportunity to involve organised civil society in related activities. However, in order to achieve this, the involvement of both the European institutions and Member States is necessary.

1.4. The European Commission should encourage the governments of countries in the Southern Caucasus to cooperate actively with the social partners and civil society organisations in implementing the action plans and Partnership and Cooperation Agreements.

1.5. At the same time, the European institutions should stress that human rights and democratic standards, as well as principles of social dialogue and those of civil dialogue be respected in the action plan negotiations. Annual reports on implementation of action plans should include an assessment of these issues. This could enhance both the importance of civil society and the independence of its organisations as well as have a positive impact on safeguarding basic labour rights and equal rights for women.

1.6. Setting up the civil society forum provided for in the Eastern Partnership initiative may facilitate dialogue between organisations from the countries included in the partnership and dialogue between them and the authorities. However, an effort should be made to ensure that the organisations participating in the forum are genuinely representative and independent. The EESC could play a prominent role in ensuring that these criteria are respected and in the functioning of the forum.

1.7. Comprehensive contacts should be promoted between people and between organisations from countries in the region and EU Member States, not least on a bilateral basis. To this end, obtaining visas should be made easier for people from the countries of the Southern Caucasus.

1.8. The EU institutions, which could play a role in attempts to resolve conflicts between countries in the Southern Caucasus region, should seek to involve civil society organisations in the peace process, as they could have a positive impact on the reconciliation process.

2. Introduction

2.1. The region of the Southern Caucasus comprises the three countries of Armenia, Azerbaijan and Georgia. Despite the fact that this region does not cover a large area, it is nonetheless extremely diverse in terms of ethnicity, language, history, religion and politics.

2.2. The situation is further complicated by the fact that two countries in the region, Armenia and Azerbaijan, have for the past 20 years been in a state of conflict over Nagorno-Karabakh, and Georgia has for a long time not been in control of two of its own provinces, Abkhazia and South Ossetia. The situation has been further complicated there by the recent war with Russia.

2.3. Despite different traditions, histories, and paths towards development, the countries of the Southern Caucasus are linked by a common past of membership of the Soviet Union, which left a distinct mark in many areas of life, primarily the economic and social spheres.

2.4. As a result of the multi-ethnic make-up of the Southern Caucasus, as well as the ongoing armed conflicts, the issue of strengthening national identity, building a state and institutions, and defending independence remain a priority issue in all three countries, not least for civil society organisations.

2.5. The political situation in the region is characterised by a serious democratic deficit. During the recent period of independence, which has lasted barely two decades, there have been *coups d'état*, civil wars and revolutions which on the whole have been successful. Successive governments have tried to restrict the activities of the political opposition, control the media and influence civil society organisations, especially the social partners. It was only after the rose revolution in Georgia that a democratic transformation took place in that country, although both independent organisations and external observers point to many shortcomings in the way in which Georgia's democracy functions.

2.6. The economic situation remains difficult. The lack of modern infrastructure, outdated technology, the shortage of home-grown investment capital, financing of arms and military installations and the collapse of the market in the former Soviet Republics are the main causes of the poor economic circumstances. Given its deposits of oil and gas, Azerbaijan finds itself in a different position. However, the dependence of the economy on one sector and the loss of Nagorno-Karabakh and surrounding regions of Azerbaijan mean that the country's economic problems remain considerable.

2.7. The social situation is also extremely difficult. A significant part of the population continues to live below the poverty line, differences in income between rich and poor are growing dramatically, and there are huge social problems, particularly among older people and the sick. The situation is not made any better by the high level of unemployment and the large number of war refugees, especially in Georgia and Azerbaijan. Furthermore, according to several estimates, up to 60 % of income in the Southern Caucasus is generated in the informal sector, which creates serious social problems. This very gloomy situation is aggravated by the ongoing global economic crisis. On top of that there is a problem of widespread corruption.

2.8. The geopolitical situation of the countries of the Southern Caucasus is extremely complex in terms of their difficult relations with each other and with neighbouring countries. It is clear that their geographical isolation from the rest of the world will be difficult to overcome without the active involvement of large neighbours, such as Turkey or Russia. Normalising and optimising relations with those countries is therefore in their interest. The fact that all three South Caucasus countries along with Russia and Turkey take part in the Black Sea Synergy, which is a new multi-lateral regional cooperation initiative could be helpful in this respect.

2.9. Agriculture is one of the potential assets of the countries of the Southern Caucasus. However, it is backward, ruined by the irrational policies of the past and current underinvestment. Therefore, fully opening up trade relations between these three countries and their traditional market Russia could provide a significant stimulus for agricultural development.

3. The European Neighbourhood Policy (ENP) in the Southern Caucasus

3.1. The Southern Caucasus were not originally included in the European Neighbourhood Policy (ENP). It was not until the region signalled that it was interested in closer contact with Europe and above all following the rose revolution in Georgia that there was a new prospect of cooperation.

3.2. The action plans for the three countries were adopted in November 2006 following two years of negotiations and form the basis of cooperation for the 2007-2011 period. The action plan priorities are similar for Armenia, Azerbaijan and Georgia and cover the following issues, inter alia:

- strengthening the rule of law, especially by reforming the judicial system in accordance with Council of Europe standards,
- strengthening democracy and ensuring that human rights are respected, among other things, by promoting local government,
- creating the conditions for independent media,
- improving the economic situation by creating better conditions for business and enterprise, reform of the tax system and combating corruption,
- achieving greater stability through support for sustainable economic development and social cohesion, reducing areas of poverty and environmental protection measures,
- strengthening regional cooperation in the Southern Caucasus area,
- measures to find a peaceful solution to territorial conflicts.

3.3. The ENP is in no way linked to potential EU membership for the countries of the Southern Caucasus. However, it does identify areas for closer cooperation, which could bring these countries more into line with *acquis communautaire* standards. Potentially it may also lead to their accession to the European Economic Area, if they wish so.

3.4. Neither the social partners nor other civil society organisations have so far played a significant role in negotiating the principles of the Partnership and Cooperation Agreements and the Action Plans, or in implementing them, although the situation varies depending on the country and how dynamic individual organisations are. Those organisations which have tried to become involved in the process, have sometimes done so on their own initiative, and against the wishes of the authorities rather than at their request.

3.5. Both the implementation of the Action Plans as a key tool in the bilateral approach and, in addition, the new multilateral Eastern Partnership initiative provide an opportunity for civil society organisations to become more involved in the work that is taking place and in related measures. However, in order for these organisations to really be permitted to cooperate, there needs to be some initiative and monitoring on the part of the European institutions and assistance from partner organisations in EU Member States.

4. Employers

4.1. Employer organisations in the three countries of the Southern Caucasus appear to be under the strong influence of the authorities, not least because a significant share of economic activity is carried out in the state sector. However, the reasons for this influence and the way it is wielded are not the same in all countries.

4.2. A common feature of business organisations is the crucial importance of chambers of trade and industry. Although these are not employer organisations in the strict sense and although their tasks and fields of activity are broader than just representing business as a social partner, their strong ties to the government and often quasi-governmental status mean that these organisations are very authoritative but not particularly independent.

4.3. Owing to their weakness, the fact that they are not particularly representative and their ties to the state authorities, which usually assume the form of dependence, employer organisations are not in a position to play a role of full fledged social partner in negotiations with trade unions, which are forced to discuss numerous matters directly with the government whether they like it or not. However, the specific features of employer organisations vary from country to country.

4.3.1. Despite significant pressure to privatise from the market-oriented government in Georgia, a considerable section of industry is controlled by the state, and the majority of privatised businesses belong to investors from Russia or Kazakhstan. This makes the government even keener to interfere in employer issues and increases its scope for doing so.

4.3.2. The main sectors of Armenia's economy remain in the hands of Nagorno-Karabakh war veterans, who have created a privileged group of entrepreneurs. At the same time, the mutual financial, business, and political relationship of businesspeople and parliamentarians and government politicians is maintained. Now that the Nagorno-Karabakh generation of fighters are leaving the scene and as a result of cooperation with sister employer organisations from Europe, business organisations in Armenia might begin to fulfil the more traditional role of social partner.

4.3.3. The energy sector makes up 90 % of the Azerbaijani economy and remains under the direct supervision of the president. This, together with the fact that the business elite in other sectors of the economy is made up of mostly young managers who are loyal to the State Authorities, many of them well-educated and trained in Western Europe and United States, means that employer's organisations start more and more playing a role of a social partner.

5. Trade unions

5.1. Trade unions in the three countries of the Southern Caucasus are very different from one another, which to a large extent stems from the fact that they operate in different economic, social and political conditions. Their common features include a significant decline in membership over the years, and more or less successful attempts to reform outdated structures and organisational methods. Despite several attempts, it has not been possible to establish a real trade union alternative, which in practice leaves organisations which existed at the time of independence with an exclusivity on worker representation.

5.2. However, these organisations differ in how independent they are of the state authorities and in the closeness of the relationship they have with partner employer organisations.

5.2.1. Georgia's trade unions are relatively independent of the government and the presidential administration, with which they are at loggerheads. This is a difficult situation given the accusations of unpatriotic behaviour and even sabotage in a war situation. Yet it is also unavoidable considering the arrogance of the authorities and their failure to take account of the views of the social partners. Trade union and workers' rights have been infringed in many cases and a new labour code was introduced without consultation.

5.2.2. Armenia's trade unions, which were the last of the three countries' trade unions to start reform, very rarely take a critical or independent stance towards the state authorities, and have not undertaken any major reforms for a long time since becoming independent of the pan-Soviet structure. This was because of the war situation and the country's principle of political correctness, which required support for the authorities as a patriotic obligation. The change in leadership at the trade union confederation, which took place in 2007, will enable it to become more dynamic in its activities and more independent.

5.2.3. State Authorities in Azerbaijan, from the moment that the current team came to power, has devoted considerable attention to social dialogue and to ensuring social harmony. The trade unions, which support this policy, wish to achieve as much as possible for workers, while not entering into severe conflicts and avoiding any risk to national unity. This has given rise to a specific corporate model for trade unions, particularly in the wealthiest industrial sector (energy) and in the state-owned services sector. The trade unions, which enjoy relatively considerable level of independence, actively stand up for the social rights and well-being of their members, while avoiding direct confrontation with the government, which appears to be the only possible strategy at the present time.

6. Non-governmental organisations representing other interests

6.1. NGOs in the Southern Caucasus can be divided into three groups on the basis of how they fund their activities:

- independent NGOs, which finance their activities through member contributions, services provided externally or on the basis of accumulated or inherited wealth,
- NGOs which are set up, financed and controlled by the government,
- NGOs which are dependent on external, usually foreign, donors.

6.2. A characteristic feature of NGOs in the Southern Caucasus region is their wide variety of goals and tasks as well as their often transitory nature. NGOs are frequently set up and later disappear after having carried out one specific task or after their funding ceases.

6.3. The lack of a tradition of civil society organisations, armed conflicts and difficulties in funding activities mean that creating truly independent organisations is problematic.

6.4. Following the economic ruin and social catastrophe which occurred in the initial period after the collapse of the Soviet Union, a significant proportion of civil society organisations focussed their efforts on combating poverty and improving living standards.

6.4.1. Civil society seems to be developing most dynamically in Georgia. There are around 100 NGOs, which have received recognition from independent observers and are active in areas such as combating corruption and promoting the rule of law, human and minority rights, media freedom, environmental protection and energy security.

6.4.2. In Armenia, the main groups of NGOs are those commissioned directly by government or international organisations to carry out political analysis or draw up strategy documents, and those which carry out projects in areas such as education, health care or social protection. An interesting phenomenon is the transformation of NGOs into small commercial service businesses following the completion of a project.

6.4.3. In Azerbaijan the national NGO Forum founded in 1999 with support of UNDP represents a mixture of more than 400 NGOs which are partly dependent on the government, foreign sponsors or opposition parties and the few remaining organisations support themselves by charging for their services. Despite of this, they are also a small number of organisations who maintain political neutrality and might in the future play a bigger role in shaping opinion.

7. Perspectives and recommendations

7.1. The implementation of the European Neighbourhood Policy Action Plans represents a hitherto unused opportunity to strengthen social and civil dialogue in terms of European cooperation with the countries of the Southern Caucasus.

7.1.1. The European Commission should encourage governments of countries in the Southern Caucasus to consult with the social partners and other civil society organisations on the action plans and include them in joint efforts to implement, monitor and evaluate the plans. Not even the best practices of direct contacts between EU representatives and selected organisations can replace this. This would be significant both for the implementation of the action plans and for increasing the importance and role of civil society.

7.1.2. During the negotiations on the action plans and the Partnership and Cooperation Agreements, the European Commission should place greater emphasis on respect for human rights and democratic standards and principles of social dialogue and those of civil dialogue, including the freedom of association and the right to carry out collective negotiations. It would be desirable for the annual reports on implementation of the action plans to include an in-depth assessment of these issues.

7.1.3. The governments of individual countries should, while working together with the European institutions and cooperating closely with civil society organisations, carry out a broad information campaign on the EU, its institutions and the *acquis communautaire* as well as the neighbourhood policy and the implementation of the action plans. Appropriate tools and funding instruments should be created with this in mind. One such tool could be the possibility of European small grants for civil society organisations, designed especially for this purpose.

7.2. The new Eastern Partnership initiative will provide a fresh opportunity to strengthen contacts between civil society organisations of the Southern Caucasus and the European Union and, above all, to boost civil dialogue locally.

7.3. The proposal in the Eastern Partnership initiative to set up a civil society forum aimed at promoting cooperation between organisations and facilitating dialogue between them and the authorities is a valuable initiative, but should be accompanied by monitoring from the European institutions to ensure that this dialogue is genuine.

7.3.1. There needs to be an effort here to ensure that representatives are appointed to the forum democratically and that the forum should include the most representative, democratic and independent organisations. The EESC could play a prominent role in this process by assuring that these criteria are respected and in the functioning of the forum.

7.3.2. Furthermore, if the forum, as a body, were also to include members from other countries covered by the Eastern Partnership, this would enable civil society to extend the principle of multilateral cooperation to encompass countries from outside the Southern Caucasus.

7.4. The Eastern Partnership should promote effective contacts between peoples and organisations in the areas of education, science, culture, combating discrimination and intolerance and mutual respect of peoples. In order to achieve this, obtaining visas should be made easier for citizens of the countries of the Southern Caucasus..

7.5. Both the European neighbourhood policy and the Eastern Partnership enable civil society in the countries of Southern Caucasus not only to establish contact with the EU institutions but also to engage in bilateral cooperation with its own partner organisations. It would also be very useful to set up a mechanism to support the establishment of cooperation with EU counterparts.

7.6. One of the problems afflicting the countries of the Southern Caucasus is ongoing armed conflict. Apart from the obvious role for the EU institutions in attempts to resolve these conflicts, it would appear that civil society organisations could play a supporting role in the peace process, especially in promoting it among their own people. Joint regional initiatives could be particularly important here, with contacts between partner organisations of the countries in conflict as the starting point for the difficult process of reconciliation.

Brussels, 14 May 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the 'Baltic Sea region: the role of organised civil society in improving regional cooperation and identifying a regional strategy'

(2009/C 277/08)

Rapporteur: Ms PELTOLA

At its plenary session held 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:

Baltic Sea region: the role of organised civil society in improving the regional cooperation and identifying a regional strategy.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 April 2009. The rapporteur was Ms PELTOLA.

At its 453th plenary session, held on 13 and 14 May 2009 (meeting of 13 May 2009), the European Economic and Social Committee adopted the following opinion by 171 votes to 6 with 7 abstentions.

1. Conclusions and recommendations

1.1. The EESC considers that the four aims of the Baltic Sea Strategy, which seek to make the region 1) an environmentally sustainable place, 2) a prosperous place, 3) an attractive and accessible place and 4) a safe and secure place, are important, well-founded and complementary.

1.2. The EESC underlines the vital role of organised civil society in implementing the Baltic Sea Strategy. The EESC recommends that the Commission set up a consultative 'Baltic Sea Civil Society Forum' in order to ensure organised civil society's involvement in the Baltic Sea Strategy.

1.3. The external relations dimension of the Baltic Sea Strategy must be linked to cooperation within the Northern Dimension, opening the way for a partnership of equals between the EU and third countries.

1.4. The EESC believes that the implementation of the Baltic Sea Strategy will require the establishment of its own separate budget, otherwise the strategy risks remaining merely a political statement and will not achieve its aims.

1.5. Promoting economic growth and prosperity requires institutional measures from the EU, in particular the strengthening of the international treaty base. This would assist the various players, be they companies or private individuals, in bringing about economic integration and growth in the region more successfully than has been the case so far. The EESC considers that strengthening the economy of the Baltic Sea region will enhance its attractiveness and promote the creation of a Baltic Sea brand. Economic growth would also bring wider benefits to the EU area as a whole, improving the functioning of internal markets and economic integration.

1.6. The EESC is of the view that following the HELCOM Baltic Sea Action Plan, as agreed by the EU and the Baltic coastal states, is the best way of protecting the Baltic Sea environment.

1.7. The EESC believes that citizens' active participation will take on increasing importance in the future, even in those sectors and areas which have traditionally been managed by the public sector. Environmental protection in the Baltic Sea region is a good example of this.

2. Introduction

2.1. The European Union is in the process of drawing up a Baltic Sea Strategy. The European Parliament adopted a resolution on the drawing up of an EU Baltic Sea Strategy in November 2006. In December 2007, the European Council asked the Commission to draw up the strategy by June 2009. This strategy sets out the most important parameters for improving future regional cooperation in the Baltic Sea region. The Commission is preparing the strategy as a regional policy initiative. All in all, 19 Commission Directorates General are involved in the preparatory work.

2.2. The strategy aims to cover four aims: to make the Baltic Sea region ⁽¹⁾ 1) an environmentally sustainable place, 2) a prosperous place 3) an attractive and accessible place, and 4) a safe and secure place. The EESC considers such aims for the Baltic Sea Region both important, well-founded and complementary. The notion of creating a clear Baltic Sea identity is also well-founded. By putting forward recommendations on better governance, the Baltic Sea Strategy will also aim to simplify procedures and cut red tape.

(1) In this opinion, the Baltic Region means states with shorelines on the Baltic Sea: Finland, Sweden, Denmark, Germany, Poland, Estonia, Latvia, Lithuania and Russia. All, with the exception of Russia, are Member States of the European Union.

2.3. The content and overall viewpoint of the Commission's Baltic Sea Strategy has been built up through open public dialogue and wide-ranging consultation with stakeholders. In addition to these round table events, a public Internet consultation was used to gather views and opinions ⁽²⁾. The EESC supports the approach chosen by the European Commission.

2.4. The Baltic Sea Strategy will be submitted to the European Council on 19 June 2009. The strategy's implementation plan is intended to be a very practical document which defines the responsible parties and timetables and to which, should the need arise, complementary measures may be added. Implementation of the strategy will begin under the Swedish presidency of the EU and work will continue under the presidencies of other Baltic Member States, first Poland in 2011 and then Denmark and Lithuania in 2012 and 2013.

2.5. The external relations dimension of the EU's Baltic Sea Strategy is linked to cooperation within the Northern Dimension ⁽³⁾. The Northern Dimension is an instrument by means of which the EU and Russia, together with Norway and Iceland, implement policies in agreed areas of cooperation in northern Europe. Cooperation within the Northern Dimension will enable a Partnership of Equals between the EU and third countries to be created. The EESC strongly supports the inclusion of all Baltic Sea states in joint projects in the Baltic Sea region. That is why Russia's participation and commitment to Baltic Sea cooperation from the outset is of crucial importance. In addition, the EESC encourages the Baltic Sea states, Norway and Iceland to continue their cooperation, which has close historic, economic and cultural roots.

2.6. No new funding instruments are envisaged for implementing the Baltic Sea Strategy. Available funding channels include the EU Structural Funds (EUR 55 billion for the Baltic Sea region between 2007-2013), national funding from each Baltic Sea state and funding options from international financial institutions such as the EIB, NIB and the EBRD. The EESC believes that more effective use must be made of the various EU funding channels for the purposes identified in the Baltic Sea Strategy.

2.7. The EESC believes that the implementation of the Baltic Sea Strategy will require the establishment of its own separate budget, otherwise the strategy risks remaining merely a political statement and will not achieve its aims. The EESC will address the issue of funding more closely in a future opinion.

3. The role of organised civil society in implementing the Baltic Sea Strategy

3.1. The EESC welcomes the fact that the Commission has actively involved civil society organisations in drawing up the Baltic Sea Strategy: their active participation is also required for implementing the strategy's action plan. The EESC stresses that

⁽²⁾ The first round table was held in Stockholm on 30 September 2008 and the second will be held in Rostock on 5-6 February 2009. In addition, round table events were held in Kaunas on 18-19 September 2008, Gdansk on 13 November 2008, Copenhagen on 1-2 December 2008 and Helsinki on 9 December 2008. The Internet consultation took place between 3 November and 31 December 2008.

⁽³⁾ OJ C 309 of 16.12.2006, p. 91.

without organised civil society's genuine involvement in the Baltic Sea Strategy, implementing the strategy's measures and achieving its goals will not be possible.

3.2. At present, the important work of numerous different organisations, such as NGOs, consumers, and business or nature conservation groups often never progresses beyond the level of recommendations. Knowledge of their work is patchy and practical measures may never get off the ground.

3.3. As well as national bodies, regions, cities and organised civil society associations are also key players in the Baltic Sea region. The EESC feels there is a need to clarify their various roles, to encourage organisations to work together and to develop cooperation arrangements. There is also a need to clarify the confusing morass of initiatives and projects under the various funding programmes by coordinating programmes more efficiently and taking systematic account of the Baltic Sea Strategy's priorities.

3.4. The EESC is concerned about the practical implementation and monitoring of the Baltic Sea Strategy's action plan and therefore proposes that the Commission establish a consultative 'Baltic Sea Civil Society Forum', whose remit would be:

- to ensure organised civil society's involvement in the Baltic Sea Strategy;
- to voice organised civil society's views and recommendations on topical issues to the relevant Baltic Sea Strategy authorities;
- to promote the active engagement of organised civil society in countries involved in the Baltic Sea Strategy;
- to promote organised civil society's participation in implementing the Baltic Sea Strategy at national, regional, and EU level;
- to foster and encourage public discussion and awareness of the Baltic Sea Strategy's measures, progress made and goals to be attained, both in the EU Member States and in other countries covered by the strategy;
- to use various means, such as visits, workshops and the dissemination of best practice, to promote networking between regional civil society groups (both inside and outside the EU).

3.5. The EESC is ready to begin preparatory work on the 'Baltic Sea Civil Society Forum' with regard to its remit, composition and operation. The EESC's existing contacts with regional civil society organisations and its experience in similar fields will enable it to manage the Forum's activities. The EESC has some very positive experience and functional models at its disposal from securing the active participation of organised civil society in projects such as Mediterranean cooperation ⁽⁴⁾ and network cooperation in the Black Sea region ⁽⁵⁾.

4. Making the Baltic Sea a prosperous economic area

4.1. The effective implementation of the EU's internal market within the region brings with it very significant benefits in terms of economic growth. The EU, national states and international organisations create the institutional structures which underpin economic relations in the Baltic Sea region and allow it to grow. It is nonetheless clear that it is the economic players themselves, firms as well as private individuals, who are responsible for economic integration. Hence, this will be the factor determining how successfully the integration of the Baltic Sea region's economy proceeds and how quickly it grows. The EESC believes that strengthening the Baltic Sea region's economy will considerably enhance the region's attractiveness and promote the creation of a Baltic Sea brand. Strengthening the Baltic Sea region's economy would also bring wider benefits to the EU area as a whole.

4.2. The following sets out the main priorities on market integration and measures to promote growth in the Baltic Sea economic region.

4.2.1. Strengthening the international treaty base

4.2.1.1. Exploiting the economic opportunities offered by the Baltic Sea region requires, in the first instance, a significant expansion in the international treaty base as well as the deeper integration of Europe. Although Russia's membership of the WTO and its new cooperation agreements with the EU (New EU/Russia Agreement) do not concern the Baltic Sea region exclusively, their potential benefits to the region are of decisive importance as drivers of regional economic growth and as promoters of development. The Baltic Sea is the most important natural export route for Russia's and Asia's products to Europe.

4.2.1.2. It is a matter of concern to the EESC that Russia is not a signatory to the European Union's Baltic Sea Region Programme (INTERREG IVB 2007-2013), which is endeavouring to make the region an attractive place to invest, live and work in.

⁽⁴⁾ The EESC established a network of economic and social councils and similar institutions in the Euromed region in 1995 on the basis of a mandate given to it in the Barcelona Declaration.

⁽⁵⁾ OJ C 27 of 3.2.2009, p. 144.

4.2.1.3. Falling within the decision-making powers of the EU and its Member States are several contractual arrangements which could have an extremely positive impact on the Baltic Sea region. For example, at present, a company with operations in each of the nine Baltic Sea region countries has to use up to eight different currencies. Only Finland and Germany belong to the euro zone. It is very important for economic and monetary union to be extended to include Denmark, Sweden, Estonia, Latvia, Lithuania and Poland. In particular, initiatives from Denmark and Sweden to join economic and monetary union would lend effectiveness and credibility to efforts to exploit the full potential of the Baltic Sea economic region.

4.2.2. Promoting the functioning of the internal market

4.2.2.1. More needs to be done to ensure the proper functioning of the Baltic Sea region's internal market. With increased specialisation, more and more firms are operating in various international networks formed according to field of activity. Through their customers, subcontractors and business partners, firms have links to markets and producers throughout the Baltic Sea region. With the increase in cross-border commercial transactions, it is vitally important for the Baltic Sea region to create as uniform a market area as possible so that trade in goods and services, public procurements and investment flows are unimpeded and capital and labour markets function smoothly.

4.2.2.2. The entry into force of the new Lisbon treaty in 2010 is potentially very important for EU Member States in the Baltic Sea region. The treaty strengthens the EU's competence in important areas for industry such as customs union, competition rules and trade policy.

4.2.2.3. Achieving as uniform an application of EU law as possible is also crucial. For example, a key element of the revised Lisbon strategy on jobs and growth is the service directive, which must be implemented in Member States by 28 December 2009. Eurochamber's ⁽⁶⁾ February 2009 report ⁽⁷⁾ highlights, *inter alia*, significant differences between the implementation of this directive in the Baltic EU Member States in terms of both timetables and substance. The current situation presents the EU Baltic Member States with an excellent opportunity to work together to create a standardised, centralised business system for services providers. This centralised business system must clarify authorisation procedures for the provision of services, make it easier to obtain information on administrative formalities and consumer protection as well as making it easier for service providers to transfer from one Member State to another.

⁽⁶⁾ The Association of European Chambers of Commerce and Industry.

⁽⁷⁾ The 4th edition of survey on the Implementation of the Services Directive: www.eurochambres.eu

4.2.2.4. Several key sectors in the Baltic Sea region remain outside the scope of the service directive. These include some transport services, temping agencies, financial services and healthcare services. These services also need a properly functioning internal market, especially if companies are required to be active service providers.

4.2.2.5. Various trade barriers still prevent firms from operating efficiently in the Baltic Sea region. The European Union and other players still have much to do in the Baltic Sea region in terms of consolidating the basic principles of the rule of law and, in particular, eradicating corruption.

4.2.2.6. The EESC would like to draw attention to an excellent example of trade facilitation between the EU and Russia. A pilot project on the electronic transmission of customs clearance data began on 1 January 2009. At this initial stage, Russia and eight EU countries, three from the Baltic region (Latvia, Sweden and Finland) are involved. Three more Baltic countries (Lithuania, Estonia and Poland) will join the project later in 2009. This project marks the first step in modernising customs procedures between Russia and the EU. Further harmonisation measures are needed to facilitate customs clearance so that opportunities for criminal activity in this area are closed off. Harmonisation will improve logistics and bring down company costs.

4.2.3. Infrastructure

4.2.3.1. Infrastructure needs sea, river, land and air transportation to be linked up across state borders. This calls for competition and joint planning so that routes can be linked together seamlessly. More attention also needs to be paid to their quality. Cooperation between EU Member States and with Russia in particular is needed to develop cheap and efficient transport chains and to eliminate bottlenecks. This could be accomplished by making full use of the Baltic Sea motorway concept, the Europe-wide TEN-T⁽⁸⁾ policy on transport networks and the forthcoming Northern Dimension's transport and logistics partnership. Any analysis of this should encompass neighbouring EU Member States and trans-European transport routes. This is a key condition for the improved mobility of goods, services and labour.

4.2.4. Boosting economic growth

4.2.4.1. Several pieces of research show that there is a positive correlation between economic growth and the effectiveness of the legal system⁽⁹⁾. Inadequate protection of property, corruption

and uncertainty about the honouring of contracts and the independence of the judiciary as well as the inconsistent application and interpretation of the law combine to slow down economic growth. This makes investment more risky and investment flows dry up. The countries of the Baltic Sea region could agree on joint steps to remedy any shortcomings in this regard. The Baltic Sea Strategy would offer an excellent foundation for such action.

4.2.4.2. The nine countries of the Baltic Sea region differ widely from each other in many respects. The countries of the Baltic Sea region and their economic relations have changed significantly during the last 20 years. Levels of economic development and industrial structures differ from one country to another and new business opportunities created by differences in supply and demand and diversity should be exploited more effectively than has hitherto been the case. The mega trends in the region, such as European integration, Russia's changing international status and global changes in the energy, commodities and service markets, should be exploited in a commercially and economically sustainable way. This means that civil society players must have favourable underlying conditions and incentives for their activities.

4.2.4.3. The EESC would emphasise that economic growth and efficient production do not necessarily need to stand in opposition to environmental concerns. On the contrary, the positive opportunities offered by the interaction of a growing and diversifying economy with a cleaner environment should be highlighted.

4.2.5. Cooperation in research and innovation

4.2.5.1. Interesting, international joint innovation projects on a cluster basis are underway in the Baltic Sea region. For example, the Nordisk Innovations Centre (NICE) has launched over 100 different projects and cross-border networks which have been grouped into different thematic groups: creative sectors, environmental technology, micro- and nanotechnology, innovative construction, nutraceuticals and food safety.

4.2.5.2. The EESC sets great store on the importance of the so-called fifth freedom and on cooperation between researchers, students, teachers and between the public and private sector. Efforts should be made to promote exchanges of research personnel between research institutes and universities. For example, developing the operational conditions for clusters would require the removal of national barriers to research funding creating a common system for the Baltic Sea countries which combines research funding from national sources. In line with the revised Lisbon strategy, each EU Member State in the Baltic Sea region should endeavour to increase its proportion of research and development spending to three per cent of gross national product.

⁽⁸⁾ http://ec.europa.eu/transport/infrastructure/consultations/2009_04_30_ten_t_green_paper_en.htm

⁽⁹⁾ European Bank for Reconstruction and Development, Transition report 2005: Business in transition and World Bank (2008), Macroeconomics and Growth Research Program/Investment climate and the Microeconomics of Growth/Institutions and Governance. See also: <http://www.enterprisesurveys.org/> on business climate conditions in various countries.

4.2.5.3. The scientific and research communities of the eight Baltic Sea region countries which are EU Member States have been active participants in BONUS ERA-NET projects. In 2008, as part of the EU's 7th framework research programme, the Commission approved the Joint Baltic Sea Research Programme (BONUS+), which is jointly funded by the EU and by national research funding bodies from the Baltic coastal states. The EESC warmly welcomes the establishment of this new permanent Baltic Sea research programme BONUS+ and particularly hopes that its results will have a greater impact on the protection of the Baltic Sea and on the region's sustainable development than has been the case to date.

4.2.6. Labour mobility

4.2.6.1. Although five years have passed since EU enlargement in the region, free movement of labour in the EU area has not yet been attained. However, as of 30 March 2008, all the EU Baltic Sea Member States have been covered by the Schengen provisions that facilitate the free movement of persons. The EESC believes that an end should be put to transitional periods for the free movement of labour. The movement of labour and expertise from one country to another, so-called 'brain circulation', is of benefit to everyone. To ensure the availability of qualified labour, the whole Baltic Sea region must swiftly adopt an employment-based immigration policy. This is necessary even though at a time of economic slowdown, labour supply is likely to grow in the area for some time. Efforts should also be made to further promote the matching of job vacancies with employees. Work cultures and minimum working conditions need to be harmonised in order to avoid distortions of competition and to ensure employees' fundamental rights. With regard to training people for the labour market, the objective must be to develop a common vocational training structure and a list of professional qualifications. Much remains to be done across the whole Baltic region in promoting work incentives and facilitating the move from place to place or country to country.

4.2.6.2. The Baltic Sea Labour Network (BSLN) has just begun a three year joint project involving dozens of participating partners from the various countries in the region. It aims to make the Baltic Sea Region a European model of transnational labour market policy as well as an attractive place to work, live and invest in. The Trade Union Network (BASTUN) is, one of the key partners involved in the BSLN project ⁽¹⁰⁾.

5. Making the Baltic Sea Region an environmentally sustainable place

5.1. The aim is to make the Baltic Sea Region an ecologically sustainable area. The Baltic Sea is a relatively small, shallow basin of brackish water, which makes it, ecologically speaking, exceptionally vulnerable.

5.2. Over the last twenty years the condition of the Baltic Sea has deteriorated to a worrying degree. Waste discharges into it remain at an unsustainable level. The Baltic's eutrophication and its high levels of environmental toxins mean that nutrient levels, the frequency of algae blooms and other flora are on the increase. The increase in algae blooms is directly determined by the high levels of nitrogen and phosphorous, their primary nutrients.

5.3. Over 85 million people live in the Baltic's drainage area and they are becoming increasingly aware of its worrying state. The challenge in taking measures to protect the Baltic lies, however, in the fact that there are nine countries at different stages of development on the Baltic coastline and around a dozen countries, including Belarus and Ukraine, situated in the drainage area. This has made coordinating work between the various stakeholders difficult. The EESC believes that the Baltic's alarming condition makes swift and effective cross-border measures imperative ⁽¹¹⁾.

5.4. The EESC feels that the most rapid and cost-effective way of improving the whole Baltic's condition is to tackle the worst sources of pollution at a very localised level. In the Gulf of Finland, for example, the worst single polluter is the city of St. Petersburg, which still does not do enough to remove nutrients from its waste water. Nevertheless, significant progress has been made. At its biggest sewage treatment plant, which came on-stream in 2007, the chemical precipitation of phosphorous in waste water has contributed to a significant reduction in phosphorous pollution and algae blooms in the Gulf of Finland. In particular, fugitive emissions from agriculture must be tackled more effectively in all Baltic coastal states. Reducing these would significantly improve the condition of coastal waters.

5.5. The EESC considers the HELCOM Baltic Sea Action Plan (BSAP) ⁽¹²⁾ to be the most important instrument for halting the eutrophication of the Baltic. All the Baltic coastal states and the Commission signed this agreement in 2007.

6. Energy and maritime safety

6.1. The EESC has prepared a separate opinion on the external dimension of the EU's energy policy ⁽¹³⁾ which states that the EU attaches particular importance to the energy issues contained in the Baltic Sea Strategy. Energy cooperation in the region mainly covers energy consumer countries and energy transit countries. The central feature is the connection to Russia. A particular priority for the Baltic region should be the establishment of a new agreement between the EU and Russia (New EU/Russia Agreement) based on the principles of reciprocity and mutual understanding, which also covers energy issues. Russia should allow gas transit on its network and permit European firms to invest in developing its energy networks and energy sources.

⁽¹⁰⁾ Partners include central employees' organisations, international employees' federations, the Council of Baltic Sea States (CBSS), central employers' organisations and the German Institute for Social and Training Policy.

⁽¹¹⁾ <http://www.wwf.fi/wwf/www/uploads/pdf/balticseascorecard2008.pdf>.

⁽¹²⁾ www.helcom.fi.

⁽¹³⁾ OJ C 182 of 4.8.2009, p. 8.

6.2. The Baltic Sea's fragile ecosystem, already seriously polluted, means that the planned Nord Stream Baltic gas pipeline project must meet stringent safety and environmental requirements. For example, after the Second World War, ammunitions, munitions and chemical weapons were sunk in the Baltic Sea and there is no knowledge of their exact location and condition. The EESC supports the resolution adopted by the European Parliament ⁽¹⁴⁾ on 8 July 2008 and strongly recommends that stakeholders in the Nord Stream gas pipeline project look closely at alternative routes, especially over land. Whatever happens with the Nord Stream Baltic gas pipeline, Russia must also unconditionally respect the EU gas market's legal framework, including access for third parties.

6.2.1. Maritime safety is a particular cause for concern for the Baltic coastal states. A particular environmental challenge is the amount of oil transported across the Baltic which has increased seven-fold over the last fifteen years. In 2007, the amount of oil transported via the Baltic was 145 million tonnes and this is forecast to increase to 240 million tonnes by 2015. This cooperation between the Baltic coastal states has resulted in the International Maritime Organisation (IMO) designating the Baltic Sea as a particularly sensitive sea area (PSSA). Vessels with double bottoms and double hulls, mandatory from 2010, will help to prevent possible oil spillages. The EESC nevertheless urges the countries of the Baltic Sea region to develop a joint monitoring and information exchange system to further promote maritime safety.

6.2.2. Nutrient emissions from ships can be reduced by changing the waste water requirements in annex IV of the MARPOL convention. The aim of Directive 2000/59/EC was to increase port reception facilities for ship-generated bilge and waste water. Voluntary action to reduce waste water discharges should continue to be encouraged, for example, by increasing the number and volumes of port reception facilities. Baltic Sea ports must also ensure that their operational conditions are sufficiently flexible and swift to deal with large cruise ships ⁽¹⁵⁾.

6.3. Although the eutrophication of the Baltic is not significantly affected by ship discharges, they are easier to reduce than fugitive emissions, and therefore must not be overlooked.

7. Reduction of agricultural emissions

7.1. The HELCOM Baltic Sea Action Plan (BSAP) sets out clear minimum nutrient pollution targets for each country in the Baltic Sea region. Meeting those targets requires the EU to develop

⁽¹⁴⁾ European Parliament resolution of 8 July 2008 on the environmental impact of the planned gas pipeline in the Baltic Sea to link up Russia and Germany (Petitions 0614/2007 and 0952/2006) (2007/2118(INI)).

⁽¹⁵⁾ HELCOM recommendation 28E10 (Application of the no-special-fee system to ship-generated wastes and marine litter caught in fishing nets in the Baltic Sea area) should likewise be fully implemented.

certain elements of the common agricultural policy in which the particular circumstances of the Baltic Sea region's agricultural production and environment are also taken into account ⁽¹⁶⁾.

It is useful therefore that, in its draft action plan, the Commission has to a large extent taken on board the proposals of the Baltic countries' farming organisations concerning sustainability, the environment and agriculture. Among other things, these focus more specifically on action relating to environmental technology, consultation, manure management and the implementation and administration of the EU's rules on pesticides, feed and food.

Here cooperation between players and organisations in the individual Member States such as agricultural producers, environmental organisations and consumers is of particular importance. Agreeing on best practice in order to apply and disseminate it across the various countries is vital for the area. Practices which could be systematically utilised by different players should be sought under agricultural development programmes in the new programme period. Likewise, methods which improve the use of fertilisers and energy should also be sought ⁽¹⁷⁾.

8. Reducing phosphorus and nitrogen emissions by means of more efficient waste water treatment

8.1. The EESC considers the full application of the EU Urban Wastewater Treatment Directive ⁽¹⁸⁾ to be the most important step in bringing down nitrogen and phosphorus emissions. Another important measure for a more efficient removal of phosphorus is the application of HELCOM recommendation 28E/5. Current EU timing requirements are, however, too generous given the alarming state of the Baltic Sea. More ambitious targets are necessary. The EESC sets store on improving the efficiency of these technical and chemical treatment processes as they are reasonably cost-effective and produce swift results.

⁽¹⁶⁾ The effective implementation of the integrated river basin management plans of the EU Water Framework Directive should be secured. Water protection within agriculture can be enhanced by giving priority to environmentally sensitive areas.

⁽¹⁷⁾ To reduce the agricultural loading to the Baltic Sea, innovations within agricultural policy are needed both in planning and in implementation of the measures. One possible example of new practices could be voluntary competitive biddings in an agri-environmental scheme. Background: competitive bidding is a voluntary measure by which measures are focused on those fields where the risk of nutrient release is highest and the cost-efficiency ratio of the protection measures is best. Based on the bids, the authorities pay the farmer according to the environmental advantage of measures concerning each of the fields offered to the programme, instead of the present flat-rate subsidies.

⁽¹⁸⁾ The Council Directive 91/271/EEC concerning urban waste-water treatment.

8.2. The John Nurminen Foundation is a good example of how organised civil society can act to protect the Baltic Sea environment. The principal aim of the John Nurminen Foundation's project for a clean Baltic Sea is to halt its eutrophication and to raise environmental awareness of the Baltic's condition ⁽¹⁹⁾. The main focus is on measures which impact most rapidly and cost-effectively on the Baltic Sea's natural environment and utility values. Donations fund measures such as improvements in the chemical removal of phosphorous from municipal waste water destined for the Baltic Sea. The advantage enjoyed by the foundation as an active player in protecting the environment also flows

from the fact that it is a non-profit organisation, flexible and free from bureaucratic constraints.

8.3. The EESC believes that active citizenship initiatives can play a significant role even in areas traditionally managed by the public sector. Clearly, the expertise, knowledge and approach provided by the private and third sectors can complement measures put in place by the public sector.

Brussels, 13 May 2009.

The President
of the European Economic and Social Committee
Mario SEPI

⁽¹⁹⁾ <http://www.johnnurmisenfaat.io.fi/?lang=en>.

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

453RD PLENARY SESSION HELD ON 13 AND 14 MAY 2009

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council repealing Council Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC, and 86/217/EEC regarding metrology'

COM(2008) 801 final — 2008/0227 (COD)

(2009/C 277/09)

Rapporteur: **Mr SALVATORE**

On 19 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 repealing Council Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC, and 86/217/EEC regarding metrology

COM(2008) 801 final – 2008/0227 (COD).

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 24 April 2009. The rapporteur was Mr SALVATORE.

At its 453rd plenary session, held on 13-14 May 2009 (meeting of 14 May), the European Economic and Social Committee unanimously adopted the following opinion.

1. Conclusions and recommendations

1.1. The EESC endorses the Commission's proposal to repeal Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC, and 86/217/EEC concerning the metrology sector and the grounds it gives for doing so. These directives can now be deemed obsolete and no longer effective for pursuing the goal for which they were intended – harmonisation of national legislation on the various types of measuring instruments.

1.2. The EESC takes note of the outcome of the public consultation and the external study carried out by the Commission, namely:

- a) there are no barriers to trade in the sectors covered by the eight directives;
- b) in practice the directives are increasingly rarely used as they concern instruments which are now obsolete;

- c) technological advance is taken into account by international standards and national legislation based on the principle of mutual recognition.

1.3. Given that the national rules in the sector are able to ensure the absence of barriers to trade irrespective of whether the directives in question are applied, the EESC calls on Member States not to make changes to their current rules once the directives have been repealed.

2. Introduction

2.1. Streamlining the existing stock of legislation is a priority for the EU, as can be seen from the Better regulation programme, which is anchored in the Lisbon Strategy for growth and jobs. It is intended to make Community and national legislation less burdensome, easier to implement and therefore more effective for achieving the relevant objectives.

2.2. The general aim is to facilitate the achievement of a European regulatory framework which meets the most stringent legislative criteria while respecting the subsidiarity and proportionality principles.

2.3. Under these principles, revising the Community acquis takes the form of an ongoing, systematic process whereby the lawmaking institutions can review the legislation taking all stakeholders into consideration.

2.4. The Commission decides to repeal legal instruments – as a means of streamlining – in all cases where they have been rendered irrelevant or obsolete by technical or technological advances, changes in EU policy, changes in the way the provisions of the Treaties are applied or the adoption of international standards.

3. Background

3.1. The legislative framework consisting of Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC, and 86/217/EEC concerning the metrology sector was established in the 1970s to remove barriers to the free movement of goods in the internal market arising from differences in national legislation in the sector.

3.2. The Commission stresses that the legislative framework consisting of the eight EEC metrology directives is in practice outdated as, over time, national legislation in the sector has evolved to keep pace with technological advances and standards laid down by international rules⁽¹⁾. The addition of mutual recognition clauses has ensured that measuring instruments with a similar level of performance have been accepted as well despite the fact that they were designed on the basis of another Member State's legislation.

3.3. On the basis of a public consultation and an external study the Commission notes that there are currently no barriers to trade

in the sectors covered by the directives. Moreover, the directives concern instruments which are increasingly rarely used.

3.4. The Commission's proposal to repeal the eight directives is based on the need to reconcile two different objectives: reducing the quantity of European legislation whilst fully preserving the internal market.

4. Comments

4.1. In terms of its stated aims of reducing the quantity of European legislation while, at the same time, fully preserving the internal market, the Commission proposal is valid. In the sector covered by the directives in question, national rules based on standards defined by relevant international rules and on the principle of mutual recognition keep pace with progress in technology. They have the same effect as a legislative harmonisation framework such as that provided by the eight directives it is planned to repeal.

4.2. Repealing the eight directives on the metrology sector is in line with the EU strategy of streamlining the Community acquis by repealing legislative instruments which have become irrelevant and, therefore, obsolete because of their lack of impact.

4.3. Once the directives have been repealed, in order to ensure the effectiveness of a system based on voluntary standardisation, the EESC feels that it would be judicious to introduce periodic controls on national legislative systems relating to both new and old technologies.

4.4. The EESC acknowledges and appreciates the Commission's considerable efforts to involve all stakeholders in the sector concerned by its proposal. These endeavours include the broad external consultation carried out between May and July 2008 to record the reactions of measuring-instrument producers, buyers, consumers and authorities.

Brussels, 14 May 2009.

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

⁽¹⁾ Model regulations and international recommendations giving Member States a basis agreed upon at international level on which to establish their respective national laws include, in particular, those drawn up by the OIML (International Organisation of Legal Metrology). Established in 1955 on the basis of a Convention with the aim of promoting the global harmonisation of legal metrology procedures, this intergovernmental organisation has developed a worldwide technical structure that provides its members with metrological guidelines for the definition of national and regional requirements concerning the manufacture and use of measuring instruments for legal metrology applications.

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the protection of animals used for scientific purposes'

COM(2008) 543 final — 2008/0211 COD

(2009/C 277/10)

Rapporteur: **Richard ADAMS**

On 12 January 2009 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 on the protection of animals used for scientific purposes

(COM(2008) 543 final – 2008/0211 COD).

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 17 April 2009. The rapporteur was Richard ADAMS.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May), the European Economic and Social Committee adopted the following opinion by 173 votes to 14, with five abstentions.

1. Conclusions and recommendations

1.1. The EESC welcomes this long overdue Directive which will standardise and regularise the selection, use and treatment of animals for scientific purposes but has reservations about the degree to which the Directive will, in practice, replace, reduce and refine the use of animals in research. The Committee therefore highlights the following recommendations in addition to those others contained in the main text.

1.2. The Commission should monitor more closely the numbers of animals used in scientific purposes. This may require new, sector-specific approaches to data collection and monitoring, some of which will lie outside the scope of the present Directive.

1.3. The Directive should require harmonisation on research reviews across Member States and develop and determine that competent authorities in each Member State hold and effectively apply a database of existing animal experimentation when granting project and procedure approvals.

1.4. The role of ECVAM should be developed from that of a supporting research function to a central coordinating role. An EU Centre of Excellence should be established to promote and prioritise development of 3Rs methods across all current animal uses including basic medical research. The '3 Rs' (replace, reduce and refine) is a general approach first defined in 1958.

1.5. 'Severe' experiments should receive special attention in the efforts to identify humane alternatives. Procedures likely to cause intense pain, suffering or fear should only be performed if no alternative and effective research methods exist making it possible to research certain diseases that seriously affect human health. 'Intense' is defined as a level of suffering or fear above that of 'severe' in the classes of severity set out in the directive.

1.6. The Directive should require that, as soon as practically possible, non-human primates are only used in animal testing if they are the offspring of non-human primates which have been bred in captivity.

1.7. The Directive shall clearly state that it does not restrict the right of the Member States to apply or adopt stricter measures for care and housing of laboratory animals.

1.8. The EESC urges the scientific community to recognise that its research programmes can be made fully compatible with the aims of the 3Rs in practice as well as in principle and commit to this as a dynamic approach.

2. Introduction

2.1. The welfare and protection of animals, whether domestic or farmed, is dealt with in a large number of EU directives, decisions and regulations. Protocol 33 on Animal Welfare⁽¹⁾, appended to the Treaty of Amsterdam, established a view: 'Desiring to ensure improved protection and respect for the welfare of animals as sentient beings'. In this way the EU recognised that animals have an inherent status above that of property or objects and

⁽¹⁾ OJ C 340, 10 November 1997.

our dealings with them should be governed both by ethical considerations and through regulation. The higher animals have this status because, like us, they experience pain and pleasure, are aware of their own existence and prefer to experience pleasurable and continuing lives. Some species of these animals, having comparable neurological systems to humans, are used widely in laboratory experimentation for various purposes. The results of such tests can provide varying degrees of benefits to humans, animals themselves and the environment but also, in some instances, cause distress, suffering and death for the animals concerned.

2.2. This directive, revising legislation dating from 1986 ⁽²⁾, can be seen as one of a series reflecting changing views on the use of animals. There have been recent revisions on directives dealing with animal slaughter and transport and the introduction of a Community Action Plan on the Protection and Welfare of Animals, all of which have been dealt with recently in this Committee ⁽³⁾. A near-total ban on the sale of animal-tested cosmetics throughout the EU and a ban on all cosmetics-related animal testing has come into effect this year ⁽⁴⁾.

2.3. The proposed directive on the protection of animals used for scientific purposes will become part of this body of legislation. It fully accepts the general objective, endorsed in principle by the wider scientific community, to replace, reduce and refine the use of animals in research (known as the 3Rs). The Committee Opinion therefore considers whether the proposal will further this objective and the degree to which a balance has been struck between animal welfare, human benefit and scientific advancement.

3. Summary of the proposed directive

3.1. Scope and permitted purposes

3.1.1. The directive will apply where animals (mostly vertebrates) are bred for or used for scientific purposes. It excludes agricultural, animal husbandry and veterinary practices. Purposes allowed are basic research for the advancement of knowledge in the biological or behavioural sciences; research aimed at the avoidance, prevention diagnosis or treatment of illness or the assessment, detection, regulation or modification of physiological conditions; the development, manufacture or testing of drugs,

foodstuff or other products with the aims of the above; the protection of the environment in the interests of human welfare; research aimed at the preservation of the species; higher education or training and forensic inquiries.

3.2. Types of animal

3.2.1. Primates must be purpose-bred for research and may only be used in procedures that are 'undertaken with a view to the avoidance, diagnosis, prevention or treatment of life-threatening or debilitating clinical conditions in human beings.' The use of great apes is banned, although there is a 'safeguard' procedure to allow Member States, with the European Commission's agreement, to authorise their use for research that is considered essential for the preservation of the species or in relation to an unexpected outbreak of a life-threatening disease. Endangered species can only be used for translational/applied research and testing, but not for basic research and stray and feral domestic animals cannot be used, nor can animals taken from the wild unless a specific scientific justification is provided. In addition the usual 'laboratory' species (mice, rats, guinea pigs, hamsters, gerbils, rabbits, frogs, dogs, cats) must be purpose-bred.

3.3. The severity of procedures

3.3.1. Four classes of severity are defined. Mild, moderate, severe and non-recovery (i.e. killed while still under general anaesthesia). The Commission will establish criteria for the classification of procedures to be adopted by a regulatory committee. These criteria are relevant to the care and welfare measures that need to be taken and the 're-use' of an animal in testing and some restrictions apply.

3.4. Authorisation

3.4.1. Individuals require authorisations to supervise or carry out procedures, humane killing and the supervision of animal care staff. Institutions require authorisation for breeding, supplying or using animals in procedures. Named staff must be responsible for projects and to deal with non-compliance. Each institution must have a permanent ethical review body. Project authorisations of up to 4 years can be given by competent authority as assigned by Member State based on a transparent ethical evaluation which includes the scientific or legal justification of the project; the application of the 3 Rs in project design; the severity of the procedures involved and a harm-benefit analysis (is the animal use and suffering justified by the expected advancement of science that ultimately benefits human beings, animals or the environment.)

⁽²⁾ OJ L 358, 18.12.1986.

⁽³⁾ OJ C 28, 3.2.2006, p. 25; OJ C 151, 17.6.2008, p. 13; OJ C 161, 13.7.2007, p. 54; OJ C 324, 30.12.2006, p. 18 and the EESC additional opinion CESE 879/2009 (NAT/431) adopted on 13 May 2009.

⁽⁴⁾ OJ L 262, 27.9.1976, OJ L 66, 11.3.2003.

3.4.2. Non-technical project summaries are required to be published in applications for all authorised projects. Member States can decide to use a reduced project application system (which does include such summaries) for any non-primate projects which only use procedures classified as 'mild'.

3.5. *Care and Inspection*

3.5.1. The guidelines on the accommodation and care of laboratory animals set out in the European Convention for the protection of vertebrate animals used for experimental and other scientific purposes (Council of Europe, European Treaty Series – Nr. 123), will be in most parts mandatory requirements. All Member States will be required to have an appropriate infrastructure with sufficient numbers of trained inspectors; each establishment will have at least 2 inspections a year by the national authority, at least one of which will be unannounced, with larger establishments having more frequent inspections. There is provision for the Commission to undertake controls of the infrastructure and operation of national inspections. Detailed records on the provenance, use, re-homing or disposal of the animal will be required, with extra provisions for dogs, cats and non-human primates.

3.6. *Alternatives to the use of animals*

3.6.1. Data on testing methods legally required in one Member State will be accepted by all to avoid duplication. Each Member State will contribute to the development of alternative, non-animal, approaches and must designate a national reference laboratory for the validation of alternative methods. The Commission will set the work priorities for these national reference laboratories in consultation with the Member States and coordinate them. If a method of testing not involving the use of animals exists and may be used in place of a procedure, Member States are specifically required to ensure that the alternative method is used. Member States must also ensure that the number of animals used in projects is reduced to the minimum without compromising the objectives of the project.

4. **General comments**

4.1. Although data on animal experimentation continues to accumulate the number of animals used in laboratory testing has recently begun to rise and is now estimated at a minimum of 12 million within Europe. It should also be noted that 'surplus' animals – those bred but not used and subsequently destroyed, and animals bred, killed and whose tissue is subsequently used for testing - are not included in the figures. Details of the numbers of animals used, supplied under a voluntary process, have been published by the Commission: Fifth Report on the Statistics on the Number of Animals used for Experimental and other Scientific

Purposes, 5 November 2007. Rodents and rabbits, for example, represent 77,5 %, birds 5,4 % and non-human primates 0,1 % of all animals used. Some of this is due to the trend for researchers to use genetically modified animals in experiments and for new legal testing requirements - for example the REACH legislation ⁽⁵⁾. Animal welfare organisations are concerned about the overall impact of REACH on animal testing, which will result in an increase in numbers used. Others, WWF for example (<http://www.wwf.org.uk/filelibrary/pdf/animltesting03.pdf>) (only available in English), point out that in the long term the environmental benefits to fauna carry significant advantages.

4.2. Biomedical research bodies have raised a number of issues of clarification concerning the proposed directive. In general the main concern seems to be an increase in administration and bureaucracy, a possible weakening of the right to protect confidential research and the opportunity provided for greater access to information and procedures by campaigning groups. Users of animals in experiments often express frustration that the public and campaign groups fail to recognise that animal testing is largely a last resort because of its expense and ethical ambivalence. The Committee believes that the research industry can, to some extent, make a case for all the above points but that these issues have already been taken fully into account in the framing of the Directive.

4.3. It should be noted that replacement of animals used in testing will ultimately be of commercial benefit to companies. Given that animal testing is expensive and time-consuming alternatives will provide future commercial opportunities.

4.4. The EESC finds that the proposed Directive does not fully take the opportunity to reflect progress on non-animal testing alternatives. Given that there is no legal basis for the Commission to require harmonisation on research reviews across Member States the EESC has doubts about the possibility of competent authorities in each Member State holding and effectively applying a database of existing animal experimentation when granting project and procedure approvals. The Commission should do all in its powers to ensure that the national bodies responsible for authorisation, and likewise the national centres for the validation of alternative methods, are fully aware of the activities of their respective counterparts and are able to develop joint approaches in order to discourage distortion of the internal market.

⁽⁵⁾ OJ L 396, 30.12.2006.

4.5. There is considerable public interest in, and sensitivity to, the issue of animal testing in some member states. The EESC believes it is accurately reflecting mainstream attitudes by wishing to see animal suffering minimised, whilst at the same time accepting that animal testing is sometimes necessary for the greater good.

5. Specific comments

5.1. The Committee recognises that the proposed Directive could be influential in reducing the numbers of animals in testing, and in improving the welfare of animals involved in tests. Whilst the long-term objective should be the significant reduction of numbers of animals involved in tests, setting targets could be counterproductive, driving regulated use overseas. However, the Commission should try to find ways of monitoring the numbers of animals being tested, and review its approach if need be. This may require new, sector-specific approaches to data collection and monitoring, some of which will lie outside the scope of the present Directive.

5.2. Current EU activity on developing alternatives concentrates on regulatory toxicology which covers less than 10 % of animal testing at present. An EU wide approach to the development of alternatives across all research sectors using animals (articles 44-47) is highly desirable, recognising that the oversight of coordination will be a major task. Significantly increasing the uptake of alternatives will require considerable effort from multidisciplinary scientific groups and from legislators, and will require increased support for the European Centre for the Validation of Alternative Methods (ECVAM), created by the EU in 1991, and other European and national centres. The role of ECVAM should be developed from that of a supporting research function to a central coordinating role in pushing alternatives into the mainstream. In addition, the Committee recommends that an EU Centre of Excellence is established to promote and prioritise development of 3Rs methods across all current animal uses including basic medical research. This remit would be considerably greater than that held by ECVAM.

5.3. REACH represents a significant challenge to both industry and regulatory authorities, if the timetable is to be adhered to. It also represents an opportunity to develop progressive testing strategies which will lead not only to the development of alternatives and the reduction in animal suffering, but also to improved data, and reduced costs for industry resulting from more efficient methods. Tiered testing approaches, building on the work of ECVAM, have been outlined by a number of authors and should be considered. Such approaches are already in use, especially in North America.

5.4. The Committee accepts majority scientific opinion that animal testing has made a valuable contribution to scientific research and that it will continue to do so in the future. However there is also a need for the wider scientific community involved in animal testing to be able to accept the limitations of current approaches and the need to consider all methods when reviewing the rationale behind specific experimentation. Those research programmes where animal testing is considered to be of doubtful value should be a priority for the development of alternatives. The Committee welcomes the forthcoming retrospective assessment of the benefit of animal procedures and believes that it has the potential, if applied to all procedures to avoid redundant animal use and meet the concern of some stakeholders as to the value of some animal procedures.

5.5. The Committee welcomes the forthcoming classification as to degree of suffering in experiments. The 'severe' experiments should receive special attention in the efforts to identify humane alternatives. Procedures likely to cause intense pain, suffering or fear should only be performed if no alternative and effective research methods exist making it possible to research certain diseases that seriously affect human health.

5.6. In the Directive it is required that each Member State will support the development and use of procedures and approaches that promote the 3 Rs, aiming to reduce animal use and suffering. This can be achieved partly through improved experimental design, through the avoidance of duplication, and by not undertaking unnecessarily broad exploratory studies. Methods capable of reducing, refining and ultimately replacing animal testing as part of integrated testing strategies, such as *in vitro* tests, quantitative structure-activity relationships (QSAR), expert systems, computer modelling, and statistical methods, must be supported. Member states should also be required to nominate a reporting body on such initiatives to ensure that alternatives are being developed and applied.

5.7. The Committee welcomes the position taken in the Directive concerning the near total ban on the use of Great Apes.

5.8. The Committee recognises that non-human primates will continue to be used in specific research contexts but believes the elimination of all primate use in tests should be a long term aim, once sufficient alternative exists. In the meantime the Directive should require that non-human primates may only be used in animal testing if they are the offspring of non-human primates which have been bred in captivity; competent authorities may grant exemptions on the basis of a scientific justification (article 10).

Considering the uncertainty the EESC proposes that the Commission shall carry out an animal welfare assessment and a feasibility evaluation of the implementation of these requirements after 5 years of entry into force of the Directive.

5.9. At present the Directive requires that Member States shall apply the minimum standards for care and accommodation set out in Annex IV and the Commission can adapt the standards to technical and scientific progress in accordance with the proposed committee procedure and also make them binding (article 32). Article 95 of the Treaty as legal basis for the proposed Directive gives only very strict procedures for Member States to defend higher standards. In order to eliminate uncertainty the EESC

wishes to see the inclusion of a clear statement in article 32 confirming that the Directive shall not restrict the right of the Member States to apply or adopt stricter measures for care and housing of laboratory animals.

5.10. At present the Directive requires that the decision to authorise a project is taken and communicated to the establishment at the latest within 30 days from the submission of the application. If the Member State fails to take a decision within that period, the authorisation shall be deemed to have been granted, where the project concerned involves only procedures classified as 'up to mild' and non-human primates are not used (Article 43). The EESC finds that this is not justified and should not apply if the ethical evaluation is an integrated part of the project authorisation process.

Brussels, 13 May 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 Regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy'

COM(2008) 721 final — 2008/0216(CNS)

(2009/C 277/11)

Rapporteur: **Mr ADAMS**

On 15 December 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 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy

COM(2008) 721 final - 2008/0216 (CNS).

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 17 April 2009. The rapporteur was Mr ESPUNY MOYANO.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May 2009), the European Economic and Social Committee rejected the Section's opinion and adopted the following counteropinion drawn up by Mr Adams by 98 votes against 75 and 11 abstentions.

1.1. The EESC supports the substantial reform of the fisheries control system by the Commission and recognises it both as a centrepiece of the Common Fisheries Policy (CFP) and as a highly relevant and urgent restructuring which will improve the CFP's effectiveness in advance of the proposed major reform.

1.2. The EESC believes the current fisheries control system in the EU suffers from substantial shortcomings. It is inefficient, expensive and complex and does not produce results. This failure has significant consequences for the sustainability of fisheries resources, the fishing industry, the regions dependent on fishing and the environment. The EESC notes this view is also shared by the Commission.

1.3. In particular the CFP has generated an attitude of delay, prevarication, reluctant implementation or non-compliance by certain stakeholders. The reform of the control system is designed to bring about a change in this antagonistic, non-compliant culture. It reflects the new approach outlined in the April 2009 Green Paper on the Reform of the Common Fisheries Policy and is therefore a test of stakeholders' willingness to commit to change.

1.4. Over 75 percent of the world's fish stocks are either fully exploited or overexploited. Eighty-eight percent of EU stocks are fished beyond their maximum sustainable yield.

1.5. In the EU, the present control system is inadequate and undermines the reliability of the basic data on which scientific advice is formed. Due to unreliable data, unsustainable catch levels are continuing. Fraudulent practices are hard to detect and penalties imposed are often much lower than the potential profits to be made from overfishing. The Commission also suffers from a lack of legal tools which hamper its ability to react quickly and effectively when it detects a problem in the performance of national control systems. At the same time, new technologies offer a potential that is not used to the full.

1.6. The EESC believes the new system would establish a global and integrated approach to control, focusing on all aspects of the Common Fisheries Policy and covering the whole chain of catch, landing, transport, processing and marketing – from catch to consumer.

1.7. The EESC considers that the Commission has fulfilled its consultation responsibilities with key stakeholders, has produced a well-researched impact assessment and is right to press for immediate reform and not to defer action until the future of the Common Fisheries Policy post-2012 is determined.

Brussels, 13 May 2009.

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

APPENDIX

The following Section Opinion was rejected in favour of counteropinion adopted by the assembly but obtained at least one-quarter of the votes cast

1. Conclusions

1.1. The EESC recognises the need to simplify the control system for ensuring compliance with the Common Fisheries Policy (CFP) and agrees with the principles of the proposed reform.

1.2. However, the Committee considers that now is not the best time to carry out the reform, as the debate on the future of the CFP post-2012 has only just begun and it is very likely that there will be changes in the CFP that will have a direct effect on the control system. The EESC therefore recommends that first of all a thorough review of the basic elements of the CFP is carried out, together with a review of the relevant management models, so that the new control system methods can then be derived from this basis.

1.3. The Committee is disappointed that the Commission, in its haste to embark on the reform, has not carried out sufficient consultation of stakeholders. The EESC believes that for the reform to be successful, the economic and social players need to be involved to a greater degree.

1.4. The Committee also believes that the changes to the control system which are set out in the proposal actually significantly increase the number of obligations on fishing vessels and fisheries administrations, instead of simplifying the control system. The Committee therefore recommends that there be a sufficient transitional period.

1.5. The EESC considers that the socio-economic consequences of these measures have not been properly assessed.

1.6. To ensure that the measures are complied with, the EESC suggests that the Commission publishes an appendix detailing the different deadlines and obligations for each type of vessel.

1.7. As far as specific technical issues are concerned, the EESC asks the Commission, the Council and the European Parliament to take into account the points made under the specific comments section of this opinion.

2. Introduction

2.1. On 14 November 2008 the European Commission published three documents on the reform of the CFP control system: the Communication from the Commission to the European Parliament and the Council on the proposal for a Council Regulation establishing a Community control system for ensuring compliance with the rules of the CFP ⁽¹⁾, the principal for a Regulation itself ⁽²⁾, and the impact assessment ⁽³⁾.

2.2. The Commission believes that the control system established in 2002 has significant shortcomings that impair its overall effectiveness. The control system is ineffective, expensive, complicated, and does not produce the intended results. The Commission is therefore proposing to carry out a substantial reform of the CFP control system.

2.3. The Commission states that the main objective of the reform is to establish a Community system to inspect, monitor, control and ensure compliance with the rules that create the conditions required to effectively implement the CFP.

2.3.1. More specifically, the Commission states that its proposal for a reform seeks to achieve improvements through:

- *simplifying the legal framework.* The proposal sets out common control standards for all the CFP rules. It establishes the principles: the details will be set out in a single implementing regulation;
- *expanding the area of application.* The proposal tackles areas which have previously been neglected (transport, markets, traceability) and deals with others in which there is an increasing need for control (discards, recreational fishing, marine protected areas);

⁽¹⁾ COM(2008) 718 final.

⁽²⁾ COM(2008) 721 final.

⁽³⁾ SEC(2008) 2760.

- *establishing equal conditions for control.* Introducing harmonised inspection procedures, together with harmonised fines to act as a deterrent, will ensure fishermen are treated fairly, regardless of where they fish, and will increase confidence in the system as a whole;
- *rationalising the approach of the control and inspection procedures.* The systematic use of risk management procedures will allow Member States and the Commission to ensure their resources are targeted at areas where there is a greater risk of infringements;
- *reducing the administrative burden*
- *applying the CFP rules more effectively.* The Commission will take a macro-management approach, focussing on monitoring and checking that Member States comply with the rules.

2.4. The proposal for a Regulation complements the IUU Regulation ⁽⁴⁾ and the Regulation concerning authorisations for fishing activities of Community fishing vessels outside Community waters ⁽⁵⁾. These three Regulations comprise the new control framework.

2.5. The Commission's aim is for the new Regulation to come into force on 1 January 2010.

3. General comments

3.1. The EESC recognises that the success of the CFP will be determined by the application of an effective, global, integrated and non-discriminatory control system 'from net to plate' which will ensure that living aquatic resources can be exploited in a sustainable way.

3.2. The Committee also believes that there is a need to reform and thereby improve the current Community control system, and agrees with the general principles of the proposal.

3.3. However the EESC believes that the Commission should think long and hard about whether now is the best time to carry out this reform. In 2008 the Commission opened up the debate on the future of the CFP post-2012, and the basic elements of the policy will be revised over the next few years. The EESC believes that it should be the new CFP that determines how the control system is reformed.

3.4. The main instrument for managing fishing in the current CFP is the TAC ⁽⁶⁾ and quota system, yet this system has been challenged in different contexts ⁽⁷⁾. Given that one of the Regulation's main objectives is to ensure that the TAC and quotas assigned to the Member States are complied with, and given that the institutions have recognised that this system clearly needs to be improved, it would seem to make more sense to revise these management systems before reforming the control system. In any case, the EESC certainly recommends that the basic aspects of the CFP are thoroughly revised, the different management models are reviewed, and the new control methods are adapted to these findings.

3.5. The Committee is disappointed that the Commission has presented the whole legislative package – the Communication, the proposal for a Regulation and the impact assessment – all at the same time. Usually the Commission starts off by presenting the Communication so that it can be used to inform and guide discussions on the proposal. The EESC believes that for the reform to be successful, the economic players affected by the issue should be involved and engaged in in-depth discussions. Certainly, a reform on the scale of this proposal cannot be rushed through.

3.6. The proposal for a Regulation significantly increases the number of obligations on fishing vessels and fisheries administrations. The EESC believes that this situation could bring about serious practical problems as neither the Member States nor the Commission have adequate structures or enough staff to collect and process all the information that the proposal requires. The proposal also increases the obligations for economic players. The Committee considers that given the current economic crisis, increasing the administrative burden on Member States and economic players could be inappropriate: it could have a negative impact on businesses and jobs, and a particularly negative effect on the 10-15 metre fleet.

⁽⁴⁾ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L 286, 29.10.2008).

⁽⁵⁾ Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters (OJ L 286, 29.10.2008).

⁽⁶⁾ Total Allowable Catches.

⁽⁷⁾ Special report No 7/2007 of the Court of Auditors of the EU.

3.7. The EESC believes that the simplification process should be carried out gradually as reviewing the legal framework and subsequently applying the changes will be complicated, introducing the new systems will be expensive, and initially people will be unfamiliar with the new systems. As the changes which have been proposed are so far-reaching, the Committee believes that a more in-depth debate is required over a longer period of time. The Committee therefore believes that Article 16 should establish a transition period which would ensure there is enough time to adapt to the changes in control legislation.

3.8. The EESC believes that a culture of compliance should be established not by increasing the number of control and sanction procedures but rather through cooperation and agreement between the parties involved. Having a simpler set of rules that can be easily understood by stakeholders would foster compliance.

3.9. The Commission intends to take on greater powers for the control system. The EESC believes that account should be taken of the balance between the Council and the Commission to avoid potential conflict over areas of competence in the future.

3.10. The EESC believes that the Regulation should consider the possibility of using surplus quotas, which could be given to other Member States to help make their fisheries more profitable.

4. Specific comments

4.1. The EESC believes that the fishing authorisation issued to Community fishing vessels should not be limited to Community waters, and therefore believes that the words 'in Community waters in general' should be deleted from Article 4(8).

4.2. Regarding Article 4(10) the Committee believes that the definition of Marine Protected Areas which are located in Community waters and have an impact on fishing activity should also set out a Community procedure for the creation, use, control and monitoring of Marine Protected Areas.

4.3. Article 4(17) establishes the definition of processing, which includes cleaning, gutting, icing or freezing. The EESC believes that the definition of processing should only be used to refer to products where the organoleptic characteristics of the marine resources have been changed, and should not cover the processes required to preserve the product – which are intended to ensure that fish products are safer for the consumer. The Committee therefore suggests that these activities should be deleted from the definition of processing.

4.4. The EESC believes that Article 7(f) should make reference to high seas areas, which are not regulated by a Regional Fisheries Management Organisation.

4.5. The Committee believes that vessels of between 10 and 15 m. length overall should not be required to carry the device referred to in Article 9) which allows vessels to be automatically located and identified through the Vessel Monitoring System by transmitting position data at regular intervals. The activities of this section of the fleet are limited in any case: the nature of these vessels means that they have to fish in areas near to the coast which can be easily monitored. The cost of installing this system would be significant and disproportionate for this section of the fleet, which is made up of a large number of small and medium-sized businesses that employ a large number of people.

4.6. The EESC believes that the rules set out in Article 14 on the logbook for Community vessels are excessive, as checking them will be extremely bureaucratic. This requirement should therefore only apply to fisheries where clear reasons have been given to justify the application of the provisions.

4.6.1. Article 14(1) states that the quantities of each species discarded at sea shall also be recorded in the logbook. The Committee considers that only catches above a certain weight, e.g. 50 kg, should have to be recorded in the logbook.

4.6.2. Article 14(3) establishes that the permitted margin of tolerance in estimates recorded in the logbook of the quantities in kilograms of fish retained on board shall be 5 %. The EESC believes that it is already difficult to meet the current margin – which at its strictest is set at 8 % in the recovery plans. As the new margin of tolerance is too low it will be highly bureaucratic and cause difficulties for fishermen who will not be able to comply with it, resulting in a large number of penalty proceedings. This goes against the aim to simplify the monitoring systems and the Committee therefore recommends that the new margin should not be applied.

4.6.3. The EESC considers that the conversion factors set to convert stored fish weight into live fish weight (which differ between Member States and therefore have an impact on calculating the catches of each country) should not only be based on an average of the values applied in the Member States, but should also take the individual circumstances of each fishery into account. The conversion factors should also take account of the effect that converting national conversion factors into Community factors could have on the principle of relative stability.

4.7. The Regulation on the use of electronic recording ⁽⁸⁾ does not state that this method should be applied to vessels of less than 15 metres in length. The EESC believes that vessels between 10 and 15 metres long should not be included until the authorities of the Member States have assessed how the rule would work in practice for vessels over 15 metres long, together with the overall impact, and until practical experience has been accumulated. It should be noted that electronic recording will not be compulsory until 1 January 2010 for vessels over 24 metres and 1 July 2011 for vessels over 15 metres. Moreover, Article 15 of the proposal does not include the derogations in force regarding electronic recording procedures for vessels over 15 metres. The Committee therefore asks that the two sets of rules be made consistent.

4.8. The EESC believes that the prior notification requirement set out in Article 17 should only apply in situations where it is justified. At present, prior notification is only required when vessels are carrying on board species which are included in recovery plans, thereby avoiding additional work which often will not provide any useful information (as is the case for zero catches). The Committee believes that the requirement to give notification of catches should be based on a minimum representative quantity.

4.9. The Committee believes that the master of the vessel or his/her representatives should always give prior notification to the flag Member State, rather than having to notify the coastal Member State or the Member State where the fish is landed. Currently, vessels always pass on information to the communications centre in the flag Member State, which then passes this information on to the other Member States ⁽⁹⁾.

4.10. The EESC considers that prohibiting transshipments at sea, as set out in Article 18, could cause serious problems for some types of fishing, as it would make the affected sections of the fleet less economically viable. Moreover, the fact that it is prohibited to tranship fish to be processed and frozen at sea or near the fishing grounds could compromise the quality of fish for consumers.

4.11. Regarding Article 21, the EESC believes that the requirement to transmit landing declaration data by electronic means within two hours of landing does not allow enough time and could give rise to compliance problems. The Committee therefore suggests that the requirement should be changed to 24 hours, taking into account the fact that the current deadline is 48 hours.

4.12. The Committee considers that Article 28 should set out the procedures to ensure that surplus, unused quotas belonging to a Member State can be used by other Member States under certain conditions, as well as procedures for enabling a Member State to carry over surplus quotas to the following year. As far as corrective measures are concerned, when a fishery is closed, the mechanisms for compensating the Member State should be rapid and easy to apply.

4.13. The EESC believes that Article 33 could cause problems for the sections of the fleet that catch small pelagic species and transfer their catches to freezer vessels in port for processing. Article 33 could also affect the parts of the fleet that land their catches in a Member State other than their home Member State, and have these catches transported by lorry to ports in another Member State, where they are then put on the market.

4.14. As established in Article 35, the EESC agrees that species subject to a recovery plan should be stowed in different boxes from the rest of the catch and labelled accordingly. However the Committee believes that stowing the boxes separately would not mean that the catches could be monitored more effectively, as the boxes containing species subject to a recovery plan will in any case have a label indicating the FAO code of the species.

4.15. The EESC considers that the registration of discards (Article 41) is essential for preserving resources and improving the quality of scientific research, especially in mixed fisheries. The Committee calls for discards to be reduced to ensure sustainability. However it believes that the requirements for registering discards are disproportionate and incompatible with fishing practices. The requirements would create an excessive amount of work which could compromise safety on board, the wellbeing of fishermen, or health standards. The expression 'without delay' is too vague and could create legal uncertainty.

4.16. The Committee believes that the real-time closure of fisheries (Articles 43 and 46) is a delicate issue and an in-depth assessment of the measure is required before it is implemented. Given that the proposal for a Regulation on technical measures ⁽¹⁰⁾ will provide a specific legislative framework, the EESC believes it would make sense to wait until the analysis is complete. In any case, the procedures for closing and re-opening a fishing area should be simple and flexible. The Committee considers however that the procedure for temporarily re-opening closed areas, which requires vessels to carry a scientific observer on board, is not ideal, especially if the intention is to establish a swift procedure which does not put fishermen at an unnecessary disadvantage.

⁽⁸⁾ Council Regulation (EC) No 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing, OJ L 409, 30.12.2006.

⁽⁹⁾ Commission Regulation (EC) No 1077/2008 laying down detailed rules for the implementation of Regulation 1966/2008, OJ L 295, 4.11.2008.

⁽¹⁰⁾ Proposal for a Council Regulation concerning the conservation of fisheries resources through technical measures. COM(2008) 324 final.

4.17. The Committee believes it is unreasonable for Article 47(3) to establish that catches of species subject to a multi-annual plan by recreational fishermen shall be counted against the relevant quotas of the flag Member State, as this rule would set professional fisherman – for whom fishing is their livelihood – at a disadvantage. The Committee also believes that recreational fishing should be regulated and monitored appropriately in all Member States to protect fishing resources.

4.18. Article 84 introduces a penalty point system to penalise fishermen who infringe the CFP rules. The Committee believes that this system is inappropriate, first of all because it is discriminatory – fleets from third countries would not have to comply with this system yet provide more than 60 % of the fish consumed in the EU – and secondly because little or no consideration is given to the principle of proportionality – withdrawing a fishing permit will effectively close down the fishing business involved, resulting in job losses.

4.19. The Committee believes that the financial measures established in Article 95 are excessive. Suspending and cancelling Community financial assistance to a Member State because it cannot meet its obligations as set out in the Regulation would seriously penalise fisheries sector operators.

4.20. Article 96 provides for the closure of fisheries when Member States fail to comply with the objectives of the CFP. The Committee considers that the use of very vague terms in this Article could be misleading. The EESC believes that fisheries should only be closed under exceptional circumstances, and then only on reasonable grounds when the facts have been confirmed. The exact conditions under which this measure will be implemented must be clearly defined.

4.21. The Committee is concerned about the difficulty of ensuring confidentiality and professional and commercial secrecy, given the quantity of e-communications required, along with the number of people exchanging the information, and the large number of communication, positioning and identification devices that are necessary.

Voting:	For: 75	Against: 98	Abstentions: 11
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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: Addressing the challenges of deforestation and forest degradation to tackle climate change and biodiversity loss’

COM(2008) 645 final

(2009/C 277/12)

Rapporteur: **Mr RIBBE**

On 17 October 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: Addressing the challenges of deforestation and forest degradation to tackle climate change and biodiversity loss

COM(2008) 645 final.

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 17 April 2009. The rapporteur was Mr RIBBE.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 14 May), the European Economic and Social Committee adopted the following opinion by 153 votes to five with six abstentions.

1. Conclusions and recommendations

1.1. The European Economic and Social Committee welcomes the Commission communication and endorses the objectives set out therein, namely to reduce the deforestation and degradation of tropical forests by at least half by 2020, and to halt it completely by 2030. The Committee expects the EU to be much more proactive in its approach than it has been in the past.

1.2. Although activities undertaken by people living in the area may in some cases be responsible for part of the scenario outlined in the document – through subsistence farming for instance – the core damage has other underlying causes. The main players are, in most cases, a small number of people – or, in some cases, global companies – that pocket sometimes exorbitant profits at the expense of the environment, the climate, biodiversity and the local population, leaving, quite literally, scorched earth in their wake.

1.3. The current situation has arisen not just for the direct economic reasons rightly cited by the Commission, and connected with uncertain land-tenure regimes and corrupt or ineffective administrative systems. The countries to which the products concerned are exported also share a large part of the blame – and that includes the EU. The Committee thus welcomes the Commission’s intention to assess the EU’s direct and indirect contribution to the situation and to draw the requisite conclusions.

1.4. It is good that the EU will be taking on a leading role in combating deforestation. Clearly, there will also have to be some financial input from the international community as a whole. However, the Committee would call on all policymakers to abide by certain principles. The basic maxim should always be the polluter-pays principle, under which anyone – legally – acting in a way that is damaging to the environment must meet any attendant costs. Thus, the internalisation of external costs – a move called for by the Committee on many occasions in the past – now, at last, needs to be taken forward at a global level and framed as

to be consistent with WTO ground rules. The ‘polluter-pays principle’ must not be undermined by a ‘public-pays principle’, where taxpayers/the public purse pay for the environment **not** to be damaged.

1.5. Countries wishing to take advantage of financial instruments to combat deforestation or forest degradation should be required to state quite clearly that they are not interested in the ‘sale of indulgences’ but in sustainable development. Action to combat illegal logging and timber trading must be an initial touchstone here. It makes no sense to transfer money to countries that lack even the willingness to actively combat illegal logging, either with or without EU support.

1.6. Although the individual measures the EU is seeking to introduce to resolve this global problem have yet to be worked out definitively, it is already clear that the planned action will largely be voluntary ⁽¹⁾. However, the international community, which is predicated on liberalisation and globalisation, quickly appears constrained where worldwide moves to curb environmental and social exploitation are concerned. There is a lack of effective tools with global reach. The EU is called upon to ensure – at least – that initiatives in this area are no longer seen as trade barriers within the ambit of the WTO.

1.7. The Committee would initially endorse the voluntary approach, but expects the EU to conduct an interim study, at the latest after three years, to determine whether the measures are actually having an effect and whether the objectives are being achieved. If it is clear that deforestation and forest degradation are continuing apace, then consideration should be given to tougher measures.

⁽¹⁾ Proposal for a Regulation of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market, EESC opinion on the subject: NAT/420 – APA R/CESE 543/2009.

1.8. Certification schemes are one initial option for securing improvements in this area. These should apply not only to all imported timber and timber products, but also to other products from the relevant regions (e.g. animal feed or biomass for energy production).

1.9. Sadly, the Committee feels that deforestation and forest degradation are also examples of how development policy has to a large extent failed – at least in the regions under discussion here. Nothing was done to develop innovative, forward-looking, regionally appropriate paradigms that could have allowed things to turn out differently, thereby avoiding the pillaging of natural resources that is in evidence today. That said, it is never too late to promote suitable ways forward – with and for the benefit of the local population. The EU should include in its strategic considerations appropriate initiatives to develop democratic structures and support civil society. The Committee again offers its assistance in any such venture.

2. The European Commission communication

2.1. The Commission communication is not concerned with forest areas within the EU. Instead, it addresses the issue of how, in future, to better protect those forest areas not yet covered by international agreements, such as that on climate protection.

2.2. According to FAO estimates, some 13 million hectares of forest are lost every year – an area approximately the size of Greece. 96 % of deforestation occurs in tropical regions and the largest net forest cover loss between 2000 and 2005 was recorded in ten countries ⁽²⁾.

2.3. The causes of this unabated deforestation are, on the one hand, complex and diverse, yet, on the other, relatively simple. The Commission makes clear in a number of points that wholly unsustainable uses may well be highly profitable from an economic perspective, noting, for instance, that *'forests are destroyed because it is more profitable in the short run to use land for other purposes than to keep them standing'* and that *'profitable alternative uses of land with a high market value, such as obtaining commodities, provide incentives for deforestation'*. It continues: *'It should be explicitly recognised that one of the main drivers for deforestation is economic.'*

2.4. The communication also cites infrastructure development as a further cause of what has, up to now, been unbridled deforestation. Moreover, the Commission writes: *'The most important underlying cause is ineffective governance, linked to poorly enforced land-use policies and uncertain land-tenure regimes.'*

2.5. The impacts of this deforestation are manifold:

- Deforestation as described here accounts for some 20 % of total CO₂ emissions, with no mechanisms in place to curb the massive impact this has on the climate. This is precisely what the Commission document seeks to address, not least in the run-up to the Copenhagen climate protection conference scheduled for the end of the year.

- However, the Commission also makes clear that this is not just a question of global climate protection. Around half of all species of the world's fauna and flora live in tropical forests. Halting deforestation would also be a significant step towards halting biodiversity loss – another goal to which the international community is committed.

- Attention is also drawn to the various negative social impacts that deforestation and forest degradation may have, not least on poor sections of the population, and to the fact that indigenous peoples are losing their livelihoods.

2.6. The Commission communication gives figures for the economic value of tropical forests. Among other things, it cites forecasts signalling that, if deforestation continues apace, 5 % of global GDP will be lost by 2050 ⁽³⁾, and notes the significant greenhouse gas mitigation potential that could be tapped at relatively low cost in terms of tonne of CO₂ saved.

2.7. The European Commission is unequivocal that *'the time is right for decisive action'*. The objective is *'to halt global forest cover loss by 2030 at the latest and to reduce gross tropical deforestation by at least 50 % by 2020 compared to current levels.'* This is the objective the Commission intends to bring to the post-Kyoto negotiations.

2.8. In short, the Commission considers it vital to protect forest resources across the world and believes that Europe *'needs to take a leading role to shape the global policy response to deforestation.'*

2.9. The Commission communication outlines various areas in which the EU could make a contribution within the existing policy framework:

- On the one hand, the communication sets out possible ways of promoting sustainably produced timber and timber products. This is a key issue, since the EU is a major consumer of timber and timber products. In 2005 alone, 83 million m³ of timber and timber products were imported into the EU market, not counting pulp and paper. The Commission estimates that 19 % of imported timber is illegally harvested.

- On the other, the communication also advocates that more should be done to assess the 'forest impact' of EU policies related to non-timber products. The communication notes, among other things, that *'there are linkages between demand for agricultural commodities and pressures on land use'* and makes clear the Commission's commitment to *'studying the impact of EU consumption of imported food and non-food commodities (e.g. meat, soy beans, palm oil, metal ores) that are likely to contribute to deforestation'*. Such studies could lead to considering policy options to reduce this impact.

⁽²⁾ Brazil, Indonesia, Sudan, Myanmar, Zambia, United Republic of Tanzania, Nigeria, Democratic Republic of the Congo, Zimbabwe, Venezuela.

⁽³⁾ Interim report *The Economics of Ecosystems & Biodiversity (TEEB)*, Mr Pavan Sukhdev.

2.10. In addition to existing policy, the Commission communication also draws attention to the scale and sources of funding and mechanisms to meet the deforestation challenge.

- The Commission's impact assessment concludes that an estimated EUR 15 to 25 billion per annum will be needed to halve deforestation by 2020. The EU assumes that '*developed countries need to allocate considerable resources to help to tackle deforestation.*'
- Consideration is given on various fronts to what kind of funding mechanisms might be put in place. Recognition of forestry credits in the EU emissions trading system (ETS) is not deemed to be realistic at the present time since the emissions from deforestation are roughly three times higher than the amount of emissions regulated under the EU ETS. However, once, in addition to the EU ETS, other global trading systems are established and interconnected, it may become feasible to use forestry credits of this kind to finance forest protection.
- A major portion of EU funding could, however, come from proceeds from the auctioning of allowances within the EU ETS. If 5 % of the expected auctioning revenue (estimated at EUR 30 to 50 billion) were earmarked for this purpose, some EUR 1.5 to 2.5 billion could be raised in 2020.

2.11. Within the context of the United Nations Framework Convention on Climate Change (UNFCCC), the EU is, for the period 2013-2020, pushing for an internationally supported incentive scheme to reduce deforestation and forest degradation in developing countries.

- This might include the establishment of a Global Forest Carbon Mechanism to enable developing countries to contribute to the globally agreed emissions reduction objective by taking action to reduce emissions from deforestation and forest degradation; the institutional and operational details still '*have to be worked out.*'
- The inclusion of deforestation in carbon markets is seen as a longer-term prospect.

3. General comments

3.1. The Committee welcomes the Commission communication and the EU's commitment therein to taking a leading role in resolving an issue that has been so well known and so widely discussed for decades. The upcoming negotiations for a climate protection agreement provide a good framework in which to do that.

3.2. Beginning on a critical note, the Committee deplores the fact that, so far, the international community has done virtually nothing to tackle deforestation. There were reasons enough to act long before now. Biodiversity loss as a result of deforestation and forest degradation, the destruction of resources on which indigenous people directly depend for their survival, the evident exploitation of workers and the ejection of small-scale farmers from their ancestral farmlands are in no sense new phenomena. Climate protection is thus merely a new and additional opportunity to tackle an old problem – it is to be hoped with new momentum.

3.3. To a certain extent, the Committee understands the Commission's point that the communication '*is not intended to give definitive answers to the many issues related to deforestation.*' However, it trusts that the Commission will procrastinate no further on the issue. Now at last is the time for action.

3.4. The Committee welcomes the Commission's clear statements on the reasons for deforestation. The Commission explicitly states that short-term economic interests are at the root of these utterly unsustainable types of land-use. With land-tenure regimes remaining wholly unsettled and administrative systems non-existent, weak on enforcement or, in some cases, downright corrupt, the destruction that is taking place not only raises serious global issues, but often also totally ignores the needs of the local population.

3.5. Naturally, the Committee understands that people in all regions of the world need scope for economic development. For many years now, the Committee has itself been working closely with civil society groups in Central and Latin America, India, China and elsewhere to find adequate solutions. However, the worldwide forest damage and destruction discussed in the Commission communication has nothing to do with appropriate regional development. It is the unacceptable exploitation of people and the environment with no hint of concern for sustainable development.

3.6. In countries which are experiencing large-scale deforestation, large numbers of farmers often cut down and set fire to forests so that the land can be used for arable farming or livestock production. This unsustainable waste of natural resources is caused by the unjust distribution of land and the absence of any form of agricultural policy in these areas.

3.7. In those places, land use is often in the hands of a very small number of people – or, in some cases, global companies – that pocket sometimes exorbitant profits at the expense of the environment, the climate, biodiversity and the local population, leaving, quite literally, scorched earth in their wake. It does not have to be like this – as witnessed by many positive examples ⁽⁴⁾, worthy of support, that show just how available local resources can be used sustainably, giving the local population new scope for income and development.

⁽⁴⁾ For instance, the collaborative project *Rainforestation farming* between the University of Hohenheim (Germany) and the Leyte State University (Philippines), see: <http://troz.uni-hohenheim.de/innovations/InnovXtr/RFFS/>.

3.8. Although the impact of such wanton destruction is most directly – and indeed most spectacularly – felt at the local level, a global dimension is also involved, not least climate change and biodiversity loss. In other words, we are all of us affected by this destruction and we must all of us play a part in resolving it.

3.9. It makes little sense for the developed countries to point the finger at the drama unfolding in the developing countries, since we ourselves are also part of the problem. Many of the products – typically unprocessed commodities or low-processed goods – are not sold locally, but generally far away, often in the developed countries. There is therefore a demand for these ‘cheap’ products – including from Europe.

3.10. The Commission is thus absolutely right to address the following three issues:

1. What is the EU's ‘share’ of the destruction taking place in these areas (and how can that be reduced)?
2. How, on the one hand, can the EU (and the Member States) help prevent illegal operations – i.e. destruction of a kind that cannot possibly be in the interests of the country concerned? And, on the other, what can be done to develop types of land use that are underpinned by sustainability principles and geared towards the needs of the local population?
3. How can funding methods be put in place to remove the pressure that leads to forest destruction?

3.11. The Committee is pleased that, together with other institutions, the Commission is actively seeking to present economic facts as back-up to the debate on climate and biodiversity protection. Examples include the Stern review, which makes clear that failure to protect the climate will, in the long run, be more expensive than large-scale change, and the Sukhdev report, cited in the Commission document, which outlines the economic value of intact biodiversity.

3.12. However, these studies and figures also illustrate only too well that the economic values they describe are still just words on paper. They do not add to GDP, they are not reflected in company audits and cannot be traded on the stock market. Quite the reverse: the example of deforestation highlights all too well the yawning chasm that exists between the short-term quest for profit (which is the cause of forest destruction) and the long-term interests of the economy as a whole (where forests are maintained to protect the climate and foster biodiversity).

3.13. The wanton exploitation of our resources is being carried on at the expense of the collective good. Our primary challenge, therefore, is to make the ‘externalisation of internal costs’ a reality at last and thus help promote genuine acceptance of the much-vaunted polluter-pays principle. The studies mentioned here and other figures cited in the Commission communication give a good indication of the scale of the sums involved.

3.14. The Committee recognises that, as in the Commission document, consideration will also have to be given to incentives in a bid to halt deforestation. For the Committee, however, it is vital that one key principle must thereby be observed, i.e. that no public money must be awarded to companies or private individuals as an ‘incentive’ **not** to act in a way that is damaging to the collective good. Efforts must always focus on creating global conditions in which the actions that cause damage can be avoided and ruled out in the first place. That must also be the EU's guiding principle in the Copenhagen negotiations. Where damage does occur, we must respond with the consistent application of the *polluter-pays principle* – not the *public-pays principle*, where payment is made for damage **not** to be done.

3.15. Countries wishing in future to take advantage of financial instruments should thus be required to state quite clearly that they are not interested in the ‘sale of indulgences’ but in long-term sustainable development. Action to combat illegal deforestation and forest degradation could be a kind of ‘initial touchstone’ here. The countries concerned should make clear their sincere willingness – with or without the assistance of the international community – to put an end to these illegal practices. For the EESC, it is important to note that the point here is not to legalise illegal activities, but to put a stop to them. That in itself would improve matters considerably.

3.16. The countries concerned should also make clear that they are keen to take on board innovative, sustainable and regionally appropriate ways of combating deforestation and forest degradation.

4. Specific comments

4.1. The Commission communication remains rather vague on many points. This is due not only to an insufficient knowledge and information base, but also to the fact that the ideas presented are not yet fully formed.

4.2. Little by little, the EU is risking exposure to charge of simple lack of interest – unless it starts putting much more effort into developing ways of combating forest degradation.

4.3. For far too long, administrators and policymakers have simply looked on as forests are destroyed and illegally sourced products arrive at European ports. Although the origins of deliveries can often be hard to trace because, for instance, the materials in question have been incorporated into other products or because different coding has been used, there also appears to be no real willingness to remedy the situation. The Committee expects the EU to take a much more vigorous approach in tackling this key global issue. Only recently, the Committee welcomed EU moves for a complete ban on seal products, even although the Canadian government allows seals to be hunted legally. With this in mind, civil society is expecting similarly tough action to protect forests.

4.4. The communication is, for instance, less than specific on the extent to which the huge quantities of animal feed imported into the EU are responsible, directly or indirectly, for deforestation⁽⁵⁾. This issue has frequently been a matter of controversial debate and it is also touched on in the Commission document (see point 2.9). To bring some clarity into the matter, the Committee would ask the Commission to press ahead with the greatest urgency with the study, announced in the communication, of *'the impact of EU consumption of imported food and non-food commodities (e.g. meat, soy beans, palm oil, metal ores) that are likely to contribute to deforestation.'*

4.5. Just as the EU has evolved sustainability criteria for the production of agrofuel base material, the Committee feels that similar criteria should also be developed as quickly as possible for feedstuffs, timber, timber products etc. Although, given the uncertain land-tenure regimes and poor administration, it remains to be seen whether it will be possible to put in place and apply any ongoing monitoring arrangements for such sustainability criteria, the criteria themselves do represent an important and sound approach. For them to be effective, however, they will have to be incorporated as a mandatory component into the world trade rules of play.

4.6. Deforestation is a good example of the way in which the international community, which is predicated on liberalisation and globalisation, quickly appears constrained where worldwide moves to curb environmental and social exploitation are concerned. There is a lack of effective tools with global reach. The EU is called upon to ensure – at least – that initiatives in this area are no longer seen as trade barriers within the ambit of the WTO.

Brussels, 14 May 2009.

The President
of the European Economic and Social Committee
Mario SEPI

4.7. The Committee also understands the absence of any specific concepts for funding action in this area. The climate protection negotiations should be used for that purpose.

4.8. The future approach, however, will not simply be based on money transfers provided certain criteria are met (see above). Before any successful conclusion of negotiations on this front, action is needed in the countries concerned to put in place key conditions conducive to resolving the issues at stake. Without functioning democratic rights giving local people a say in the development of their region, without recognition of the rights of the indigenous peoples (who after all number some 60 million) and small-scale farmers, and without a properly working (corruption-free) administration, it will be impossible both to stop the often illegal exploitation and to work out appropriate development strategies to tackle it. That this aspect is virtually ignored by the Commission is a serious weakness in the communication.

4.9. Sadly, the Committee also feels that deforestation and forest degradation are examples of how development policy has to a large extent failed – at least in the regions under discussion here. Nothing was done to develop innovative, forward-looking, regionally appropriate paradigms that could have allowed things to turn out differently, thereby avoiding the pillaging of natural resources that is in evidence today. That said, it is never too late to promote suitable ways forward – with and for the benefit of the local population. The EU should include in its strategic considerations appropriate initiatives to develop democratic structures and support civil society. The Committee again offers its assistance in any such venture.

⁽⁵⁾ The same also of course applies to agrofuels etc.

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 — An EU strategy for better ship dismantling’

COM(2008) 767 final

(2009/C 277/13)

Rapporteur: **Dr BREDIMA**

On 19 November 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 – An EU strategy for better ship dismantling

COM(2008) 767 final.

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 17 April 2009. The Rapporteur was Dr BREDIMA.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May 2009), the European Economic and Social Committee adopted the following opinion by 187 votes to two with three abstentions.

1. Conclusions

1.1. The EESC welcomes the Communication and supports the range of possible measures whereby the EU could contribute to safer and more environmentally sound treatment of end-of-life ships worldwide.

1.2. The EESC notes that recycling makes a positive contribution to the global conservation of energy and resources and recognises that, if properly managed, ship recycling can become a ‘green’ and sustainable industry.

1.3. The EESC supports the swift ratification and implementation of the IMO Ship Recycling Convention (2009). EU Member States and recycling States should be prompted to take all measures for its early entry into force.

1.4. The EESC strongly supports the inclusion of rules on the clean dismantling of warships and other government vessels in the measures on ship dismantling.

1.5. The EESC deems it important to take actions to redress the appalling environmental and social conditions in many of the South Asian recycling facilities, by improving their operation, while maintaining the income for local communities from jobs and services provided.

1.6. Dismantling capacity needs to be increased to meet growing demand and the challenge of doing this in a safe and sustainable way must be met. Developing a way to cover the substantially higher labour costs of dismantling in European yards can be achieved through a combination of regulatory action and industry initiatives.

1.7. The EESC realises that in the foreseeable future ‘beaching’ ships for breaking will continue to be the preferred method. Hence, current conditions need to be improved so that the yards are operated in a safe and environmentally sound manner. However, excessive pressure to improve the conditions in South Asian facilities should not have the adverse effect of ‘exporting’ the problem to beaches of other developing countries, thus leading to an uncontrolled expansion of substandard yards in Asia and Africa.

1.8. The EESC proposes that dismantling and recycling conditions feature strongly in the EU's bilateral maritime or trade agreements with the Asian countries in question, e.g. the ongoing EU/India maritime agreement should include ship recycling provisions. It urges the Commission to raise this issue at the political level.

1.9. The EESC believes that dismantling and recycling is an issue of corporate social responsibility. It invites the Commission to involve shipbuilding yards in the chain of responsibility for ship disposal. Ship operators, in conjunction with shipyards, should contribute to ensuring that information is available to recycling yards on any potentially hazardous materials or conditions within their ships.

1.10. The EESC supports the development of a model of an integrated management system (IMS) for the internationally independent certification of ship recycling facilities to demonstrate safe and environmentally sound recycling in accordance with the future IMO Convention.

1.11. The EESC recommends that the Commission's study on a recycling fund takes into account the 'polluter pays' and 'producer responsibility' principles of European law and its compatibility with state aid legislation. It should be further explored how such a fund might further the objectives of the Convention.

1.12. The EESC recognises that the establishment of ship recycling yards in the EU may be objected by local communities on environmental grounds. However, if existing yards are utilised for the purpose and meet - as they should - EU, international and national standards, then their operation may be acceptable as they will provide significant job opportunities. These parameters need careful consideration.

1.13. The EESC invites the Commission to devise policy incentives and rewards, e.g. 'Clean Marine Awards' for ship owners and yards for exemplary ship recycling.

2. Introduction

2.1. Environmental and social aspects of ship dismantling practices on beaches in South Asia continue to be a source of concern worldwide and particularly in Europe. Recently, the Environment Commissioner Dimas called for better procedures and checks on ships that are sent to South Asian breaking yards to ensure that they are dismantled properly. According to recent estimates a thousand ships will be scrapped in 2009, more than three times the 2008 figure, increasing the pressure on recycling capacity. Dismantling capacity needs to be increased to meet growing demand and the challenge of doing this in a safe and sustainable way must be met.

2.2. The Commission Communication on 'An EU strategy on better ship dismantling' ⁽¹⁾ is based on the results of the public consultation on the 'Green Paper on better ship dismantling (2007)' ⁽²⁾. The Green Paper was appreciated by the EESC ⁽³⁾ as a long awaited initiative. In addition, the European Parliament has recently called on the Commission and Member States to take urgent action on ship dismantling ⁽⁴⁾.

2.3. At the same time, concrete international action is undertaken to tackle the issue. The International Maritime Organisation (IMO) has developed a new 'International Convention for the safe and environmentally sound recycling of ships' (hereinafter referred to as 'the Convention'), which is scheduled for adoption in May 2009. The Convention takes a 'cradle to grave approach' for ships. It aims at the operation of ship recycling facilities in a

safe and environmentally sound manner, without compromising the safety and operational efficiency of ships. By providing a proper control and enforcement mechanism, it seeks to establish a level of control equivalent to that of the Basel Convention ⁽⁵⁾.

2.4. The Joint ILO/IMO/Basel Convention Working Group on Ship Scrapping is evidence of international cooperation. The three organisations have jointly developed the Global Programme for sustainable ship recycling, to ensure the future sustainability of the industry, through improvements in workers' health and safety and environmental protection in the South Asian yards.

3. Communication on an EU strategy on better ship dismantling

3.1. The Communication on an EU strategy on better ship dismantling does not provide a concrete legislative proposal. It proposes several measures to improve ship dismantling conditions as soon as possible, including in the interim period before the entry into force of the Convention.

3.2. The strategy proposes that the Commission examines the feasibility of a number of options to further the objectives of the Convention.

3.3. The impact assessment ⁽⁶⁾ accompanying the Communication concludes that an integrated policy approach combining selected legislative and non-legislative measures is preferable, as it would be the only option to achieve positive environmental, social and economic impact in the short, medium and long term.

4. General comments

4.1. The EESC welcomes the Communication and supports the range of possible measures whereby the EU could contribute to safer and more environmentally sound treatment of end-of-life ships worldwide. The Communication is timely and appropriate, since an estimated 19 % of the world fleet is flying the flag of an EEA Member State (European Economic Area).

4.2. New steel production from recycled steel requires only third of the energy used for steel production from raw materials. Thus, recycling makes a positive contribution to the global conservation of energy and resources and, if properly handled, ship recycling can become a 'green' and sustainable industry.

⁽¹⁾ COM(2008) 767 final.

⁽²⁾ COM(2007)269 final.

⁽³⁾ OJ C 120 of 16.5.2008.

⁽⁴⁾ P6_TA(2008)0222.

⁽⁵⁾ Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal.

⁽⁶⁾ SEC(2008) 2847- Commission Staff Working Document.

4.3. The trend of dismantling hundreds of ships each year will continue with the phasing out of single hull tanker vessels by 2010 (and 2015). In addition, and as a consequence of the current financial and shipping crisis, older bulk carriers are being phased out fast. Currently, 157 vessels amounting to 5.5 million tonnes are being reassessed for eventual demolition. Hence, the prevailing social and environmental impacts will continue, if not worsen.

4.4. More than 80 % of ships are dismantled in yards located on the beaches of India, Bangladesh, Pakistan and Turkey. Bangladesh is currently the largest ship-breaking country. The majority follows the lowest cost, but at the same time most environmentally damaging method of 'beaching' ships for breaking. This method takes a heavy toll on human lives and leads to many diseases due to exposure to toxic substances. The EESC realises that in the foreseeable future 'beaching' ships for breaking will continue to be the preferred method. Therefore, the current conditions in the yards need to be improved in order to operate in a safe and environmentally sound way.

4.5. Poor environmental and social conditions in South Asian yards are responsible for unfair competition with their European counterparts. In addition the high local demand for recycled steel creates a further problem for European competitiveness.

4.6. Ship dismantling is a challenging process, which includes a wide range of activities, from removing all equipment to cutting down and recycling the structure. While ship dismantling in dry docks of industrialised countries is regulated, such activities on the beaches of Asia are less subject to control and inspection. A recent study has estimated that 20 % of the work force employed on the ship-dismantling beaches of Bangladesh, are children under 15 years old. Several ILO Conventions on safety and health conditions of workers are hardly applied in these countries. Failure to apply sound management and environmental disposal of downstream waste exacerbates the problem.

4.7. The EESC reiterates that structural poverty and other social and legal problems are strongly linked to the absence or non-implementation of minimum standards of safety at work, and environmental protection. Furthermore, these countries are reluctant to raise the standards and interfere with recycling prices for fear to be deprived of a major source of revenue. Yet, these countries should demand from the yard operators to invest in the improvement of the facilities and to afford their workers the protection and working conditions they deserve. In future negotiations with the countries in question the EU should encourage the application of these international standards, as well as their effective enforcement, coupled with capacity building.

4.8. The EESC opinion (7) on the Communication on 'An Integrated Maritime Policy for the EU' reiterated the serious worldwide shortage of dismantling facilities compatible with principles

of environmental and social sustainability. Therefore, the objective of EU and international efforts should focus on actions by recycling States in South Asia to bring their facilities to internationally acceptable standards.

4.9. The EESC notes that the Convention, together with its implementing Guidelines, seeks to ensure an equivalent level of control and enforcement to that of the Basel Convention and should be strongly supported.

4.10. In the context of the 'cradle to grave' approach to ship dismantling, the EESC urges the Commission to involve shipyards, in the responsibility chain for the disposal of the ships they have built. The overwhelming majority of the world commercial fleet is being built in Japanese, Korean and Chinese yards. According to the chain of responsibility of quality shipping every player bears his own degree of responsibility. This line of thought brings to the fore the responsibility of shipyards along the line of similar responsibilities of car makers and aircraft manufacturers, who are responsible for their products.

4.11. In addressing this issue, the EESC has to do a balancing act between conflicting parameters. On the one hand, the appalling environmental and social conditions still prevailing in most of the Asian recycling yards. On the other hand, the spectre of unemployment facing local communities in South Asian countries, which live from the revenues of the recycling yards. Therefore, improvement of the conditions should not have the adverse effect of 'exporting' the problem to beaches of other developing countries.

4.12. Improved performance of the ship dismantling process is also being addressed by the International Organisation for Standardisation (ISO). The future voluntary international standards (ISO 30000 and ISO 30003), which will provide a scheme for audit and certification of ship recycling facilities, seek to support the work of the IMO, ILO and the Basel Convention, while carefully avoiding any overlap.

5. Specific comments

5.1. *Early implementation of the IMO Ship Recycling Convention*

5.1.1. The European Commission predicts that the Convention will not be enforced before 2015. The EESC supports the swift ratification and implementation of the Convention. EU Member States and recycling States should be prompted to take all measures for its early entry into force. The EESC concurs that governments should be encouraged to apply the technical standards of the Convention on a voluntary basis in the interim period, as soon as operationally feasible.

(7) OJ C 211 of 19.8.2008.

5.1.2. The EESC supports the transposition of the Convention into EU law through a Regulation, incorporating its basic elements, as was the case with the IMO AFS Convention ⁽⁸⁾. In parallel, the Commission should examine ways and means for inducing recycling states to take similar action, i.e. to ratify and implement the Convention as soon as possible.

5.2. *Clean dismantling of warships and other (government) vessels*

5.2.1. The EESC notes that the Convention will not apply to all ships and in particular warships and State owned ships. However, such ships should be required to act in a manner consistent with the Convention. Therefore, the Committee proposes inclusion of these ships in the future recycling measures of the EU. Such a move will provide ample employment for EU yards, whilst eliminating some big polluters from the seas. The EESC suggests that the environmental pollution record of warships should also be addressed. In addition, it believes that small ships below 500 gt should be sent to EU yards for dismantling.

5.2.2. At present, ship dismantling facilities in the EU and in other OECD countries do not have sufficient capacity to dismantle warships and other state owned vessels to be decommissioned over the next 10 years. The EESC considers the engagement of Harland and Wolff Heavy Industries ⁽⁹⁾ in ship dismantling an encouraging example of how idle shipyards and repair yards may be turned into dismantling facilities. The EESC realises that despite the world economic downturn and current unemployment, the establishment of ship recycling yards in the EU may be objected by local communities on environmental grounds. However, if existing yards are utilised as prescribed under the Convention, their operation may be acceptable, while providing new job opportunities.

5.2.3. In the foreseeable future, the competitive advantage of South Asian ship breakers will continue to prevail, whereas Europe will continue to be faced with the problem of disposal of warships and state owned ships. The EU should make provisions for the dismantling of such ships in OECD facilities, or for the inclusion of end-of-life disposal clauses in any sale agreement of warships to non-EU States.

5.3. *What industry can do in the interim period*

5.3.1. The EESC shares the Commission's concern about the prospects of the interim period until the entry into force and full implementation of the Convention. It agrees that the simplest and quickest way to change practices would be through a voluntary commitment from the relevant stakeholders.

⁽⁸⁾ International Convention on the control of harmful anti-fouling systems on ships (Regulation 782(2003) on the prohibition of organotin compounds on ships).

⁽⁹⁾ Harland and Wolff in Belfast was recently awarded a waste management licence for the dismantling of marine vessels and marine structures, and is in the process of completing the decommissioning and recycling of the MSC Napoli.

5.3.2. The EESC believes that recycling is an issue of corporate social responsibility. It urges the Commission to devise policy incentives, e.g. 'Clean Marine Awards' for shipowners and yards for exemplary ship recycling. The incentives should offer attractive benefits worth pursuing.

5.3.3. The EESC appreciates the positive involvement of industry organisations, as well as non-governmental organisations and their support for the development of the Convention. It also welcomes the fact that the industry organisations have identified a series of measures ⁽¹⁰⁾, which shipowners should seek to fulfil in respect of safe and environmentally sound ship dismantling. It is anticipated that more shipping companies will opt or will be induced to undertake commitments for 'green' demolition of their ships. However, the ship recycling process involves many other parties and complementary action is also required on their part, especially from shipyards to contractually accept the building of 'green ships'. The use of a standard 'ship recycling sale and purchase contract', such as DEMOLISHCON developed by BIMCO ⁽¹¹⁾ and contractual commitments undertaken by shipyards to apply the requirements of the Convention in the interim period, would be a significant step forward.

5.4. *Better enforcement of waste shipment rules*

5.4.1. The EESC welcomes the Commission's intention to issue guidance in order to improve the enforcement of the current waste shipment rules with regard to end-of-life ships, as well as to engage in multilateral cooperation and to examine the feasibility of rules on a list of ships that are ready to be scrapped.

5.4.2. In international waste shipment law it is recognised that a ship may become waste, as defined in Article 2 of the Basel Convention, and at the same time may be defined as a ship under other international rules. Hence, there are divergent views as to when a ship becomes 'waste', and whether the ship can be construed as 'polluting' and the shipowner as 'polluter' before the dismantling process begins. Ships are being sold by shipping companies to cash buyers, who often change their flag, and are sent to recycling yards where prices of recycled steel per Light Displacement Tonne vary from 150-700 US dollars. In practice, most ship operators seldom deal directly or indirectly with dismantling facilities. However, they should be in a position, in conjunction with shipyards, to ensure that information is available on any potentially hazardous materials or conditions within their ships, and to determine the general condition of the ships when handed over.

⁽¹⁰⁾ Interim measures for shipowners intending to sell ships for recycling (BIMCO, IACS, ICS, INTERCARGO, INTERTANKO, IPTA, OCIMF).

⁽¹¹⁾ BIMCO = The Baltic and International Maritime Council.

5.4.3. Normally ships are sent for dismantling when their commercial operation is no longer viable. The age of a ship does not in itself reflect the level of maintenance of the ship, nor its commercial viability, which depends on the fluctuations of the freight market. Whilst it would be a simple exercise to maintain a list of ships above a certain age, it would not be an easy task to establish when ships are intended for dismantling and to take any controlling action before the entry into force of the Convention. In any event, old and high risk ships should be closely monitored to ensure compliance of obligations prior to dismantling.

5.5. *The case for auditing and certification of dismantling facilities*

5.5.1. The Convention will place responsibilities on flag States, port States and recycling States. It will not include specific provisions for auditing and certification of facilities. However, complementary Guidelines will provide such a regime under the control of the recycling States. The objective of the IMO Guidelines may also be enhanced by the parallel application of the relevant ISO standards that are being developed.

5.5.2. The EESC notes that the European Maritime Safety Agency (EMSA) had commissioned a study⁽¹²⁾ for developing a model of an integrated management system (IMS) for the certification of ship recycling facilities, in order to demonstrate safe and environmentally sound recycling. This European IMS should serve as a tool to strengthen the implementation of the IMO Convention. The EESC notes that such a certification process must have international credibility and that this can only be guaranteed through an independent inspection regime.

Brussels, 13 May 2009.

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

5.6. *Ensuring sustainable funding*

5.6.1. In 2007 the Commission stated⁽¹³⁾ that the question as to whether or not direct financial support should be given to clean ship dismantling facilities in the EU or to shipowners who send their vessels to 'green' yards, either for full ship dismantling or for decontamination, deserved special attention.

5.6.2. The EESC notes that the Commission intends to assess the feasibility of the option of a mandatory international funding system for clean ship dismantling ('ship dismantling fund') on the basis of the results of a study. The EESC expects that the study will take into account the 'polluter pays' and 'producer responsibility' principles of European law, and believes that the problem of funding the safe and sustainable dismantling of ships will not be solved until appropriate arrangements are agreed that duly reflect the apportionment of the relevant stakeholders in the responsibility chain during the lifetime of vessels.

5.6.3. The IMO has already established a voluntary International Ship Recycling Fund to promote the safe and environmentally sound management of ship recycling through IMO's technical cooperation activities. Ship-owners should be encouraged to make contributions to this fund. It should be further explored how such a fund might promote the objectives of the Convention. An EU fund for the same purposes would face the problem of its financing, since subsidies for clean ship dismantling would not be justified under EU law.

⁽¹²⁾ Study on the Certification of Ship Recycling Facilities, Final Report, Sept.2008.

⁽¹³⁾ COM(2007) 269 final.

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of passenger cars at service stations'

COM(2008) 812 final — 2008/0229 (COD)

(2009/C 277/14)

Rapporteur: **Francis DAVOUST**

On 20 January 2009, 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 Directive of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of passenger cars at service stations

COM(2008) 812 final – 2008/0229 (COD).

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 17 April 2009. The rapporteur was Mr Francis DAVOUST.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May), the European Economic and Social Committee adopted the following opinion by 194 votes to 2, with 5 abstentions.

1. Conclusions and recommendations

1.1. The EESC welcomes the proposal for a directive, which follows the commitments made in:

- the Thematic Strategy on Air Pollution;
- the Commission's proposal to amend Directive 98/70/EC on petrol and diesel quality, which aims to facilitate a greater uptake of biofuels and bioethanol, in particular by relaxing the vapour pressure requirements of petrol. The Commission recognised that this could lead to greater emissions of volatile organic compounds and indicated that Stage II PVR would be proposed to offset any increased emissions;
- a statement accompanying a new directive on ambient air quality in which the Commission recognised the importance of tackling air pollution at source in order to attain air quality objectives and which proposed several new Community source-based measures including Stage II PVR.

1.2. The EESC notes that Directive 94/63/EC aims to recover petrol vapour otherwise emitted to the atmosphere from the storage and distribution of petrol between terminals and service stations (so called 'Stage I petrol vapour recovery'). The petrol vapour displaced when a service station receives a new delivery of petrol is returned to the road tanker or mobile vessel and returned to the terminal where it can be redistributed.

1.3. The EESC welcomes the Commission's choice to install PVR Stage II equipment at:

- a. all new and substantially refurbished service stations with a throughput greater than 500 m³ of petrol per annum;

- b. all new and substantially refurbished service stations with a throughput greater than 500 m³ of petrol per annum and larger existing stations (i.e. with a throughput in excess of 3 000 m³ per annum);

- c. all service stations covered by option (b) and service stations situated in or under residential accommodation;

- d. all service stations covered by option (c) with automatic monitoring of all stage II equipment that would restrict petrol sales if the equipment is not functioning correctly.

1.4. A detailed evaluation of the options is included in the Impact Assessment accompanying the proposal, which is available on the following website ⁽¹⁾.

1.5. The EESC therefore recommends that the Directive be adopted, with the proposed amendments to articles 3, 4 and 5.

2. General comments

2.1. This legislative proposal aims to recover petrol vapour emitted into the atmosphere during the refuelling of passenger cars at service stations (known as 'Stage II Petrol Vapour Recovery or PVR').

2.2. The EESC is well aware that emissions of volatile organic compounds present in petrol are detrimental to local and regional air quality (benzene and ozone) for which Community air quality standards and objectives exist. Ground level ozone is a pollutant which crosses national borders and is also the third most important greenhouse gas. Benzene is a known human carcinogen. Hydrocarbons are classified in several different categories on the basis of their molecular structure, according to whether they are

⁽¹⁾ <http://ec.europa.eu/environment/air/transport/petrol.htm>

bonded into chains (linear hydrocarbons) or rings (cyclic hydrocarbons). Aromatic hydrocarbons are unsaturated cyclic structures built around a basic element of six carbon atoms. The basic hydrocarbon is C_6H_6 benzene. For the protection of human health, in 2006 the European Parliament and the Commission set a European exposure limit to benzene of an annual mean of $9 \mu\text{g}/\text{m}^3$, with a target of $5 \mu\text{g}/\text{m}^3$ in 2010. The EESC is therefore particularly concerned that account be taken both of consumers, who regularly refuel their vehicles in service stations, and the employees who work continuously *in situ*.

2.3. The main source of these emissions is the loss of petrol vapour from vehicle fuel tanks or during refuelling. The recent changes made to the Directive on quality of petrol, which allow a higher proportion of ethanol to be added to petrol, exacerbates the problem of emissions, since the presence of ethanol increases petrol vapour pressure in storage tanks. Consequently, it is time to look for new ways of reducing emissions.

2.4. The EESC strongly recommends that the Commission immediately look into the possibility of vehicles being altered to allow petrol vapour to be retained or recovered in their own tanks, a practice that is already mandatory in the USA, and to issue proposals on this subject without delay.

2.5. In the meantime, the EESC supports the Commission's current proposals aimed at reducing the petrol vapour emitted into the atmosphere during vehicle refuelling.

2.6. The EESC stresses that current practice regarding petrol vapour recovery in refuelling varies widely between the Member States. Consequently, it supports the Commission's proposal to allow recourse to Article 175 to ensure minimum standards for petrol vapour recovery on refuelling at European level, whilst leaving Member States free to impose stricter standards if they wish to do so.

2.7. Directive 94/63/EC already ensures the recovery of petrol vapour otherwise emitted into the atmosphere from the storage and distribution of petrol between terminals and service stations (known as 'Stage I Petrol Vapour Recovery').

2.8. For the EESC, stage II petrol vapour recovery is a logical step from the point of view of improving air quality.

2.9. Moreover, the EESC notes that this proposal is not only consistent with the Community's Sixth Environmental Action Programme, but also in line with the three pillars of the Lisbon Strategy. It will encourage a greater demand for, and the development of, Stage II vapour recovery technologies.

3. Specific comments

Article 3

Service stations

3.1. Point 1

3.1.1. In the first sentence, the word 'intended' should be clarified. In the EESC's view, it is particularly hard to be certain that

the actual throughput once a service station is opened will be identical to the throughput intended at the planning stage.

3.1.2. The EESC would like the following phrase to be added after ' 500 m^3 per annum': 'Service stations shall declare their throughput within three months of opening'.

3.1.3. The EESC considers it necessary that all new service stations with a capacity of less than 500 m^3 should be required to declare any increases that bring their throughput to over 500 m^3 per annum. The declaration must be made within three months of the beginning of the year after the year when the increase occurred; the equipment must be installed within six months in the same year.

3.1.4. In the second sentence, the word 'separate' should be added before the phrase, 'working areas', since offices needed for the running of the service station may be an integral part of the building.

3.1.5. Point 1 would therefore be worded as follows:

*Member States shall ensure that any new service station shall be equipped with a Stage II petrol vapour recovery system if its actual or intended throughput is greater than 500 m^3 per annum. **Service stations shall declare their throughput within three months of opening. All new service stations with a capacity of less than 500 m^3 shall declare any increases that bring their throughput to over 500 m^3 per annum. The declaration must be made within three months of the beginning of the year after the year when the increase occurred; the equipment must be installed within six months in the same year.** However, all new service stations situated under permanent living quarters or **separate** working areas shall be equipped with a Stage II petrol vapour recovery system irrespective of their actual or intended throughput.*

3.2. Point 2

3.2.1. The EESC considers that the term 'major refurbishment' needs to be clarified. It feels that it must entail a significant change, such as an increase in the throughput of petrol distribution and filling equipment of over 20 % in comparison to the equivalent initial throughput or the transition from a manned self-service installation to an unmanned one.

3.2.2. The EESC calls for the following not to be classified as major refurbishments or significant changes: changing a service station's display sign; changing from a traditional full-service installation to a self-service operation with an attendant; or bringing the installation into line with existing regulations.

3.2.3. Point 2 would therefore be worded as follows:

Member States shall ensure that any existing service station with a throughput greater than 500 m³ per annum which undergoes a major refurbishment shall be equipped with a Stage II petrol vapour recovery system at the time of the refurbishment. **Major refurbishment shall be understood as entailing a significant change, such as an increase in the throughput of petrol distribution and filling equipment of over 20 % in comparison to the equivalent initial throughput or the transition from a manned self-service installation to an unmanned one. The following shall not be classified as major refurbishments or significant changes: changing a service station's display sign; changing from a traditional full-service installation to a self-service operation with an attendant; or bringing the installation into line with existing regulations.**

3.3. Point 3

3.3.1. The EESC recommends that the following sentence be added: 'Service stations with a throughput of less than 3 000 m³ per annum must declare any increase in throughput, beyond 3 000 m³ in the course of a calendar year'; the equipment must be installed within six months in the same year.

3.3.2. Point 3 would therefore be worded as follows:

Member States shall ensure that an existing service station with a throughput in excess of 3 000 m³ per annum shall be equipped with a Stage II petrol vapour recovery system by no later than 31 December 2020. **Service stations with a throughput of less than 3 000 m³ per annum must declare any increase in throughput, beyond 3 000 m³ in the course of a calendar year; the equipment must be installed within six months in the same year.**

Article 4

Minimum permitted level of petrol vapour recovery

3.4. Point 1

3.4.1. The EESC proposes that the figure of 85 % be replaced by 90 %, since a number of Member States have already set the minimum recovery level at this rate.

3.4.2. Point 1 would therefore be worded as follows:

Member States shall ensure that the hydrocarbon capture efficiency of a Stage II petrol vapour recovery system is equal to or greater than 85 % **90** %.

3.5. New point

3.5.1. The EESC recommends that the equipment for Stage II petrol vapour recovery systems be more clearly defined.

Article 5

Periodic inspection and compliance

3.6. Point 1

3.6.1. The EESC considers that annual inspections are all the more necessary for service stations with automatic monitoring systems since there is no operator to monitor faults.

3.6.2. Point 1 would therefore be worded as follows:

Member States shall ensure that the hydrocarbon capture efficiency is tested at least once per annum **where an automatic monitoring system has been installed.**

3.7. Point 2

3.7.1. The EESC proposes that the first sentence be deleted.

3.7.2. It recommends that the second sentence: 'The automatic monitoring system shall automatically detect faults in the proper functioning of the Stage II petrol vapour recovery system and in the automatic monitoring system itself, indicate faults to the service station operator and automatically stop the flow of petrol from the faulty dispenser if the fault is not rectified within 7 days' read as follows: 'The automatic monitoring system shall automatically detect faults in the proper functioning of the Stage II petrol vapour recovery system and in the automatic monitoring system itself, as well as indicating faults to the service station operator; fuel distribution shall be interrupted if the repairs are not carried out within 72 hours'.

3.7.3. The proposed seven-day deadline is far too long. This provision should also apply to manned service stations.

3.7.4. Point 2 would therefore be worded as follows:

~~Where an automatic monitoring system has been installed, the Member States shall ensure that the hydrocarbon capture efficiency is tested at least once every three years. The automatic monitoring system shall automatically detect faults in the proper functioning of the Stage II petrol vapour recovery system and in the automatic monitoring system itself and indicate faults to the service station operator; and automatically stop the flow of petrol from the faulty dispenser if the fault is not rectified within 7 days. fuel distribution shall be interrupted if the repairs are not carried out within 72 hours.~~

Brussels, 13 May 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 on the energy performance of buildings (recast)'

COM(2008) 780 final/2 ⁽¹⁾ — 2008/0223(COD)

(2009/C 277/15)

Rapporteur: **Mr ŠIUPŠINSKAS**

On 27 January 2009, 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 on the energy performance of buildings (recast)

COM(2008) 780 final/2 - 2008/0223 (COD).

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 15 April 2009. The rapporteur was Mr ŠIUPŠINSKAS.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 14 May 2009), the European Economic and Social Committee adopted the following opinion by 147 votes to one with two abstentions.

1. Recommendations

1.1. The EESC endorses the Commission's proposed improvement of the Directive on the energy performance of buildings (EPBD), though with certain reservations. Under the Directive, renovations must be linked to the requirement to enhance energy efficiency, not just in order to reduce energy demand but also to reduce energy costs.

1.2. In accordance with the policy goals of the EU, the Member States must ensure that renovation of buildings in order to enhance their energy efficiency reduces not just energy demand but also energy costs.

1.3. The national legislation enacted for this Directive must take account of architectural and construction features, i.e. energy needs for heating, cooling, ventilation, lighting, mechanical installations (e.g. lifts), supply of hot and cold water, and sewage systems.

1.4. The EESC endorses the recommendation that the technical feasibility of the following be checked before construction starts:

- heating and energy production based on renewable energy,
- cogeneration and possibly trigeneration
- district heating or cooling
- heat pumps
- geothermal probes and geothermal collectors.

1.5. The EESC believes it is important for the Member States to step up their efforts to improve vocational training in the construction sector with a view to sustainable building and use of renewable energy.

1.6. The EESC particularly welcomes the emphasis in the proposal for a Directive on the key role of the public sector in developments in the construction sector as a whole.

1.7. The Member States and local authorities are called on to be more pro-active and efficient in their use of funding from the European Investment Bank for 'third-party financing' ⁽²⁾ by Energy Services Companies (ESCOs).

1.8. A repeat inspection of heating, ventilation and air-conditioning systems should be conducted in line with Member State rules and taking the costs of inspection into account. The inspection reports should not only contain recommendations for possible improvements but also requirements with respect to the operational safety of installations.

1.9. The recast version of the Directive requires the Member States to envisage penalties and fines. The EESC considers that these should vary depending on whether public or private parties are concerned, and that the amount of the fines should be a matter for subsidiarity. It also considers that if non-compliance with the Community prescription is a fault, then it too should have a Community dimension and be defined in the Directive.

⁽¹⁾ Concerns only the English version.

⁽²⁾ See Directive 93/76/EC, OJ L 237 of 22.09.1993, p. 28-30.

1.10. The EESC believes that the Member States should provide technical support to their citizens for building renovation.

1.11. In the housing developments with standardised concrete-block buildings that are typical in all the new EU Member States it would be difficult for owners' associations to produce energy performance certificates for all the standardised buildings. Energy performance certification based on assessment of another representative apartment block ⁽³⁾ could reduce renovation costs and red tape.

1.12. In addition, occupiers of individual apartment blocks could be offered facilities for renovation financing, building contracts, maintenance, issue of energy performance certificates, etc., based on the principle of a 'one-stop shop' in the municipality.

1.13. The EESC believes that the recast version of the Directive will help to reduce CO₂ emissions and will have positive social effects within a relatively short time, not least by:

- reducing energy demand
- improving the living standards of disadvantaged families
- providing employment for long-term unemployed people.

1.14. The EESC recommends full coordination of the new labelling for window frames and construction products with the Directive on the energy performance of buildings.

1.15. The EESC considers that if apartment blocks are demolished because renovation to make them more energy-efficient is no longer feasible, those concerned should be contacted by the competent authorities and the occupiers must be offered alternative accommodation. More broadly, consultation of representative civil society organisations should be included in the specifications of all measures implementing the Directive, and national ESCs – at least in those countries that have them – should be consulted as a matter of course ⁽⁴⁾.

⁽³⁾ Addition to provisions in Article 10(5)(b) of the recast version.

⁽⁴⁾ This would ensure compliance with the prescriptions contained in Articles 1 (human dignity) and 34(3) (housing assistance) of the EU Charter of Fundamental Rights.

2. Introduction

2.1. The EESC has already drawn up several major opinions on reducing CO₂ emissions and energy-saving in conjunction with common EU policies, and on the energy quality of buildings and their installations. Tangible results are being achieved on the basis of EU legislative requirements in new buildings. These results are felt primarily by consumers, while also benefiting the country as a whole. The relevant opinions include TEN/227, 263, 283, 274, 286, 309, 269, 299, 311, 332 and 341 ⁽⁵⁾.

2.2. However, after their accession to the EU, the 12 new Member States began transposing legislation into practice at a much later stage, and these countries therefore lag behind the old Member States in matters relating to energy performance of buildings, with residential and public buildings not even coming close to meeting the minimum requirements of the Directive.

2.3. The EESC already commented on the Directive itself in its opinion of 17 October 2001 ⁽⁶⁾, and the present opinion therefore considers only the proposal for a recast version of Directive 2002/91/EC (COM(2008) 780 final), drawing attention to the particular circumstances of the new Member States in relation to issues mentioned in this directive.

2.4. It is positive that the objectives of EU policy also include the possibility of more comfort and lower energy costs for citizens.

2.5. The existing directive already sets out:

- the method for calculating the energy efficiency of new and existing buildings that are being renovated,
- minimum requirements for energy efficiency,
- energy performance certification,
- inspection of boilers and heating systems,
- inspection of air-conditioning systems.

2.6. The recast version sets out, based on the arguments of competent bodies, what can be improved through targeted approaches and how.

⁽⁵⁾ TEN section brochure 'What Energy Policy for Europe? Key points of recent EESC opinions', and other EESC sources.

⁽⁶⁾ 'Energy performance of buildings', OJ C 36 of 8.02.2002, p. 20.

3. General comments

3.1. Some 40 % of energy consumption and CO₂ emissions in the EU is accounted for by buildings (residential and commercial). This sector represents some 9 % of GDP (about EUR 1 300 billion) and 7-8 % (*summary of impact assessment*) of jobs in the EU (about 15-18 million of the total 225,3 million people in work according to Eurostat). 40 % of buildings are in public ownership and 74 % have a floor area of less than 1 000 m².

3.2. Today's society is increasingly conscious of:

- environmental protection issues,
- consumer health (e.g. ambient air quality, accessibility for the elderly),
- comfort of living conditions,
- efficiency of electrical appliances and heating systems (the sector is subject to numerous rules that are often contradictory) (7).

3.3. Civil society should evaluate the economic impact, adequacy and future effects of the proposals from the perspective of various parties and social groups in a specific region, with a view to longer-term developments.

3.4. Energy performance certification for buildings is not just a means of assigning a building to a particular energy-efficiency class, but also provides an incentive to seek new planning solutions.

3.5. There is substantial potential for job creation in the building sector based on required climate protection measures.

3.5.1. On the basis of Directive 2002/91/EC and the proposed recast version of it, an average of 60 000 new jobs could be created each year in the 15 old Member States and some 90 000 jobs in the 12 new Member States.

3.5.2. Implementing measures to ensure high energy performance (in buildings with an annual consumption of up to 50 kWh/m²) could lead to 1 million new jobs being created in the EU each year (8) (equivalent to 10 % of employment in this sector).

(7) A lead market initiative for Europe, COM(2007) 860.

(8) Study carried out by the Environment DG (Social Development Agency).

3.5.3. Currently not enough workers in the building sector have the skills required in the technologies that are needed to achieve high levels of energy efficiency. The proposal for a Directive recommends training measures to ensure the availability of qualified workers who can be employed in the sustainable buildings sector.

3.6. Looking ahead is particularly important for us: in point 3.4 of its opinion INT/415 (9), the EESC formulated an idea relevant to all legal acts, namely that they must be comprehensible, accessible, acceptable and enforceable. From a technical point of view, a directive should also be timely, viable and achievable.

3.7. Point 2.1.3 of opinion TEN/299 (10) notes that for heating alone the average consumption of conventionally equipped dwellings in many regions of Europe is 180 kWh/m²/year. According to information available to the rapporteur and his expert, the average energy consumption for heating in standardised dwellings in the Baltic States, and in dwellings of about the same age in neighbouring countries, is around 150 kWh/m²/year. Experience shows that consumption under the same climate conditions can be reduced by half after renovation and insulation.

3.8. Relevant Community provisions relating to the current situation in the EU are cited in point 3.1 of opinion TEN/299 (10).

3.9. The Environment DG and Enterprise and Industry DG are in the process of drawing up important rules on the labelling of construction products; these rules will help to reduce energy consumption (windows, walls, and heating, ventilation and sanitation systems), even if the products themselves do not produce energy.

3.10. Recasting or revising the existing provisions can contribute significantly to reducing energy demand in buildings.

4. Specific comments

4.1. The recast version of the Directive introduces the following important changes:

- broader scope: energy performance certification becomes binding for all buildings (it should be noted that 74 % of all buildings in the EU have a floor area of less than 1 000 m²);
- extending and promoting energy performance certification for public sector buildings;

(9) 'The proactive law approach', OJ C 175, 28.7.2009, p. 26.

(10) 'Energy efficiency of buildings – the contribution of end users', OJ C 162, 25.6.2008, p. 62.

- strengthening the role of the experts who issue energy performance certificates;
- requiring the Member States to introduce specific new measures to create more favourable financial conditions for investment in improving energy efficiency;
- taking more account of problems relating to air-conditioning systems;
- regular updating of the energy efficiency standards of the European Committee for Standardisation.

4.2. In recital 6, the percentage given of final energy consumption accounted for by buildings is markedly higher in countries with a cold climate. It is therefore proposed that recital 8 of the recast version of the Directive take adequate account of climate and location, especially with regard to allocation of investment.

4.3. The EESC welcomes the provisions of Article 10, under which, in the case of building complexes with a shared heating system, energy performance certificates can be issued on the basis of a general certificate for the whole building or based on assessment of another representative apartment in the same block, although the EU countries could further simplify the procedure for issuing energy performance certificates for standardised buildings.

4.4. Energy performance certification under Article 10 – whether mandatory or voluntary – makes dwellings more attractive to future owners or tenants, provided the information on the certificates is reliable. The EESC considers the proposal set out for Option B 1 of conducting random sampling checks of certificates in order to guarantee their reliability to be acceptable and commendable. However, this should not lead to penalties being imposed in accordance with Article 22. The new energy performance certificate for a residential building should preferably become a document that guarantees long-term energy quality. The certificate for a newly installed heating system should be issued by independent experts (see Article 16) together with the fitter.

4.5. The EESC welcomes the thresholds for inspection fixed in the Directive of 20 kW of the effective rated output of boilers (Article 13) and 12 kW of the effective rated output of air-conditioning systems (Article 14). Depending on whether fossil fuels or renewable energy sources are used, the EU Member States could set different thresholds and different inspection intervals for heating systems in their regions. The quality of the inspection reports should be subject to recurring spot checks in accordance with Article 17, though it is unclear whether the recommendations of the expert for improving the system should be binding or can be ignored, or whether the ‘financial consequences’ mentioned in Article 19 should be regarded as penalties. Provisions enacted by the individual Member States should stipulate that inspectors must be given access to private property in order to inspect heating systems.

4.6. The energy efficiency of a boiler that is to be sold by a manufacturer is certified in a special laboratory in accordance with standard requirements and displayed on a label affixed to the boiler. This avoids misleading advertising and guarantees quality. Recommendations for subsequent regular or voluntary inspections of the boiler in situ would motivate the owner to take measures to ensure that it works efficiently in accordance with its optimum technical performance parameters.

4.7. Comparison of all the provisions contained in the recast Directive suggests they are all worthwhile and sensible, and that the proposed means of enhancing the energy performance of buildings are consistent with each other and can be implemented concurrently.

4.8. EU-wide energy performance benchmarks and a method in accordance with Article 5 of the Directive and Option D 1 (summary of the impact assessment) are required because it is difficult to compare annual consumption in kWh/m² between different countries owing to climate particularities. It should be possible to ascertain the energy performance of heating and cooling systems separately against regional benchmarks that have been fixed. It would make sense to set these values not according to external temperature but on the basis of the typical number of heating degree and cooling degree days in each Member State, since these reflect the effect of climate on energy consumption better than the average external temperature.

4.9. Obviously the parameters for calculating energy performance (as opposed to the actual figures) must be the same in all Member States, and a single calculation method must be used. However, these calculations are unlikely to indicate a country's actual rating, and it is still unclear whether or not the optimum cost level is reached because this is determined by many other economic variables (which are not climate-dependent).

4.10. It is easiest to see and feel the results of renovating buildings with obsolete, provisional or very poor energy indicators under Article 4 (Option D 3). However, buildings with the worst performance also tend to be old and dilapidated. There is no point in providing public subsidies for the renovation of such buildings if the amortisation period of the investment clearly exceeds the anticipated useful life of the building. Such an approach to renovation would have negative consequences. Particular care should be exercised when selecting for renovation buildings with the worst performance.

4.11. Since no houses exist that produce zero emissions (Article 9), the rules should not be too tight here. The EESC believes it is better to adopt a soft approach, leaving the Member States flexibility in their choice of optimum solutions. Zero emissions should be pursued only as a future goal.

4.12. Currently relevant to this are 'passive houses', which have an annual heating requirement of no more than 15 kWh/m², as well as 'Category A' houses, which have an annual heating requirement of no more than 30 kWh/m².

5. Conclusions

5.1. According to the conclusions of the impact assessment the recast Directive provides good prospects for saving energy, and the EESC is confident that broadening the scope of the Directive will help to harness the potential for energy saving in buildings.

5.2. The EESC thinks it will be difficult to achieve the target and financial impact set out in the recast Directive with the estimated yearly investment of EUR 8 billion. In the case of the new Member States alone, it can be estimated that the amount of renovation is much higher. Certain factors independent of the Directive's provisions influence the cost and extent of renovations.

5.3. The extent and need for renovation in Lithuania can be seen from the following figures. There are about 40 000 old residential buildings that are uneconomic with respect to energy efficiency. Various improvements have been made to some 600 existing buildings in order to reduce energy costs (usually by replacing windows), and about 60 buildings have been completely overhauled. Although data vary between sources, they consistently show projects to be substantially behind schedule. At this rate, renovation work will take over 100 years. Renovation under the existing Directive has not even begun.

5.4. Financial factors. A typical example: according to the company *Vilniaus energija*, which supplies heating to the Lithuanian capital Vilnius, a 60 m² apartment requires about 200 kWh/m² annually for heating and hot water, of which about 140 kWh/m² is for heating⁽¹¹⁾. By insulating a building, which would cut heating costs by half, residents would save EUR 5,07 per square metre per year, or EUR 304,20, assuming a price of EUR 0,072 per kWh. According to figures from the local authority of Vilnius, complete renovation of an apartment block costs an average of EUR 165 per square metre⁽¹²⁾. If loans for renovation must be paid back within 20 years, residents of such a building would be paying at least EUR 41,30 a month. Surveys show that only 5 % of residents would be prepared to do this.

Government is not in a position to co-finance the renovation of heating systems in buildings. From adoption of the programme to modernise apartment blocks in 2004 until November 2008, EUR 37,3 million has been earmarked for such projects, amounting to 0,5 % of the national budget⁽¹³⁾. Adoption of the recast version of the Directive by the European Parliament, in accordance with the proposal submitted to Parliament by MEP Silvia-Adriana Țicău (RO), should therefore give new impetus to the renovation process based on better distribution of financing through the Structural Funds.

5.5. Psychological and legal factors. A drastic reduction in energy costs can only be achieved through insulation, for which the amortisation period is several decades. This is an inestimably long time scale in terms of people's life expectancy. Young people do not know where they will be living in 20 years' time and people approaching 60 are unsure whether they will even be alive in 20 years, which means that these two population groups (i.e. 20 % of the population⁽¹⁴⁾) will not be interested in renovation. In addition, there are poor residents receiving heating subsidies. These factors undermine the argument that renovation increases the value of housing. If an old building is demolished, the owner becomes homeless and often has no right to the land on which the building used to stand, unless he or she purchased it previously. This situation is improved by Article 19 of the new version, which even provides for measures to give information to owners or tenants through information campaigns under Community programmes.

5.6. Renovation of heating systems is discouraged by the view prevailing among consumers that it burdens property owners with a long-term loan that they may in some cases be unable to repay if the economic situation deteriorates, whereas energy suppliers' income from a renovated building remains unchanged, or may even increase following tariff adjustments, which are affected by illegal lobbying and corruption. The reason for this view is partly that suppliers of district heating, which is the main source of heating in the new EU Member States, are raising heating prices across the board, including for renovated buildings, in pursuit of excessive profits. This is a difficult problem to resolve. Consumers' fears could be allayed through technical and administrative measures if transposition of the new, broadened Directive facilitates improved billing through the energy certification requirement and if penalties are applied for infringements under Article 22.

⁽¹¹⁾ K. Nėnius, Vilnius Local Authority Programme *Let's renovate houses – renovate the city* (in Lithuanian), http://www.krea.lt/uploads/Busto_prog_bendrijos_EAIP.ppt#22.

⁽¹²⁾ E. Levandraitytė, *Tough policies unavoidable*, in: *Statyba ir architektūra (Construction and Architecture magazine)* (in Lithuanian), 2008/12, pp. 26-29.

⁽¹³⁾ V. Martinaitis, *Energy performance of Lithuanian apartment blocks and challenges for Lithuania's economy*, 22.10.2008. Material for a workshop on *The most expensive heating season*.

⁽¹⁴⁾ Office for Statistics, *Residents of Vilnius and Housing* (in Lithuanian), http://www.stat.gov.lt/uploads/docs/Vilniaus_saviv.pdf.

5.7. Large-scale renovation work will bring about savings in heating costs for buildings, but the expected reduction in CO₂ emissions may not happen. Residual heat from electricity generation is used in the production of energy for heating by combined heat and power plants. Reducing heating consumption may result in part of the unused residual heat being used to heat newly constructed buildings, so that carbon dioxide emissions are lessened.

5.8. In the absence of public guarantees, support and plans, consumers feel pessimistic. Moreover, neither the existing nor the recast Directive establish the principle of a 'one-stop-shop' for the renovation process, which all stakeholders and consumers would like to see. Where energy costs are clear from bills that have been paid and both contracting parties are in agreement, consumers

have reservations about the requirement in Article 11(3) and (4) that an energy performance certificate must be presented when an apartment in a block with several apartments is sold or let.

5.9. Numerous manmade building materials exist ⁽¹⁵⁾ ⁽¹⁶⁾ from which the most suitable can be chosen. However, if the market is suddenly flooded by enormous amounts of investment for renovation to revive the construction sector, there is a risk that, in the race to secure those funds, less attention will be paid to the quality of the products selected. On the other hand, the provisions of the Directive (Articles 16 and 17) concerning independent experts and the independent control system would prevent the use of poorer-quality products, if the remit of these experts were extended accordingly.

Brussels, 14 May 2009.

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

⁽¹⁵⁾ 'Laying down harmonised conditions for the marketing of the construction products', OJ C 218, 11.9.2009, p. 15.

⁽¹⁶⁾ This would ensure compliance with Article 1 (human dignity) and Article 34(3) (housing assistance) of the EU Charter of Fundamental Human Rights.

Opinion of the European Economic and Social Committee on the ‘Proposal for a Council Directive imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products’

COM(2008) 775 final — 2008/0220 (CNS)

(2009/C 277/16)

Rapporteur: **Mr CEDRONE**

On 10 December 2008 the Council decided to consult the European Economic and Social Committee, under Articles 100 and 262 of the Treaty establishing the European Community, on the

Proposal for a Council Directive imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products

COM(2008) 775 final - 2008/0220 (CNS).

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 15 April 2009. The rapporteur was Mr CEDRONE.

At its 453rd plenary session, held on 13-14 May 2009 (meeting of 13 May), the European Economic and Social Committee adopted the following opinion by 182 votes to three with eight abstentions.

1. Conclusions

1.1. The EESC feels that, in addition to its other qualities, the proposal has the great merit of *simplifying existing legislation* on the subject, in that instead of the three existing measures there will now be only one. In addition, it streamlines Member States' administrative procedures by bringing stockholding obligations into line with those of the International Energy Agency – IEA (in actual fact the alignment itself is not particularly substantial).

1.2. The proposal takes into account the *subsidiarity principle* and applies it correctly to a public good; the internal market must ensure that, in the event of a world crisis, any stocks released can flow freely to any buyer country concerned, whether or not it belongs to the International Energy Agency.

1.3. At the very least, as things stand, *coordination* would be the best way of preserving a high level of security of oil supply in the European Union and achieving adoption of common requirements.

1.4. The proposal facilitates adoption of *more effective, rapid measures* in the event of a crisis, including in respect of the relationship which has existed thus far between the EU and IEA systems, taking account of the genuine needs which may arise in the event of disruption.

1.5. The EESC feels that a *global strategy* is needed, to make the EU as self-sufficient in the field of energy as possible.

1.6. The proposal is a step in this direction but *does not go far enough* to achieve the desired goal.

1.7. The EESC believes that the main issue is not so much ownership of stocks, which could have very heavy financial consequences, at least for some EU Member States, as *control*, which must be extremely strict, public and preferably managed at European level.

1.8. Thus, dedicated and emergency stocks can be held by businesses too, provided that control stays in the hands of the Member States or, even better, in European hands. According to the proposal, only in the event that these controls prove ineffective could state ownership of dedicated stocks be imposed.

1.9. The EESC believes that an obligation to hold stocks corresponding to *70 days of consumption* would be more appropriate than an obligation to hold stocks corresponding to 90 days of net imports.

1.10. The aim of converting part of commercial stocks into emergency stocks could also be pursued. To achieve genuine intra-European solidarity, a principle of rapid pooling of stocks in the event of a crisis could be introduced; for instance, the ‘use-it-or-lose-it’ rule, which is already applied in the European energy market, could be studied and adapted.

1.11. The EESC calls on the Commission to assess the possibility of making tax (excise duty) on petroleum stocks in the various countries uniform.

2. Proposals

2.1. The EESC calls for *more substantial measures* from the Commission on petroleum stocks, particularly in the area of coordination and control. Similar measures are required in the area of natural gas stocks.

2.2. This means that, with a view to working towards the completion of the *single energy market*, the EU must take on a greater role.

2.3. Each Member State should require their businesses to hold a sufficient volume of stock to cope with any crises.

2.4. Subsequently, the Commission must monitor the situation at Community level; where a Member State fails to comply, it must be required as a penalty to create state-owned dedicated stock. In all cases, financing of these stocks should be as transparent as possible.

2.5. Predominantly *private* stock management is preferable, maybe accompanied domestically by a revolving fund (which facilitates release of stocks by state-certified businesses while avoiding too much money being wasted), but it should be subject to strict control by the *public authority*.

2.6. However, the EESC sees *EU involvement* as essential, to ensure that Member States are on a level playing field and that, consequently, the obligation to create and maintain stocks and make them available is in effect met, in case of need in one or more Member States.

2.7. A *Coordination Committee* or *agency* needs to be set up with genuine power to act, or, even better, the Agency for the Cooperation of Energy Regulators could be used.

2.8. The EESC calls on the Commission to submit an annual report to the European Parliament on the state of stocks.

3. Introduction

3.1. In recent years, particularly of late, the threat of energy supply being disrupted has increased. In response to this oil stocks have been released. There have been a number of physical disruptions of supply around the world in the last forty years, and the use of stocks held in different countries has helped to alleviate these problems in an orderly way. Since Europe has a single unified market for oil products any disruptions of supply are likely to affect each country similarly, and it is appropriate and useful for Europe to establish co-ordinated arrangements for holding oil supplies and for managing their release in the event of future disruptions.

3.2. There is thus a need to increase security of supply in the European Union and individual Member States, looking for better, more effective systems to cope with disruption.

3.3. Europe has had legislation requiring Member States to maintain minimum oil stocks for a number of years, based on the IEA's general recommendation to maintain 90 days' supply at all times. In March 2007, however, the Council, in reviewing energy security issues, asked for a review of EU oil stock mechanisms, with special reference to the availability of oil in the event of a crisis, stressing complementarity with the crisis mechanism of the International Energy Agency.

3.4. This is even more necessary because of the flaws in the current system: these flaws could prevent suitable supply in the event of need, with serious implications for the economy.

3.5. As oil is still the EU's main energy resource, the stock system needs to be made more reliable, bearing in mind that the energy sector is still NOT operating as a single market; what is more, there are no coordinated intervention procedures and no relationship between the EU and IEA systems.

3.6. In practice, in the EU everyone does as they please; there are a wide variety of systems and practices which, *inter alia*, can also lead to competition between economic operators being distorted.

4. Gist of the proposal

4.1. Before drawing up the proposal, the Commission carried out numerous consultations and, drawing on experts, drafted an **impact assessment**.

4.2. Four options were considered in the impact assessment:

- *option 0*: no changes made to the current situation, which is wholly unsatisfactory;
- *option 1*: provides for reinforcement of control and coordination mechanisms within the existing system, leaving existing legislation unchanged; thus, the same flaws would remain as at present without any substantial improvements being made;
- *option 2*: provides for the establishment of a centralised EU system with mandatory public ownership of 90 days of emergency stocks, held separately from commercial stocks; this would provide greater capacity to cope with disruption but at higher costs;
- *option 3*: provides for the creation of dedicated EU emergency stocks within a revised version of the existing system; this option would ensure that supplementary volumes are available in case of need, and therefore seems the most suitable solution.

4.3. The Commission's proposal is based on the third option. However, Member States are only required to create emergency stocks corresponding to the greater of 90 days of imports and 70 days of consumption. They are not required to create dedicated stocks unless they undertake to do so voluntarily. Rules are introduced to reinforce controls and each Member State is also required to draw up an annual report specifying the location and ownership of the emergency stocks.

4.4. It is planned to bring the general stockholding obligations closer into line with IEA requirements.

4.5. Member States will have greater flexibility in choosing specific arrangements for complying with the stockholding obligations, and will even be able to delegate management of stocks among themselves.

4.6. The proposal establishes rules and procedures to be followed in the case of an IEA-led action (effective international decision to release stocks). The EU will coordinate the contribution of non-IEA Member States.

4.7. After three years, the Commission may propose that part of the emergency stocks of each Member State is to be owned by the government or an agency.

5. General comments

5.1. The EESC shares the Commission's preference for option 3 of the impact assessment, as it requires less investment than option 2, which at present seems excessive, particularly in terms of cost; indeed, it believes, taking into account the survey referred to in the documents accompanying the proposal, that creating dedicated stocks – volumes of petroleum products owned by Member States – may conflict with the need to maintain emergency stocks and commercial stocks together, possibly even in the same tanks.

5.1.1. From a technical point of view, this seems the best option, notwithstanding, of course, the absolute necessity of guaranteeing ongoing availability of emergency stocks held together with commercial stocks. In any case, both the social and environmental implications of each of the measures listed should be taken into consideration.

5.2. The EESC endorses the proposal's objective, which is to deal with disruptions in supply of oil and/or petroleum products.

5.3. Available stocks, as the Commission rightly states, are the best possible means of dealing with the severest effects of any disruption on the petroleum market (although the key role currently played by the gas market - not covered in the proposal - should not be overlooked).

5.4. The EESC does not endorse the proposal for physical separation of emergency and commercial stocks. These stocks can be held in the same facilities or tanks.

5.5. The EESC feels that the other three strategies referred to by the Commission, followed by the International Energy Agency since 1974, should be pursued and enhanced.

5.5.1. *Domestic production should be increased.* (Some Member States are not doing this, seeking to preserve strategic reserves in the ground or to keep crude oil prices higher.)

5.5.2. *Alternative technologies should be used more widely* in energy applications, particularly following the approach of increasing the range of alternatives to using primary fuels in electricity production; this can be achieved by replacing fuel oil, where technically, environmentally and financially feasible, with natural gas especially, coal (there seem to be good prospects for 'clean' use of coal) and nuclear fuel (latest-generation technology here, too).

5.5.3. *Consumption should be reduced,* not so much in domestic heating or the chemical industry as, rather, the private transport sector, as part of a global strategy of promoting public transport.

5.5.3.1. Taking into account the fact that energy supplies could soon be running low in Europe, even though the crisis which seemed to be looming last summer has not yet come to pass, this strategy is also justified by the fact that, in many respects (particularly environmental), private transport seems to have reached limits which call for careful reflection on possible ways of redressing the balance.

6. Specific comments

6.1. The proposal should make a clearer distinction between dedicated stocks (Article 9) and emergency stocks (Article 3), stating whether the difference between the two categories lies solely in whether Member States have the obligation to create them, or whether the different definitions also cover the kind of petroleum product stocks being held, leaving it to the discretion of each Member State to choose whether or not to take on the obligation to build up stocks of other petroleum products, which, in this case, would not be emergency stocks. The grounds for including some oil products or qualities in the list of stocks, to the exclusion of others, are not clear.

6.2. The location (Article 3) in which the emergency stocks must be held is not properly defined, given the use of the term 'within the European Community'. It might be appropriate in addition to identify the geographical and climate conditions necessary for the site, as well as for connections to TEN-E in case they are to concern oil too in the future, to ensure that the stocks are properly available to all Member States in case of need. It would be appropriate for responsibility for stockholding to be allocated to a number of different Member States, even in rotation.

6.3. The content of Article 5 needs to be clearer, as it is ambiguous as it stands. In particular, paragraphs 1 and 2 seem to be contradictory. Article 5(1) requires Member States to ensure that emergency and dedicated stocks held within their national territory are physically accessible and available at all times, while under paragraph 2 it seems that these same Member States are free to decide on the allocation and release of stocks, with no uniform arrangement.

6.4. It might be wise to set uniform requirements with which each central stockholding entity must comply when fixing the conditions subject to which the stocks are offered (Article 7(4)).

6.5. The tasks assigned to the Coordination Group (Article 18) are relatively modest, as they are limited to contributing to analysing the situation within the Community (where, however, the Commission is responsible for control) with regard to security of oil supply and facilitating the coordination and implementation of measures in that field. The Group should be given a further-reaching role, for example, in verification and control of stocks and procedures (maybe becoming a genuine agency).

6.6. The 'necessary' measures which Member States have to adopt (Article 21) in the event of a major supply disruption are not clearly defined. It would be appropriate to specify in advance the percentage of crude oil and petroleum products that each Member State has to release, or by how much consumption should be reduced in each Member State; these should preferably be equal or at least proportionate to the volume of stocks available or to stocks consumed. Moreover, given that the reason for the stocks is to ensure mutual support in the European Union, forms of mutual support and remuneration among Member States in the event of disruption should be better defined, in particular EU producer countries' obligations. In addition, the European public should be informed about such key issues to bring them closer to the EU.

6.7. The EESC believes that, in the event of disruption, supply should not be reduced to public passenger transport or carriage of goods; heating supplies for the general public, in particular public services such as schools and hospitals, should be guaranteed. Supply to the petrochemical industry should also be guaranteed.

6.8. To ensure harmonisation of the procedures (Article 21(3)) laid down in the IEA Agreement, countries which are members of both the European Community and the IEA can use their dedicated stocks (where created) and respective emergency stocks to meet international obligations. In this case, however, a situation could arise where only countries which are members of both the EU and the IEA take action. To avoid this, it might be better to make it mandatory for all EU Member States to create dedicated stocks or use stocks already created, which should be put at the disposal of the Commission alone, in line with the subsidiarity principle, and handled by the Coordination Group.

6.9. It is not quite clear to whom the penalties laid down in Article 22 are to be applied: if they are only to be applied to businesses, it seems right for Member States to establish the size of the penalties and to be responsible for collecting them. However, if fines are to be imposed on the Member States themselves, these should be specified and regulated at Community level.

6.10. Setting up a special Committee (Article 24) to assist the Commission would serve no purpose unless it were the Committee or Coordination Group already provided for. Furthermore, Article 24 does not specify the Committee's responsibilities, nor arrangements for selecting its members, still less how many members it should have, and it does not make any mention of funding arrangements. The proposal does not specify clearly the differences between Commission employees carrying out controls (Article 19), 'Coordination Group' (Article 19) and 'Committee' (Article 24). The EESC condemns this as it does nothing whatsoever to increase transparency or democracy.

Brussels, 13 May 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 laying down the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other transport modes'

COM(2008) 887 final — 2008/0263 (COD)

(2009/C 277/17)

Rapporteur: **Mr ZBOŘIL**

On 29 January 2009, the Council decided to consult the European Economic and Social Committee, under Article 295 of the Treaty establishing the European Community, on the

Proposal for a directive of the European Parliament and of the Council laying down the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other transport modes

COM(2008) 887 final – 2008/0163 (COD).

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 15 April 2009. The rapporteur was Mr ZBOŘIL.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May), the European Economic and Social Committee adopted the following opinion by 183 votes to 3 with 6 abstentions.

1. Conclusions and recommendations

1.1. The EESC welcomes the Commission's initiative, believing it essential to have a reliable, functional, effective and safe road transport system (including services provided in this area).

1.2. The Committee agrees that the proposed directive should be adopted to make the ITS action plan possible, since it constitutes the required legal framework for coordinating the intelligent transport system while being supple enough to meet the proportionality and subsidiarity principles.

1.3. Enabling traffic to flow smoothly on road networks necessitates having real-time transport information and data on incidents and conditions causing complete or partial congestion at certain locations or on certain stretches. ITS must provide accurate, reliable and standardised information in real time and give users the freedom to choose.

1.4. The EESC considers it essential to have a unified European taxonomy (such as the AlerTC system) of incidents and conditions affecting traffic flow and safety on the roads. An XML data exchange format also needs to be standardised to enable the exchange of real-time traffic data and travel information. The parameters also need to be established for creating a standardised georeferenced network of road infrastructure for a standardised digital geographical localisation of conditions and incidents, including information on roads and stretches of road and associated infrastructure.

1.5. A system should be used to process and distribute the necessary data to the end user so that it does not unduly inconvenience drivers, but actually make things easier for them and so increases traffic safety.

1.6. The EESC recommends that the architecture of ITS systems be speedily established at national level by defining specific functions as well as the basic standard equipment for TEN-T roads with tangible telematic systems to deliver the specific functions required.

1.7. The Committee points out that building the infrastructure should involve relevant sources of funding from the Community, the Member States and the private sector. Operating costs should be funded from taxes or tolls. Obligations to be met by central bodies at national level in the collecting, processing, sharing, publishing, distributing and cross-border sharing of traffic data must also be worked out in further detail.

1.8. ITS will involve the increasing use of high volumes of data. Their implementation, therefore, requires the development of a long-term approach, taking into account not only current applications but also possible future system developments and the role and responsibility of the various parties involved. The intelligent transport systems put in place must also strictly comply with data protection requirements. The directive and action plan must ensure necessary protection against misuse via any technical, technological, organisational or legal means, in accordance with the legal provisions of the EU and Member States ⁽¹⁾.

⁽¹⁾ Opinion No 4/2004 of Article 29 Working Party on the Processing of Personal Data by means of Video Surveillance, WP 89, 11.2.2004. Declaration of the Article 29 Working Party on Enforcement, WP 101, 25.11.2004. http://ec.europa.eu/justice_home/fsj/privacy/workinggroup/wpdocs/2004_en.htm

1.9. The EESC recommends that appropriate measures be included in the action plan to promote modern IT transport technologies e.g. through the organisation of a competition for intelligent vehicles.

2. Introduction – Commission Documents

2.1. According to the mid-term review of the White Paper on EU transport policy, innovation will play a big part in greater road transport sustainability (i.e. in making it safer, more economic and efficient, cleaner and smoother), especially through the deployment of information and communication technologies – i.e. intelligent transport systems.

2.2. The increasing overload on our transport systems (with a 55 % rise in road freight transport and 36 % rise in passenger transport expected by 2020) and the energy consumption and related environmental damage (CO₂ emissions from transport slated to go up 15 % by 2020) call for an innovative approach that copes with the growing needs and demands of transport and mobility. Traditional measures, such as extending existing transport networks, will not be possible on the required scale and fresh solutions will have to be found.

2.3. The deployment of intelligent transport systems is slower than expected and generally piecemeal. The result is an atomised structure of national, regional and local solutions lacking any clear harmonisation. As a result, ITS is used ineffectually and so incapable of making a telling contribution to achieving (transport) policy aims and to mastering the growing number of difficult challenges with which road transport is contending.

2.4. One particular aim is to improve the interoperability of the system, ensure a smooth approach, support the continuity of services and create mechanisms for effective cooperation between all entities involved in the ITS sphere. A (framework) directive is judged the most appropriate way of achieving the intended goal in conformity with the subsidiarity principle.

2.5. However, the technical details of deployment – the procedures and specifications – will be adopted by the Commission, aided by a committee made up of representatives from the Member States. Without prejudice to the remit of this committee, the Commission will set up a European advisory group for ITS (service providers, consumers' associations, transport and equipment operators, the manufacturing industry, the social partners and professional associations) to which the relevant stakeholders in the field will be invited; it will advise the Commission on the commercial and technical aspects of setting up and deploying ITS in the EU. This advisory group for ITS will gather and collate input from existing fora such as eSafety and ERTRAC.

2.6. This proposal deals with ITS applications and services associated with road transport and their interfaces with other transport modes. Road transport is regulated by various legislation:

Directive 2004/52/EC on the interoperability of electronic road toll systems, Regulation 3821/85/EEC on recording equipment in road transport and Directive 2007/46/EC establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles. A clear complementarity between the work of the committees concerned will be ensured.

2.7. The proposal will help towards a number of (microeconomic) goals of the Lisbon strategy for growth and jobs. Above all, it will help to facilitate the proliferation and effective use of ITS. It will also contribute to the following goals:

- facilitating all forms of innovation: cross-border information transfer on the effective deployment of ITS;
- expanding, improving and connecting European infrastructure and completing priority cross-border projects; assessing the arguments for suitable price-setting systems in the infrastructure;
- supporting the sustainable use of resources and improving synergy between environmental protection and growth, especially helping to develop ways of internalising external costs;
- increasing and improving investment in research and development, especially from private companies: better environment for the use of innovative ITS solutions.

2.8. Chapter 4 of the Communication on Greening Transport, adopted by the Commission in July 2008 (COM(2008) 433), sets out an action plan for ITS in road transport to be achieved through a legislative initiative that establishes a common approach to getting existing technologies onto the market and used. In addition, using existing infrastructure more efficiently will mean that less new infrastructure will be needed, avoiding habitat fragmentation and soil sealing.

2.9. This proposal also meshes with the EU's sustainable development strategy, since it tackles several key issues flagged up for greater effort in the course of the 2005 review. What these have in common is the aim of making transport greener – for example, through better management of demand for transport and helping to improve road transport safety by halving the number of road accident fatalities by 2010 (compared with 2000). Another question to be addressed indirectly is cutting energy consumption in the EU and hence reducing the contribution to climate change. The proposal also supports the implementation of Regulation 1/2005/EC on the protection of animals during transport and related operations (navigation systems).

2.10. The proposal for a directive sets forth a framework for implementing the ITS action plan. To back up the obligations the directive imposes upon Member States, the Commission will bring in uniform specifications, following discussions in the committees, to ensure a Europe-wide coordinated introduction of ITS interoperability systems. This work will be carried out by the Commission, assisted by the European committee for ITS. The directive also establishes a framework for exchange of information with the Member States. The proposed ITS action plan brings in priority areas for speeding up the coordinated deployment of ITS applications and services throughout the European Union.

2.11. The ITS action plan builds on a series of European Commission initiatives currently underway, including the action plan for freight transport logistics ⁽²⁾, the action plan for urban mobility ⁽³⁾, the introduction of the Galileo system ⁽⁴⁾, the package of measures for greening transport ⁽⁵⁾, the i2010 initiative for intelligent vehicles ⁽⁶⁾, the eSafety initiative ⁽⁷⁾, the Seventh Framework Programme for research and technical development ⁽⁸⁾, the eCall service ⁽⁹⁾, the European technology platforms and their strategic research plans ⁽¹⁰⁾ and the CARS 21 initiative ⁽¹¹⁾.

3. General comments

3.1. The EESC welcomes the Commission's initiative, believing it essential to have a reliable, functional, effective and safe road transport system (including services provided in this area). Coordinated deployment of ITS means ensuring optimal traffic flow in the individual Member States and in Europe as a whole for as much of the time as possible.

3.2. The Committee agrees that the proposed directive should be adopted to make the ITS action plan possible, since it constitutes the legal framework needed for coordinating the intelligent transport system and is at the same time supple enough to meet the proportionality and subsidiarity principles.

3.3. It is important to achieve the objectives of the proposed directive, in particular to improve the functionality, reliability, effectiveness and safety of road transport, if we are to ensure a more stable economic and social environment in individual Member States and throughout the EU. The deployment of ITS will have an impact on regional development, particularly where the volume of goods exceeds the capacity of the existing road network. The regions should play an important role in implementing the Directive and the action plan by pooling experience and sharing best practices.

3.4. The Directive does not contain any specific provisions ensuring the effective deployment of ITS, via concrete control mechanisms, in the road systems of the Member States, despite the funding from the Commission and the projects mentioned above (Easy Way etc.).

3.5. Enabling traffic to flow smoothly on road networks necessitates having real-time transport information and data on incidents and conditions causing complete or partial congestion at certain locations or on certain stretches.

3.6. ITS must provide reliable, standardised and sufficiently accurate information in real time, as well as delivering information on intermodal transport and giving users the freedom to choose between the various modes of transport available.

3.7. ITS will involve the increasing use of high volumes of data. Their implementation, therefore, requires the development of a long-term approach, taking into account not only current applications but also possible future system developments and the role and responsibility of the various parties involved. To ensure the protection of privacy, personal data which can be used to identify individuals should be processed within a legal and technical structure that allows the transmission of personal data for strictly defined purposes only in accordance with the legal framework of the EU and the individual Member States.

3.8. The core requirement is to ensure that the initial provider can guarantee the anonymity of the data. The advisory group must cooperate and consult with the European Data Protection Supervisor on such issues; we recommend that the data supervisor be represented directly within the advisory group.

3.9. There must be no exclusive status for Galileo and cooperation with all available satellite navigation systems must be possible.

3.10. To garner and share information and data on road blockages or hold-ups, we need to have a unified European taxonomy of the monitored incidents and conditions that cause such events and so reduce safety and smooth flow of traffic, as well as an XML data exchange format.

3.11. Similarly, there needs to be unification of the parameters for creating a standardised georeferenced network of road infrastructure for a standardised digital geographical localisation of conditions and incidents, including information on roads and stretches of road and associated infrastructure. Use should be made of the Member States' experience and best practices. Also involved here are systems for managing the state of road surfaces to ensure they are always technically sound.

⁽²⁾ COM(2007) 607.

⁽³⁾ To be submitted by the European Commission in 2009.

⁽⁴⁾ http://ec.europa.eu/dgs/energy_transport/galileo.

⁽⁵⁾ COM(2008) 433.

⁽⁶⁾ COM(2007) 541.

⁽⁷⁾ www.esafetysupport.org.

⁽⁸⁾ <http://cordis.europa.eu/fp7>.

⁽⁹⁾ www.esafetysupport.org/en/ecall_toolbox.

⁽¹⁰⁾ <http://cordis.europa.eu/technology-platforms>.

⁽¹¹⁾ COM(2007) 22.

3.12. A system should be used to process and distribute the necessary data to the end user so that it does not unduly inconvenience drivers, but actually makes things easier for them and so increases traffic safety, particularly taking into account the ageing population. The Directive should also envisage providing ITS users with information support to maximise benefits to the operation, effectiveness and safety of the system, while at the same time lowering the accident rate.

3.13. ITS is also understood to include the information systems used by the transport units of the Police, the fire service, road network operators, meteorological services as well as by drivers themselves. The travel information and data from such systems must be an integral part of the content of travel information.

3.14. In addition to processes to improve traffic flow, new roads need to be built to extend networks (especially in places where these are incomplete) and reconstruction and repairs carried out so that enough road capacity is available, while respecting land conditions, the environment and so on. ITS should be integrated into not only newly constructed TEN-T networks but also into already existing networks.

4. Specific comments

4.1. The Directive and the action plan should identify tangible objectives which all Member States can achieve during the opening phase:

- o ensure the collection and collation of travel information and data on the current transport situation in the Member States at national level;
- o ensure the cross-border exchange of travel information and data on the current transport situation on the TEN-T network in real time;
- o provide drivers with basic travel information, free of charge, as a public service.

4.2. Road traffic and travel data on partial or complete congestion at points and sections of transport infrastructure are used in associated processes for:

- checking and monitoring the removal of the causes of congestion or the management of adverse conditions until these have been completely eradicated;

- providing information about the place, time, extent and causes of traffic congestion or adverse conditions to all those on the roads (the driving public, drivers of emergency vehicles, etc.);
- managing traffic on roads to ensure smooth traffic flow on the network based on identified incidents responsible for congestion or adverse conditions (management of a certain stretch of the network and on alternative routes, etc.);
- analysis of recurrent causes for incidents impeding traffic flow on roads in certain places and stretches so that measures can be proposed and implemented to reduce or eradicate them.

4.3. The proposals fail to define the functions that ITS systems should address or at least indicate when these functions will be defined by experts. These are framework documents and too general, which could lead to different procedures in individual roles and areas.

4.4. For this reason, the Committee proposes defining some ITS functions as follows:

4.4.1. Operations management systems: These gather and process information as part of the operation of bodies, organisations and institutions (police, fire brigades, medical emergency services); some parts of this primary information can serve as traffic information about the present situation on the roads.

4.4.2. Collection of data and information from telematic applications: This monitors specified characteristics of individual elements of the transport system at certain sections of road using telematic systems (ITS).

4.4.3. Managing and routing traffic: The intelligent transport system assesses tangible traffic information and sensor data automatically, or through an operator, and directs traffic on a given stretch of road via the appropriate means (variable message traffic signs, illuminated arrows or signals, and so on).

4.4.4. Surveillance: visual surveillance by road traffic bodies, organisations and institutions using shared camera systems.

4.4.5. Information provision: Road traffic and travel data on partial or complete congestion is published or distributed to all clients and road users. Information is provided through normal and accessible media and information technologies by public or private companies in the form of pre-trip and on-trip information services.

4.4.6. Monitoring and sanctions: Telematic systems verify that certain obligations (e.g. tolls) are met and road traffic rules obeyed, possibly followed up by sanctions for the most serious infringements (e.g. speeding, jumping red lights, exceeding weight limits, tracking stolen vehicles), in accordance with the traffic regulations of the Member States and at EU level ⁽¹²⁾, in the event of their harmonisation.

4.4.7. Maintenance checks: Telematic systems also monitor the reliability of individual system elements, including the automatic identification of problems and triggering of follow-up procedures or back-up.

4.5. The EESC also recommends defining basic European standards (or model examples) for equipping roads incorporated into TEN-T with 'standard' telematic systems for collecting travel data, traffic monitoring and management:

- CCTV surveillance system,
- traffic-flow monitoring, congestion detection and traffic census systems,
- variable traffic sign systems and information transfer equipment,
- meteorological information system for roads,
- traffic management on major transport routes,
- rescue system.

Brussels, 13 May 2009.

The President
of the European Economic and Social Committee
Mario SEPI

4.6. These systems and information from operations management systems can be used to evaluate traffic flow and conditions, including estimated travel time to key destinations.

4.7. The EESC draws attention to possible problems in retrofitting vehicles with dedicated ITS equipment; the architecture of systems must have the necessary compatibility. Vehicle systems and infrastructure must be developed to operate on open platforms. This applies not only to systems and technology but also to the services provided through them.

4.8. There is no doubt that ITS will involve the use of a whole range of information and other technologies that are available now. A coordinated EU approach to these systems should also involve specifying the target areas which will have to be made ready for practical implementation. Thought should also be given to the relevant sources of funding from the Community, the Member States and the private sector. Operating and investment costs should be funded from existing duties, taxes and tolls.

4.9. The Commission's proposals also provide for a whole series of practical measures for introducing ITS for each of the main areas of the action plan. These schedules will, of course, also have to detail the time needed for the end users – drivers – to be trained and to master the relevant elements of the system. This will involve supporting publicity and information campaigns about these modern technologies using innovative methods (e.g. promoting the development of intelligent vehicles through the organisation of a competition for the best intelligent vehicles in Europe).

⁽¹²⁾ EESC Opinion on the Proposal for a Directive of the European Parliament and of the Council facilitating cross-border enforcement in the field of road safety, rapporteur: Mr Simons, 17.9.2008 (TEN/348), OJ C 77 of 31.3.2009, pp. 70-72.

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy’

COM(2009) 35 final — 2009/0010 (COD)

(2009/C 277/18)

Rapporteur-General: **Mr RETUREAU**

On 10 February 2009 the Council decided to consult the European Economic and Social Committee, under Articles 156 and 175 of the Treaty establishing the European Community, on the

Proposal for a Regulation of the European Parliament and of the Council establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy

COM(2009) 35 final – 2009/0010 (COD).

On 24 February 2009, 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 Retureau as rapporteur-general at its 453rd plenary session, held on 13-14 May 2009 (meeting of 14 May), and adopted the following opinion by 129 votes to 5 with three abstentions.

1. Proposals

1.1. At the end of January 2009, with the aim of mitigating the impact of the crisis on the economy, the Commission proposed reallocating EUR 5 billion from the 2008 budget from unspent agricultural structural funds; this proposal sought to facilitate investment in sustainable energy and broadband access in rural areas.

1.2. Discussions in the Council and requests from some parliamentarians led to negotiations on the list of projects to be financed among Member States, whilst the Parliament regretted the lack of investment in energy-saving measures.

1.3. An informal agreement seems to have been reached between the Commission and the two co-legislators in mid-April, relating to the energy aspect, on a sum of EUR 3,98 billion, compared to the EUR 3,5 billion provided for in the draft Regulation. The agreement provides that if the EUR 3,98 billion allocated to energy projects (electricity and gas interconnections; offshore wind energy; carbon capture and storage) have not been fully spent by the end of 2010, they will be able to be used for other projects, for example for improving energy efficiency.

2. General comment

2.1. The Committee welcomes the idea of allocating unused budgetary resources from 2008 to projects aimed at kick-starting the European economy, which has been plunged into stagnation by the systemic crisis that is affecting the world economy and by

the unwillingness of financial institutions to provide low-interest loans to businesses, particularly SMEs and start-ups.

2.2. In the current circumstances, it is essential to act as quickly as possible, whilst prioritising specific projects that fit in with the medium to long-term aims of sustainable development, such as renewable energy and the rollout of broadband networks to areas that are not yet connected to the worldwide web by appropriately efficient technologies.

2.3. The Committee therefore supports the general approach of the Regulation, but understands that the expression of different national interests and concerns relating to climate change may lead to some variations on the initial proposal.

2.4. What now needs to happen is for the proposed measures to be implemented as quickly as possible, as time is of the essence when battling this crisis. If political will is not demonstrated, and if measures are taken too late, the objectives pursued may suffer as a result.

3. Specific comments

3.1. However, the Committee regrets that the measures proposed by the Commission to combat the crisis are generally too modest given its rapid and widespread impact on jobs and businesses. It further regrets that stronger proposals and clearer signals were not produced in the months that have already passed.

3.2. The Committee will doubtless be issuing an opinion on other proposals, such as those on regulating cross-border movements of capital or combating tax havens; it will do so at the appropriate time, but it is awaiting strong, effective proposals that are proportionate to a crisis that is already proving to have more serious consequences than any of the others that have gone before.

Brussels, 14 May 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 and the Council: The raw materials initiative — meeting our critical needs for growth and jobs in Europe’

COM(2008) 699 final

(2009/C 277/19)

Rapporteur: **Mr FORNEA**

On 4 November 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 and the Council: The raw materials initiative - meeting our critical needs for growth and jobs in Europe

COM(2008) 699 final.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 April 2009. The rapporteur was Mr FORNEA.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May 2009), the European Economic and Social Committee adopted the following opinion by 194 votes to 4 with 7 abstentions.

1. Conclusions and recommendations ⁽¹⁾

The EESC recommends the following:

1.1. The EU should prepare a review of the national analyses of strategic and critical raw materials and establish an EU overview, similar to the ones carried out by the National Research Council for the United States or Japan. In particular, the Member States should review their raw material supply policies in order to see what criticality means for each EU Member State and for the EU as a whole. The criticality of individual raw materials needs to be reviewed regularly, possibly every two to three years, in order to monitor changes.

1.2. An OECD/BIAC (the Business and Industry Advisory Committee to the OECD.) workshop on access to raw materials whilst possibly providing a starting point, would limit the EU's range from the very beginning. Having identified a number of critical raw materials, those countries that are already or could potentially in the future be supplying these raw materials should be assessed with regard to their potential for beneficial cooperation. Then diplomatic steps should be undertaken.

1.3. The EESC very much supports and wishes to participate in related conferences organised by the Czech, Swedish and Spanish Presidencies, in 2009-2010 on the question of the supply and demand of mineral resources, access to land, best available technologies and capacity building.

1.4. The Commission should enhance its efforts in support of effective negotiations at international level, not only to eliminate unfair trade barriers and distortions, but also to assist in the shaping of bi- and multilateral investment agreements.

1.5. The Commission should activate the necessary mechanisms for action in case of infringements of the WTO rules by non-EU countries (e.g. export taxes/restrictions on materials).

1.6. The EU's external tariffs should be set with a view to ensuring that sustainably produced raw materials are not excluded from the EU market. A review of existing tariffs needs to be undertaken to identify tariff lines that should be subject to change.

1.7. The EU should actively pursue raw materials diplomacy with a view to securing access to raw materials, and in so doing, contribute to creating funds and programmes focusing on capacity building that would support sustainable raw materials production and economic and social progress in developing countries.

1.8. The Commission should actively participate at the annual meetings of the World Mining Ministers Forum and the Intergovernmental Forum on Mining and Metals with the aim of establishing better relations with a number of the world's authorities on the matter, in order to identify and strengthen the investment opportunities for the EU.

1.9. An inventory of best regulatory practices in the EU with regard to access to land for raw materials industries should be prepared with the view to simplifying procedures and reducing the sterilisation of mineral resources resulting from inadequate land use planning practices.

⁽¹⁾ For further EESC detailed recommendations, see the opinion on the Non-energy mining industry in Europe, adopted on 9 July 2008 and published in the Official Journal of the EU under 2009/C27/19. The present recommendations should be seen as complementary to those which were presented in this previous EESC opinion.

1.10. The Commission should continue its support for the European Technology Platform on Sustainable Mineral Resources and include its topics in the upcoming calls for 2009-2013. Also, it is important to push forward raw material-related themes among the domains for priority action in the 8th R&D Framework Programme, such as for example promoting resource and energy efficiency.

1.11. The Commission should foster an objective methodology based on a full life cycle analysis to assess the validity of resource efficiency measures and of any 'material substitution policy'.

1.12. The Commission's departments should strengthen recycling and facilitate the use of secondary raw materials in the EU and propose sound recycling, recovery and re-use strategies in non-EU countries by promoting best practices at international level.

1.13. Further consultations and research are needed for understanding better to what extent the methodology applied for non-energy mineral raw materials is suitable for the specific situation of renewable non-energy raw materials such as for example wood, hide and skins (the Commission's Communication focuses mainly on the issues around the security of supply of non-energy mineral raw materials. It is open to question if it is the best way to use the same procedure for other raw materials, but for sure, through strong cooperation among the Commission's specialised departments, it will be possible to create an integrated instrument for assessing all the strategic and critical raw materials for EU industries and defence.)

2. Background

2.1. The trend towards ever higher prices of raw materials has come to at least a temporary halt. The Commission's Communication is confident that the trend will resume and that 'the growth levels of emerging countries in the future will maintain high pressure on raw materials demand'. The critical factors are *first*, whether emerging countries, particularly China, will be able to transit smoothly from a growth mode, based largely on fixed capital investment driven by business opportunities in export-oriented manufacturing sectors to one more reliant on domestic consumption, and *second*, if the latter growth mode results in the same rate of increase in raw materials demand.

2.2. As pointed out in the Communication, the EU is self-sufficient in construction minerals (where foreign suppliers are handicapped by high transport costs relative to the value of the materials) but dependent on imports of certain materials of strategic economic importance. Their strategic importance derives from their being critical to industrial production to a degree that is considerably understated by their economic value and from

supplies being concentrated on a small number of commercial suppliers and countries, some of which are associated with high political risks.

2.3. The Communication expresses a number of concerns about supplies. Four types of risks, depending on the perspective and origin of supply constraints, can be distinguished as being sources of concern:

- intensified competition for raw materials among processors, manifesting itself in the form of higher prices and diversion of materials to new destinations for primary and secondary resources;
- 'hoarding' of raw materials through barriers to export, such as export taxes and dual pricing systems (a number of examples are provided in the Communication);
- competition for assets producing raw materials in third countries (example: competition over investment opportunities and access to mineral deposits in Africa);
- risk of interruptions in the physical supply of raw materials having strategic economic importance (example: a possible interruption to supplies of rare earth elements (REE - all green and energy efficient technologies are based on an increasing consumption of rare earth elements. (for example a hybrid car incorporates around 20 kg of REE). China is the main world supplier but also the main world consumer of REE. To date, there are very few economically feasible alternatives to the Chinese supply of REE.); the supply of which is strongly concentrated and which are important in a number of applications). Critical minerals can be a powerful bargaining tool and even weapons in economic warfare.

2.4. The first two types of risks affect directly the competitiveness of raw materials processing European industry, and to the extent that they arise from anti-competition practices or trade policy measures their consequences have to be addressed in the context of trade and competition policy.

2.5. The third risk may be of less concern to the industry using raw materials, since there is no reason *per se* to expect that the owners of natural resources will see any interest in discriminating among customers to the detriment of EU industry, but there are reasons to be concerned both about the impact on the long-term competitive position of the European-based mining industry as well as about the effect on Europe's position as a hub for mining finance, technology development and corporate networking. Recent developments in this regard also raise concerns about the prospects for sustainable development in developing countries that depend on natural resource-based exports.

2.6. The fourth type of risk, finally, has the potential to cause serious damage to the economic fabric of the European Union and a loss of jobs, by bringing production to a halt due to a lack of necessary materials. This risk has to be addressed directly, including, possibly, through measures that have not been contemplated earlier. It is worth noting that the risk has been taken seriously enough by both the United States (see Minerals, Critical Minerals and the US Economy, report of the National Research Council, www.nap.edu/catalog.php?record_id=12034.) and Japan (see Guidelines for Securing National Resources, www.meti.go.jp/english/press/data/nBackIssue200803.html.) to justify new policy initiatives. It has also been suggested in press reports that China has engaged in the establishment of raw materials stockpiles with a view to mitigating the effects of interruptions to supplies.

3. General comments

3.1. The European Economic and Social Committee welcomes the Commission's Communication (COM(2008) 699, Commission's Initiative on Raw Materials.) as a key factor to secure the EU's sustainable supply of non-energy raw materials, in particular mineral resources (see p. 3 of COM(2008) 699) in order to meet our critical needs for development and jobs. The EESC is anxious to see the necessary structure and resources put in place that will assist the implementation of the measures identified.

3.2. The representatives of civil society have been requesting for a long time an integrated approach on this issue, bringing together several EU policies and programmes. It is the merit of the Commission, through this initiative, to have outlined solutions to the challenges generated by the necessity to ensure sustainable supply with non-energy raw materials for EU industries by integrating policies for improving non-EU and domestic supply with measures designed to enhance resource efficiency and recycling activities.

3.3. In particular, whilst not undermining the subsidiarity principle applicable in the EU with regard to resource and land planning policies, international developments have clearly shown the need for a more coordinated approach at EU level.

3.4. The EESC is satisfied to find that in this Communication, the Commission has adopted a similar approach, identifying almost the same challenges and solutions as presented in the most recent EESC own-initiative opinion related to this topic ⁽²⁾. This document was issued to help the Commission to have in advance the viewpoint of civil society and resulted after an extended process of consultation initiated by the EESC's Consultative Commission on Industrial Change as a response to the Commission's Information Paper 'Securing raw materials supply for EU industries' (IP/07/767, issued on 5 June 2007.) which was meant to anticipate the current raw materials initiative.

3.5. In the context of the EU commitment to develop a global approach in tackling climate change effects by improving the energy efficiency technologies, promoting responsible use of the natural resources and greening its industries, the EESC is once again emphasising the strategic importance of the non-energy minerals supply security along with the European Energy Policy, focusing on the interdependence of these sectors, on account of the technological factor.

3.6. The EU is highly dependent on imports of 'high-tech' metals and will not master the shift towards sustainable production and green technologies, unless it is granted safe access to such high-tech metals and rare raw materials (in terms of competition, risks, geographic concentration of resources and production facilities) ⁽³⁾.

3.7. The present Communication is like a SWOT analysis of the EU's current raw material supply issues and therefore needs now coordinated support from the EU Member States and coordinated actions by the various Commission departments concerned (DEV, ENTR, ENV, EUROSTAT, REGIO, RELEX, RTD) to implement a range of steps, involving not only the Commission but also the key stakeholders (extractive downstream industries (the International Council on Mining and Metals (ICMM) should be invited to participate and contribute through its global mineral resources sector a development vision and expertise to complement Euromines' more specific EU-centred vision) business, Geological Surveys, organised civil society) to enhance the EU's security of supply in conformity with sustainable development goals.

3.8. The currently existing EU structures dealing with these issues have been too weak and need to be strengthened with higher level decisions-makers and a reinforced technical and economic analysis of the future needs in raw materials as well as a reinforced action to obtain as much as technically and economically feasible from European sources and to improve sustainable supply from non-European sources. A longer term strategy and a regular review mechanism will be necessary since investment in raw material extraction is economically very often viable only over longer time periods.

3.9. *The following principles underlie the proposals made:*

3.9.1. Security of raw materials supply for the EU involves first of all ensuring that the economy of the Union is not damaged by shocks in the supply of raw materials, but also safeguarding the interests of consumers, of EU industries that depend on imported raw materials and of EU industries that produce raw materials as

⁽²⁾ Opinion on the Non-energy mining industry in Europe OJ C 27, 3.2.2009.

⁽³⁾ See the EESC Opinion on the Non-energy mining industry in Europe OJ C 27, 3.2.2009, point 2.5.

well as theneed to ensure a level playing field. All these interests have to be taken into account and have to be implemented with a regard for EU commitments and policies with respect to international development, as well as to environmental and social sustainability. Raw materials use should be optimised, taking into account its interaction with the environment, with the needs of communities and with sustainable energy use.

3.9.2. EU policy with respect to raw materials supply has to be placed on a **solid analytical basis**. It is therefore important to ensure that relevant knowledge is available and that it is subjected to analysis using the best possible methods.

3.10. Regulatory practices concerning raw materials vary widely within the EU and there is considerable scope for improvement in individual countries by disseminating information about best practices.

4. Comments on the proposed policy response ⁽⁴⁾

4.1. *First pillar: Access to raw materials on world markets at undistorted conditions*

4.1.1. The Communication proposes that the EU should (i) actively pursue raw materials diplomacy with a view to securing access to raw materials, (ii) promote enhanced international cooperation and (iii) place a priority on access to raw materials in EU trade and regulatory policy.

4.1.2. Having identified major resource-rich countries, the issues around access to raw materials in these countries should be discussed with representatives of these states. The EU's development policy should create **funds and programmes that would support sustainable raw material production and development** in these countries.

4.1.3. The EU should review its funding schemes for those countries that are already EU Member States or neighbouring countries since the transport of resources from these countries would be more sustainable. In particular, support should be given to the latest accession states, the Balkan states, the North African states and Turkey. The ICMM's Resource Endowment initiative (Initiative launched in 2004 by the International Council on Mining and Metals. It seeks to identify good policy practice for mining and metals investments at national/regional and corporate levels within developing countries) could provide a useful model for resource and development strategies.

4.1.4. Several concrete recommendations fall into the category of **strengthening the compatibility between EU development policy and the EU's need for undistorted access to raw**

materials. The proposals made with respect to strengthening states, promoting a sound investment climate and promoting sustainable management of raw materials are all relevant and constructive.

4.1.5. The EU's external tariffs should be set with a view to ensuring that sustainably produced raw materials are not excluded from the EU market. A review of existing tariffs should be undertaken to identify tariff lines that should be subject to change.

4.1.6. Assistance to developing countries in the area of raw materials should focus on **capacity building** and should have as its objective to support and facilitate the development and implementation of policies that maximise the contribution of raw materials production and exports to development. In this context, it is particularly important to support policies and approaches that are inclusive and participatory and that accord priority to the needs and interests of these populations.

4.1.7. **Development assistance** in the field of raw materials also needs to build on broad coalitions and partnerships that guarantee the commitment of all interested parties, including, in particular, the raw materials industry, civil society organisations and government at all levels.

Assistance to developing countries should have as a strong component support to **the building of infrastructure** that can be used both by raw material-producing enterprises and by smaller enterprises, farming communities and other rural economic activities. While this particular mode of cooperation has been criticised for contributing less than should be possible to development, it is also important to recognise that it responds to a strong need on the part of developing countries to stimulate development through improvement in infrastructure and that other mechanisms for funding such investment have proved insufficient.

4.1.8. The Communication neatly underlines the difficult issues around mineral resources **trade statistics**. These are based on customs reports organised according to the Standard International Trade Classification (SITC) or the Harmonised System (HS) or the Broad Economic Categories (BEC) and suffer from poor reporting by some countries. Moreover, trade statistics cannot provide proper, much needed, information on real minerals consumption of the world economies as they do not register the minerals or metals content in traded concentrates, semi-products and manufactured goods. Research would be needed, as well as an international consensus, on how to improve the current statistical system in order to better approach real minerals and metals consumption, possible through the use of 'proxy' values for the minerals and metals contents of a standard car, a standard tonne of paper, etc.

⁽⁴⁾ See the EESC Opinion OJ C 27, 3.2.2009, p. 82.

4.1.9. The Communication goes into some detail regarding trade and regulatory policy. The proposals identify areas of vital interest to the EU and appear to be worth implementing. One of the points made deserves to be particularly emphasised: that 'the EU should also keep under review the EU tariff regime with a view to ensuring **coherence with developments in EU demand for raw materials** and in particular **assess ways of lowering import restrictions for raw materials**'.

4.1.10. Sustainable development objectives have to be implemented with a regard for their effects outside the EU area and should not provide an excuse or shelter to practices that are contrary to the interest of consumers and the environment by limiting trade. It is important that security of supply and objectives of eliminating unfair competition based on privileged access to raw materials should not be used to promote protectionism or to restrict trade and access to the EU market for developing country producers.

4.2. *Second pillar: Foster sustainable supply of raw materials from European sources*

4.2.1. The sustainable local and regional development of the EU is directly influenced by the future development of the economic sectors able to turn to profit the potential of each area. In the EESC's opinion, taking into account the reserve calculation for each mineral deposit, the mining economic activities may contribute to the development of local communities and also to the development of EU Member States, by providing them with resources. They may contribute this way to:

- developing the industrial production and providing the raw materials required by the industrial activities;
- reducing the dependence on importation and ensuring a better use of resources;
- maintaining a reasonable number of skilled workers in this sector, in order to make possible that in the EU the exploration and extractive activities will continue;
- more and safer jobs;
- social cohesion and regional development;
- improving living and working conditions.

4.2.2. Given its long history of mineral extraction, Europe needs to provide leadership on know-how and expertise for issues such as how to handle the extraction of raw materials, optimising the contribution of raw materials production to economic development, their sustainable use and the aftercare of the land in a beneficial way for society.

4.2.3. Member States should review to what extent their land use planning processes include raw material potential and whether the priority setting in case of competing land uses is still

adequate in the light of the need to source raw materials sustainably, that is by applying the proximity principle wherever possible and commercially viable.

4.2.4. The state of geological knowledge changes continuously, and procedures therefore have to be sufficiently flexible to allow future access to natural resources that are not identified.

4.2.5. **An inventory of best regulatory practices** in the EU with regard to access to land for raw materials industries should be prepared with a view to:

- **simplifying procedures** and making them more similar within the Union, while at the same time ensuring that competing land use interests, including conservation, are adequately taken into account;
- **reducing the sterilisation of mineral resources** resulting from inadequate land use planning practices. It is particularly important that provisions to assure access to land do not concern only known mineralised areas.

4.2.6. Following the development of the guidelines on the compatibility of Natura 2000 with raw material extraction, Member States should review their own national guidelines and ensure that the competent authorities are aware of the fact that **Natura 2000 does not prohibit the extraction of raw materials** (Art. 6 of the Habitats Directive provides an excellent tool to ensure that the sustainable development principles are respected by the extractive industries).

4.2.7. In order to **improve the knowledge basis concerning the supply of economically strategic materials and the use of raw materials** within the EU, an analysis similar to the one carried out by the National Research Council for the United States, should be prepared for the EU. The analysis should aim to identify and assess both potential risks to the supply of materials to EU industry and the criticality of different materials in their various end uses (the following aspects should be taken into consideration: physical availability of some minerals which can be extracted from EU countries, substitution grade, geopolitical risks regarding international trade with strategic and critical raw materials, EU defence needs).

The Communication contains a number of recommendations intended to improve the knowledge base about raw materials. However, nothing is proposed in order to improve the knowledge about the use of raw materials within the EU. This would appear to be one of the first priorities and would be in line with the need to develop coherent policies and maximise the effectiveness of measures. The United States report on critical materials contains a methodology that could be applied to European circumstances.

4.2.8. In particular, a **complete assessment of the geological resources potential** assessed with modern technologies would be desirable as well as an assessment of the capacities of National Geological Surveys to provide first class mineral resources data, information and expertise. Specific support actions to geological (as used here the expression includes all geology-related thematic data such as geochemical or geophysical data) data acquisition should be delineated and implemented via the future extension of the GMES Land Services and/or the EU Regional Development Funds. A formal review of the situation in the Member States should be conducted by the Commission.

4.2.9. The European institutions should **support the Czech, Swedish and Spanish Presidencies with their related events**, in particular:

- Under the Swedish Presidency of the EU, a conference should be held in order to identify best practices for land planning and sustainable land management after extraction.
- The Rovaniemi (Finland) Conference on Exploration and Mining that will be held in December 2009 and which is expected to feature best practice in fostering exploration in Europe.
- An Exploration Conference in South East Europe and the Balkans should be prepared with the assistance of the EU's TAIEX tool.

4.2.10. **Research and technological development for the raw materials should be accorded priority, with particular emphasis on technologies that are compatible with strong conservation policies. Best practices** in the area of **exploration, cleaner production, recycling** should be promoted, with a view particularly to implementing practices that use market-based incentives that are economically feasible. The Strategic Research Agenda and the Implementation Plan produced by the European Technology Platform on Sustainable Mineral Resources could serve as a basis for this purpose.

4.3. *Third pillar: Optimise the EU's consumption of primary raw materials*

4.3.1. Public opinion considers that legal persons are in the main responsible for the environmental conditions, respectively,

the mining enterprises and trading companies, but in fact, the whole of society bears a responsibility for consuming the goods which include these resources.

European citizens have to be aware that our existence depends upon the exploitation of mineral resources but also at the same time it is **very important to protect the environment and to promote a responsible consumption of raw materials**.

4.3.2. The development of policies and practical measures to optimise the use of raw materials cannot take place in isolation from legitimate interests outside the EU and has to take into account actual capabilities in developing countries, both with respect to the regulation and use of technology. The REACH legislation has been strongly criticised by several African countries which are concerned that it may lead to undue discrimination of their mineral exports. Similarly, in some Asian countries the Basel Convention on Hazardous Wastes has led to unintended consequences, including the proliferation of informal enterprises in metals recycling industries employing hazardous practices since they have been cut off from legitimate sources of raw materials.

4.3.3. European research and industry should be encouraged to **develop substitutes to the critical raw materials**. To this effect, the identified list of essential metals/raw materials should be subject to a detailed research initiated by the European Commission under FP-7, in order to provide a background for the new green technologies and environmentally safe products.

4.3.4. The recycling process should not be dealt with merely as an administrative task, but as a regulatory framework assisted by a business approach on a commercial basis. In order to implement this principle it is necessary to have:

- a legal framework for collecting, sorting, handling and recycling industrial and household waste;
- incentives for consumers to participate in recycling activities;
- proper specialised national and international networks for collecting, preserving and industrial recycling;
- a properly established waste management, on a commercial basis, organised by the local administration/regional authorities.

Brussels, 13 May 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 on Responding to the crisis in the European automotive industry'

COM(2009) 104 final

(2009/C 277/20)

Rapporteur-general: **Mr ZÖHRER**

On 25 February 2009 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 - Responding to the crisis in the European automotive industry

COM(2009) 104 final.

On 23 March 2009 the Committee Bureau instructed the Consultative Commission on Industrial Change to prepare the Committee's work on the subject. The rapporteur was Mr Zöhrer and the co-rapporteur was Mr GLAHE.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Zöhrer as rapporteur-general at its plenary session held on 13 and 14 May 2009 (meeting of 13 May) and adopted the following opinion by 141 votes to 2 with 5 abstentions.

1. Background and gist of the Commission document

1.1. The crisis struck the automotive sector more swiftly and severely than most other branches of industry. For this reason, the Commission and the Member States have taken a number of initiatives in the past months to help it out in this difficult situation. The Commission drew attention to the importance of a dynamic and competitive vehicle industry in its Communication of 25 February 2009. In the Communication the Commission looks at the collapse in demand for cars and commercial vehicles and the squeeze on credit, as well as the longer-term structural problems pre-dating the crisis.

1.1.1. With the CARS-21 high-level group, the restructuring forum in October 2007 and numerous small working groups, the Commission has been tackling the challenges facing the automotive sector for some time now. The Committee made an important contribution to this debate in its December 2007 information report on the situation of the automotive sector in Europe (CCMI/046 Opinion on 'The automotive sector in Europe: current situation and prospects' (CESE 1065/2007 fin rev.)) and is currently working on an opinion on the components and downstream markets of the automotive sector (CCMI/059 Opinion on 'The components and downstream markets of the automotive sector').

1.2. In the second part of the Communication, the Commission sets out the measures – especially those for the automotive industry – that have been taken or are being planned at Community level and in the Member States as part of the European economic recovery plan.

2. Remarks and conclusions

2.1. The Committee welcomes the Commission's Communication, which demonstrates that both it and the Member States are ready to support the automotive industry in these turbulent times. It underscores the need for a coherent and coordinated framework to ward off any drift towards protectionism and to set common goals.

2.2. The present crisis calls for swift action. Some measures need to be implemented more quickly than planned, especially to save supply industry SMEs from collapse and to make urgently needed investments possible.

2.2.1. The first thing to do is ensure rapid access to sufficient, targeted funding through banks and the European Investment Bank or through state aid and guarantees from the Member States.

2.2.2. Even then, some insolvencies cannot be ruled out. The Committee therefore calls on the Commission and the Member States to look into how far insolvency laws help companies stay afloat.

2.3. The biggest challenge the crisis poses, however, is safeguarding jobs. The important thing is to stave off unemployment and retain know-how in the industry. Member States have a raft of measures (short-time working among them) that they can use to span gaps in the order books. In some Member States, however, such arrangements do not exist, resulting in massive lay-offs. The Committee therefore urges the use of exchange of best practices and targeted support to keep people in work. Slack periods must now be used for measures to boost workforce skills.

2.3.1. The Committee welcomes the efforts made within the ESF to enable the funding of job-protection measures. It supports the proposal to adapt the European Globalisation Adjustment Fund in the light of the crisis. Given that the allocated funds of EUR 500 million may not be enough, the Committee proposes raising this figure to EUR 1 billion (see Opinion CCMI/063).

2.3.2. Fixed-term and temporary agency workers are the ones most badly hit by the crisis and the consequent downsizing. The Committee calls for special measures to be taken for these groups of workers and for the legal framework – especially for agency workers – to be adapted accordingly as a matter of urgency.

2.4. Incentives to boost demand are also needed. On this front, care must be taken to ensure that all financial or fiscal initiatives (such as scrapping schemes) support and accelerate the sector's technological overhaul (energy efficiency of machinery, emissions reduction). In addition, the Committee calls on the Member States, the Commission, the ECB and the social partners to provide the overall macroeconomic environment to safeguard incomes and so fuel domestic demand.

2.5. As far as long-term structural problems are concerned, the Committee refers to the Information Report by its *Consultative Commission on Industrial Change (CCMI)* on 'The automotive sector in Europe: current situation and prospects (November 2007)'. This sets out clearly the challenges facing the industry and notes that the sector is heading for a profound transformation, accelerated by the current crisis.

2.5.1. The most obvious immediate effect of the crisis and national support measures is a shift in market share to smaller, greener and cheaper models. This has a big impact on the value added by manufacturers and suppliers that will have a long-term impact on the sector.

2.5.2. If the sector is to emerge from the crisis stronger than before, now is the time to put greater effort into research and development, innovation and skilling of the workforce. This is the responsibility of companies as well as of Member States and the Community. The Committee therefore supports the initiatives set out by the Commission.

2.5.3. Care must be taken not to equate structural problems with overcapacity alone. Europe has seen a sharp drop in capacity (especially in Spain, Portugal and the UK) in recent years. Different manufacturers take very different approaches to this and there are various philosophies. To some extent, overcapacity is inherent in the system (changes of model and internal competition, for example). However, there is a danger that the crisis might cause a massive reduction in capacity, resulting in undercapacity and hence increased imports when demand increases once again.

For this reason, the Committee calls for this issue to be examined by the CARS 21 high-level group.

2.5.4. US manufacturers, in particular, are mired in a deep structural crisis. The Committee welcomes the Commission's endeavours to mount an effective policy response to the problems that this has caused GM Europe and its suppliers by coordinating the activities of the Member States affected. The EU must press the USA and General Motors to give the European arm (OPEL, Vauxhall and Saab) a chance to survive.

2.5.5. In the Committee's view, mastering the forthcoming challenges will require further efforts on the part not only of companies, but also of the Member States and the European Union as such. For this reason, the Committee endorses the Commission's proposals on implementing the outcomes of the CARS 21 consultation process and on the way forward. It favours continuing the process, which supports a longer-term European industry policy in line with the Lisbon Strategy.

2.5.6. The Committee also draws attention to the importance of the downstream markets (an opinion on the subject is being drafted and will be issued shortly). It calls for a high-level group to be set up that capitalises on CARS 21 experience and gets to grips with the specific challenges facing players in the downstream sector.

2.5.7. The European Partnership for the anticipation of change in the automotive industry instigated by the Commission is an important step in bringing the social impact of restructuring into the spotlight. Given the dramatic turn of events, the Committee calls on the social partners concerned and the Commission to launch a real, effective social dialogue.

2.6. The cornerstone of the continued success of the European automotive industry is open access to world markets and fair competition. For this reason, the Committee welcomes the Commission's intention of stepping up dialogue with trading partners. Developments in the USA and Asia, in particular, must be monitored to ensure a level playing field and the rejection of protectionist and discriminatory measures, as well as effective protection of intellectual property. The Committee stresses the necessity and timeliness, particularly with regard to the conclusion of a free trade agreement with South Korea, of pressing for a fair framework to be created for the European automotive industry. The current state of negotiations fails to reflect the goal of dismantling non-tariff trade barriers for European producers.

Brussels, 13 May 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 Decision on guidelines for the employment policies of the Member States'

COM(2008) 869 final — 2008/0252 (CNS)

(2009/C 277/21)

Rapporteur working alone: **Mr JANSON**

On 3 February 2009, the European 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 Decision on guidelines for the employment policies of the Member States

COM (2008) 869 final – 2008/0252 (CNS).

The Section for Employment, Social Affairs and Education, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 April 2009. The rapporteur was Mr JANSON

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May), the European Economic and Social Committee adopted the following opinion by 193 votes to 7, with 9 abstentions.

1. Conclusions and recommendations

1.1. Article 128(2) of the Treaty requires that the validity of the current Employment Guidelines for 2009 be confirmed by a Council decision, following consultation with the European Parliament, the Committee of the Regions and the EESC.

1.2. The EESC endorses the proposal that the validity of the Employment Guidelines for 2008-2010 be confirmed for 2009, subject to the comments set out below.

1.3. The National Reform Programmes need to be more ambitious with respect to employment policy and workers' rights and obligations.

1.4. There needs to be a much stronger emphasis on the integration of young people into the labour market and a continued emphasis on combating discrimination.

1.5. The transition to the knowledge economy requires a much more rigorous and focused approach to vocational training and lifelong learning. It is important that there be more consistency in integrating investment in research, development and innovation.

1.6. The EESC feels that the employment guidelines do not give enough attention to gender equality and the need to balance work and family life.

1.7. The economic crisis will lead to higher unemployment and lower employment rates and in other ways make it more difficult for the EU to achieve the goals laid down in the Employment Guidelines.

1.8. It is important that the Member States give priority to the guidelines which are key to employment and growth, namely (1) implementing employment policies aimed at achieving full

employment, improving quality and productivity at work, and strengthening social and territorial cohesion; (2) ensuring inclusive labour markets, enhancing work attractiveness, and making work pay for job seekers, including disadvantaged people and the inactive; and (3) expanding and improving investment in human capital ⁽¹⁾.

1.9. The EESC would stress the need for the social partners and civil society to be involved in all stages of drawing up and implementing the Employment Guidelines.

2. Gist of the Commission document

2.1. The guidelines constitute national commitments made at EU-level and set overall objectives for Member States to be implemented through their National Reform Programmes (NRP). The integrated guidelines will expire at the end of the first three-year cycle, and will therefore need to be renewed for the next cycle.

2.2. According to the Commission, Member States stepped up the implementation of structural reforms during the first three-year cycle (2005–2008). Reforms in line with the Lisbon Strategy helped increase the growth potential of Member States' economies and also helped to make the European economy more resilient in dealing with external shocks, such as higher energy and commodity prices and currency fluctuations.

2.3. The new governance in the Lisbon Strategy, with its emphasis on partnership between the EU level and the Member States level, has proved its worth. The Commission's view is therefore that the integrated guidelines are fulfilling their role and thus do not require revision.

3. Previous comments by the EESC

3.1. The EESC analysed the guidelines and their shortcomings in an opinion it issued last year ⁽²⁾. The analysis is still relevant.

⁽¹⁾ Integrated guidelines Nos 17, 19 and 23 (COM(2007) 803 final/3, Part V).

⁽²⁾ EESC opinion of 13 February 2008 on the *Proposal for a Council Decision on guidelines for the employment policies of the Member States*, rapporteur: Mr Greif (OJ C 162 of 25.6.2008).

3.2. In that opinion the Committee states that it feels that the National Reform Programmes are not ambitious enough with respect to employment policy and workers' rights and obligations. This reflects the emphasis in the current guidelines for Member States to set their own targets, as a result of which there is continuing concern that the employment policy measures can no longer be judged against specific, quantifiable targets.

3.3. There needs to be far more emphasis than at present on integrating young people into the labour market whilst continuing to focus on combating discrimination based on age, disability, ethnic origins or gender.

3.4. If the EU is to become a knowledge-intensive economy, the transition to the knowledge economy requires a much more rigorous and focused approach to vocational training and lifelong learning in order to be able to adapt to new technologies and restructuring of the industrial base and to enable individuals to acquire transferable skills. One way to achieve this is to apply a more consistent approach in integrating investment in research, development and innovation, both to stimulate the economy and to create new jobs ⁽³⁾.

3.5. The Employment Guidelines do not pay enough attention to gender equality and the need to balance work and family life. This is important in order to be able to respond to demographic change and meet the challenges of an ageing workforce.

3.6. The Committee would also highlight the importance of having appropriate funding at national and EU level in order to implement the employment policy measures.

4. General comments

4.1. In the short and medium term the economic crisis will lead to higher unemployment and lower employment rates and in other ways make it more difficult for the EU to achieve the Lisbon process objectives.

4.2. Although some progress was made before the crisis, a major problem continues to be the differences between countries as regards how well some of them have succeeded in achieving the objectives and in implementing various measures within and across Member States. The economic crisis is exacerbating the situation in this regard.

4.3. If Member States want to avoid a repetition of the depression of the 1930s, the EESC believes that it is important to give priority to the guidelines which are crucial for employment and growth. The countries which will be hardest hit by the crisis will be those whose governments have not taken action to support employment but have instead continued to pursue the same policies as during normal economic times.

4.4. The relevant guidelines here are those which seek to: (1) implement employment policies aimed at achieving full employment, improving quality and productivity at work, and strengthening social and territorial cohesion; (2) ensure inclusive labour markets, enhance work attractiveness, and make work pay for job seekers, including disadvantaged people and the inactive; and (3) expand and improve investment in human capital ⁽⁴⁾.

4.5. It is essential in this context that the Commission and the other parties involved be able to quickly simplify the rules governing the use of the Structural Funds, the Social Fund and the Globalisation Fund so as to enable the funding of the implementation of the Employment Guidelines. The EESC continues to believe that it is very important that appropriate funding be made available at EU and national level for prioritising employment initiatives.

4.6. The EESC would like to see the Commission play a greater part than hitherto in developing objectives at EU and national level and in monitoring and assessing progress. This would boost the weight and standing of the annual reports on National Reform Programmes in the Member States.

4.7. The EESC would stress the need for the social partners and civil society to be involved in all stages of drawing up and implementing the Employment Guidelines.

Brussels, 13 May 2009.

The President
of the European Economic and Social Committee
Mario SEPI

⁽³⁾ EESC has dealt with this issue in previous opinions, see for instance:
— EESC opinion of 12 July 2007 on *Investment in Knowledge and Innovation (Lisbon Strategy)*, rapporteur: Mr Wolf (OJ C 256 of 27.10.2007);
— EESC opinion of 26 February 2009 on *Cooperation and transfer of knowledge between research organisations, industry and SMEs – an important prerequisite for innovation*, rapporteur: Mr Wolf (OJ C 218 of 11.9.2009, p. 8)

⁽⁴⁾ See footnote 1.

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 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding'

COM(2008) 637 final — 2008/0193 (COD)

(2009/C 277/22)

Rapporteur: **Ms HERCZOG**

On 7 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 Directive of the European Parliament and of the Council amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

COM(2008) 637 final - 2008/0193 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 April 2009. The rapporteur was Ms HERCZOG.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May 2009), the European Economic and Social Committee adopted the following opinion by 82 votes to 37 with 2 abstentions.

1. Conclusions and recommendations

1.1. The Committee supports the Commission's proposal for a new directive to improve the protection offered to pregnant workers and workers who have recently given birth and/or are breastfeeding.

1.2. The Committee sees this initiative as an opportunity to strengthen legislation that not only enables women to recover adequately following confinement, but also encourages them to breastfeed and helps them to forge a strong bond with their newborn child.

1.3. Unsafe working conditions during pregnancy and breastfeeding are unacceptable to the Committee. In this sense, women should be encouraged to make their pregnancy known as soon as they are aware of it so that any risk regarding health and safety can be assessed and eliminated. Special attention should be paid to risks to both women's and men's fertility, as well as for the embryo.

1.4. The Committee also pleads for extra support for parents and infants with special needs or who find themselves in special circumstances, like premature, disabled or sick babies, multiple births or hospitalisation, as well as adoption and fostering, etc.

1.5. The Committee agrees with the Commission that a minimum paid maternity leave of 18 weeks should be guaranteed to all pregnant employees. However, the Committee requests the Commission to consider the recommendation of the Social Platform (1), - including the European Women's Lobby -, as well as those given by the WHO (2) and the UNICEF (3), which are based on the benefit for children to be exclusively breastfed during their first six months of life, as a health prevention measure for both mother and child. It therefore recommends seeking for additional legal and practical solutions, which, in terms of space and time, can facilitate breastfeeding.

1.6. On the other hand, the Committee considers that sick leave during pregnancy should not have any impact on the whole duration of maternity leave, but urges the Commission to precise which exact period before confinement is meant.

(1) Common position of the Steering group of Social Platform on amendments on the directive amending Directive 92/85/EEC on maternity leave, 19 February 2009.

(2) 'As a global public health recommendation, infants should be exclusively breastfed for the first six months of life to achieve optimal growth, development and health' (Global Strategy on Infant and Young Child Feeding - A55/15, paragraph 10), in: http://www.who.int/nutrition/topics/infantfeeding_recommendation/en/index.html. See also Michael S. Kramer, Ritsuko Kakuma: *The optimal duration of exclusive breastfeeding - A systematic review*, World Health Organisation, 2002, in: http://www.who.int/nutrition/topics/optimal_duration_of_exc_bfeeding_review_eng.pdf.

(3) See: <http://www.unicef.org>.

1.7. The Committee welcomes the suggestion that Member States should take the necessary measures to protect pregnant or breastfeeding workers, within the meaning of article 2 ⁽⁴⁾ of the original directive, from consequences of unlawful dismissal.

1.8. The Committee agrees that women have the right to return to employment, to the same or an equivalent post retaining the same terms and conditions, and to benefit from any improvements in working conditions to which they would have been entitled during the period of their absence.

1.9. The Committee strongly supports that payment during maternity leave be equal to the previous salary. This provision is not only a necessity, but also a way of recognising of the value of mothering.

1.10. In conformity with the flexicurity common principles and lifecycle approach, the Committee believes that the proposal has to be seen in the context of difficulties with the care needs of children under the age of two ⁽⁵⁾. The use of flexible working hours for parents negotiated by all partners has proven its worth in this context.

1.11. Maternity leave as a means to protect pregnancy and maternity has to be clearly distinguished from parental leave. The proposed period of 18 weeks aims primarily at enabling the recovery of women after giving birth and to ensure a minimum period of breastfeeding and bonding between the mother and the newborn child. The Committee highlights the importance of parental leave as an opportunity for both parents to spend adequate time with their children, but believes that parental leave should follow on from maternity leave and enable fathers to benefit from this possibility as well.

⁽⁴⁾ See: Council Directive 92/85/EEC of 19 October 1992, Article 2, 'Definitions': For the purposes of this Directive:

- (a) pregnant worker shall mean a pregnant worker who informs her employer of her condition, in accordance with national legislation and/or national practice;
- (b) worker who has recently given birth shall mean a worker who has recently given birth within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice;
- (c) worker who is breastfeeding shall mean a worker who is breastfeeding within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice.

⁽⁵⁾ See: Lamb, M.E. Ahnert, L (2006): *Nonparental child care: Context, concepts, correlates and consequences*, in: W. Damon, R.M. Lerner, K.A. Renninger, T.E. Sigel (eds): *Handbook of Child Psychology (Vol.4) Child Psychology in Practice*, pp. 950-1016, Hoboken, N.J. and Chichester, Wiley.

1.12. The Committee takes this opportunity to suggest that initiatives be envisaged enabling grandparents and other close family members to care for the children if working parents so wish as well and provided this is in the child's interest. Such a measure would help to address labour market needs, as well as the reconciliation of working and private/family life. This temporary additional care provided by family members does not replace the State's responsibility to provide adequate day care, in terms of quantity and quality.

1.13. The Committee acknowledges the importance of a holistic and comprehensive approach to these matters, to see the whole picture and achieve economic and social progress. In this context, policy makers should consider different needs, competing values and conflicts of interest in the following issues:

- demographic issues (including low birth rate and fast growing number of pensioners);
- labour market needs;
- education and life long learning;
- equal opportunities for men and women;
- reconciliation of working, family and private life;
- accessible, affordable and high quality child care;
- active citizenship;
- solidarity between generations;
- fight poverty and social exclusion;
- and the best interest of the child ⁽⁶⁾.

The Committee therefore urges the European institutions and the Member States to consider the necessity to take an integrated approach to this legislative proposal, and to avoid narrowing its scope and implications.

1.14. The Committee thinks that if the proposal aims to support reconciliation, maternity leave cannot be seen in isolation from the range of other existing instruments in the above mentioned areas.

1.15. The role of the social partners as main actors in the labour market is crucial in this respect. In the Committee's view, civil society too has to take an active part in the process, both in ensuring that Member States are implementing the directive and in supporting by all means the above mentioned comprehensive approach.

⁽⁶⁾ In the context of the Commission's strategy *Towards a Strategy on the Rights of the Child*, launched on 04/07/2006 (in: <http://europa.eu/scadplus/leg/en/lvb/r12555.htm>).

2. Background

2.1. The proposal of a directive amending Directive 92/85/EEC seeks to improve the protection offered to pregnant workers and workers who have recently given birth and/or are breastfeeding. Protection is needed for several reasons. The length of maternity leave is influenced by many factors that should be considered when regulated. The former directive provides for a minimum of 14 continuous weeks maternity leave and also lays down requirements on health and safety in the workplace to protect pregnant women and those who have recently given birth or are breastfeeding. A woman cannot be dismissed during maternity leave. According to Article 2(7) of a previous legal instrument - the Directive 76/207/EEC -, after maternity leave, a woman has the right to return to the same or an equivalent post. Any less favourable treatment of a woman constitutes discrimination.

In the Roadmap for equality between women and men 2006-2010 (7) commitment was made to reviewing the existing EU legislation. Directive 92/85/EEC was not included in the recasting exercise and is therefore to be reviewed now.

2.2. In March 2006 the European Council stressed the need for better balance between work and private life in order to achieve economic growth, prosperity and competitiveness and approved the European Pact for Gender Equality (8). The European Parliament called on several occasions for improvements to the existing legislation relating to pregnant workers and the granting of parental leave, and for measures to improve the reconciliation of professional, private and family life. On 21 February 2008, in its resolution on the demographic future of Europe (9), the Parliament called on the Member States to adopt best practices as regards the length of maternity leave and its possible influence on the birth rate through coordinated public policies, by creating a family and child friendly material and emotional environment. In an earlier resolution of 27 September 2007 (10), the Parliament had already urged the Member States to mutualise the costs of maternity and parental leave and welcomed the consultation with social partners. It urged Member States to combat discrimination

against pregnant women in the labour market and to ensure high level of protection for mothers. In March 2008 European Council reiterated that further efforts should be made to reconcile work with private and family life for both women and men (11).

The directive is the tenth individual directive covered by article 16(1) of the Framework Directive 89/391/EEC on health and safety at work. Its now proposed revision includes an extension of the legal base to article 141 of the EC Treaty regarding equal treatment.

2.3. Citizens and civil society representatives consulted by the Commission expressed their concern with the fact that having children has a much higher impact on women's job prospects than on men's. The employment rate of women with dependent children is only 65 % compared to 91,7 % for men. Women have to face the consequences of stereotypical assumptions about their domestic responsibilities and their aptitude to employment (12). This can lead to less women returning to the labour market after having a child.

3. General remarks

3.1. The Commission in its communication of 2006 (13) expressed that children's rights are a priority for the EU and that the Member States are bound to respect the UNCRC and its Optional Protocols, as well as the Millennium Development Goals. In March 2006, the European Council requested Member States 'to take necessary measures to rapidly and significantly reduce child poverty, giving all children equal opportunities, regardless of their social background' (14). In the context of the current subject, this means to provide all children the opportunity to be breastfed and taken proper care of in accordance with their developmental needs by their primary caregiver, and, when appropriate, the access to accessible, flexible, high quality and affordable day care.

3.2. The EU employment policy promotes a life-cycle approach to work, acknowledging that workers have different needs and priorities at different stage of their lives. The directive on protection during pregnancy, maternity leave and breastfeeding has to be reflective of this life-cycle approach.

(7) *A Roadmap for equality between women and men 2006-2010* (COM(2006) 92 final).

(8) See Annex II to the Presidency Conclusions of the Brussels European Council of 23/24 March 2006 in: http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/89013.pdf.

(9) European Parliament resolution of 21 February 2008 on the demographic future of Europe (2007/2156 (INI) (A6-0024/2008), in: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0066&language=EN>.

(10) European Parliament resolution of 27 September 2007 on equality between women and men in the European Union - 2007 (2007/2065(INI) (P6_TA(2007)0423) in: <http://www.europarl.europa.eu/oel/FindByProcnum.do?lang=2&procnum=INI/2007/2065>.

(11) See Presidency Conclusions of the Brussels European Council of 13/14 March 2008 in: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/99410.pdf.

(12) Communication from the Commission: 'Citizen's Summary - Better maternity leave provisions designed to promote reconciliation of family and working life' (ec.europa.eu/social/BlobServlet?docId=611&langId=en); Common position on the revision of the Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave by the Social Platform, January 2009.

(13) *Towards an EU Strategy on the Rights of the Child* (COM(2006) 367 final).

(14) See paragraph 72 of the Presidency Conclusions - 23/24 March 2006 (ref. in footnote 8 above).

3.3. As the European Women's Lobby has put it, '*Maternity provisions are specific to women. The physicality of giving birth and the subsequent afterbirth and breastfeeding processes need to be recognised and supported by policy makers, employers and society as a whole*'⁽¹⁵⁾. As stated above, Europe has indeed a legal framework which prohibits gender discrimination through a range of legislative measures. However, women often reduce their working hours or take longer leaves from work to care for their children, which leads to lower pay and lower pensions. A better enforcement of current legislation in equality issues is therefore required.

3.4. Women should have the flexibility to choose when they will take their maternity leave. On the other hand, employers should be able to plan their human resources' needs to compensate for their absence. In their planning a minimum leave (of at least six weeks after birth) should be taken into account⁽¹⁶⁾.

3.5. The proposal would give women returning from maternity leave the right to request a flexible working time arrangement with the requirement for the employer to consider the request taking account of the needs of both the employer and the worker. The Committee agrees with this provision.

3.6. To be achieved, the different goals of the EU strategies on the implementation of the Lisbon Strategy, on the Barcelona targets, but also on the demographic situation, on solidarity between generations, on equal opportunities for men and women and on a better work-life balance need further clarification and harmonisation.

3.7. The EU, in its attempt to increase the number of working women⁽¹⁷⁾, should promote opportunities for the reconciliation of work, family and private life, so that the different needs, competing values and conflicts of interest are handled and monitored in a transparent way.

3.8. A large proportion of Member States have developed sets of measures to promote a better reconciliation of professional, private and family life, which reflect the different national labour market needs and the diversity of traditions and cultures present in Europe. If this proposal aims to support reconciliation, maternity leave cannot be seen in isolation of the range of other existing instruments in this area. These include childcare, flexible working arrangements, parental leave and other forms of leave, which are, in many cases, more relevant in providing a better reconciliation of work and family life.

4. Specific remarks

4.1. The main legal basis for this proposal is the health and safety of pregnant and breastfeeding women. However, there is a logical link between health and safety issues and i) the right of the child to adequate care, ii) the reconciliation of family and

working life, and iii) employment and career opportunities. Furthermore, the demographic situation of Europe demands a policy that encourages and supports higher birth rates. The issues dealt with in this proposal for a directive are not standing alone. They have to be viewed as a complex matter as presented in the recommendations.

4.2. Special attention should be paid to risks to both women's and men's fertility. Both men and women should be protected from the factors involved in genetic mutations that lead to infertility and, what is worse, can cause malformations in the embryo.

4.3. Maternity leave as a means to protect pregnancy and maternity has to be clearly distinguished from parental leave. The proposed period of 18 weeks aims primarily at enabling the recovery of women after giving birth and to ensure a minimum period of breastfeeding. While supporting this approach, the Committee calls for the identification of additional legal and practical solutions which make breast-feeding or expressing milk at work easier for mothers, in order to provide them with adequate time for exclusive breastfeeding, in line with the WHO and UNICEF recommendations⁽¹⁸⁾ (e.g. the right to count breaks for breastfeeding as working time).

4.4. In special cases – premature, disabled or sick babies, multiple births or hospitalisation, the Commission proposes that Member States be able to provide a longer paid leave, considering the need for special care. The Committee believes that this list of cases should not be exhaustive but should also give individual Member States the opportunity to take into account other cases such as caesareans or postnatal complications. In cases of adoption and fostering of new born children, parental leave should also be guaranteed.

4.5. In line with the ILO Convention 183⁽¹⁹⁾, the Committee accepts the proposal that, at least, six weeks of leave be taken after giving birth, but it would like to stress that this should be the minimum amount. This minimum period is essential to enable women to recover adequately following confinement, encourage breastfeeding and help forge a strong bond between mother and child.

4.6. Having in mind the UN Convention on the Rights of the Child⁽²⁰⁾, the Commission should conduct a parallel study which considers the impact on the child of the proposed measures. The child must be well nurtured and his/her personal well being accounted for. The wellbeing of children and the value of childhood during this extremely important stage of life is decisive in itself, but, at the same time, children constitute the workforce of the future and the lack of care and support in this early period of life might lead to failures in school and later integration in society.

⁽¹⁵⁾ Proposals from the European Women's Lobby on the Commission's proposal on the directive amending Directive 92/85/ECC January, 2009, p. 2.

⁽¹⁶⁾ See pt. 4.5 of the 'Specific remarks'.

⁽¹⁷⁾ Namely through the above mentioned Lisbon Strategy for Growth and Jobs.

⁽¹⁸⁾ See footnotes 2 and 3.

⁽¹⁹⁾ See: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C183>.

⁽²⁰⁾ *Convention on the Rights of the Child*, adopted by General Assembly resolution 44/25 of 20 November 1989 and entered into force 2 September 1990, in accordance with article 49. In: <http://www2.ohchr.org/english/law/crc.htm>.

4.7. The Committee agrees with the new provision, according to which sick leave during pregnancy due to illness or pregnancy complications should not have any impact on the duration of maternity leave, but urges the Commission to precise which period before confinement is meant. The provision in the directive which covers this issue must not be ambiguous ⁽²¹⁾.

4.8. The Committee agrees that Member States should take the necessary measures to protect pregnant or breastfeeding workers, within the meaning of article 2 ⁽²²⁾ of the proposal, from consequences of unlawful dismissal.

4.9. Being aware of the fact that in some countries there is a ceiling to payment during maternity leave corresponding to the amount of sick leave, the Committee would like to highlight that a lower payment than the previous salary has a detrimental effect and penalises women for their biological role of being mothers and does not take into account the value of mothering. A lower payment also impacts in the longer run, namely on their pension rights.

4.10. Job protection is an opportunity to ensure a growing number of births, adequate length of leave and increased participation of women in the labour market. In connection with this, flexible working hours and arrangements are required. According to the Directive's explanatory memorandum: *'(...) it is possible to influence birth rate curves favourably through co-ordinated public policies, by creating a family and child-friendly material and emotional environment'* ⁽²³⁾.

4.11. The role of grandparents and wider family members as carers and childminders who support working parents should be given greater consideration. The role other family members could

help retaining family structures, involving the elderly and reducing the stress of the working parents, as well as address labour market needs and the reconciliation of working and private/family life. Positive parenting initiatives and programs supported by all EU Member States, just like the many national programs available ⁽²⁴⁾, should also be taken into consideration in this respect. This temporary additional care provided by family members does not replace the State's responsibility to provide adequate day care, in terms of quantity and quality.

4.12. Childcare provision is a form of employment opportunity for women, but its quality and standards must be guaranteed. The Barcelona targets aim to achieve by 2010 at least 33 % day-care placement for children under the age of 3 and 90 % for the ones between 3 years old and the mandatory school age, but there is no special provision for the different forms of child care. Furthermore, even if 33 % could be placed in day-care centres, what happens to the other 2/3?

4.13. As regards the quality of childcare, there is scarce information relating to informal childcare services provided in the home by nannies, babysitters and 'au-pairs'; many of whom are unqualified, are not formally registered, and remain outside of recognised monitoring systems. These workers do not fall into formal employment structures, and thus lack proper workplace protection. Member States and local authorities should commit themselves to ensure quality care in all of its forms. Social partners should plead for regulations and transparency not only in professional childcare but also in all forms of home-based and informal care by supporting and requiring professional training and supervision. Tax incentives could contribute to the setting up of more high quality care facilities. Given the high number of women active in the care sector, improving working conditions and qualifications in this sector would also contribute to the EU overall strategy in this area.

Brussels, 13 May 2009.

The President
of the European Economic and Social Committee
Mario SEPI

⁽²¹⁾ New article 8, pt. 5, refers to 'four weeks or more' (COM(2008)637 final, p. 15).

⁽²²⁾ See footnote 4.

⁽²³⁾ COM(2008) 637 final, p. 1.

⁽²⁴⁾ See: http://www.coe.int/t/dg3/youthfamily/enfance/parenting_en.asp.

APPENDIX I

**to the opinion
of the European Economic and Social Committee**

The following amendments, which were supported by at least a quarter of the votes cast, were defeated in the course of the debate (Rule 54(3) of the Rules of Procedure):

Point 1.5

Amend as follows:

'The Committee agrees with the Commission that a minimum paid maternity leave of 18 weeks should be guaranteed to all pregnant employees. However, the Committee requests the Commission to consider the recommendation of the Social Platform, – including the European Women's Lobby –, as well as those given by the WHO and the UNICEF, which are based on the benefit for children to be exclusively breastfed during their first six months of life, as a health prevention measure for both mother and child. It therefore recommends seeking for additional legal and practical solutions, which, in terms of space and time, can facilitate breastfeeding. As far as a minimum paid maternity leave is concerned, the Committee recommends to the European Commission to base its proposal to go beyond 14 weeks on concrete statistics. There is no concrete evidence on health and safety grounds that the current provision of 14 week maternity leave is insufficient.'

Result of the voting:	For: 40	Against: 83	Abstentions: 5
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Point 1.9

Amend as follows:

'The Committee strongly supports that payment during maternity leave be equal to the previous salary. This provision is not only a necessity, but also a way of recognising of the value of mothering. The Committee, while noting that payment during maternity leave be equal to the previous salary, asks the EC to bear in mind the significant extra costs not only for Member States but also for companies, particularly SMEs, whose survival in the present economic climate is crucial.'

Result of the voting:	For: 39	Against: 79	Abstentions: 3
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Point 1.11

Amend as follows:

'Maternity leave as a means to protect pregnancy and maternity has to be clearly distinguished from parental leave. The maternity leave proposed period of 18 weeks aims primarily at enabling the recovery of women after giving birth and to ensure a minimum period of breastfeeding and bonding between the mother and the newborn child. The Committee highlights the importance of parental leave as an opportunity for both parents to spend adequate time with their children, but believes that parental leave should follow on from maternity leave and enable fathers to benefit from this possibility as well.'

Result of the voting:	For: 41	Against: 79	Abstentions: 3
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Point 4.3

Amend as follows:

'Maternity leave as a means to protect pregnancy and maternity has to be clearly distinguished from parental leave. The maternity leave proposed period of 18 weeks aims primarily at enabling the recovery of women after giving birth and to ensure a minimum period of breastfeeding. While supporting this approach, the Committee calls for the identification of additional legal and practical solutions which make breast-feeding or expressing milk at work easier for mothers, in order to provide them with adequate time for exclusive breastfeeding, in line with the WHO and UNICEF recommendations (e.g. the right to count breaks for breastfeeding as working time).'

Result of the voting:	For: 41	Against: 79	Abstentions: 3
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Point 4.9

Amend as follows:

'Being aware of the fact that in some countries there is a ceiling to payment during maternity leave corresponding to the amount of sick leave, the Committee would like to highlight that a lower payment than the previous salary has a detrimental effect and penalises women for their biological role of being mothers and does not take into account the value of mothering. A lower payment also impacts in the longer run, namely on their pension rights. On the other hand, the EC should bear in mind the significant extra costs not only for Member States but also for companies, particularly SMEs, whose survival in the present economic climate is crucial.'

Result of the voting:	For: 39	Against: 79	Abstentions: 3
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Opinion of the European Economic and Social Committee on the ‘Proposal for a Council Directive amending Directive 2003/48/EC on taxation of savings income in the form of interest payments’

COM(2008) 727 final — 2008/0215 (CNS)

(2009/C 277/23)

Rapporteur: **Mr BURANI**

On 2 December 2008 the Council decided to consult the European Economic and Social Committee, under Article 94 of the Treaty establishing the European Community, on the

Proposal for a Council Directive amending Directive 2003/48/EC on taxation of savings income in the form of interest payments

(COM(2008) 727 final - 2008/0215 (CNS)).

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 1 April 2009. The rapporteur was Mr BURANI.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May), the European Economic and Social Committee adopted the following opinion by 193 votes to three with eight abstentions.

1. Summary and conclusions

1.1. The Commission's proposal for a Directive is aimed at extending the scope of Directive 2003/48/EC – currently limited to savings interest – to a range of new financial products that also provide benefits but do not fall under the current provisions.

1.2. While the Committee fully endorses the initiative, it has concerns about certain administrative and legal complications thrown up by the new rules. The Commission has acknowledged that the problem exists and has done its best to minimise the burden: while this effort is to be commended, it was constrained by the complexity of the new procedures envisaged and by the difficulties in implementing the relevant provisions.

1.3. An important aspect is the cost, which would be borne not only by the operators, and thus the market in general, but also by the tax administrations, because of both the management element and the need for more accurate and extensive controls. Simplification is not always easy but remains, however, a necessity. The Committee points out, however, that an issue of greater concern than the cost should be the quality of the resulting information: difficult or complicated rules often give rise to poor quality information.

1.4. The Committee would also emphasise the need to avoid a situation where the new rules are to be applied unilaterally by the EU: without agreements with third countries and the *agreement countries* we could see a large-scale shift of operations away from Europe to other areas. At the same time, this would risk greatly distorting competition between Europe and the rest of the world.

The EU should therefore enter into negotiations to agree the simultaneous adoption of similar measures in the main global financial markets.

2. Introduction

2.1. Directive 2003/48/EC established the necessary procedures for the taxation of interest payments on savings held in one Member State made to beneficial owners resident in another Member State. In September 2008 the Commission presented a report to the Council on the impact of the Directive, based on consultations with the Member States' tax administrations, with regard to the first two years of implementation.

2.2. The positive findings of this report encouraged the Commission to press on with refining the original Directive, whilst extending its scope. Thus, new definitions of *beneficial owner* and *paying agent* have been introduced, the Directive has been extended to cover the benefits of a wider range of financial products, and numerous procedural aspects have been revised or amended.

3. General comments

3.1. The Committee notes the considerable effort made by the Commission in drawing up this proposal, which it **fully endorses** in its broad outline. Through Member State and stakeholder consultation new rules have been drawn up to enhance the existing ones, ensuring effective taxation of savings income for the benefit of national tax administrations while, indirectly, correcting distortions in capital movements. There are however some aspects on which the Committee must express certain reservations.

3.2. Overall, the Commission proposal seems to be geared towards a **gradual adaptation of tax legislation to the realities of the financial market** which, before the onset of the current

crisis, witnessed the birth of a range of innovative products, which are difficult to classify and are not covered by the 2003 Directive. Several of these products could enable the tax legislation to be *circumvented* in a perfectly lawful way; it is therefore logical that the new Directive should try to fill this legislative gap, **including in the concept of savings income (interest) certain other income from innovative financial products and certain life insurance products, which, moreover, should be further clarified.** The Committee endorses this approach: it points out, however, that the purpose of this extension is not including general life insurance, pensions and annuities, since they serve a long term clear risk coverage purpose. Moreover, given the variety and sophistication of innovative financial products, it will not always be easy to calculate the amount of declarable income or the taxable base.

3.3. In the introduction, the Commission assures us that in drawing up this proposal for a Directive it has taken into account the **administrative burden** that the amendments would entail for operators, and thus consulted both the national tax administrations and the duly established expert group, in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty.

3.3.1. The Committee considers, however, that despite these good intentions, the weak point of the proposal is that it in fact **considerably exacerbates the administrative burden** for operators, whilst requiring existing electronic procedures to be modified or completely new ones introduced. Moreover, in some cases, the new rules appear ambiguous or hard to implement. The general impression is that the interests of the national tax administrations – who are obviously in favour of the changes, being the beneficiaries – have prevailed over the fact that **any additional burden on the operator will inevitably end up being shouldered by the consumer**, and more generally by the market. It should also be borne in mind that rules which are hard to implement often result in poor quality information.

3.3.2. With due respect for the proposal's underlying fundamental concepts, the Committee thinks that the only amendments that should be made are those that, without altering the scope of the provisions, would **simplify and lessen the expense of the administrative procedures** involved, providing clarifications where necessary. This is particularly the case with the procedures envisaged for establishing the identity and residence of the investors: the amendments proposed by the Commission entail overly rigid and cumbersome formalities. The Committee thinks that the changes here should be guided by the recent recommendations of FISCO (the Fiscal Compliance Expert Group), an advisory body set up by the Commission itself, which has proposed – in respect of exemption requests – self-declaration of residence by investors, for withholding tax purposes.

3.3.3. In any case, the Directive needs to explicitly establish a principle of fundamental importance: all of the new procedures, provisions and requirements should take effect from the point at which the new Directive enters into force, without retroactive

effect. Electronic procedures have been programmed on the basis of the existing Directive; new formalities with retroactive effect would entail lengthy, complicated modifications.

3.4. The Commission is clearly aware of the complexity of the formalities required of operators, and indeed the Directive is intended to **come into force three years after** its publication date, which seems a reasonable and appropriate timeframe. The experience of the previous Directive is, however, that in certain Member States there have been considerable delays in adopting the necessary legislation, causing administrative problems for operators. The proposal should therefore **require Member States to publish implementing legislation at least two years before the Directive enters into force.**

3.5. The **level playing field** with the *agreement countries*, referred to in the 24th recital of the 2003 Directive, has been only partly achieved, and in any case does not apply to countries that are not signatories to the agreement; the current proposal does not mention the possibility of **extending the scope of the new Directive to third countries.** While not ruling out the possibility of negotiations leading to a new agreement, in the current market crisis it is unlikely that this could be achieved in the short term. The level playing field is not the only thing that would suffer: a **flight of capital** would have much more serious consequences, a concern that is evoked in the above-mentioned recital but not mentioned in the new proposal. The Committee would advise against creating **new disparities** as regards the obligations of paying agents in the Member States and those in other countries, be they *agreement countries*, third countries, or other dependent or associated territories. It takes the same view regarding the announced extension of the Directive to other sources of revenue.

4. Specific comments

4.1. The proposal contains a series of new requirements regarding the documentation to be presented aimed at **identifying the beneficial owners and their residence for tax purposes.** The tax identification number (TIN) ⁽¹⁾ – for which each country has adopted a different structure – becomes an additional requirement under **Article 3(2)**, alongside indication of the place and date of birth, whereas the current Directive requires only one or the other. Simplification could be achieved by substituting, where possible, the place and date of birth for the TIN; this is information that is sufficient in all Member States to identify residents.

4.1.1. Other cumbersome procedures include the fact that the original **documentation** must be **constantly updated.** The Committee feels that this rule would be almost impossible to enforce, and in any case would constitute a considerable burden. It therefore proposes that the relevant documentation be deemed to have a continuing validity, with due respect for the standard of *best information available.*

(1) In French: NIF (Numéro d'Identification Fiscale).

4.1.2. However, it has since been intimated that the provisions on the TIN and updated information are both optional, in that they are to be communicated **only if they are in the possession of the intermediary**. If this were the case, it would negate the fundamental rationale of the objections posed, i.e. the burdensome nature of the procedures.

4.2. The new Article 4(1) extends the concept of beneficial owner, bringing this in line with the concepts established under the anti-money laundering Directive (2005/60/EC) and introduces an investigative requirement (*look-through*) for entities and legal arrangements, as set out in Annex I to the proposal for a Directive. Consequently, a payment made to such entities or legal arrangements is considered to be made to their beneficial owner, in accordance with the provisions of the anti-money laundering Directive.

4.2.1. The Committee highlights the **discrepancies between the objectives pursued by the Directive on the taxation of savings income and the aforementioned anti-money laundering Directive**. While the former requires paying agents to identify taxpayers who are required to declare their savings income in their Member State of residence, the latter requires paying agents to ascertain not only the identity of the legal company or arrangement holding the account, but also the identity of the person who effectively owns, controls or benefits from the company or legal arrangement. Moreover, while the anti-money laundering Directive is applied, with the necessary rigour, *only* to suspect cases, the present proposal would apply to *all* beneficiaries; the difference being that money laundering cases require a level of in-depth investigation that goes far beyond the due diligence of tax legislation. Compliance with the proposed rules would thus not only be difficult, but also costly and somewhat arbitrary.

4.3. Article 4(2) clarifies the nature of **paying agents upon receipt** who under national legislation in their **country of effective management**, are not taxed on their income or on the part of their income attributable to their non-resident members (the categories, which vary from country to country, are listed in Annex III to the proposal for a Directive). **Country of effective management** refers to the country of residence of the person who primarily holds legal title and manages their property and income. Payments received or secured by paying agents upon receipt are deemed to be made or secured for the immediate benefit of the **beneficial owner** to whom the taxable income is legally attributable.

4.3.1. Extending the concept of *paying agent upon receipt*, which is difficult to define in practice on the basis of the existing Directive, could create administrative and systemic problems for the

original operators, despite the effort made to list the various types in Annex III. Moreover, the place of *effective control* could be difficult for the original operator to ascertain. These innovations therefore raise **serious doubts in operational and management terms**. Not only would it add to the administrative burden and responsibilities of paying agents upon receipt, but the tax administrations would also be lumbered with complicated and costly procedures. The beneficiaries concerned have already flagged the problems that would ensue from adoption of the proposed measures, using technical arguments too complex for the uninitiated. The Committee does not feel it ought to take a position on this issue, but calls on the Commission and the legislators to **give serious consideration to the problems raised by the operators**: failure to meet objectives is often down to legislation that underestimates practical difficulties.

4.4. **Article 6** highlights the Commission's efforts to **include within the concept of interest any benefit deriving from an investment**. The long, detailed list of examples is aimed at extending the taxation to income from **innovative financial products**, which represent anomalies or in any case are not covered by the current legislation. The Committee thinks that the Commission has made a worthy effort here to implement the principle of **sharing the burden among taxpayers**, regardless of the form, definition or level of sophistication of their investments. But at the same time, the Committee would stress the need to **safeguard the competitiveness of the EU's financial and insurance markets**. Therefore, an **essential condition to be negotiated** before the new legislation comes into force is that the rules contained in the new Directive will also be applied by the agreement countries and third countries. An imbalance that would penalise Europe is clearly not the best solution.

4.4.1. Several paragraphs of this Article lay down the procedures to be followed by **paying agents**, who are often a different entity from the issuer of the financial instruments or the information provider. The majority of these procedures involve analysis, investigation or assessment, which in certain cases cannot be carried out by paying agents. In the interests of fairness, it should be specified that, once they have proven to have exercised due diligence and acted in good faith, paying agents **should not be liable vis-à-vis tax administrations when the data provided are derived from third-party information** that cannot be verified through normal means of investigation. On the other hand, it should be explicitly specified that liability does lie with intermediaries and direct beneficiaries who provide incorrect, incomplete or false information.

Brussels, 13 May 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 on the common system of value added tax as regards tax evasion linked to import and other cross-border transactions’

COM(2008) 805 final — 2008/0228 (CNS)

(2009/C 277/24)

Rapporteur: **Mr BURANI**

On 28 January 2009 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 on the common system of value added tax as regards tax evasion linked to import and other cross-border transactions

COM(2008) 805 final – 2008/0228 (CNS).

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 1 April 2009. The rapporteur was Mr BURANI.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May), the European Economic and Social Committee adopted the following opinion by 192 votes, *nem. con.* with five abstentions.

1. Summary and conclusions

1.1. The Commission Communication ⁽¹⁾, which was issued at the same time as the Proposal for a Directive discussed in this Opinion, proposes a **short-term action plan**, which may be more realistic and easier to implement than others conceived in the past for **combating tax fraud**. The previous action plans were based on broader, longer-term strategies, but a number of Member States failed to give them unreserved support. The short-term action plan lays down **common standards for registration** and deregistration in VIES ⁽²⁾, better **control tools** thanks to enhanced communication and cooperation between Member States and, in time, the creation of Eurofisc, a body which will perform surveys and take a hand. Lastly, as regards **collection of lost tax**, the proposal for a directive published alongside the Communication is the first tangible proposal implementing the action plan.

1.2. The EESC welcomes the Communication, which paints a picture of implementation of the VAT system which is not wholly unsatisfactory. The system is still described as ‘temporary’ several decades on from its introduction. However, it is still too complex and costly, and, most importantly, **open to considerable tax evasion**. Electronic procedures are essential for combating evasion but their effectiveness is dependent on them being **adopted in a uniform manner** by the Member States; for the moment these objectives are still rather far off. One possible

danger is that **unconnected, divergent national solutions** will be adopted.

1.3. A number of suggestions should be made regarding **points which could be included in the action plan**: revision of the SCAC (Standing Committee for Administrative Cooperation) model; more accessible and useful databases and legislation which strikes the right balance between data protection and cooperation between administrations; creation of professional reference bodies to act as an interface between the various administrations; certifying the reliability of operators.

1.4. First and foremost, the **proposal for a directive** clarifies a number of provisions of the initial directive on **tax exemption**, which are open to abuse: it has been noted that **implementation of the rule** that exemption is to be granted when the imported goods are sold within the Community is **difficult to follow up** on the ground. The new rules lay down a set of precautionary requirements, including the requirement for the importer to provide data identifying the end customer *at the time of importation*.

1.5. The EESC fully endorses these rules, along with the rules on **joint and several liability of a buyer and a seller established in different countries** in cases where one of the two does not meet their VAT obligations. Moreover, this is not a new or innovative rule: it already exists and is implemented rigorously within Member States but is almost **always overlooked when applying it would involve cooperation between administrations of different Member States**.

⁽¹⁾ COM(2008) 807 final – Communication on a coordinated strategy to improve the fight against VAT fraud in the European Union.

⁽²⁾ VAT Information Exchange System.

1.6. On the subject of liability, the EESC points out an aspect which is never taken into consideration: **administrations' liability towards taxpayers and each other** in cases where errors or delays lead to financial or legal prejudice. This must be addressed in the name of basic fairness and transparency.

2. Introduction

2.1. The Commission **Communication** and proposal follow on from two other Communications: the 2006 Communication, which first launched a debate on the need for a 'coordinated approach' to combating tax fraud in general, and the 2007 Communication, which focused attention on VAT fraud, expounding the key components of a strategy. In February 2008 a further Communication won the Council's approval regarding a proposal to adopt two 'far-reaching' measures to change the VAT system to fight fraud: a **system of taxation of intra-Community transactions**, and a **general reverse-charge system**. The Commission offered to launch a pilot project for the second of these solutions but the Ecofin Council did not manage to reach agreement.

2.2. In view of the clear political reluctance to adopt a far-reaching joint policy, the Commission fell back on the proposal for a **short-term action plan** with a time schedule: a 'conventional' solution which might have a better chance of being approved.

2.3. A Community approach is necessary in both legislative and operational terms. Operation has thus far been left exclusively to the Member States, and differences in the methods adopted by the different administrations have encouraged fraudsters to shift their activities to countries which do not introduce effective measures. Moreover, there is also a problem of compliance costs for businesses, which are forced to use different procedures according to the country in which they are operating.

2.4. The **proposal for a directive** published at the same time as the Communication is a first step in the area of conventional measures. **Specific exemption on importation** is already regulated by the initial VAT directive (2006/112/EC), but the original wording had been interpreted in ways leading to abuse. The proposal clarifies the requirements and limits for obtaining exemption while, at the same time, providing Member States with a tool for recovering any VAT which may have been lost through evasion.

3. The gist of the Communication

3.1. The analysis of past measures carried out by the Commission's Anti Tax Fraud Strategy (ATFS) expert group revealed three main areas of focus for implementation of a **short-term action plan** to fight fraud: a more watertight VAT system; enhancing tools for control and investigation; greater possibilities for collecting lost tax.

3.2. As regards **making the system watertight**, clear common standards are needed for registration and deregistration in the Information Exchange System (VIES). Some Member States keep VAT identification numbers valid even where the taxable person concerned is involved in VAT fraud; this allows them to continue their activity. The Commission is soon to issue a legislative proposal on common standards for **registration and deregistration in VIES**. The proposal will also include provisions on operators' rights to **access electronically information** on their counterparts' names, addresses and VAT identification numbers, a right which is currently denied or limited in some Member States. Other rules will concern a simplified, modernised common **invoicing** system. Lastly, provisions will be laid down on **exchange of information**, eliminating the differences in interpretation between Member States on chargeability of VAT and ensuring that the administrations concerned do their reporting at the same time.

3.3. **Control tools** are the most sensitive, and perhaps the most deficient, part of the system. The focus is on the weak points identified over time: **communication, cooperation and access to information**. A number of legislative proposals are being developed. One promising operational measure could be the establishment of **Eurofisc**, a European early warning network along the lines of Eurocanet, a system set up by the Belgian tax administration and supported by the Commission and Olaf.

3.4. The third section of the action plan, **possibilities for the collection of lost tax**, includes a **number of measures**. Firstly, Member States are encouraged to take legal steps against fraudsters operating in the country concerned whose actions have caused VAT losses in another Member State. The most important part concerns, however, the **principle of joint and several liability of operators resident in different Member States**, a principle that already has a legal basis but which, thus far, each Member State has only applied domestically and only to

operators under its jurisdiction. A proposal for uniform systems of enforcement or precautionary measures will also be issued, to improve the prospects for cross-border tax collection. Lastly, a definitive solution will be provided to the issue of **cross-border protection of VAT revenue**, independently of the Member State in which the VAT is due: an issue which only a few countries are already exploring.

4. General comments

4.1. The Commission is still working on fine-tuning the rules on application, management and collection of VAT, which still form a 'temporary system' 40 years on from its creation. For it to become permanent, rates of taxation need to be harmonised and taxable persons need to be given the means of paying tax due directly in their own country, with invoices issued including VAT as is currently the case in domestic transactions. This goal is not even in sight. The reasons for this are neither technical nor legal: they are political, and this means that the issues involved are almost irresolvable. The measures proposed here are therefore 'conventional', making effective a system which is 'temporary' in name alone.

4.2. That said, it should be pointed out that the VAT scene overall is not wholly unsatisfactory, despite numerous aspects which leave room for improvement, but the system is complex, costly and, what is worse, still open to evasion on a huge, international scale. The defect lies in the very concept of a temporary system, which only political will, which is currently lacking, can transform into a simpler, more effective, permanent system.

4.3. The Commission is doing its best to deal with the greatest, most glaring shortcomings, wedged as it is between a Council which is incapable of taking unanimous decisions and the behaviour of the Member States, which are all working to solve their own problems with their own solutions internally. One example which the Commission cites is that of **electronic procedures** used in relations between taxpayers and administrations. Some Member States, like a number of non-EU countries, are keeping pace with the times while others have fallen behind. Overall, the Commission's verdict is: 'the management of the VAT system in the EU has not kept pace with ... information technology' ⁽³⁾. The EESC can only agree.

4.4. It therefore comes as no surprise that various Member States – not just the most advanced but others as well – are working with their own operators to seek better management solutions. This worries the Commission as it can see the **danger of unconnected, divergent national solutions** and strongly suggests that Member States coordinate their developments. At this point the EESC would like to **bring the Commission down to**

earth: when it comes to coordinating Community-level activities, the Commission has the power to regulate, and it has used and continues to use this power in an exemplary fashion. However, when it comes to domestic issues of individual Member States, where the Commission has no power, **recommendations have little impact**: each Member State can give a good reason for acting independently. Only where two or more countries have common interests can coordinated solutions be found.

4.5. Bearing this in mind, the EESC congratulates the Commission on an initiative which is wisely couched in terms of a suggestion: the creation of an *ad hoc* group involving tax authorities and businesses (although certified operators are not mentioned), with the objective of seeking a common approach to the various issues surrounding relations between them. The parties concerned are advised 'to put in the necessary expertise and resources in order to give this exercise a real chance of success'. The EESC hopes that this success is achieved.

5. Comments on outstanding issues

5.1. The EESC would like to take this opportunity to suggest that the **action plan include major points** which are not directly linked to combating fraud: efficient structures and effective rules help *per se* to build a watertight system, or at least help to avert abuse or, in the worst-case scenario, to clamp down on it.

5.2. As regards **electronic procedures**, the Commission has already done everything in its power with Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92; in practice, the SCAC (Standing Committee for Administrative Cooperation) model used for exchange of information and requests for action should be revised so that procedures are better geared to providing immediate, targeted responses.

5.3. **Databases** are a more sensitive matter: here it is not just a question of usefulness but also and above all of **accessibility and completeness of information**. With specific reference to VAT, the **balance between data protection and cooperation between administrations** has to some extent yet to be found; this can only be resolved with **legislation** setting out the limits of the respective requirements – which data have to be protected and which not, in which circumstances, and what the procedures are for access to information. Recommendations and agreements are not enough: the issue needs a solid legal basis which, without jeopardising fundamental rights, gives precedence to the public interest.

⁽³⁾ Commission Communication, COM(2008) 807, point 4, first paragraph.

5.4. One practical issue to be resolved is **collecting information on the ground**: Member States should create **professional reference bodies** which can collect information useful to the Member State requesting it, and which are authorised to exchange this information with their counterparts in other Member States concerned. A Community initiative could help to create a genuine **rapid intervention 'network'**, whose members can interact directly along reserved channels, working together with any other authorities carrying out investigations.

5.5. The EESC stresses that any common solution must take into account the need for **VIES to work perfectly**, providing administrations with data on each transaction **in real time**. The basic prerequisite is that the entities given a VAT code are **reliable**: the qualities ensuring this reliability must be verified in advance. If and when it is possible for both conditions – real-time operation and prior certification – to be met, missing trader fraud will fall sharply.

5.6. Pending comprehensive solutions (which may take some time), as a priority the option could be explored of **'certifying' the reliability of operators** in the sector with a single set of rules for all EU countries: if a certificate were to be issued by the relevant tax authority for each VAT identification number, two birds would be killed with one stone: both Member States' domestic interests and the commercial interests of Community operators would be protected. If information were published through a network, members would be aware of any revocation or suspension immediately.

6. The proposal for a directive: clarification and new rules

6.1. As stated in the introduction to the proposal, it is 'part of the first set of proposals announced in this Communication'. **Two changes are made to the initial directive, 2006/112/EC**: a number of provisions on **exemption from VAT** upon importation are clarified as they have led to **abuse** in the form of evasion of VAT payments, and the **right to apply joint and several liability** in some cases of supply of intra-Community goods is **made an obligation**.

6.2. **Exemption from VAT on importation** (Article 143 (d)) is permitted when this importation is followed by an intra-Community supply or transfer of the imported goods to a taxable person in another Member State; in other words, **exemption is permitted when the importer sells the imported goods to another taxable person within the EU**. Fraud investigators have drawn attention to large-scale abuse due to 'inadequate' implementation of this Community rule in national law. According to

the Commission, the result is that 'the follow-up of the physical movement of the imported goods by the customs and tax authorities within the Community is not guaranteed'. In tax jargon, this is a case of the **'missing trader in intra-Community (MTIC) fraud'**.

6.2.1. The proposal provides for presentation of documents proving that the person requesting exemption is in effect compliant with the requirements already laid down by the initial directive: to be identified for VAT purposes or to have appointed a fiscal representative in the Member State of importation; the obligation to declare that the imported goods will be transported or dispatched to another Member State; the obligation for the importer to provide *at the time of importation*, the VAT identification number of the person to whom the goods will be sent in that other Member State.

6.2.2. The EESC has no particular comment to make as this is an area where the reason for the provisions is the need to improve administrative systems to prevent potential fraud. Merely, a certain **doubt remains regarding what are termed 'third territories'**. The concept of 'Member State' in the context of VAT rules is defined in Article 5(2) of the initial directive; Article 6 of that directive states that **the directive does not apply to 'third territories'** ⁽⁴⁾ as they are exempted from paying VAT upon importation under the provisions of Article 143 (c) and (d). The rule is quite clear, but it does need to be ascertained, however, whether and to what extent this exemption is likely to protect VAT application from abuse.

6.3. The new provision laid down in Article 1(2) of the proposal replaces Article 205 of the initial directive, which states that a person other than the person liable for payment of VAT is to be held **jointly and severally liable together with the exporter** for payment of VAT. In a nutshell, the new provision states that **the seller must declare their intra-Community transactions** so that the buyer's Member State can be made aware of taxable transactions carried out in that country.

6.3.1. The aim of joint and several liability is to ensure not only that the supplier discharges their reporting obligations but also, by implication, that they **select their customer wisely and familiarise themselves** with the customer and his state of solvency; where the customer has not met his obligations, the Member State in which he is resident is authorised to recover the sum of unpaid VAT and any penalties from the supplier. Member States have applied this rule diligently **but only to domestic transactions**. By implication, in neglecting to extend the principle to international transactions, they have forgotten their obligation to cooperate in order to protect the interests of administrations in the Member States of purchase *as well*.

⁽⁴⁾ Territories forming part of the customs territory of the Community: Mount Athos, the Canary Islands, the French overseas departments, the Åland Islands, the Channel Islands; territories not forming part of the customs territory of the Community: the Island of Heligoland, the territory of Büsingen, Ceuta, Melilla, Livigno, Campione d'Italia, the Italian waters of Lake Lugano.

6.3.2. The new proposal attempts to bridge this gap by explicitly extending provision for joint and several liability to international transactions; it should, moreover, be noted that in the Commission's view ⁽⁵⁾, this provision was already made in Article 205 but that "so far its use by Member States has been limited to domestic transactions'.

6.3.3. The EESC fully endorses the Commission proposal, but draws attention to the need to regulate recovery of a debt by an administration in one Member State from a resident in another Member State, and make this feasible. If this is to be done through the judicial system, the rules on judicial cooperation apply; if the debt is to be collected through the administration of the exporter's Member State by means of administrative procedures, clear

agreements will be required, along with the resolution of ensuing issues.

6.3.4. A further comment should be made, which, although general, is relevant to the subject addressed by the proposal, whose main aim is to protect tax administrations' interests. No reference is made in the text to **tax administrations' financial and legal liability towards taxpayers** regarding errors or delays in notification of counterparts' codes, nor of the **liability of an administration in one country towards another administration**. Legislation based on fairness and transparency should always take into account taxpayers' rights in the face of the greater power of the state.

Brussels, 13 May 2009.

The President
of the European Economic and Social Committee
Mario SEPI

⁽⁵⁾ Commission Communication, COM(2008) 807, point 3.3.1, second paragraph.

OPINION of the European Economic and Social Committee on the ‘Credit Rating Agencies’**COM(2008) 704 final — 2008/0217 (COD)**

(2009/C 277/25)

Rapporteur: **Mr Peter MORGAN**

On 1 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 regulation of the European Parliament and of the Council on Credit Rating Agencies

COM(2008) 704final – 2008/0217 (COD).

The Section for Economic and Monetary Union Economic and Social Cohesion, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 1 April 2009. The rapporteur was Mr MORGAN.

At its 453 plenary session, held on 13-14 May 2009 (meeting of 13 May 2009), the European Economic and Social Committee adopted the following opinion by 157 votes to 4 with 5 abstentions.

1. Conclusions and Recommendations

1.1. The context for this opinion is the worst peacetime economic crisis in eighty years. It is causing severe damage to the interests of employers, employees and all the other groups represented by the EESC as well as to civil society in general. Businesses are failing, employment is falling, homes are being repossessed, pensions are in jeopardy, civil unrest is spreading and governments are falling. A root cause of this crisis has been the performance of the unregulated Credit Rating Agencies (CRAs). The role of the CRA is central to the working of the financial system and, as such, cannot be left unsupervised. Self regulation has failed dramatically and the performance of the credit rating industry has been disgraceful. The EESC fully supports the plan to regulate and register the CRAs.

1.2. For historical reasons the business of credit rating is a global oligopoly involving three main CRAs (credit rating agencies) known as Fitch, Moody’s and S&P. Although headquartered in the USA, they are also the main providers of credit rating services in the European Union. CRAs have been subject to SEC registration in the USA since 2007. As yet there is no registration requirement in the EU. Registration is, of course, a precursor to regulation.

1.3. Beginning in 2007, delinquency and foreclosure rates for subprime mortgage loans in the USA increased dramatically, creating turmoil in the markets for residential mortgage-backed securities (‘RMBS’), backed by such loans, and collateralised debt obligations (‘CDOs’), linked to such securities. As the performance of these securities continued to deteriorate, the three CRAs most active in rating these instruments downgraded a significant number of their ratings. The CRA performance in rating these structured finance products raised questions about the accuracy of their credit ratings generally as well as the integrity of the ratings process as a whole.

1.4. In 2006 the European Commission set out its regulatory approach to CRAs and stated that it would monitor developments in this area very carefully. In October 2007, EU Finance Ministers agreed to a set of conclusions on the crisis which included a proposal to assess the role played by CRAs and to address any relevant deficiencies. After consulting widely and taking into account activities in other countries, the Commission has brought forward this draft Regulation.

1.5. The proposal has four overall objectives:

- first, to ensure that CRAs avoid conflicts of interest in the rating process or at least manage them adequately;
- second, to improve the quality of the methodologies used by the CRAs and the quality of their ratings;
- third, to increase transparency by setting disclosure obligations for the CRAs;
- fourth, to ensure an efficient registration and surveillance network, avoiding regulatory arbitrage between EU jurisdictions.

1.6. Since the Commission published its regulatory proposals, the Larosiere Group has published its report. In respect of the CRAs, it made the following recommendation:

- within the EU, a strengthened CESR should be in charge of registering and supervising CRAs;
- a fundamental review of CRAs’ business model, its financing and of the scope for separating rating and advisory activities should be undertaken;

- the use of ratings in financial regulations should be significantly reduced over time;
- the rating for structured products should be transformed by introducing distinct codes for such products.

These recommendations are discussed in the relevant sections of the opinion.

In addition, the Group observed that 'It is crucial that these regulatory changes are accompanied by increased due diligence and judgement by investors and improved supervision.' The EESC strongly endorses this observation

1.7. COREPER has also considered the Commission's regulatory proposals. The EESC supports the proposal for the endorsement of ratings established in third countries.

1.8. In general, the EESC supports the Commission's proposals. The CRAs played a defining role in the development and credibility of structured products which have turned out to be toxic and have destroyed hundreds of billions of dollars worth of assets. The provisions of the proposed Regulation are the least that are called for in the circumstances. Furthermore, it is the EESC assessment that the rules will not be an undue burden for a well run CRA.

1.9. CRAs occupy a privileged position in the financial services industry because regulated entities in the industry must hold investment grade securities. On both sides of the Atlantic, the authorities have chosen to recognise very few CRAs for regulatory purposes. The EESC encourages the Commission to use the new registration process to open up the ratings business to new CRAs, notably by supporting any initiatives to create an independent European agency, and rewrite financial regulation to recognise for regulatory purposes ratings from any EU registered CRA. It will not be easy for new CRAs to become established and gain credibility. Nevertheless, the rise of Fitch in the last decade, financed by a French holding company, shows that it can be done.

1.10. Financial services regulation has been the main driver of the CRA oligopoly because of the reliance placed on ratings in respect of capital reserves. The EESC urges EU regulators not to place undue reliance on ratings, especially in the light of recent experience where certain ratings have been found to be worthless. This is consistent with the Larosiere Group recommendation that the use of ratings for financial regulation should be significantly reduced over time.

1.11. In this context, the EESC also asks the Commission to deal with the issue of CRA disclaimers. Because the disclaimers tend to render the ratings worthless, the ratings themselves are not actually a satisfactory basis for determining regulatory capital. Steps must be taken to hold CRAs responsible for their ratings. Genuine errors can be tolerated but failures of due diligence cannot.

1.12. The EESC supports the proposal that CRAs must be a legal person established in the Community and that the home Member State should be the regulator. The Commission has presented its arguments for not moving regulation and supervision to a centralised body. While this conflicts with the Larosiere Group proposal, the EESC does not necessarily reject the idea of creating a new supervisory authority at EU level should the arrangements for cooperation between Member States prove to be inadequate.

1.13. The EESC is delighted to see that the proposed regulation has real teeth. The supervisory measures available to the competent authorities include withdrawing a registration and initiation of criminal proceedings. Penalties must apply to cases of gross professional misconduct and lack of due diligence. Penalties must be effective, proportionate and dissuasive. The penalties must be applied uniformly in all Member States. The EESC believes that this should be coordinated by the Committee of European Securities Regulators (CESR).

1.14. Organisationally there is considerable dependence on the role of the independent non-executive directors. The EESC believes that it should be mandatory that all non-executive appointments receive prior approval from the competent authority. In the proposed scheme of things, such approval is indispensable.

1.15. The EESC asks Member State competent authorities, as part of their organisational supervision, to watch closely the linkage between the rating business and the expectations of shareholders. The business model of a CRA cannot be readily adapted to the ethos of a public company. Particular attention should be paid to the structure of executive performance bonuses. The Larosiere Group has expressed the same concern and asked for a further examination of the CRA business model. The EESC supports this.

1.16. The EESC welcomes the provisions of Article 7. The publication of methodologies will make it evident if ratings have been arrived at by short cuts or by-passes. In addition the CRA is now bound to check its information sources and ensure that they are good enough to permit a rating to be established. Equally as important, the rules relative to changing methodologies and assumptions, had they been in force, could have highlighted the RMBS rating errors many years before 2007.

1.17. As far as disclosure is concerned, the EESC is particularly pleased that the EU will go further than the USA in respect of structured products, requiring that, in one way or another, the potentially toxic features of these products be highlighted to potential investors. The Larosiere Group has proposed that a separate notation system be used. This would be the EESC's preferred option.

1.18. Objections to a separate series of rating symbols for structured products focus on the likelihood that after the massive downgrades which have taken place, bonds carrying this distinct notation could be regarded as lower grade investments. In the view of the EESC, that would be no bad thing until the rating reputation of such bonds is re-established.

1.19. The various general disclosures for both regulatory and market purposes are fine, with two caveats. The EESC would like the provision in the EU regulation relating to semi-annual disclosures of default rates to be quite specific and the 5 % disclosure rule to be reviewed by the CESR.

1.20. Concern has been expressed on both sides of the Atlantic about the possibility that the US and EU regulatory regimes could embody conflicting rules. There has even been the suggestion of a single global regime. The EESC is comfortable with the proposed EU regime which is not expected to conflict with the US regime. In circumstances where companies have to accommodate different standards in different regimes it is customary to establish policies geared to the 'highest common factor'. There is no reason why such an approach should not apply in this case.

2. Introduction

2.1. An RMBS is created by an arranger, generally an investment bank, which packages a pool of mortgage loans – generally thousands of separate loans – into a trust. The trust issues securities collateralised by the pool. The trust uses the receipts from the securities to purchase the loan pool. The aggregate monthly interest and principal payments into the pool from the individual mortgage loans are used to make monthly interest and principal payments to RMBS investors. Three main devices are used to turn these packages of dubious subprime loans into AAA rated products: (i) the RMBS is split into tranches offering a hierarchy of security and yield, (ii) over collateralisation, so that the value of the pool of mortgages exceeds the value of the RMBS, (iii) excess spread so that the mortgage interest due from the pool exceeds the amount of RMBS interest to be paid. In addition, there was an underlying assumption that house prices would keep rising.

2.2. A CDO is conceptually similar except it uses debt securities, not mortgages. Usage of RMBS in CDO collateral pools increased from 43,3 % in 2003 to 71,3 % in 2006, effectively

creating a second house of cards on top of the first. The US Securities and Exchange Commission (SEC) found a CRA internal email which referred to the CDO market as a 'monster'. 'Let's hope we are all wealthy and retired before this house of cards falters'.

2.3. A key step in creating and ultimately selling a subprime RMBS or CDO is the determination of a credit rating for each tranche issued by the trust. In August 2007 the SEC initiated an examination of the CRA role in the turmoil which had occurred. The focus of the examination was the way in which the CRAs had rated RMBS and CDOs. Key areas of review included:

- (a) rating policies, procedure and practices including models, methodologies, assumptions, criteria and protocols;
- (b) adequacy of the disclosure of the above;
- (c) whether the CRAs were actually complying with their own procedures;
- (d) the efficacy of conflict of interest procedures;
- (e) whether ratings were unduly influenced by conflicts of interest.

2.4. The general findings were reported as follows:

- (a) there had been a substantial increase in the number and the complexity of RMBS and CDO deals since 2002; some of the CRAs had struggled to handle the growth, especially of CDOs, with a consequent impact on the completeness of the rating process;
- (b) significant aspects of the ratings process such as ratings criteria were not always disclosed; 'out of model' adjustments were made without any documented rationale;
- (c) none of the agencies had documented procedures for rating RMBS and CDOs, nor did they have specific policies and procedures to identify or address errors in their models or methodologies;
- (d) the CRAs had begun to implement new practices to examine the rating information provided to them by issuers, but previously there had been no requirement for the CRA to verify the information contained in RMBS portfolios, nor did they insist that issuers perform due diligence on those portfolios;
- (e) the CRAs did not always document significant steps in the ratings process – including the rationale for deviations from their models and for rating committee actions and decisions – and they did not always document the presence of significant participants in rating committees;
- (f) the processes for surveillance of on-going ratings used by the CRAs appear to have been less robust than the processes used for initial ratings; lack of resources had impacted the timeliness of surveillance activity, the surveillance which was conducted was poorly documented and there was a lack of written procedures;

- (g) issues were identified with the management of conflicts of interest and their affect on the ratings process; key participants in the ratings process were allowed to participate in fee discussions;
- (h) internal audit processes varied significantly; only one of the three agencies was considered to have adequate compliance controls.

2.5. There is an inherent conflict in the business model of the industry because the debt issuer pays for the rating, but it is exacerbated in the case of structured products because (i) the arranger is the designer of the deal so there is flexibility in the way it can be structured to optimise ratings and the arranger can also choose the CRA which will give the issue a favourable rating and (ii) there is a high concentration of arrangers.

2.6. In a sample of 642 RMBS deals, 12 arrangers handled over 80 %; in a sample of 368 CDOs, 11 arrangers accounted for 80 %; 12 of the largest 13 RMBS underwriters were also the 12 largest CDO underwriters. The combination of the arrangers' influence in determining the choice of rating agency and the high concentration of arrangers with this influence appear to have heightened the conflicts of interest inherent in the 'issuer pays' compensation model.

2.7. The SEC published its findings in July 2008, having already put out regulatory proposals for consultation. New regulations were published in the USA on 3 December 2008. The EU Commission published its draft Regulation - (COM2008) 704 final - on 12 November 2008 and it is this publication to which this Opinion refers.

2.8. Investigation has not been confined to the regulators. On 18 October 2008, the Financial Times (FT) printed an exposé of the role of Moody's in the subprime crisis which Moody's did not refute. Certain of the insights included in the article are given in paragraphs 2.9 to 2.12.

2.9. Moody's went public in 2000. After the listing, the change was precipitous. There was a sudden concentration on profit. Management got stock options. The whole centre of gravity shifted. Moody's reported the highest profit margins of any company in the S&P 500 index. It held that position for 5 years running. Its shares rose by 500 % in the first four years of trading, at a time when the rest of the market was down. Moody's earnings grew by 900 % in a decade.

2.10. In the early days of the millennium it was almost impossible for a CDO to get a triple A rating from Moody's if the collateral was entirely made up of mortgages. The agency had a long-standing 'diversity' score which prevented securities with homogenous collateral from winning the highest rating. As a

result Moody's lost market share because the two competitors did not apply such a prudent rule. Moody's withdrew the rule in 2004 after which its market share rocketed.

2.11. In 2006, Moody's started to rate CPDOs – constant proportion debt obligations. The rating was triple A. Fitch, which was not asked to rate any CPDOs, said that its models put these bonds barely above junk grade. CPDOs were reported to be the most lucrative instrument Moody's had ever handled. In early 2007 an error was found in the computer code for CPDO performance simulation. It turned out that the product was being over rated by as many as four grades. The error was not disclosed to investors or clients. The code was revised so that once again it delivered triple A ratings. Subsequently, after the FT revealed the error, internal disciplinary proceedings were begun.

2.12. By mid year 2007 the US housing down turn was well under way. Moody's then realised that its models were inappropriate. It began to down grade mortgage-backed bonds in August 2007 and the turmoil had begun. In the final few months of the year, Moody's downgraded more bonds than it had over the previous 19 years combined. Moody's insists that there was no way that it could have foreseen the onset of the credit crisis, but Moody's had not updated its basic statistical assumptions about the US mortgage market since 2002. Internal staff were debating the issue in 2006 but the resources were not available to do the necessary review and re-appraisal.

2.13. Factual evidence from the SEC and anecdotal evidence from the FT both show that many changes are needed if the CRAs are to fulfil the role and meet the standards expected of them.

3. Gist of the Proposed Regulation

Registration and Surveillance Framework

3.1. Article 2 states that the Regulation shall apply to credit ratings used for regulatory purposes while Article 4 states that financial institutions may only use for regulatory purposes credit ratings which are issued by CRAs established in the Community and registered in accordance with this regulation.

3.2. Article 12 states that a CRA may apply for registration in order to ensure that its credit ratings can be used for regulatory purposes provided that it is a legal person established in the Community. The competent authority of the home Member State shall register the CRA if it complies with the conditions set out in the regulation. The registration shall be valid throughout of the Community.

3.3. The initial application for registration must go to the CESR (Committee of European Securities Regulators) who will forward it to the responsible home Member State(s) (Article 13), where it will be examined (Article 14) and then registered or declined by the home Member State in consultation with the CESR (article 15). There are provisions to withdraw the registration if the CRA becomes non compliant (Article 17). CRAs must make an application for registration within six months of the Regulation coming into force (Article 35).

3.4. Article 20 describes the powers of the competent authorities. They are not permitted to interfere with the content of credit ratings. However, they may:

- have access to any document in any form and receive or take a copy thereof;
- demand information from any person and if necessary to summon and question a person with a view to obtaining information;
- carry out on-site inspections with or without announcement;
- require records of telephone and data traffic.

3.5. Article 21 outlines the supervisory measures available to the competent authorities. These include withdrawing a registration, temporary prohibition on issuing ratings, suspension of the use of the CRA's ratings, public notification of breaches of regulation and initiation of criminal proceedings.

3.6. Articles 22 to 28 detail provisions for cooperation between competent authorities so that registration and supervision are effective throughout the internal market. Articles 29 and 30 provide for cooperation with third countries.

3.7. Article 31 concerns penalties to be imposed by competent authorities. It stipulates that, as a minimum, penalties must apply to cases of gross professional misconduct and lack of due diligence. Penalties must be effective, proportionate and dissuasive.

Independence and Avoidance of Conflicts of Interest

3.8. Article 5.1 stipulates that a CRA shall ensure that the issuance of a credit rating is not affected by any existing or potential conflict of interest. Sections A (organisational requirements) and B (operational requirements) of Annex 1 of the Regulation mandate significant checks and balances.

3.9. Organisationally, responsibility rests with the main or supervisory board. The senior management shall be of good repute. There must be at least three NEDs (independent non-executive directors). Their compensation is unrelated to the performance

of the business. Their term of office must be fixed and must not extend beyond five years. The appointment is not renewable and there are limitations on their dismissal within the term. All board members must have relevant experience and at least one NED must have an in depth knowledge of structured securities markets.

3.10. The NEDs must be specifically responsible for overseeing the credit rating policy and process and the avoidance of conflicts of interest. Policies and procedures must conform with the Regulation. NEDs must present opinions on these matters periodically to the board and to the competent authority as requested. For the NEDs to work effectively the rating systems must be properly established, supported by internal controls and subject to independent review.

3.11. Operationally, the CRA shall identify and eliminate or, where appropriate, manage and disclose any actual or potential conflicts of interest. Both personal and corporate conflicts are spelled out. For example, a CRA shall not provide consultancy or advisory services to the rated entity or any related third party regarding the corporate or legal structure, assets or liabilities of the rated entity or any related third parties. Similarly, a CRA shall ensure that analysts do not make proposals or recommendations, either formally or informally, regarding the design of structured finance instruments on which the CRA is expected to issue a rating.

3.12. A CRA shall keep records and audit trails of all its activities including its commercial and technical dealings with rated entities. Such records should be retained and made available to the competent authority upon request.

Employees

3.13. Article 6 requires that employees involved in rating should have appropriate knowledge and experience, should not be involved in commercial negotiations with rated entities, should not work with any entity for less than two years or more than four and should not have their compensation linked to revenues earned from the rated entities for which they are responsible.

3.14. Appendix 1, section C, spells out more rules relating to employees. These prohibit the analyst or related parties from owning or trading in the financial instruments of any entity for which he or she is responsible or soliciting gifts or favours from that entity. Other provisions relate to confidentiality and the security of information.

3.15. Two provisions related to the subsequent employment of an analyst by an entity for which the he or she had worked on the rating. There is also the provision that when an analyst moves to a rated entity, the relevant work of the analyst over the previous two years should be reviewed.

Rating Methodologies

3.16. Article 7 requires the CRA to disclose to the public the methodologies, models and key rating assumptions it uses. It shall adopt all necessary measures so that the information it uses in assigning a credit rating is of sufficient quality and from reliable sources.

3.17. A CRA shall monitor credit ratings and review its credit ratings where necessary. When rating methodologies, models or key rating assumptions are changed, a CRA shall take immediate action to communicate the likely effect, review the affected ratings and re-rate accordingly.

Disclosure and presentation of Credit Ratings

3.18. Article 8 stipulates that a CRA shall disclose any credit rating, as well as any decision to discontinue a credit rating on a non-selective basis and in a timely manner.

3.19. Section D of Annex 1 requires the CRA to disclose:

- whether the rating was disclosed to the rated entity before dissemination and, if so, whether it was amended following this disclosure;
- the principle methodology(ies) used to determine the rating;
- the meaning of each rating category;
- the date the rating was first released and the date it was last updated.

The CRA should also state clearly any relevant attributes or limitations of the rating, especially with regard to the quality of the available information and its verification.

3.20. In a case where the lack of reliable data or the complexity of the structure of a new instrument or the quality of the information available is not satisfactory or raises serious questions as to whether a CRA can provide a credible credit rating, the CRA should refrain from issuing a credit rating or withdraw an existing rating.

3.21. When announcing a credit rating, the CRA should explain the key elements involved. In particular, when a structured finance instrument is rated, it shall provide information about the loss and cash flow analysis it has performed.

3.22. Also, for structured finance instruments, the CRA must explain its assessment of the due diligence carried out on the underlying assets (such as a book of sub prime mortgages). If it has relied on a third party assessment, it should disclose how the outcome of that assessment has affected the rating.

3.23. Article 8 also deals with the concern that ratings for structured finance instruments are not comparable with ratings for conventional debt instruments. Accordingly, CRAs must either adopt different symbols, abandoning the familiar alphabet or, alternatively, attach a detailed explanation of the different rating methodology for these instruments and the way in which the risk profile differs from conventional instruments.

General and Periodic Disclosures

3.24. The disclosures called for in Articles 9 and 10 are detailed in Annex 1, section E. The general disclosures are required to be publicly available and up to date at all times. The specifics relate to the most important regulatory elements such as conflicts of interest, disclosure policy, compensation arrangements, rating methodologies, models and key assumptions, changes to policies and procedures, etc.

3.25. The periodic disclosures include default rate data on a six monthly basis and client data on an annual basis.

3.26. In addition, an annual Transparency report is required. This will include details of CRA legal structure and ownership, a description of the internal quality control system, statistics on staff allocation, details of the record keeping policy, outcome of the annual internal review of independence compliance, a description of the staff rotation policy between clients, information about sources of revenue and a governance statement.

4. EESC Perspective

4.1. CRAs occupy a privileged position in the financial services industry because regulated entities in the industry must hold investment grade securities. On both sides of the Atlantic, the authorities have chosen to recognise very few CRAs for regulatory purposes. The EESC encourages the Commission to use the new registration process to open up the ratings business to new CRAs, notably by supporting any initiatives to create an independent European agency, and rewrite financial regulation to recognise for regulatory purposes ratings from any EU registered CRA.

4.2. Financial services regulation has been the main driver of the CRA oligopoly because of the regulatory reliance placed on ratings in respect of capital reserves. The EESC urges EU regulators not to place undue reliance on ratings, especially in the light of recent experience where the ratings have been found to be worthless.

4.3. In addition, the EESC asks the Commission to deal with the issue of CRA disclaimers. These typically state that 'any user of the information contained herein should not rely on any credit rating or any other opinion contained herein, in making an investment decision'. To argue that ratings are just an opinion and not to be relied on makes a mockery of the concept of regulatory capital, as has been demonstrated by the current crisis. The new regulation should include the requirement that CRAs stand behind their ratings.

4.4. The EESC also supports the proposal that CRAs must be a legal person established in the community and that the home Member State should be the regulator. However, the EESC does not necessarily reject the idea of creating a new supervisory authority at EU level should the arrangements for cooperation between Member States prove to be inadequate.

4.5. The EESC is delighted to see that the proposed regulation has real teeth as spelled out in Articles 21 and 31. (paragraphs 3.5 and 3.7 above). The lack of such sanctions has been a major criticism of the comparable US regulations. It is important that penalties are applied with the same vigour in all Member States. The EESC believes that this should be coordinated by the CESR.

4.6. The proposed organisational and operational regulations are well conceived. The requirement that three independent non-executive directors be appointed is in line with the code of corporate governance adopted in the UK and elsewhere. There will be considerable dependence on the role of the independent non-executive directors. Their conduct and performance will determine the success of the organisational rules. The EESC believes that it should be mandatory that all non-executive appointments receive prior approval from the competent authority. In the proposed scheme of things, such approval is indispensable.

4.7. Fitch is 80 % owned by Fimalac SA which is itself 73 % owned by Marc de Lacharriere. S&P is part of the McGraw Hill group of companies. Until 2000 Moody's was part of the Dun and Bradstreet group. The evidence of the FT investigation suggests that after 2000, Moody's historic professionalism may have compromised by stock market imperatives. The EESC asks Member State competent authorities, as part of their organisational supervision, to watch closely the linkage between the rating business and the expectations of shareholders. Particular attention should be paid to the structure of executive reward packages.

4.8. Operationally, the prohibitions detailed in paragraph 3.11 above are central to controlling and avoiding the most important element in the conflicts of interest which have been detected. A CRA may no longer rate a deal on which it has advised.

4.9. The rules regarding employees are also designed to eliminate conflicts of interest. As is the case with external auditors, there are limits to the length of time that an analyst can be associated with any one client, although the four year limit might be relaxed to five. As is the also the case with auditors and all branches of the financial services industry, analysts may not have an interest in the stocks and shares of a client. The EESC is pleased that these prudential rules will now be respected by CRAs.

4.10. The EESC is very supportive of the provisions of Article 7. It will address the very evident abuses found by the SEC investigation. The publication of methodologies will make it evident if ratings have been arrived at by short cuts or by-passes. In addition the CRA is now bound to check its information sources and ensure that they are good enough to permit a rating to be established. Equally as important, the rules relative to changing methodologies and assumptions, had they been in force, could have highlighted the rating errors years earlier than 2007. The EESC proposes that compliance with Article 7 should be closely monitored and, if necessary, its provisions could be strengthened.

4.11. Article 8 closes the loop by requiring disclosure of the way in which the CRA has applied to each deal the rules detailed in Article 7. The EESC is particularly pleased that the EU will go further than the USA in respect of structured products, requiring that, in one way or another, the potentially toxic features of these products be highlighted.

4.12. Objections to a separate series of symbols focus on the likelihood that after the massive downgrades which have taken place, bonds carrying this distinct notation could be regarded as lower grade investments. In the view of the EESC, that would be no bad thing until the rating of such bonds is re-established.

4.13. The COREPER work has highlighted the fact that the proposed regulation does not deal specifically with ratings developed in third countries. The EESC supports the COREPER proposal that such ratings may be used for regulatory purposes in the EU when they are endorsed by a CRA already registered in the EU on condition that:

- the two agencies involved form part of the same group
- the non-EU agency abides by obligations similar to EU regulations
- there is an objective reason for the third country rating issuance
- there is established co-operation between the relevant competent authorities

4.14. The various disclosures for both regulatory purposes and to inform the market seem fine, with perhaps two caveats.

— Default rates are important because they provide a measure of the quality or otherwise of the rating activity of each CRA. In the USA the requirements are specific: that CRAs publish performance statistics for one, three and ten years in each rating category so that it will be evident how well

their ratings had predicted defaults. The EESC would like the provision in the EU regulation to be quite specific on this point.

— There is also a requirement that clients representing more than 5 % of turnover be identified. This limit may be too low. The EESC asks that it should be further considered by the CESR.

Brussels, 13 May 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 Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Action Plan for the implementation of the EU Animal Health Strategy'

COM(2008) 545 final

(Additional opinion)

(2009/C 277/26)

Rapporteur: **Mr NIELSEN**

On 24 February 2009, the European Economic and Social Committee decided, under Rule 29A of the implementing provisions of the Rules of Procedure, to draw up an additional opinion on the

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Action Plan for the Implementation of the EU Animal Health Strategy.

(COM(2008) 545 final).

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 17 April 2009. The rapporteur was Mr NIELSEN.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May), the European Economic and Social Committee adopted the following opinion by 189 votes to 2 with 11 abstentions.

1. Conclusion

1.1. The EESC supports the Commission's proposals on the implementation of the EU Animal Health Strategy, and is pleased that the Commission has broadly taken on board the EESC's comments made at the time the suggested new strategy was put forward. The EESC reiterates its call for the EU to step up its efforts to prevent, supervise and control serious, contagious livestock diseases, a large number of which continue to present a global risk. The EESC therefore continues to hope that the EU's future rules will have a far-reaching knock-on effect on the rest of the world. The Commission should also help foster a clear understanding of new EU legislation in the relevant non-EU countries, and use expertise and resources in the Member States to solve crises. At the same time, efforts should be stepped up vis-à-vis developing countries, and top priority should be given to putting indicators in place as these are of fundamental importance. It is also important to preserve the veterinary fund and harmonise Member States' co-financing in order to avoid distortions of competition.

2. Background

2.1. In 2007, the EESC expressed support for the Commission's proposal for a new Animal Health Strategy for the

2007-2013 period⁽¹⁾. The present action plan gives practical expression to the strategy and provides a timetable for the 31 detailed initiatives⁽²⁾ to be implemented by 2013 in the four areas of activity (prioritisation, legislative framework, prevention and research). The most important features are a new EU animal health law, and revised responsibility- and cost-sharing arrangements. Other features include the EU's long-term desire to become a member of the World Organisation for Animal Health (OIE), measures against health-related barriers to exports, the categorisation and prioritisation of risks resulting from animal diseases and of chemical risks, guidelines on biosecurity among livestock and at borders, the development of electronic information systems, the reinforcement of the EU antigen and vaccine banks, the development of new medicines and vaccines, and the monitoring of zoonotic micro-organisms' resistance to antibiotics. The overriding goal is to simplify and improve existing and new legislation, and to provide more effective rules. The Commission thus wants to systemically assess the individual proposals and consider possible alternatives in order to achieve better and simpler legislation.

(1) 2007 Communication from the Commission: *A new Animal Health Strategy for the European Union (2007-2013) where 'Prevention is better than cure'*, and the EESC's opinion of 16 January 2008, OJ C 151, 17.6.2008.

(2) Commission Communication (2008) 545 contains 21 initiatives. However, the Commission's internal planning is based on 31 initiatives. See http://ec.europa.eu/food/animal/diseases/strategy/pillars/action_en.htm.

3. General comments

3.1. The action plan is relevant and well thought-through, and the EESC welcomes the large degree of openness and willingness to cooperate that has marked the process so far, including the attention the Commission has paid to the EESC's comments. Progress now needs to be made in outlining and prioritising the areas to be covered by the action plan. This should be based on a comparison of the risks that diseases pose for human health, the suffering they cause in animals, and the economic impact on producers and businesses.

3.2. As the EESC has already stated, it is crucial for EU credibility that its institutions and Member States meet the deadlines they themselves have set for the submission, adoption and implementation of the specific provisions. Unfortunately, this is currently more the exception than the rule. It is therefore important that the Commission set realistic deadlines for the submission of its proposals and reports, and that it actually meet those deadlines in practice.

3.3. With regard to the deadlines for individual measures, it should also be made clear that the 'indicative timeline' for legislative initiatives and the 'date for completion' refer to the submission of proposals and not the final decision, which will require a time consuming decision-making process. The statement that the specific actions on animal welfare set out in the 2006 action plan⁽³⁾, are now an integral part of the Animal Health Strategy is particularly unclear, as the timeframe for many of these measures was already exceeded shortly after the action plan was submitted.

3.4. It is essential to make sure that the individual measures lead to a higher level of protection and are made more effective. Account must thereby be taken of the proportionality principle and moves to provide a better and simpler regulatory framework. It is also important that the follow-up to the animal health strategy is carried out in open cooperation with the Member States and stakeholders, amongst other things by means of a communication plan and the Animal Health Advisory Committee.

4. Specific comments

4.1. The EESC supports the overall goal of creating a regulatory framework that sets out the common principles and requirements for animal health and indicates any interfaces with, existing legislation on animal welfare, food safety, public health, and agricultural policy. The planned moves to simplify and improve legislation will also help to render this policy area more coherent and open. However, this also requires a cross-cutting approach and that due account be taken of the requirements of food safety,

animal health and disease prevention. It is important to make the most of synergies in these areas, and animal welfare should, wherever appropriate, be drawn further into the mainstream of animal health policy than has been the case up to now.

4.2. The proposed categorisation of animal diseases and the definition of the term 'an acceptable risk level' present major challenges for cooperation. Basically, any categorisation should have a scientific base, i.e. diseases should be categorised in line with epidemiological factors and scope for monitoring. At the same time, the economic and commercial impact of diseases must also be brought into the equation.

4.3. According to the action plan, initiatives and resources will 'be focused on diseases with high public relevance'. This statement, of course refers to diseases which are a threat to human health. However, the term 'public relevance' and the associated costs should also cover diseases that have serious economic consequences for the sector and thus also for Member States' economies.

4.4. When simplifying or revising existing legislation, it is also vital to seek greater convergence between the EU's rules and the OIE's recommendations. It is essential to avoid inappropriate restrictions on competition between Member States and vis-à-vis non-EU countries. When drawing up new veterinary or animal welfare legislation, the EU must therefore work to ensure that its rules are readily understandable for non-EU countries and are harmonised as far as possible.

4.5. The effective and responsible cost-sharing model sought by the Commission should continue to be based on joint funding from the EU and Member States, but should also take into account the responsibility of the sector itself and the current costs of disease prevention and cure. The EU's contribution to funding via the veterinary fund therefore should be retained, but Member States' share of co-funding should be harmonised to avoid distortions in competition resulting from a differences in the share of public and private funding. Direct and indirect costs should both be reimbursable to ensure, under all circumstances, that the incentive to report outbreaks of serious, contagious diseases is maintained in the future Animal Health Strategy. It will also be necessary, as highlighted by the Commission, to carry out an in-depth analysis of existing possibilities before proposals for a harmonised cost-sharing model of cost allocation are put forward.

4.6. The feed sector is of major importance to animal health since the handling of feed is crucial to disease prevention. The EESC, however, regrets that no detailed explanation has been provided of the reasons for the proposal to introduce financial guarantees in the feed sector. It appears that the conclusions in the report on financial guarantees in the feed sector have not been taken into consideration⁽⁴⁾.

⁽³⁾ COM(2006) 13 - Community Action Plan on the Protection and Welfare of Animals, and the EESC opinion of 26 October 2006, OJ C 324, 30.12.2006.

⁽⁴⁾ Appendix to COM(2007) 469 regarding financial guarantees in the feed sector and description of the existing arrangements.

4.7. As the EESC has previously noted, in the interests of public acceptance, among other things, vaccination should be used in connection with combating disease outbreaks if it can advantageously replace or supplement the culling of healthy animals. However, as the Commission also points out, vaccination should be carried out in the light of the concrete situation and be based on recognised principles and factors, such as the accessibility and effectiveness of the vaccine, valid tests, international guidelines and possible trade barriers, cost-effectiveness and the possible risks related to the use of vaccines.

4.8. Further research and development is needed in this area. The Commission also needs to make the EU's vaccination policy more readily understandable outside the EU's borders to reduce the number of doubtful cases that arise during export.

4.9. Finding solutions to acute crises has hitherto largely been the responsibility of individual Member States and the relevant third countries, and it is vital that, in future too, problems continue to be resolved jointly by the partners involved. The current division of responsibilities has worked well. For this reason, the individual right to negotiate should be maintained, provided that the Commission is kept informed.

4.10. On most farms today, a range of measures are in place, involving a combination of specific action, routine practice and general common sense. Considerable legal uncertainty would be created if these voluntary preventive measures, which are usually carried out on the producers' initiative or as a result of advice provided by agricultural associations, had to be performed as part of moves to establish a cost-sharing model.

4.11. Even though it may at first seem appropriate to assess whether livestock producers in each case have done enough to prevent the introduction and spread of a contagious disease, using such an assessment as the basis for a decision on financial compensation does raise problems. The lack of information on the

impact of such preventive action on the different types of livestock makes it very difficult at present to apply such rules in practice. Further research and development is thus needed to examine the available options – and their applicability in practice.

4.12. The basic rules on biosecurity need to be set out in legislation, which can later be supplemented with more specific rules in the form of guidelines for different types of livestock or forms of production (for example, hobby farmers). Moreover, there is a need for the ongoing provision of information within the ambit of cooperation between authorities and agricultural associations.

4.13. Research, development and the provision of advice are crucial to achieving the strategy's goal. Most research is only of value once it is actually used in production, advice and monitoring. Transfer of knowledge is therefore an important area of action. The Strategic Research Agenda thus fails to focus enough on prevention based on initiatives that do not involve veterinary medicine. Livestock associations should therefore be more fully involved in efforts to find solutions than is the Commission's apparent intention.

4.14. In a large number of Member States, there is a growing risk that standards will be set at the lowest common denominator. Individual Member States that wish to press ahead should be given the possibility to do so, provided this does not harm the Community's interests. This would allow experience to be gained, which could be put to use at a later stage in other Member States. For example, the Commission is not planning to submit a proposal on the electronic identification of cattle as a replacement for ear tags until 2011. This will be followed by a time-consuming decision-making process. Given the clear advantages of electronic identification in terms of a reduced workload on farms, improved registration of treated livestock, thus also securing more effective analysis, and greater product safety, scope should be provided for speedier introduction.

Brussels, 13 May 2009.

The President
of the European Economic and Social Committee
Mario SEPI

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