

# Official Journal of the European Union

C 18



English edition

## Information and Notices

Volume 54

19 January 2011

Notice No	Contents	Page
I	<i>Resolutions, recommendations and opinions</i>	
	OPINIONS	
	<b>European Economic and Social Committee</b>	
	<b>462nd plenary session held on 28 and 29 April 2010</b>	
2011/C 18/01	Opinion of the European Economic and Social Committee on 'Strengthening the European agri-food model' (exploratory opinion) .....	1
2011/C 18/02	Opinion of the European Economic and Social Committee on 'The Community agricultural model: production quality and communication with consumers as factors of competitiveness' (exploratory opinion) .....	5
2011/C 18/03	Opinion of the European Economic and Social Committee on 'The role of civil society in EU-Montenegro relations' .....	11
2011/C 18/04	Opinion of the European Economic and Social Committee on 'Education for inclusion: a tool for fighting poverty and social exclusion' (exploratory opinion) .....	18
2011/C 18/05	Opinion of the European Economic and Social Committee on 'Accessing consumer and household credit: abusive practices' (own-initiative opinion) .....	24
2011/C 18/06	Opinion of the European Economic and Social Committee on the 'European Foundation Statute' (own-initiative opinion) .....	30

EN

Price:  
EUR 7

(Continued overleaf)

<u>Notice No</u>	Contents (continued)	Page
2011/C 18/07	Opinion of the European Economic and Social Committee on ‘The European shipbuilding industry dealing with the current crisis’ .....	35
2011/C 18/08	Opinion of the European Economic and Social Committee on ‘New trends in self-employed work: the specific case of economically dependent self-employed work’ (own-initiative opinion) .....	44

### III *Preparatory acts*

#### **European Economic and Social Committee**

##### **462nd plenary session held on 28 and 29 April 2010**

2011/C 18/09	Opinion of the European Economic and Social Committee on the ‘Green Paper — Reform of the common fisheries policy’ COM(2009) 163 <i>final</i> .....	53
2011/C 18/10	Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament and the Council — Building a sustainable future for aquaculture — A new impetus for the Strategy for the Sustainable Development of European Aquaculture’ COM(2009) 162 <i>final</i> .....	59
2011/C 18/11	Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the Council and the European Parliament — Beyond GDP — Measuring progress in a changing world’ COM(2009) 433 <i>final</i> .....	64
2011/C 18/12	Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament and to the Council — Partnership between the European Union and Africa — Connecting Africa and Europe: working towards strengthening transport cooperation’ COM(2009) 301 <i>final</i> .....	69
2011/C 18/13	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 — Solidarity in health: reducing health inequalities in the EU’ COM(2009) 567 <i>final</i> .....	74
2011/C 18/14	Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted’ COM(2009) 551 <i>final</i> /2 — 2009/0164 (COD) .....	80
2011/C 18/15	Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection’ COM(2009) 554 <i>final</i> — 2009/0165 (COD) ....	85



## I

*(Resolutions, recommendations and opinions)*

## OPINIONS

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

462ND PLENARY SESSION HELD ON 28 AND 29 APRIL 2010

**Opinion of the European Economic and Social Committee on 'Strengthening the European agri-food model' (exploratory opinion)**

(2011/C 18/01)

Rapporteur: **Mr ESPUNY MOYANO**Co-rapporteur: **Mr TRÍAS PINTO**

On 23 July 2009, the Spanish 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

*Strengthening the European agri-food model.*

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 25 March 2010.

At its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 124 votes to one, with three abstentions.

**1. The Community agri-food model today**

1.1 The Common Agricultural Policy (CAP) is not only the first common policy in the true sense of the term, culminating with the recent extension of powers brought in by the Lisbon Treaty, but also a real agri-food model. As a result, it should be a major strategic interest for Europe and have an active influence in the international arena.

1.2 Whilst maintaining its objectives since the outset and across successive Treaty reforms, the CAP has nonetheless adapted over nearly five decades to the new requirements that have emerged: reform of instruments and management systems, budgets, calls from the public, and the opening of the market to non-EU countries. Today's agricultural model is sustainable and based, increasingly, on a combination of economic, environmental and social considerations.

1.3 Throughout this process, the European agri-food model has been moving steadily towards its key goals of guaranteeing the population a supply of safe, healthy food, building a globally unparalleled economic food system and fostering varied, high-quality production that is appreciated by consumers.

**2. Positives and negatives**

2.1 While the overall assessment remains positive, certain improvements and upgrades to the model should nonetheless be considered, including:

— the need for common instruments that can respond to the price fluctuations that may reoccur in the years to come, avoiding episodes such as those during 2007 and 2008;

- improving specific agri-food schemes – designations of origin, protected geographical indications, guaranteed traditional specialities – in order to simplify and streamline their conditions, increase their technical requirements and strengthen the model, while ensuring they are more fairly protected within external markets;
- securing a policy to effectively promote Community agricultural products, bringing added European value to the wealth and variety of our products and, above all, successfully promoting European principles whilst ensuring the commercial development of products;
- furthering a strategic vision of the agri-food chain – production, processing and trade – whilst boosting the system's transparency and setting up measures to prevent abuses of dominant positions or unfair practices that affect the way it operates;
- improving information to consumers through a common labelling model, and setting up a system to harness the potential of new information technologies so that consumer choices are as informed as possible.

### 3. Facing the immediate challenges

3.1 The EU is entering a new phase, with renewed institutions and a new Treaty. A series of new challenges and major changes must be tackled if the EU is to confirm its role as leader and, above all, find a way out of the current economic and financial crisis.

3.2 In this context, the Community agri-food system has its own requirements which must be taken into account in the discussions currently underway with a view to establishing a new CAP as from 2013. A number of these requirements are set out herein, and have also been expressly mentioned in other EESC opinions <sup>(1)</sup>.

3.3 In this opinion, the EESC wishes to establish a more detailed position on the sustainability of the Community agri-food model and to highlight its importance. As the only model that can be valid in the long term, it is important to ensure that it is applied uniformly throughout the Community market and to prevent it from being adopted only by European operators, for there is clear evidence that it is the only model likely to endure.

### 4. Towards a safe, balanced, fair model

4.1 The European agri-food model falls within a framework of sustainability, taking into account its economic, environmental and social aspects.

4.2 In recent years, particularly with the last reform of the CAP, far-reaching legislative provisions have been included in key areas such as:

- increased food safety and traceability;
- organisation of organic production, integrated production, more environmentally-friendly practices and the protection of the environment in general;
- application of various provisions relating to animal welfare, for all products;
- stepping up of social and worker protection measures.

4.3 The EESC believes this model to be essential in order for the CAP to persist, and for the EU to remain a competitor in an increasingly globalised world. These values, reflected in legislation, combined with efforts to boost research and agricultural production, are what will enable the EU to face the challenge in a world where, according to the FAO, global food production needs will have doubled by 2020.

4.4 However, to achieve this model, major efforts have been – and will continue to be – required from Community operators in terms of both agricultural production and processing. It does not seem logical, therefore, that its implementation should bring to light various shortcomings that could undermine its very existence.

4.5 The first of these shortcomings relates to food safety and the compliance of imports (foodstuffs, feed, animals and plants) with Community regulations. In Europe, experience has shown that it is necessary to maintain high levels of health protection both for consumers and for animals and plants, and this has resulted in new standards being established, with the entry into force of Regulation (EC) 178/2002 which lays down the principles of Community food law. However, the legislator focussed on setting down the obligations for Community operators, while obligations for imported products were left to one side.

4.5.1 Today, according to data from the European Food Safety Authority, over one third of food warnings registered in the internal market originate outside the EU. The EESC is keen to stress that the EU is obliged to guarantee the health and safety of its consumers and to ensure that all products – including imports – placed on the market comply with legislation.

4.6 The second problem facing EU producers and industry players is that this lack of balance in the Community market is undermining their ability to compete with imported products.

<sup>(1)</sup> OJ C 77, 31.3.2009, p. 81.

4.6.1 The requirements imposed by the EU model significantly increase production costs, some of which are not faced by imported products, which may also enjoy reduced tariffs <sup>(2)</sup>.

4.6.2 Therefore, according to LEI report 2008-071 by Wageningen University, the application of the new animal welfare requirements for laying hens established by Directive 99/74/EC will mean an 8-10 % increase in costs for the average EU producer, who must compete with products imported from Brazil and the USA. Not only do these imports not comply with such animal welfare requirements, but the production systems used entail much lower standards than those laid down in EU legislation (intensive production, fewer restrictions on the use of medicines, no restrictions on the use of GMOs in animal feed, etc.).

4.6.3 Regulatory costs produce a similar effect. The European animal feed industry needs to import certain raw materials as European production is insufficient, but the strict limits imposed by Community legislation on GMOs make it difficult to import products essential for animal feed such as cereals, soya or protein seeds from countries like Brazil or Argentina. These restrictions directly affect the European meat industry which must cover cost increases that affect its competitiveness in the European market and in its exports to non-EU countries. The EESC is neutral regarding the need for GMO use.

4.6.4 Indeed, the European Commission recognises this in the report by DG AGRI on the implementation of GMO legislation, pointing out that the 'zero tolerance' policy could lead to losses of up to EUR 200 bn for the European agri-food sector. Moreover, in reality, European consumers are not receiving the high level of protection they are entitled to because Europe continues to import meat, milk and other products derived from animals raised on feed containing GMOs. Therefore, the right conditions need to be created for a production chain to develop which is more attentive to consumers' expectations.

4.6.5 Similar problems to those mentioned above also occur in other areas where regulatory costs are just as high, such as pesticides (maximum residue limits and other environmental restrictions), plant health and animal identification.

4.7 Lastly, there are political considerations which mean that the current situation cannot be sustained in the long term. It does not seem reasonable that European operators should be discriminated against within their own market, in relation to non-EU countries.

## 5. The necessary search for solutions

5.1 The EESC believes that the EU should find solutions in order to improve the application of the Community model in

the internal market whilst allowing for free competition and complying with international legislation.

5.2 The solution would involve various areas, and in some cases might need to be implemented gradually. Among the measures possible, the EESC would like to highlight the following:

- *Improving access conditions*: import control must be able to ensure that animals and plants – especially those to be used in foods – entering the EU do so safely and in compliance with European legislation. It is also important that this control be based on harmonised procedures so that all products, regardless of their point of entry, offer the same safety guarantees. It is an issue of reciprocity among European operators.
- *Improving international approval of the European model*: the EU must explain and advocate the international acceptance of its model, based on values of sustainability promoted globally by the UN system. Bodies such as the WTO, FAO, Codex Alimentarius Mundi, IOE, ILO, UNCTAD, etc. should be involved in these efforts. Likewise, efforts should be made to harmonise legislation at international level, as far as possible, so as to prevent unequal treatment.
- *Furthering the system for mutual recognition of systems for protecting consumer health and animals with non-EU countries*: in its trade agreements, the EU should include specific chapters for mutual recognition of health, plant health and food systems, in order to ensure consensus on the appropriate levels of health protection, within the framework established by the WTO.
- *Improving international technical support*, by boosting initiatives such as 'Better Training for Safer Food', which supports technical cooperation with developing countries which export or wish to export to Europe, via technical training, the creation of rules and standards, exchange of staff, etc.
- *Trade incentives*: The EU could also look into the possibility of improving treatment in terms of trade, financial aspects or development cooperation for developing countries that harmonise their systems with the Community model.
- *Better lawmaking*: The EU should not resort to protectionist measures to restrict access to its markets; so, by the same token, it should not agree to its model being applied at the expense of its own operators. Legislative simplification could also be a very useful way to cut red tape.

<sup>(2)</sup> The EESC highlights that the EU is the world's biggest importer of agricultural produce – a position which has been gained on the basis of preferential tariff schemes (GSP, GSP+, Everything but Arms) for products from less advanced and developing countries.

5.2.1 Part of the European model is based on those 'public assets' that citizens and consumers value as necessary – most importantly, quality based on the origin and protection of animals, animal welfare, the precautionary principle and environmental protection.

5.2.2 European policy should include instruments that prevent work from being relocated to other areas, so that it is possible to compete under equal conditions, encouraging the application of the socio-occupational legislation<sup>(3)</sup> on decent work that is advocated in the internal market. The EU should also urge the relevant international bodies (especially the WTO) to include the basic socio-occupational standards among their

non-trade considerations, as trade can only be truly free if it is also fair.

5.2.3 The legislator must therefore prioritise the need to rebalance the current situation by adopting appropriate legal measures.

5.3 The EESC calls on the European Parliament, the Council and the Commission to take this opinion into account, and urges the Spanish presidency to propose measures in this connection.

Brussels, 28 April 2010.

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

---

<sup>(3)</sup> ILO Conventions 87, 98, 105, 111, 135, 182; ILO Declaration of Fundamental Principles and Rights at Work; ILO Tripartite Declaration Concerning Multinationals & Social Policy; ILO Declaration on Forced Labour; ILO Declaration on Discrimination; ILO Decent Work Agenda; ILO Declaration on Child Labour; OECD Principles of Corporate Governance; OECD Guidelines for Multinational Enterprises; UN Millennium Declaration.

**Opinion of the European Economic and Social Committee on 'The Community agricultural model: production quality and communication with consumers as factors of competitiveness' (exploratory opinion)**

(2011/C 18/02)

Rapporteur: **Carlos TRÍAS PINTO**

On 20 January 2010, the Spanish EU Presidency decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on

*The Community agricultural model: production quality and communication with consumers as factors of competitiveness (exploratory opinion).*

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 25 March 2010.

At its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 116 votes to one, with five abstentions.

## 1. Conclusions and recommendations

1.1 The EESC recommends strengthening quality policy and communication to consumers as key factors in boosting the competitiveness of the European agrifood industry and improving the brand image of agriculture. To this end, it is essential to:

- encourage the espousal of the social, environmental, health and animal welfare aspects relating to agricultural production, harnessing new tools based on information and communication technologies (ICTs);
- improve the consistency and coherence of existing accreditation instruments by means of guidelines for clarification, harmonisation and simplification;
- strengthen channels for dialogue between producers, industry players, distributors and consumers, and develop effective strategies for communicating with the public.

1.2 More specifically, the EESC proposes implementing various measures:

### 1.2.1 Tools

- **Harnessing ICTs as a communication tool.** ICTs are present in our daily lives, but are not yet used in the purchasing process. By incorporating them into the supermarket shelves as an information tool, it would be possible

to regularly update information (agricultural products are subject to high rotation) and for it to be selected by consumers or obtained from anywhere.

- **Traceability as a tool to ensure that claims are reliable.** The production chain involves a variety of players who are responsible for the different social and environmental aspects comprised by integral quality. Traceability would not only indicate which players are involved but also how they have handled the product, together with any related indicators.

### 1.2.2 Instruments

- **Incorporate integral quality criteria into existing voluntary schemes** such as the EU ecolabel in order to extend its scope to agricultural products, or into existing quality standards such as the Protected Designations of Origin or Protected Geographical Indications.
- **Create a new voluntary certification scheme for socio-environmental factors**, so that consumers can assess the integral quality of products quickly, simply and reliably.

### 1.2.3 Strategies

- **Promotion of European quality.** The EESC proposes promoting communication campaigns for European agricultural products, emphasising the high standards of quality and diversity that they meet.



— **Promotion and adoption of measures.** The **Administration** has the opportunity to make use of the tools available to it to promote socially and environmentally responsible agricultural products: public procurement, differentiated taxation, information campaigns and production incentives.

## 2. Introduction

2.1 Day by day, our society becomes more sensitive to the major social and environmental challenges, stemming from the perception of the effects of climate change, the gradual depletion of natural resources and the increasingly unbalanced distribution of wealth.

2.2 Paradoxically, this gradual awareness is rarely backed by consumer decisions (so-called conscious, responsible consumption), which unfortunately highlights the growing gap between consumers' theoretical position <sup>(1)</sup> and their daily practices.

2.3 However, we cannot lose sight of the fact that, in times of major economic uncertainty, it is very complex to constantly introduce variables such as social and environmental impact into the traditional price-product equation <sup>(2)</sup>, particularly when this influences the amount paid by the consumer. And yet we cannot conceal the fact that the socio-economic crisis has coincided with the environmental crisis, and that we cannot consider one without the other. In other words, as Jacques Delors said, the crisis of values is that we live in a world in which anything can be bought. Therefore, our values will have to be re-evaluated.

2.4 Fortunately, within the EU we have an agricultural production system based on strict health, environmental, social and animal welfare standards which could be defined as an integral quality system and which undeniably bring us added value with regard to the rest of the world – but also bring competitive risks.

2.5 Many of the aspects that comprise integral quality are included in legislation or form part of the practices of the European agrifood industry and are therefore already being met by products and producers. Unfortunately, this is not the case for many products imported from outside the EU. This difference means that there is an increasing gap between the prices of agricultural produce from the EU and that from non-EU countries, thus eroding the competitiveness of the European products.

<sup>(1)</sup> The Eurobarometer survey published in July 2009 highlights that four out of five Europeans say they take into account the environmental impact of the products they buy, and for the most part are in favour of implementing measures to improve the environmental behaviour of products.

<sup>(2)</sup> The purchasing decision is also conditioned by aspects inherent to the product, such as its appearance, prestige, nutritional qualities, etc., and by consumers themselves (time available, proximity, etc.).

2.6 This focus on quality – the product of deep-rooted tradition and significant efforts to achieve excellence – must, as is occurring today, move from being a competitive risk to a greater development opportunity. To achieve this, new strategies must be considered that will enhance the key attributes of our production model and guide consumers towards prioritising European products, placing specific emphasis on consumer communication policies by employing a wide variety of means and, in particular, by harnessing information and communication technologies (ICT) to implement powerful consumer information and education tools <sup>(3)</sup>.

2.7 In parallel, consideration must be given to the necessary technical and economic support in order to maintain the progress of the multifunctional agricultural paradigm, ensuring that European farms remain viable, producers receive fair prices and stable, high-quality jobs are maintained – a key issue for the endurance of the model.

2.8 The EESC therefore emphasises that to improve competitiveness through agricultural quality and consumer communication policies, there must also be measures to rebalance the agrifood value chain, which is currently subject to much price distortion owing to the abuse of dominant positions by certain operators <sup>(4)</sup>.

## 3. Consumers, quality and socio-environmental factors

3.1 The EESC has on a number of previous occasions affirmed its commitment to sustainable development as a means of achieving environmental, economic and social development in the European Union. This commitment could strengthen the existing European agricultural model, revising the current concept of quality, which focuses on traditional qualitative aspects inherent in the product (flavour, appearance, size, etc.), to include other criteria relating to the production context, such as social, environmental, health, safety and animal welfare aspects. It will be called 'integral quality', based on the new indicators of excellence.

3.1.1 For example, various criteria or indicators could be considered, among others <sup>(5)</sup>:

Environmental impact:

— Type of irrigation

— Energy consumption relating to the product

<sup>(3)</sup> In the broad sense, i.e. including potential consumers: it should also reach schoolchildren, extending the scope of consumer education tools to include them.

<sup>(4)</sup> Communication COM(2009) 591 – *A better functioning food supply chain in Europe*.

<sup>(5)</sup> Given as examples only, in order to illustrate the different types of indicators for the various aspects of integral quality. Specific indicators would need to be drawn up to suit the product and its degree of processing.



— Distance from point of production

— Type of waste

— Waste management

Social factors:

— Compliance with legislation in country of origin

— Relation between retail price and price paid to producer

— Type of employment contract (fixed/open term)

— Hiring of disabled people

— Gender equality

Animal welfare:

— Type of breeding and lairaging

— Type of feed

— Transport system

— Slaughtering method

3.2 This new integral quality framework is what will enable European products to stand out from those from other countries, as they already comply with many of the aspects mentioned due to the regulations imposed by the EU and the Member States, which are much stricter than in other producer countries. The problem lies in the fact that consumers are unaware of most of the aspects that are regulated, which means they do not take them into account when purchasing products, particularly if the consumer has doubts as to the truthfulness of the claims made. Therefore, it will be necessary to educate and inform consumers in order to drive demand for products that involve better practices.

3.3 Food safety has not been mentioned as it is not considered merely a criterion of excellence but, rather, an essential factor in European citizens' right to health. The EESC reiterates its concern about the lax attitude that continues to authorise foods to be imported without full traceability (owing to the Commission and Member States' dubious interpretation of food legislation) or to be treated with synthetic products banned in the EU. Their marketing means that consumers are

being deceived and unfair practices are being allowed at the expense of European producers.

#### 4. Traceability as a tool for information

4.1 In the agrifood sector, various initiatives <sup>(6)</sup> are emerging in order to trace the movements of a product throughout its life-cycle: Some are mandatory (such as for beef in the EU) while others are voluntary (different distribution chains or carbon footprint type initiatives).

4.2 The EESC points out that this tool could have a new (initially voluntary) application in the field of quality, through the inclusion of various product-related socio-environmental indicators or aspects, in order to make it easier for consumers to read product information. The EESC therefore proposes that this powerful, reliable tool, along with the ensuing certifications or checks, be harnessed so that consumers can make purchasing choices in a conscious fashion, backed by accurate, real data.

4.3 It will be necessary to set up systems to publicise the relevant indicators, ranging from traditional information on labels – whether this takes the form of an evaluative scale (such as the energy efficiency label), a logo (ecolabel, designation of origin) or a claim (recyclable product) – to the use of ICT.

#### 5. Potential of Information and Communication Technologies to inform consumers of agricultural product quality

5.1 To date, the main source of product information for consumers has been the label. Although labelling plays a key role in ensuring that information is transparent, there is an increasing number of voluntary or mandatory references that appear in this limited space, that could make the messages difficult to discern and understand – not only because of the accumulation of messages, but also because of their complexity (such as the codes used on eggs, on which the farming method, country of origin and producer's identification number are printed).

5.2 Moreover, agricultural products have one important specific feature: their high rotation on shelves, due to the seasonality of products and the variability of the provider throughout the year or even the season.

5.3 Moreover, many citizens are already familiar with information and communication technology (ICT), which has significantly evolved when it comes to representing and storing information (e.g. QR codes <sup>(7)</sup>) and affordability. As regards consumer information, consideration should be given to the use of existing personal devices (e.g. mobile phones) or fixed devices (touch screens, LCD screens), as well as the Internet at the pre- and post-sales stage.

<sup>(6)</sup> [www.tracefood.org](http://www.tracefood.org) or [www.foodtraceability.eu](http://www.foodtraceability.eu).

<sup>(7)</sup> The QR (Quick Reference) code is a matrix or bar code that stores data and can be read using a portable camera device or webcam.

5.4 Countries such as Italy are already using this technology to improve consumer information and product quality accreditation systems:

- The ‘Campagna amica’ farmers’ markets show that the price spread between production and consumption allows for broad margins that can ensure affordable purchases for families while sustaining farmers’ revenues.
- ‘Tac salva mozzarella’ is the first analysis system that shows whether a mozzarella has really been made with fresh milk or with older, frozen or refrigerated curds. New technology is a concrete tool that defends farmers and consumers from food counterfeiting.

5.5 On the basis of these factors, the EESC proposes conducting a study on the potential benefits of ICT to improve consumer information, particularly those benefits which could be useful during purchases, as it is usually on the shop floor that the consumer makes the decision to buy.

## 6. Labelling and the new indicators of excellence

### 6.1 Broadening the scope of the EU ecolabel (European flower) to food products

6.1.1 The European label is a distinctive stamp of environmental quality. The starting point for establishing the environmental quality criteria to be met by goods or services with the EU ecolabel is the lifecycle analysis, in order to ensure that the product meets certain environmental requirements throughout its useful life.

6.1.2 Once the study planned by the Commission<sup>(8)</sup> has been carried out (by 31 December 2011) the EESC will state its opinion on the subject, with two key conditions to be taken into account:

- the inclusion of a new mark in the already dense labelling on food products;
- possible conceptual confusion with the organic product label (Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products).

6.1.3 Positive aspects to be considered include the fact that consumers might be familiar with the symbol after seeing it on other products, and the existence of broader criteria than those used for organic production.

<sup>(8)</sup> As indicated in Article 6 of the draft proposal to revise the EU Ecolabel regulation (European Parliament legislative resolution of 2 April 2009 on the proposal for a regulation of the European Parliament and of the Council on a Community Ecolabel scheme (COM(2008)401 – C6-0279/2008 – 2008/0152(COD))).

6.1.4 The EESC proposes that, in the context of the study to be carried out, the Commission analyses the possibility of including, for food products, socio-economic criteria (such as animal welfare, equal opportunities, etc.) as a pilot test for the entire scheme, without overstepping the framework set by Regulation (EC) No 1980/2000 regulating ecolabelling.

### 6.2 Inclusion of environmental and social criteria in the different quality standards in existence

6.2.1 It is well-known, as the EESC has pointed out on a number of occasions, that there are many quality schemes for agricultural products in the EU, and many private certifications and labels, whose objectives include:

- guaranteeing the safety and quality of products for the end-consumer;
- adding greater value to products in order to increase the competitiveness of market operators (producers, processors and distributors).

6.2.2 Owing to the wide variety of references, both public and private, within the EU’s field of action, the abovementioned objectives lose much of their impact and may have the opposite effects to those intended, resulting in:

- consumer confusion due to unfamiliarity with the different schemes;
- lack of consumer trust in labels or certifications;
- creation of conflict between producers who follow certification/labelling systems and those who do not. There can even be conflicts between producers with different certification/labelling schemes;
- lack of protection for local certified products (at EU level) in comparison with non-EU countries.

6.2.3 In this context, it would be useful for the EU to promote actions to simplify and reduce the number of quality schemes for agricultural produce from the EU.

6.2.4 In the framework of this unification of schemes and/or criteria, the EESC proposes that the Commission promote the inclusion of environmental and social criteria as minimum requirements in the existing official certification schemes (or that it modify them): organic farming label, Protected Designation of Origin (PDO), Protected Geographical Indication (PGI), Traditional Speciality Guaranteed (TSG), etc.

6.2.5 It would also be necessary to incorporate those indicators of excellence in certain marketing standards, particularly those in which they are partially included (such as the possible optional reserved terms for 'upland' or 'low carbon-emission' products <sup>(9)</sup>).

6.2.6 With regard to private certifications, the EU should establish minimum requirements for all standards, including environmental and social indicators, and should promote the harmonisation and unification of the various types of certification: one example would be the COSMOS standard (<http://www.cosmos-standard.org>), which brings together different European certification bodies under a single reference for the certification of natural, organic cosmetics, based on simple prevention- and safety-based rules at all production levels, from raw material to end-product. This certification is set to come into use from April 2010.

### 6.3 *Creation of a new voluntary certification scheme for socio-environmental aspects*

6.3.1 The aim is to promote a new excellence certification scheme that takes social and environmental aspects into account, ensuring that the environmental impact of agricultural products is kept to a minimum throughout their lifecycle, while guaranteeing compliance with social requirements such as equality, fair pay or a balanced value chain.

6.3.2 This would involve including new information on the label so that products (and/or producers) with exemplary social or environmental standards will stand out from the rest. The establishment of such systems is currently being studied by various public and private-sector organisations.

6.3.3 The new scheme would have to comply with the requirements laid down in the ISO 1402X standards which call, *inter alia*, for accuracy, verifiability, relevance and truthfulness. While it is being set up, the guiding principles of the scheme will need to be considered, such as:

- whether it should be qualitative (logo or other evaluative system) or quantitative (list of indicators and values);
- whether it should be self-declared or subject to a certification process;
- whether the indicators are mandatory (YES/NO), points-based or combined;
- how to ensure that the system is transparent.

<sup>(9)</sup> Communication COM(2009) 234 on agricultural product quality policy.

## 7. **Promotion of European products (European quality)**

7.1 Although the Committee has already commented on the non-use of the EU requirements label (NAT 413 <sup>(10)</sup>), it is necessary to promote the quality values (extended to include environmental aspects) of European agricultural products in order to improve their position vis-à-vis third countries.

7.2 The EESC calls on the Commission to promote specific communication tools and instruments for the agrifood sector, stressing the quality standards of European products, based on consensus between stakeholders. In this connection, despite differences, there are in other sectors standards which help the consumer to identify quality products, such as the energy efficiency label (labelling and classification of products in accordance with the energy efficiency, which has brought about a clear move to more efficient products) or the mark (compliance with safety standards for the sale of the products in Europe, which obliges third country imports to comply with European standards).

7.3 It is also necessary to do more to promote information on quality (in most cases compliance with mandatory requirements) via information campaigns and slogans publicising the product's main quality characteristics. These campaigns could be general (e.g. organic produce campaign) or specific to a product or group of products.

## 8. **Integrated Product Policy**

8.1 The Green Paper of 7 February 2001 on Integrated Product Quality speaks of the adoption of measures to promote environmentally-friendly agricultural products using all the tools available to the administration, ranging from purchasing to information, as well as differentiated taxation. The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan deals with the same subject, but with particular emphasis on industrial products and virtually no reference to products of agricultural origin.

8.2 Other areas which should be developed include the potential of public procurement (currently the focus is exclusively on issues such as organic or integrated agriculture and animal welfare) and incentives for responsible production (with subsidies for socially and environmentally sound products), as well as consumer information. In this connection, it is very important to stress the need to include indicators of excellence as a benchmark for quality products. Currently many consumers still associate the concept of quality with well-known products or other intrinsic product characteristics. Some consumers also assume that an organic agricultural product is necessarily also excellent in social and environmental terms, which is not always necessarily the case.

<sup>(10)</sup> OJ C 218, 11.9.2009.

8.3 Only with the interaction of these factors, where supply and demand come together, will it be possible to break the dichotomy between ethical beliefs and actual behaviour, both for consumers and for producers and distributors.

8.4 Lastly, the EESC proposes that an impact assessment be carried out in order to find out the pros and cons that introducing the proposed measures would have for the Community agricultural model.

Brussels, 28 April 2010.

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

---

**Opinion of the European Economic and Social Committee on 'The role of civil society in EU-Montenegro relations'**

(2011/C 18/03)

Rapporteur: **Ms DRBALOVÁ**

In a letter dated 14 July 2009, Commissioner Margot Wallström and Commissioner Olli Rehn asked the European Economic and Social Committee to draw up an exploratory opinion on

*The role of civil society in EU-Montenegro relations.*

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 April 2010.

At its 462nd plenary session, held on 28 and 29 of April 2010 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 101 votes with six abstentions.

**1. Recommendations enhancing the validity of this opinion both for Montenegro and for the European Institutions:**

To the Montenegrin Parliament:

1.1 The procedure for appointing NGO representatives to the National Council for EU integration <sup>(1)</sup> should be defined by Parliamentary decree and based on clear criteria of the credibility and legitimacy of NGOs with a track record in EU affairs.

1.2 The Law on Volunteers which is still to be passed should incorporate NGO standpoints.

To the Montenegrin Government:

1.3 To intensify the fight against corruption in line with the recommendation made in the EC Progress Report. Corruption remains prevalent in many areas and continues to be a particularly serious problem.

1.4 The implementation of the adopted National strategy for cooperation between the Government of Montenegro and non-governmental organisations should be intensified. Clear mechanisms should be established in order to provide genuine NGO representation within diverse bodies as stipulated by the spirit of the existing regulation, and especially within the planned Council for cooperation with NGOs, where the NGO representatives should not be elected by the Government but only verified on the basis of eligibility criteria.

1.5 The existing Office for cooperation with NGOs has very limited human and technical resources to assist NGOs appropriately and to ensure the further development of NGOs in Montenegro. The plan to establish a Governmental Council for NGOs, with genuine NGO representatives, has to be a high priority.

1.6 Tax regulations should be clearly specified for NGOs and accompanying laws introduced where applicable. Also, NGOs should be more effectively included in public debates on draft laws in order to contribute to the process of aligning Montenegrin legislation with EU standards and best practices. The same applies to the updates to the National Plan for Integration and IPA programming.

1.7 The register of NGOs should be updated and made public on the website of the competent body to provide precise details of the number of NGOs, thus stopping the manipulation concerning this issue. All NGOs should publish their narrative and financial reports on a regular basis, in order to contribute to the overall process of transparency in society and to increase their own credibility. An appropriate legal basis needs to be adopted, i.e. legislation on business activities in farming, fishing and other self-employed professions, and the right to join a trade union needs to be extended to everyone, not just employees.

1.8 The draft Law on Trade Union representativeness that is still pending must create a legislative framework establishing transparent and non-discriminatory criteria for the representativeness of trade union organisations and enable a plurality of trade unions in the country. Detailed criteria for representativity of employers' associations should be also enshrined in the Law, as it is defined for trade unions.

<sup>(1)</sup> The National Council for EU integration is operating within the Parliament but in addition of the MPs it includes representatives of judiciary, NGOs, University of Montenegro, Montenegrin Academy of Science, Social Council and President's Office.



1.9 To realise the potential of the Social Council and use it as an effective tool for consulting and informing the Social Partners, in order to address all relevant economic and social concerns.

1.10 To open the governmental Commission for European Integration up to representatives of the social partners and involve them gradually in the process of integrating the country into the EU.

To the European Commission:

1.11 To apply new indicators in the monitoring process, – one for the development of civil society and the second one for social dialogue – in order to help ensure that civil society is better and more effectively involved in the pre-accession process.

1.12 To continue to support civil society partnerships and capacity development, and also to include civil society in IPA programming and to promote the establishment of an EU-Montenegro Joint Consultative Committee as soon as Montenegro has been granted the status of candidate country.

The EESC:

1.13 will continue in cooperation with Montenegrin organised civil society, to assist it in the pre-accession process and to make concrete steps towards establishing an EU-Montenegro Joint Consultative Committee.

## 2. Main facts and figures about Montenegro

2.1 The break-up of the Yugoslav Federation after 1989 left Montenegro in a precarious position. Between 1991 and 1992, Slovenia, Croatia, Bosnia and Herzegovina, and the former Yugoslav Republic of Macedonia all seceded from Yugoslavia. On April 27 1992, Serbia and Montenegro joined together to adopt the Constitution of the Federal Republic of Yugoslavia in Belgrade. Though Montenegro reaffirmed its political attachment to Serbia, a sense of a distinct Montenegrin identity continued to thrive. On February 4 2003, the Constitutional Charter of the State Union of Serbia and Montenegro was adopted.

2.2 The Republic of Montenegro held a successful referendum on independence on 21 May 2006, and declared independence on 3 June.

2.3 It is the smallest state in the Western Balkans, with a size of 13,812 sq km and population of 620 145, which also influences its position within the wider regional geo-strategic and political context.

2.4 The multiethnic composition of the society has always been considered one of its main assets. The majority is repre-

sented by Montenegrins (43,16 %), followed by Serbs (31,99 %), then by Bosniaks (7,77 %), Albanians (5,03 %), Muslims <sup>(2)</sup> (3,97 %) and Croats (1,10 %).

2.5 In 2008 <sup>(3)</sup>, per capita GDP was EUR 4 908 (43 % of EU average) and the unemployment rate was 16,8 %. The average net salary was EUR 416 <sup>(4)</sup>, but 12,2 % of citizens lived on less than EUR 116 per month and 4,7 % were living in extreme poverty. Retail price inflation was 9 % in 2008. In 2009, public debt was EUR 1 071,1 million, or 34,7 % of GDP <sup>(5)</sup>, whereas domestic debt was EUR 426 million (13,8 %) and external debt was EUR 645,2 million (20,9 %). The adult literacy rate was 97,5 %.

## 3. EU and Montenegro relations

3.1 Nowadays, the key challenge facing Montenegro is state and institution building, fulfilment of standards and criteria set by the EU and consequently establishment of a functional rule of law system with full inclusion of all societal groups. These challenges are part of the same process, heavily influencing each other, and therefore have to be understood within the framework of that interaction.

3.2 Relations between the EU and Montenegro are based on **the Stabilisation and Association Agreement (SAA)** between the European Communities and their Member States and Montenegro and the **Interim Agreement on trade and trade-related matters signed in October 2007**. Montenegro is making progress in implementing the **European Partnership**.

3.3 Since 2007, Montenegro has been receiving pre-accession financial assistance under the **Instrument for Pre-Accession Assistance (IPA)**, which is being administered by the new EU Delegation in Podgorica. For IPA Components I and II, Montenegro has received: in 2007 – EUR 31,4 million, in 2008 – EUR 32,6 million, in 2009 – EUR 33,3 million.

3.4 Regional cooperation and good neighbourly relations form an essential part of the **process of moving towards the European Union**. Montenegro is participating in the work on regional initiatives, including work with the **South-East European Cooperation Process (SEECP)**, of which it will take over the chairmanship in 2010-2011, and the **Regional Cooperation Council (RCC)**, which replaced the **Stability Pact for South-East Europe** and aims at a more regionally owned framework. Montenegro held the chairmanship of the Central European Free Trade Agreement (CEFTA) in 2009 and also participates in the Energy Community Treaty and the European Common Aviation Area Agreement (ECAA).

<sup>(2)</sup> Official census data. Muslims are in Montenegro treated as an ethnic group in this census in line with practice in the former Yugoslavia.

<sup>(3)</sup> Eurostat.

<sup>(4)</sup> Monstat, [http://www.monstat.org/Mjesecna%20saopstenja.htm](http://www.monstat.org/Mjesecna%20saopštenja.htm).

<sup>(5)</sup> Economic and Fiscal Programme 2009-12, January 21, 2010.



3.5 Montenegro has continued to foster good bilateral relations with neighbouring countries and EU Member States. Cooperation with neighbouring countries intensified particularly in the area of cross-border cooperation (four Cross Border Cooperation programmes with: Bosnia and Herzegovina, Albania, Serbia and Croatia), science and technology (Albania), protection of minorities (Croatia) and dual citizenship (the former Yugoslav Republic of Macedonia). Relations with Serbia continue to be affected by the Montenegrin decision to recognise independence of Kosovo <sup>(6)</sup>. Relations with Turkey have remained good. Agreements were signed on free trade and on bilateral defence cooperation. Bilateral relations with Italy, Montenegro's main trading partner from the EU, have further developed. Montenegro's main trading partner in the region remains Serbia with 1/3 of total Montenegro trade.

3.6 In terms of its positioning on the international scene, Montenegro is making constant progress. It has become a member of the United Nations, OSCE, IMF, CoE and a number of other regional and international organisations. Accession to the EU is proclaimed by the Government to be the ultimate goal and there is overwhelming public support for this <sup>(7)</sup>.

3.7 **The Montenegro 2009 Progress Report** <sup>(8)</sup> describes relations between Montenegro and the European Union, examines the progress made by Montenegro towards achieving the **Copenhagen political criteria**, analyses the economic situation in Montenegro and reviews Montenegro's ability to implement European standards, i.e. to gradually bring its legislation and policies in line with the *acquis*. It also covers all the measures taken by the country to cope with the financial and economic crisis.

3.8 Although the report notes significant progress in many areas, **the Montenegrin public administration, the judiciary and policies for combating corruption will** remain a major challenge in the future.

3.9 The Government has further streamlined its European integration activities by maintaining a particularly strong pace in adopting new legislation. However, one has to make a clear distinction between drafting and adoption of new legislation, which is mainly done within a reasonable timeframe and in most cases is of good quality, and its implementation for which there is often a lack of resources or political will.

3.10 Visa liberalisation has been the key issue that marked 2009: the EC proposed on 15 July to liberalise the system if Montenegro fulfilled the conditions from the Road Map. On 30 November 2009, the interior ministers of the European Union formally agreed to remove the visa obligation upon citizens of the former Yugoslav Republic of Macedonia, Serbia and Montenegro entering the Schengen zone, as of 19 December 2009.

3.11 As regards **economic criteria**, the domestic **consensus on economic policy essentials has been maintained**. The functioning of the market mechanism was challenged by the magnitude of adjustments occurring in the external accounts and the financial sector. Public finances came under increased pressure in 2009. **Macroeconomic policy has to a large extent been driven by the financial crisis**. The focus has been on implementing a more prudent fiscal policy and accelerating structural reforms.

#### 4. Civil society <sup>(9)</sup> in a new socio-economic context

##### 4.1 Preliminary remarks

4.1.1 **Montenegrin civil society in general does not have strong historical roots or traditions** <sup>(10)</sup>. The first voluntary association only came into being in the mid 19th century and focused mainly on charitable activities. The first trade unions and workers' associations were founded at the beginning of the 20th century. With the beginning of the communist regime in 1945, independent civic organisations were not allowed to function and the work of non-profit organisations was severely limited.

4.1.2 *Civil society and non-governmental organisations are, in the Montenegrin context, synonymous* - NGOs are a part of civil society which, according to the methodology developed by CIVICUS <sup>(11)</sup>, contains another 19 elements. Even if we try to apply broader categories, we still need to acknowledge that civil society is also represented *through* religious communities, trade unions, the media, professional associations, foundations, social movements, etc. However, in the perception of Montenegrin citizens NGOs are identified with civil society; to a great extent this corresponds to the NGOs' real contribution to the establishment of principles of an open civic society and a healthy balance of powers, but it also points to worryingly low levels of social activism, potential and initiative in other categories of civil society.

<sup>(6)</sup> Under UNSCR 1244/1999.

<sup>(7)</sup> According to polls conducted over the last several years, between 75 % and almost 80 % of Montenegrin citizens are in favour of accession to the EU.

<sup>(8)</sup> Montenegro 2009 Progress Report SEC(2009) 1336 accompanying the EC communication COM(2009)533 *Enlargement Strategy and Main Challenges 2009-2010*.

<sup>(9)</sup> Civil society in the broader context of this opinion means non-governmental organisations, including professional organisations, social partners' organisations, consumers, farmers, craftsmen, religious communities, foundations, social movements, media etc.

<sup>(10)</sup> TRIALOG, Montenegrin Civil Society, Maša Lekić.

<sup>(11)</sup> CIVICUS – World Alliance for Citizen Participation, [www.civicus.org](http://www.civicus.org).

#### 4.2 Various interests group in Montenegro

4.2.1 *The legal framework for the operation of NGOs is solid* – The establishment of NGOs is rooted in the Constitutional right to assembly<sup>(12)</sup> and set out in more detail through the Law on NGOs<sup>(13)</sup> as well as number of other pieces of legislation. Still, certain aspects of NGOs' work are not clearly defined, especially as regards the tax system, and there is still room for improvement. In addition to this, the draft Law on Volunteers passed by the Government on January 14, 2010 did not acknowledge the position of NGO representatives and thus made the whole spirit of this law questionable.

4.2.2 *Registration of NGOs* – The procedure is easy, which has at certain points led to the registration of a large number of NGOs. The Register used to be kept in the Ministry of Justice until 2006 when it was, in line with the change of mandates in the Government, shifted to the Ministry of Interior and Public Administration. The figure of approximately 4 500 registered NGOs often quoted in public is not reliable since the Register is not kept well, meaning that new organisations are added but those which have ceased to exist are not deleted from the overall quoted figure. The Government has announced that it will soon launch software which will resolve these controversial issues. Furthermore, professional organisations such as farmers' or fishermen's associations are also registered as NGOs, as there is no other legal basis or form for their business activity.

4.2.3 *Public funding* – The efforts made over many years by NGOs to obtain public funding have resulted in a rather considerable amount of funds being formally available to NGOs at local level (within the budgets of the local self-governments, approximately EUR 883 900<sup>(14)</sup>) and at national level (through the Parliamentary Commission for the allocation of funds to NGOs with an estimated fund of EUR 200 000<sup>(15)</sup> and via the Commission for the allocation of a portion of lottery income with a fund of EUR 3 440 000<sup>(16)</sup>). Also, certain ministries have special funds for organisations in

respective fields<sup>(17)</sup>. In total, these funds could assist the development of civil society to a great extent. However, due to the fact that a limited number of fields of NGO work receive most of the funding, especially through the biggest fund from lottery income<sup>(18)</sup>, and due to the overall lack of transparency in the work of the Commission and serious misconduct in the allocation of the funds<sup>(19)</sup>, these funds do not actually reach most of the active and genuine NGOs or support the programmes aiming at democratisation of the society. The Regulation on the allocation of these means was drafted by a task force composed of government officials and NGO representatives and passed by the Government in 2008 and forms a solid framework, but its application remains a matter of widespread manipulation and serious concern<sup>(20)</sup>. A new inter-sectoral group will be formed in 2010 to work on new regulations in an attempt to resolve these issues.

4.2.4 *Funding from international sources* – The NGO community in Montenegro has mainly been functioning with the support of international donors. Recently, this funding has become problematic due to the fact that a lot of bilateral donors have withdrawn in line with their own priorities and that US assistance has been scaled down enormously, leaving the NGO sector reliant on EU funds, for which procedures are rather complicated. This is already leading to a situation where only the biggest organisations will survive and develop whereas the others will be limited in their actions and growth.

4.2.5 *Capacity building of NGOs* – There is a high staff turnover rate in NGOs and lack of available institutional grants, which is a limiting factor even for developed NGOs. CRNVO<sup>(21)</sup> used to have a variety of capacity building programmes but the withdrawal of the donors supporting these activities has seriously affected what it can offer in terms of quantity. New EU-funded technical assistance to CSOs from the Western Balkans<sup>(22)</sup> is in the process of being

<sup>(12)</sup> The Constitution was passed in October 2006, but this was outlined in the previous one as well.

<sup>(13)</sup> Passed in 1999, amended in 2002 and 2007.

<sup>(14)</sup> Data from CRNVO research for 2008 noting that 883 900 EUR was planned and 860 764,66 was actually distributed.

<sup>(15)</sup> 2009 data.

<sup>(16)</sup> In line with the Regulation on the allocation of a portion of lottery income 75 % of this amount should be allocated to NGOs and the rest to other organisations and institutions. Also, the fees of the members of the Commission and the overall administration process are financed from the same budget. The figure relates to 2009, whereas in 2010 this is decreased.

<sup>(17)</sup> Ministry of Tourism, Ministry of Culture, Media and Sports, Ministry of Human Rights and Minority Rights.

<sup>(18)</sup> The following fields are covered: 1) social welfare and humanitarian activities, 2) needs of persons with disabilities, 3) development of sports, 4) culture and technical culture, 5) non-institutional education and 6) the fight against drugs and all forms of addiction.

<sup>(19)</sup> Monitoring Report of the Centre for Civic Education on the allocation of funds by the Commission for the allocation of a portion of lottery income in 2009.

<sup>(20)</sup> Monitoring Report of the Centre for Civic Education on the allocation of funds by the Commission for the allocation of a portion of lottery income in 2009.

<sup>(21)</sup> CRNVO – Centre for Development of Montenegrin NGOs.

<sup>(22)</sup> Civil society facility programme.

set up. In general, there is a need for continuous capacity building programmes and development of specific knowledge and skills in various fields, as well as for institutional grants aiming to foster individual capacity building. In addition to this, NGOs should act more on topic-oriented issues through the ad hoc or long-term platforms and networks in order to make their actions efficient and more influential towards stakeholders.

**4.2.6 Self-regulation of NGOs** – within the Coalition of NGOs ‘Through Cooperation to the Aim’, which is the largest of its kind, bringing together approximately 200 NGOs in Montenegro<sup>(23)</sup>, a self-regulatory body has been established and a Code of Conduct produced and accepted by most of the major NGOs, as well as number of others, who have made public their narrative and financial records in line with that Code of Conduct. This is crucial for improving the transparency of NGOs and consequently public confidence.

**4.2.7 Representation in the councils that encompass diverse societal interests** – in line with the adoption of new legislation requiring the participation of all stakeholders, NGOs were given legally guaranteed positions in the Council of RTCG<sup>(24)</sup>, the Council for Civic Control of the Police<sup>(25)</sup>, the National Council for European Integration<sup>(26)</sup>, the National Commission for the Fight Against Corruption and Organised Crime, the Council for care for the disabled, the Council for care for children, etc. as well as in certain bodies at local level. Improvements have been made after many years of persistent effort on the part of NGOs in most of these cases but the National Council for European Integration remains a body of serious concern in relation to the legitimacy and legality of the NGO representatives.

**4.2.8 Sustainability of the NGO sector in Montenegro** – the Montenegrin NGO sector has a weak tradition and uncertain future<sup>(27)</sup> due to the generally undeveloped political culture and culture of human rights. It is heavily dependent on foreign aid as well on its own key leaders which makes it fragile in the event of changes of the personalities or the withdrawal of donors. Some steps have been made within the largest organisation in terms of internal reorganisation and strategic planning as well as the introduction of services that contribute to the budget but this is still not a solid guarantee for the overall sustainability of the sector.

### 4.3 Social dialogue and social partners' organisations

**4.3.1** The Labour Law adopted in 2008<sup>(28)</sup> regulates the provisions of collective agreements, the procedure for

amending mutual relations between the parties to collective bargaining and other issues of importance for employers and employees. A general collective agreement is to be concluded by the competent authority of the relevant trade union, the employers' association and the government.

**4.3.2 The Labour Law also includes provisions governing employees' and employers' organisations.** Employees and employers are free to choose to establish their organisations and become members, without prior approval and subject to the conditions set out in the statutes and rules of those organisations.

**4.3.3 Freedom to organise a trade union.** Employees are guaranteed the freedom to organise a trade union and engage in union activities, without prior approval. Trade union organisations are recorded in the register of trade union organisations kept by the Ministry of Labour and Social Welfare. Under the terms of the Law, a representative trade union organisation is understood to mean a trade union organisation that has the largest number of members and is registered as such with the Ministry. This means, in effect, that only one trade union organisation can be representative at national level, irrespective of the number or actual representativeness of other trade union organisations. On the agenda of the Social Council there is a proposal for a law on trade union representativeness.

**4.3.4** The trade unions are represented by the **Confederation of Trade Unions of Montenegro (CTUM)** and the **Union of Free Trade Unions of Montenegro (UFTUM)**. CTUM is a member of ITUC<sup>(29)</sup> and in the process of affiliation with ETUC<sup>(30)</sup> as an observer member. The UFTUM is a newly created organisation which broke away from the CTUM and officially established in November 2008; it is therefore not yet part of the international (ITUC) and European (ETUC) trade union organisations, although it is in contact with both of them. The CTUM has been granted the status of social partner although in practice no trade union organisations have undergone any legal procedure to be recognised as being representative under the new Labour Law.

**4.3.5 Employers' Association.** Under the Law, an employers' association is considered representative if its members employ a minimum of 25 % of the employees in the Montenegrin economy and contribute a minimum of 25 % to the Montenegrin GDP. The employers' association is obliged to register with the Ministry of Labour and Social Welfare, for the purpose of keeping records. The Ministry stipulates how records on employers' associations are to be kept, as well as more detailed criteria for determining how representative employers' associations are.

<sup>(23)</sup> More at [www.saradnjomdocilja.me](http://www.saradnjomdocilja.me).

<sup>(24)</sup> Law on Public Broadcasting Services RTCG, adopted in 2002, as well as the Law on Public Broadcasting Services of Montenegro adopted in 2008 (replacing the first one).

<sup>(25)</sup> Law on Police adopted in 2005.

<sup>(26)</sup> Decision on establishment of the National Council for European integration, adopted in 2008.

<sup>(27)</sup> CIVICUS Assessment on Montenegrin Civil Society ‘Weak Tradition, Uncertain Future’, 2006, ed. S. Muk, D. Uljarevic and S. Brajovic.

<sup>(28)</sup> Labour Law, Official Gazette of Montenegro, No 49/08.

<sup>(29)</sup> ITUC – International Trade Union Confederation.

<sup>(30)</sup> ETUC – European Trade Union Confederation.

4.3.6 The employers in Montenegro are represented by **the Montenegrin Employers' Federation (MEF)** in Podgorica. MEF is a very active member of the International Organisation of Employers (IOE) in Geneva and is involved in many projects. It is also an observer of **BUSINESSEUROPE** <sup>(31)</sup>.

4.3.7 Montenegro also has a Chamber of Commerce, a mandatory organisation established in 1928, which, at European level, is an observer member of Eurochambers and Eurocommerce. The Chamber of Commerce does not have social partner status. At national level it is a member of the National council for removing business barriers and improving competitiveness and of the governmental Commission for European Integration.

4.3.8 **The Social Council** is the highest tripartite body and was established in June 2008 based on the law adopted in 2007 (The Law on the Social Council). The Council comprises 11 representatives of the government, 11 representatives of the authorised trade union organisations and 11 representatives of the employers' association. Under the umbrella of the Social Council there are various working committees addressing different economic and social issues.

4.3.9 The Memorandum on Social Partnership in the context of global economic crisis was signed on April 2009 and the social partners are open and take various opportunities for formal and informal types of consultations in the current context of the global economic crisis.

4.3.10 Despite some progress made in the tripartite dialogue, the bilateral social dialogue is still very weak, focusing mainly on negotiation of the sectoral collective agreements. Although at national level the aim is to produce one General Collective Agreement (GCA) signed by Trade Unions, Employers and the Government, the possibility is being discussed of introducing two GCAs – for economy and public administration. Any decision in this respect should be based on more in-depth analyses. The establishment of a bipartite Resource Centre for Social Dialogue could be of great importance to overall social dialogue and joint analyses of the social partners.

## 5. Specific remarks

5.1 The fourth EC progress report on Montenegro indicates **no restrictions regarding freedom of assembly and association**. Some progress has been made on the role of civil society organisations. Several NGOs continue to have a high public and political profile. At national level **there is a Governmental Strategy on cooperation with NGOs but its implementation is lagging behind and the real impact of NGOs on policy drafting is very limited despite the expertise and resources available in the NGO sector. NGOs are welcomed**

by the Government when they are politically acceptable or when they are providing various services but the problems in this regard occur within watchdog and monitoring programmes, as well as in effective consultation and inclusion into policy and decision making processes.

5.2 The role of the existing **Office for cooperation with NGOs**, operating as part of the General Secretariat of the Montenegrin Government, should be to assist NGOs and to ensure their sound development in the country. The reality is that the recent capacity and equipment of this Office is very limited. Despite the efforts of the staff its activity is not visible vis-à-vis the NGOs' representatives. The establishment of the Government Council for Cooperation with NGOs is in the preparatory stages and the Office should fulfil the role of the Council's secretariat. This could be a good step towards improving the situation.

5.3 Civil society also has two representatives in the **National Council for EU integration**. However the legality and legitimacy of the appointment of the current members has been seriously challenged by credible NGOs. Clear criteria should be defined by Parliamentary decree and designed to ensure the transparency, representativeness and quality of the respective delegates. The National Council for EU integration could be a promising tool for deeper and more effective involvement of civil society in the EU integration process. Its potential should be unlocked.

5.4 Despite the declaration of the government and relevant ministries about consultations with civil society as part of the process for creating the legislative framework, **the involvement of civil society organisations is still unsatisfactory**.

5.5 The conditions (particularly the financial conditions) for civil society organisations to function properly have to be improved and their capacity must be enhanced through **the diversification and sustainability of their financial sources**.

5.6 The involvement of civil society organisations in the preparations for EU accession is also limited. The appropriate structures and mechanisms have already been established, but are still not sufficiently used. **The active contribution of civil society can help to smooth the EU negotiation process and make a real bridge between civil society and the EU institutions**.

5.7 The tripartite dialogue within the Social Council is ongoing. Nevertheless **the role and potential of the social partners' organisations are still underestimated**. The Social Council could be a very powerful body in the EU accession process, helping to overcome the economic and social consequences.

<sup>(31)</sup> BUSINESSEUROPE – The European confederation of business.



5.8 The provisions of the existing Labour Law defining the conditions for recognition of the representativeness of trade union organisations at national level are discriminatory vis-à-vis the small ones and prevent the proper development of trade union pluralism. Although UFTUM is participating in the Government working group negotiating the new legislative proposal on the representativeness of trade unions, it has not succeeded in influencing this work. The Government has unilaterally decided on a census 20 %, which means that 20 % of all Montenegrin employees must be organised in the unions to fulfil the criteria for representativeness at national level. Nevertheless the criteria should also reflect other components like territorial and branch structure and ability to defend the rights of workers effectively.

5.9 The social partners were not involved as much as they should have been when it came to the EU questionnaire. Only the Montenegrin Employers' Federation and Chamber of Commerce cooperated as part of governmental working bodies to answer the questionnaire. According to the EU instructions all the social partners should have been consulted in the relevant part of the questionnaire.

5.10 The governmental Commission for European Integration, working under the aegis of the Ministry for European Integration, is coordinating the state administration during the process of integrating the country into the EU. Only the Chamber of Commerce is represented in this body. The social partners are not involved.

5.11 **The capacity of the social partners needs to be further developed.** All forms of assistance at all levels are welcomed. In this respect, the EESC can appreciate the role of the IOE and ITUC at the international level and of BUSINESS-EUROPE and the ETUC at the European level. Many integrated programmes and projects are being launched to strengthen the capacity of the social partners' organisations and to enhance social dialogue.

5.12 **The EESC also welcomes the financial and technical assistance provided by the European Commission** in the framework of its enlargement strategy and available resources. Increased involvement of civil society organisations strengthens the quality of democracy and helps with reconciliation. By implementing the civil society facility under the IPA, the EC financed the setting up of technical support offices in each

beneficiary state, together with an increasing number of short-term visits to EU institutions, as well as funding some 800 people to attend workshops in the Western Balkans and Turkey.

## 6. The Role of the European Economic and Social Committee

6.1 EU enlargement and the progress made by the Western Balkans countries in moving closer to European Union membership is one of the EESC's external relations priorities. The External Relations Section has developed efficient tools for meeting its main objectives to support civil society in the Western Balkans and to enhance its capacity to be a partner for governments on the road to EU accession.

6.2 The Western Balkans Contact Group started work in October 2004. Its geographical scope covers Albania, Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia, and Kosovo under UNSCR 1244/1999. It is the EESC's permanent and specific body dealing with this particular region.

6.3 **Two Western Balkans Civil Society Forums were held** in Brussels (2006) and in Ljubljana (2008) which demonstrated the willingness of civil society players to meet on a cross-border basis to discuss a better future together. The 3rd Western Balkans Civil Society Forum will be held in Brussels on 18 and 19 May 2010.

6.4 The other most important tools for building the bridge between EU civil society and civil society in the Western Balkans countries are the **Joint consultative committees (JCCs)**. The EESC exploratory **opinion dating from 2006 on the situation of civil society in the Western Balkans** <sup>(32)</sup> stressed the position of the EESC and its substantial know-how and considerable human resources and highlighted the role of the JCCs in the whole enlargement process.

6.5 **For this reason, the EESC recommends the establishment of an EU-Montenegro Joint Consultative Committee as soon as Montenegro has been granted the status of candidate country for EU accession. This JCC** can allow civil society organisations from both sides to pursue a more in-depth dialogue and monitor the country's progress towards the EU.

Brussels, 28 April 2010.

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

<sup>(32)</sup> OJ C 195, 18.5.2006, p. 88.

**Opinion of the European Economic and Social Committee on 'Education for inclusion: a tool for fighting poverty and social exclusion' (exploratory opinion)**

(2011/C 18/04)

Rapporteur: **Ms SÁNCHEZ MIGUEL**

In a letter dated 23 July 2009, Mr Diego López Garrido, Spanish State Secretary for the European Union at the Ministry of Foreign Affairs and Cooperation, asked the European Economic and Social Committee, in the name of the future Spanish Presidency, in accordance with Article 262 of the Treaty establishing the European Union, to draw up an exploratory opinion on:

*Education for inclusion: a tool for fighting poverty and social exclusion.*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 March 2010.

At its 462nd Plenary session, held on 28 and 29 April 2010 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 103 votes in favour, 13 votes against and 10 abstentions

## **1. Conclusions and recommendations**

1.1 The EESC welcomes the decision to devote 2010 to redoubling efforts to eradicate exclusion and poverty and highlights the importance of using education and training as effective tools for achieving these goals. Education is recognised as an important instrument for including those living in poverty in society.

1.2 The fact that one of the priorities of the 'EU Strategy for 2020' is strengthening education as a means for combating inequalities and poverty and that the trio of EU rotating presidencies, Spain, Belgium and Hungary, have set 'Education for all' as one of their objectives makes it possible to put forward a series of measures aimed at making education and training effective tools for combating poverty and social exclusion.

1.3 Education has been recognised as a basic human right since the EU was founded and huge positive efforts have been undertaken to make this right a public good available to all. The EESC has made its contribution in this area with a large number of opinions, all of which recognise that the central goal of education is to train individuals to be free, critical, independent and capable of contributing to developing the society in which they live, with a high level of skills to address the new challenges, particularly in the world of work, but also aware that they share values and a culture and that the world they live in must be preserved for future generations.

1.4 On the basis of the concept of education for inclusion, the EESC recommends that the EU and the Member States undertake to revise education policies, their content, approaches and structures and the allocation of resources, but also that a revision and/or up-dating of policies relating to employment, quality public services, attention to specific groups (children, people with special needs, migrants, etc.) be carried out, and that the gender perspective is included in all these policies.

Inclusive education can take place in a number of settings, formal and non-formal, within families, in the community, so that burden does not fall exclusively on schools. Far from being a marginal question or one focused solely on the poor, it should be open to all social groups that need it. The reasons to choose inclusive education are:

- educational, because it requires a quality education system accessible to all from early infancy
- social, because education must help change mentalities, helping to build societies that are free of exclusion, prejudice and discrimination, and
- economic, because it helps to increase competitiveness in the face of new economic challenges and new labour market demands.

1.5 Within the EU, discussions on the recognition of outcomes of non-formal education, which takes place outside traditional educational settings, complements formal education by providing people with practical competences, 'soft' skills and attitudes and encourages active citizenship, have been ongoing for many years. Although these discussions have not yet culminated in consensual agreements at EU level, non-formal education is gradually being recognised as being of help in accessing the labour market. The EESC considers it useful for the EU to look at this aspect in the light of education for inclusion and consequently recommends:

- collecting information on the existing institutional and technical provisions and proposing the establishment of indicators for measuring the potential benefits of recognising non-formal education and gathering evidence as to who might benefit from it.



- reviewing the models for recognising the outcomes of non-formal education to identify the most egalitarian, effective and beneficial, particularly for the socially excluded, and ensuring the quality of the education provided.
- encouraging the exchange of successful experiences between the Member States.
- engaging social partners, concerned civil society organisations as well as representatives of both formal and non formal education institutions in this process.

1.6 The EESC has pointed out in previous opinions that quality public education for all is a tool that promotes equality and social inclusion. In this respect, it is essential that all those excluded have access to high-quality education that is for the most part public<sup>(1)</sup>, which gives them access to the labour market and to decent, well-paid work.

1.7 Finally, the EESC recommends that, without losing sight of coherence with the political priorities already defined, the actions to take forward should serve as a driving force for more daring and ambitious commitments in this area, taking in the widest possible range of institutions and social players.

1.8 The conference being held by the EESC from 20 to 22 May 2010 in Florence on Education to fight social exclusion is a good example of this vision. It will be based on a cross-cutting approach and will bring together a large number of relevant actors.

## 2. Introduction

2.1 The right to education as basic human right has been recognised and is written into all the instruments that the European Union has set up since its creation. Europe has made huge and positive efforts to make this right a public good accessible to all<sup>(2)</sup>. Nevertheless, there are still tiers of the population that are still excluded from its benefits, which aggravates conditions of poverty that have still not been eradicated. The Member States, the Commission and the European Parliament have proposed and approved substantial measures aimed at combating poverty, using public, quality education for all as an instrument for inclusion. Similarly, the EU has decided that 2010 will be the European Year for Combating Poverty<sup>(3)</sup>.

<sup>(1)</sup> See UNESCO guidelines on inclusion policies in education, Paris 2009.

<sup>(2)</sup> European Charter of Fundamental Rights (2000). Reference should also be made to the ratification by the countries of Europe of all the International Treaties related to human rights, in particular, the International Convention on the Rights of the Child (1989) and the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights (1966).

<sup>(3)</sup> OJ C 224, 30.8.2008, p. 106.

2.2 Social inclusion and fighting poverty also form part of the European Union's objectives for growth and employment. Coordinating national policies on social protection and inclusion is being carried out through a process of exchange and learning known as the 'open method of coordination' (OMC) which is being applied in areas within the remit of the Member States for the purpose of achieving convergence between the national policies to attain some common objectives. The OMC helps to coordinate social policies, particularly in the context of the renewed Lisbon Strategy.

2.3 Furthermore, education and training are key factors for improving economic development and social cohesion in our societies. The failure to achieve the objectives of reducing levels of poverty and the consequences, in terms of exclusion, of the current economic crisis together with the growth of unemployment make it all the more important to seek the means for making it possible to push ahead towards the objective of active inclusion.

2.4 The first of the EU's priorities for the 2020 Strategy<sup>(4)</sup> is 'Creating value by basing growth on knowledge'. It is thus recognised that knowledge is the motor of lasting growth and that education, research, innovation and creativity make a difference. The conclusions of the Labour Summit held in Prague in May 2009 follow the same line. In this respect and in the light of the current economic crisis that has had a major impact on workers and companies, especially SMEs, and considering that unemployment has reached historic levels of close to 20,2 % with substantial differences between the EU countries, it is necessary to step up measures, most particularly as regards education policy, that help to create employment and, at the same time, reinforce equality between all Europeans.

2.5 Public education, which is one of the main instruments that fosters equality, is currently addressing numerous and new challenges in an increasingly globalised, but also more unequal, divided and asymmetric world. Educational and social integration for all learners is a priority for public authorities and for international or regional organisations. Education for inclusion is an approach geared to meeting the learning needs of all children, young people and adults, and particularly those from sectors most affected by discrimination, marginalisation, poverty or social exclusion.

2.6 Education and training can be effective instruments for combating poverty and social exclusion. Young people with fewer opportunities in society face specific difficulties associated with the fact that they come from educationally, socio-economically or geographically disadvantaged backgrounds, or because they are living with a disability.

<sup>(4)</sup> COM(2009) 647 final 24.11.2009. Commission Working Document – Consultation on the future 'EU 2020' Strategy.

2.7 According to the UNESCO guidelines for inclusive education, this is seen as a process of addressing and responding to the diversity of needs of all learners through an increasing participation in learning, cultures and community values and reducing social exclusion and poverty. Education for inclusion calls for changes in content, approaches, structures and educational strategies, the consequent changes in teacher training programmes, the allocation of greater resources with a vision that covers all learners and with the conviction that it is the responsibility of the regular system to educate everyone. Inclusive education is concerned with providing appropriate responses to the broad spectrum of the learning needs of social groups and can be dispensed through formal and non-formal educational settings.

2.8 Rather than being a marginal issue on how some learners can be integrated into mainstream education, or focusing exclusively on the poorest, inclusive education is an approach that requires transforming education systems and other learning environments in order to respond to the diversity of learners and becoming a powerful tool for combating poverty. It must enable both teachers and learners to feel comfortable with diversity and to see it as a challenge and a chance of enrichment within the learning environment, rather than a problem.

2.9 The onset of mass unemployment created unprecedented situations of poverty. The current global economic crisis <sup>(5)</sup> is merely a painful confirmation of this situation. Nowadays, poverty does not only mean that there is insufficient income, it can take the form of limited or non-existent access to health care or education, a dangerous environment, the persistence of discrimination and prejudices and social exclusion. A job in itself (if it is not a good job) does not guard effectively against poverty. And extreme poverty is more widespread amongst women than men. The risk of extreme poverty is considerably higher for women in 17 of the Member States of the European Union. Single-parent families where the head of household is a woman run a much greater risk of falling into poverty. In a world where 60 % of the population lives on just 6 % of global earnings, where 50 % live on only 2 dollars a day and more than 1 billion people earn less than 1 dollar a day, Europe cannot turn itself into a fortress, ignoring the context in which it lives.

2.10 The growing problems of urban poverty, people moving from the countryside to industrial areas and mass migration are a challenge, for the region's social policies. According to EUROSTAT figures for 2009, 16 % of Europe's population is living below the poverty line, one out of ten Europeans is living in a household where no member of the family is working. Children in a number of Member States are more exposed to poverty than the rest of the population and it

is calculated that 19 % (that means 19 million children) are under threat. It is imperative to help break the cycle that condemns so many to poverty by creating a safe and stable learning environment that is able to guarantee that all learners can fully exercise their basic rights, develop their skills and have every chance of success in the future.

### 3. General comments

3.1 Combating poverty forms a key part of the inclusion and employment policies of the EU and of the Member States. Formerly deemed a part of welfare policy, combating poverty has now evolved into combating exclusion. It is no longer merely a question of protecting society from the dreaded consequences of poverty, but of guaranteeing the human rights of those individuals affected by poverty. When they decided in 2007 to make 2010 the year of 'Combating poverty and social exclusion', the European Parliament and Council stated that some 78 million people were currently living under the threat of poverty in the EU and that this figure continued to climb. Measures involving the EU and its Member States were called for since this state of affairs conflicted with the European Union's common values.

3.2 Furthermore, in 2000, the Member States of the UN adopted the Millennium Development Goals (MDG) which aimed particularly to cut extreme poverty by half. These eight goals are supposed to be reached by 2015. However, it is recognised that, in the current economic climate, it will be very difficult to ensure that all of the goals will be attained within the timeframe. The EU decided to dedicate 2010 to combating poverty and social exclusion specifically to step up its efforts for achieving these goals.

3.3 The EESC has repeatedly maintained a harmonised position to the effect that the knowledge society is one of the essential instruments for achieving the full integration of all citizens, rather than merely an elite, and especially as one of the means for attaining the objectives set out at the Lisbon Summit.

3.4 The EESC has recently expressed the belief <sup>(6)</sup> that those with a lower level of education run the greatest risk of exclusion. The right to education must give them options for improving their quality of life and for accessing the labour market. Similarly, it should be remembered that economic, social and technological changes call for adjustments in educational content, particularly if education is supposed to meet the needs of the labour market. In this respect, the EESC suggests a change in both school and university curricula so that they can be complemented by vocational training programmes that would facilitate entry into the labour market <sup>(7)</sup> for those who might leave early. This would be a way of preventing and making good the damage caused by social exclusion.

<sup>(5)</sup> Key Data on Education in Europe. (2009 Report by the European Commission on education in Europe). [http://eacea.ec.europa.eu/education/eurydice/documents/key\\_data\\_series/105EN.pdf](http://eacea.ec.europa.eu/education/eurydice/documents/key_data_series/105EN.pdf).

<sup>(6)</sup> OJ C 128, 18.5.2010, p. 10.

<sup>(7)</sup> OJ C 256, 27.10.2007, p. 93.

3.5 The EESC<sup>(8)</sup> also adopted an opinion which supported the Commission Communication on *New Skills for New Jobs*. One point to highlight in its conclusions is the call for 'increasing skills at all levels [which] is the *sine qua non* not only for reenergising the economy in the short term and for long-term development, but also for increasing productivity, for competitiveness and employment, and for ensuring equal opportunities and social cohesion'.

3.6 In any event, there is one unavoidable question and that is defining the basic principle of education for inclusion, because as well as being a strategy, it is a process that requires us to review not only educational policies, but also those related to employment, the provision of quality public services, and attention to the diversity of those to be educated and where they are: men and women, children, young people and the elderly migrants, the unemployed, people living with a disability or with HIV/AIDS, etc.). Essentially, education for inclusion is ultimately intended to eliminate all forms of exclusion, either resulting from negative attitudes or a lack of appreciation of diversity. It can be carried out in a number of contexts, both formal and non-formal, within families or the community, ensuring that the burden does not fall entirely on schools.

3.7 Non-formal education is very often based on non-hierarchical, participative pedagogical forms and working methods as well as being closely associated with and run by civil society organisations. The very nature and bottom-up approach of non-formal education has proved an effective tool for combating poverty and social exclusion. Therefore, the EESC wishes to underline the significant role of non-formal education in the implementation of the EU 2020 strategy.

3.8 The success of lifelong learning is reinforced by non-formal education which complements and supports formal education. This linkage can for instance play an important role to make learning more attractive for young people in order to combat school drop-outs by introducing new methods, facilitating transitions between formal and non-formal education and recognising skills<sup>(9)</sup>.

3.9 The OECD has paid special attention to non-formal education with a number of studies and plans<sup>(10)</sup>. There are as yet no general agreements as to how, and to what extent the knowledge gained via 'non-formal education' and even less 'informal education' should be recognised. This requires, inter alia, recognising that other stakeholders such as civil society organisations have the ability to teach outside the formal education system and establishing evaluation standards to assess competences gained in this way. Recognition of the competences and skills thus acquired has developed through

lifelong learning strategies in the different Member States. In some, procedures for the legal recognition of these competences and skills via the existing national qualification framework are being examined, which facilitates the process of accessing the labour market. The EESC considers that the EU should look at this aspect at national level and recommends that Member States exchange positive experiences and models of practice.

3.10 Another important pitfall to avoid is that education strategies for inclusion are only available to the poor, immigrants and those who have abandoned the school system for whatever reason. This would isolate rather than include the participants. One possible alternative is to leave open the door to such systems to other groups that might need them<sup>(11)</sup>. On the other hand, non-formal education does not replace formal education, but in recognising the value of the knowledge acquired in this way, it complements formal educations in as much as the beneficiaries of these measures are equipped to move back into the circuit of formal education if they need to and wish to.

3.11 The EESC considers it essential that all those excluded benefit from a quality and, for the most part, public education<sup>(12)</sup>, which gives them access to the labour market and to decent, well-paid work. It is no less important that this education passes on fundamental values of citizenship, of effective equality between the sexes and of active democratic involvement. The EESC is committed to education that is not just utilitarian, focusing solely on passing on skills, but contributes to personal and social development, producing open and critical individuals who are able to become actively involved in more politically mature and increasingly socially equitable societies.

3.12 The EESC believes that promoting inclusion in education means increasing the capacity for critical analysis. It also helps to improve learners' educational and social frameworks so they can cope with the new demands of the labour market and society. In short, linking education to social inclusion also means tying it in with the development goals of society and the regions in which it is being dispensed. In this way, education can also serve as a tool for progressively eradicating poverty.

3.13 To sum up, the reasons why we need to choose inclusive education are:

— Educational: the requirement that the education system is accessible to all – 'the goal of education for all by 2015' – means that this system must open up to the diversity of all those to be educated.

<sup>(8)</sup> OJ C 128, 18.5.2010, p. 74.

<sup>(9)</sup> OJ C 151, 17.6.2008, p. 45 and OJ C 318, 23.12.2009, p. 113.

<sup>(10)</sup> For example *Recognition of non-formal and informal learning in OECD countries: A very good idea in jeopardy?*, *Lifelong Learning in Europe*, Patrick Werquin, Paris, 2008.

<sup>(11)</sup> OECD, *Beyond Rhetoric: Adult learning policies and practices*, Paris, 2003, and *Promoting Adult learning*, Paris, 2005.

<sup>(12)</sup> See the UNESCO guidelines on inclusion policies in education, Paris, 2009.

- Social: education can and must help to change mentalities, helping to build societies that are free of discrimination and prejudice, in which everyone can exercise their basic rights.
- Economic: inclusive education will help increase the real competitiveness of societies facing the new economic challenges. Competitiveness based on real skills rather than unfair competition. Inclusion and quality are mutually reinforcing.

#### 4. Specific objectives

4.1 The European Year of Combating Poverty has four specific objectives:

- **recognition:** recognising the right of people in a situation of poverty and social exclusion to live in dignity and to play a full part in society;
- **ownership:** increasing public ownership of social inclusion policies and actions, emphasising everyone's responsibility to tackle poverty and marginalisation;
- **cohesion:** seeking to promote a more cohesive society, by raising public awareness of the benefits for all of a society where poverty is eradicated and no-one is condemned to live in the margins;
- **commitment:** reiterating the strong political commitment of the EU to the fight against poverty and social exclusion, and promoting this commitment at all levels of governance.

4.2 The European Year will focus on the following themes:

- a) child poverty and the intergenerational transmission of poverty;
- b) an inclusive labour market;

- c) lack of access to education and training;
- d) the gender dimension of poverty;
- e) access to basic services;
- f) overcoming discrimination and promoting the integration of immigrants and the social and labour market inclusion of ethnic minorities;
- g) addressing the needs of disabled people and other vulnerable groups.

4.3 Thus the year 2010 in Europe will provide a unique opportunity for mobilising and raising the awareness of a very broad and diversified public to combat poverty and highlighting the role that education can play in moving towards the eradication of poverty. This goal can only be achieved if a strong and clear message is put across, rather than a variety of unfocused messages. That is why the EESC is proposing to concentrate its activities on a central platform: **Education for inclusion: a powerful tool for combating poverty. Towards a Europe without social exclusion.**

4.4 The Spanish Government assumed the Presidency of the European Union during the first half of 2010. In recent years, Spain has shown particular interest in the topic of combating poverty, eradicating social exclusion and inclusive education. Spain takes over the Presidency at the beginning of the European Year devoted to this subject. The opening ceremony took place in Madrid on 21 January 2010 and the traditional European Summit, when Spain will hand on the rotating Presidency to Belgium, will be held at the end of June. The interest and commitment Spain has shown in the subject of Education for All seems to provide a good opportunity to undertake a whole series of activities that will ensure that this year leaves its enduring mark in the shape of political decisions that will bring us closer to achieving the desired objective of eliminating poverty and social exclusion.

Brussels, 28 April 2010.

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

## APPENDIX

to the opinion of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions:

**Point 1.5**

“Non-formal education” is in various countries an educational form that has been used in large scale by employers, trade unions and civil society in general over many generations. By its participative pedagogical forms and working methods it has been very performing as a tool for fighting poverty and social exclusion. Therefore the EESC underlines that in order to implement the EU 2020 strategy on inclusive growth, “non-formal” education can play a very important role by complementing formal education.

**Outcome of the vote**

Votes for: 44

Votes against: 61

Abstentions: 14

**Point 3.7**

‘Non-formal education is recognised in various countries as an educational form to better include people in society and work-life. It has been used on a large scale by employers, trade unions and civil society organisations over many generations. Non-formal education is very often based on non-hierarchical, participative pedagogical forms and working methods as well as being closely associated with and run by civil society organisations. The very nature and bottom-up approach of non-formal education has proved an effective tool for combating poverty and social exclusion. Therefore, the EESC wishes to underline the significant role of non-formal education in the implementation of the EU 2020 strategy.’

**Outcome of the vote**

Votes for: 37

Votes against: 73

Abstentions: 10

---



**Opinion of the European Economic and Social Committee on ‘Accessing consumer and household credit: abusive practices’ (own-initiative opinion)**

(2011/C 18/05)

Rapporteur: **Mr CAMPLI**

On 16 July 2009 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

*Accessing consumer and household credit: abusive practices.*

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 30 March 2010.

At its 462nd plenary session, held on 28-29 April 2010 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 75 votes to one with one abstention.

**1. Conclusions and recommendations**

1.1 The EESC believes that the creation of a single, transparent, complete regulatory framework for access to credit is essential.

1.2 The EESC calls on the Commission to look at the best way of removing the gaps in the current regulatory framework, particularly as regards credit products supplied, misleading advertising practices, transparency of conditions, credit intermediaries, information asymmetries and education of the parties concerned in financial matters.

1.3 The EESC calls on the Member States to establish supervisory authorities for unfair commercial practices with specific powers in the area of credit.

1.4 The EESC recommends extending the European rapid alert system (RAPEX) to placing of toxic products on the European financial and credit market.

1.5 The EESC calls on the Commission and the Member States to analyse the issue of illegal and/or criminal practices in the field of credit in greater depth, particularly as regards predatory and usurious practices and specific initiatives in the European Area of Justice.

1.6 The EESC recommends establishing a specific, comprehensive European rule governing the various types of credit intermediary, setting out definitions, requirements and behaviour obligations, irrespective of the product marketed and of whether the credit activity carried out is a primary or subsidiary activity.

1.7 The EESC recommends a specific rule for supervision of the activities, practices and actions of those whose intermediary business is ancillary to other businesses, part of a commercial activity.

1.8 The EESC calls for the requirements relating to registration of the various financial and credit intermediaries in a European network of national registers to be defined on the basis of European operating standards covering professionalism, observance of prudential rules and ethics; these should include Community rules for striking off those using abusive or illegal practices, whose behaviour is detrimental to the consumer.

1.9 The EESC believes it is important to look at the possibility of extending to financial and credit products, with appropriate amendments and adjustments, the Community rules on liability laid down by Directive 85/374/EEC, as subsequently amended.

1.10 The EESC recommends introducing on the European market appropriate ranges of ‘certified’ or ‘standardised’ credit products to supplement existing products, in order to promote greater transparency and fair competition in terms of both practices and credit products supplied to consumers.

1.11 The EESC feels that it is essential to launch a European information and training campaign that targets consumers, consumer associations and the professionals who assist them and covers consumers' rights relating to credit and financial services. European networks for judicial and out-of-court dispute resolution mechanisms (Alternative Dispute Resolution – ADR) <sup>(1)</sup> must also be developed.

<sup>(1)</sup> FIN-NET (Financial Dispute Resolution Network).



1.12 The EESC considers to be important the creation and promotion, in agreement with the public authorities, of civil society networks for analysis, assistance and supervision concerning situations of social exclusion and poverty associated with credit and over-indebtedness.

1.13 The EESC recommends, in particular, introducing common European procedures for dealing with situations of over-indebtedness, which must also serve as a basis for activation of public initiatives to support or help the people concerned.

1.14 The EESC recommends that the Commission carry out an official study to see whether and how comprehensive European provisions on usury could be introduced, and develop common basic elements and principles which can be used to establish a European range of rates defining a situation of usury.

1.15 The EESC recommends introducing common procedures to promote national systems for combating usury, coordinated under a European regulatory framework.

1.16 The EESC calls for issue of credit cards to be subject to stringent Community rules to prevent predatory behaviour encouraging overindebtedness, making agreements between credit card holders and providers on credit limits mandatory.

1.17 The Community rules must ensure total, transparent protection throughout the EU of the use of information provided by clients, particularly in dealings conducted over the Internet.

1.18 The EESC considers consumer information and education to be essential, with education methodology and practices applied from basic schooling onwards. It recommends promotion of and support for civil society initiatives to ensure clear, comprehensible information.

1.19 Lastly, the EESC recommends bringing forward review of the effectiveness of Directive 2008/48/EC (the first review is due to take place by 12 June 2013) and shortening the periods between reviews from five to three years.

## 2. Introduction

2.1 In response to the global financial crisis, attention was focused first on how to restore the financial markets' stability and liquidity and then on how to consolidate that stability and overhaul the regulatory framework, in order to avoid more market failures in the future.

2.2 While that process is underway and must be stepped up, the EESC firmly believes that every effort must now be made to restore the European public's confidence in the financial system and ease their minds in respect of the various forms of access to credit.

2.3 The financial crisis led to an economic crisis which is now generating substantial losses in terms of jobs, businesses and individual and household income.

2.4 In this context, there is a rise in *social and financial exclusion* and *poverty* <sup>(2)</sup>.

2.5 Credit is an important tool for consumers and families as it enables them to cope with expenditure which is essential for a normal, orderly life. In this sense, affordable access to credit is an essential factor in social inclusion.

2.6 However, credit must not be seen or held up as a replacement or supplement for consumer or household income.

2.7 The greatest challenge facing economic, fiscal and social policy is to ensure responsible access to credit without creating a situation of dependence.

2.8 To this end, a regulatory framework is needed which is aimed at avoiding irresponsible lending and borrowing practices and combating all forms of imbalanced information provision between lenders and consumers.

## 3. Subject of the opinion

3.1 The opinion discusses abusive situations in the context of loans and illegal situations encountered by consumers which help to exacerbate social exclusion and poverty. It does not address specific issues which have already been dealt with by other EESC opinions.

3.2 The opinion therefore looks at the current regulatory framework, to identify the gaps which allow abusive situations to arise and to put possible solutions to the European and national public authorities. Moreover, it takes an initial look at illegal practices which lie outside this regulatory framework at present; these issues are little-known and difficult to resolve, closely related to abusive practices and often a result thereof. Lastly, the opinion sets out the potential roles civil society could play in resolving the issues identified.

<sup>(2)</sup> See the Second joint assessment by the SPC and the European Commission of the social impact of the economic crisis and of policy responses - SPC/2009/11/13 FINAL; the Eurobarometer survey on poverty and social exclusion - 2010, European Year for Combating Poverty and Social Exclusion; and the Commission Communication - Joint Report on Social Protection and Social Inclusion at <http://ec.europa.eu/social/main.jsp?catId=757&langId=en>.

3.3 The Commission said in a recent hearing<sup>(3)</sup>: 'The financial crisis has shown the damage that irresponsible lending and borrowing practices can do to consumers, lenders, the financial system and the economy at large. We are therefore determined to learn from possible mistakes to ensure that lending and borrowing take place in a responsible manner' (Mr McCreevy, Commissioner for the Internal Market). At the same hearing, the Commission said: 'It is our duty to open our eyes to the vicious mechanisms that have generated the irresponsible lending and borrowing that is now financially hurting a good number of our citizens' (Ms Kuneva, Commissioner for Consumer Affairs).

3.4 The ultimate aim of the opinion is, therefore, also to help improve the operation of the Single Market, assessing what solutions can be proposed at Community level and what solutions could be provided at Member-State level while still part of a common framework. The EESC believes that supranational issues require solutions to be provided at this level to avoid fragmentation of the Single Market.

#### **4. The current regulatory framework: gaps and possible areas for action**

4.1 As regards consumer credit agreements, the principal European legislation is Directive 2008/48/EC (CCD). The CCD provides for full harmonisation: in other words, Member States cannot continue to apply or introduce divergent national regulations, even if these regulations give consumers greater protection. The Directive sets out the general framework of consumer rights in the field of consumer credit, but does not apply to mortgage credit.

4.2 To supplement this framework, Directive 2005/29/EC on unfair business-to-consumer commercial practices lays down a general framework for definition and punishment of unfair commercial practices. Where 'financial services' are concerned, it provides for minimum harmonisation, allowing Member States to introduce more restrictive or stringent consumer protection rules.

4.3 There are no European rules on mortgage credit; national rules vary according to the different cultures and domestic markets. However, there is a European code of practice on the pre-contractual information to be provided to consumers and a standard consumer information sheet (ESIS). This code is, however, only voluntary and its scope is extremely limited.

4.4 The EESC acknowledges that the current rules provide a range of possible solutions for dealing with abusive lending practices. However, substantial gaps still need to be filled at EU level, and national and EU authorities still have a lot of work to do, including on implementation and penalty systems.

4.5 The EESC notes, moreover, that one reason why the financial crisis became so serious was the sales pressure on employees in the credit and financial sector. The pressure to achieve increasingly high sales targets irrespective of whether products tallied with consumers' profiles led to the portfolios of businesses, consumers and, in some cases, municipal authorities being contaminated by the spread of toxic products.

4.6 The EESC believes that this was caused partly by the systems of incentives and bonuses for top managers, which in some cases increased their income out of all proportion: the point was reached where the CEO of a large financial institution was earning 400 times as much a year as an employee. Despite all the commitments and solemn promises made by EU Heads of State and Government, the EESC notes that tangible, effective measures have yet to be taken to address these issues.

4.7 First and foremost, the current regulatory framework for credit agreements does not include a requirement to gear supply to consumers' needs. Article 8 of Directive 2008/48/EC establishes a welcome requirement to assess consumers' solvency. Article 5(6) only stipulates that creditors must provide consumers with adequate explanations to enable them to assess whether the proposed credit is suitable, where appropriate by explaining the pre-contractual information, the essential characteristics of the products proposed and the specific effects they may have on consumer, and gives Member States a certain margin in practical application; it does not define rules on adapting products to needs.

4.8 This loophole has allowed abusive situations to arise where the products sold to consumers are sometimes unsuitable for their needs. This is the case where only one type of credit is available or credit/debit cards are provided indiscriminately for purchase of products in certain department stores (as part of a commercial activity).

4.9 In this connection, the EESC stresses the need to keep provision of credit cards quite separate from supply of commercial products or promotion practices related thereto.

4.10 With regard to advertising, the EESC notes that while the current rules include requirements on standard information needed to sign credit agreements (Directive 2008/48/EC, Article 4 *et seq.*), there are no specific requirements on practices which are misleading, aggressive or, in any case, likely to lead to indebtedness<sup>(4)</sup>.

4.11 The EESC is aware that, in a market economy, it should be left to the market to strike the right quantitative and qualitative balance between supply and demand. However, when the market fails to come up with appropriate solutions, the public authorities have to intervene, and it is their responsibility to provide adequate responses to social needs.

<sup>(3)</sup> Public hearing on Responsible lending and borrowing, Brussels, 3.9.2009.

<sup>(4)</sup> Good definitions of 'misleading actions' (Article 6) and 'aggressive practices' (Article 8) are provided, however, in Directive 2005/29/EC concerning unfair business-to-consumer commercial practices.

4.12 The EESC feels that one possibility would be introducing on the European market appropriate ranges of 'certified' or 'standardised' credit products. These products could supplement existing products. This would make it easier for consumers to find a product which is more convenient and suited to their needs <sup>(5)</sup>.

4.13 The EESC therefore believes it is necessary for the Commission to explore legal and procedural bases for making the European market more transparent, with 'certified' or 'standardised' credit products, and for putting in place a European rapid alert system, in order to monitor placing of toxic products on the European financial and credit market.

4.14 From another point of view, it is important to look more closely at credit suppliers' liability, in order to limit the number of products which are not suited to consumers' needs. To this end, common procedures need to be introduced at European level to address situations of over-indebtedness, with subsequent activation of initiatives to support and/or help people reduced to over-indebtedness by, *inter alia*, abusive lending practices.

4.15 Another situation which European legislation fails to cater for is usury. Usury is regulated in certain Member States (Spain, France, Italy, Portugal), but not in all.

4.16 Furthermore, recent research <sup>(6)</sup> shows that regulating usury could have a beneficial impact in terms of both combating social exclusion and poverty and combating abusive practices.

4.17 The EESC feels that the Commission should carry out an official study to see whether and how comprehensive European provisions on usury could be introduced. In particular, the EESC feels it would be useful to define in greater depth common basic elements and principles which could be used to establish a European range of rates defining a situation of usury.

4.18 In order to build on and exploit experience accumulated in a number of Member States over many years, the EESC feels it would be useful to establish a European regulatory framework for promotion of national systems to combat usury and assist victims thereof.

4.19 The EESC notes that most abusive credit practices take place in relations between credit intermediaries and consumers.

<sup>(5)</sup> See, in this connection, ISO 22222 (Personal financial planning – 2005); UNI-ISO (Personal financial planning – 2008); AENOR-UNE 165001 (*Etica. Requisitos de los productos financieros socialmente responsables*); and also ECO/266 – Socially responsible financial products.

<sup>(6)</sup> See *Usury* – final report of the Osservatorio socio-economico sulla criminalità (socio-economic crimewatch observatory), CNEL (National Economic and Labour Council) – Rome, 2008.

4.20 In this connection, the European Parliament has called <sup>(7)</sup> for a Community framework to clarify and harmonise the responsibilities and liabilities of credit intermediaries following the principle 'same business, same risks, same rules', in order to ensure consumer protection and avoid non-transparent sales practices and inappropriate forms of advertising which are particularly damaging to more vulnerable, less-informed groups of consumer. The EESC supports this and believes that such a framework would contribute to cleaning up the supply market and a stronger stand against abuse, irresponsible credit intermediaries and the illegal activities of loan sharks.

4.21 The EESC feels that establishing a register of credit intermediaries could ensure transparency, reliability and professionalism; there should be binding registration criteria, with monitoring by bodies made up of professional banking associations, financial intermediaries/brokers and consumer associations under the oversight of supervisory authorities, and specification of grounds for suspension, deletion and striking off and the existence of joint and several liability in the event of damages proved in a criminal court.

4.22 Practices such as text message loans targeting young people, 'easy' telephone loans, payday loans and indiscriminate supply of credit or debit cards are the backdrop to abusive practices. All possible means must be employed to combat them. With regard to these situations, Directive 2005/29/EC on unfair business-to-consumer commercial practices provides a number of possible solutions to problems of irresponsible lending which could be adapted and included in the rules on consumer credit agreements as well.

4.22.1 The EESC calls for credit card providers to be strictly regulated (promotions, overall indebtedness ceilings, age of the potential card holder, clarity of statements of account) to prevent predatory behaviour encouraging overindebtedness.

4.22.2 Credit card limits, in particular, should be set in agreement with the card holder. Any further increase in these limits should only occur following explicit agreement between the card provider and holder.

4.23 However, to be effective, the legislation must be applied more stringently <sup>(8)</sup>. In view of the new situation created by the global financial crisis, the EESC stresses the need to bring forward review of the effectiveness of Directive 2008/48/EC (the first review is due to take place by 12 June 2013) and shorten the periods between reviews from five to three years. In the field of unfair commercial lending practices, in particular, the EESC feels that it is important for Member States to establish market regulators with appropriate, specific powers and technical resources in the field of credit.

<sup>(7)</sup> EP Resolution of 5.6.2008 - Sector inquiry on retail banking.

<sup>(8)</sup> Member States have to comply with EU rules by 12 June 2010.

4.23.1 In particular, the EESC calls for a stronger regulatory framework to ensure total, transparent protection in the use of information provided by clients, particularly via Internet or email.

4.24 In the case of mortgage credit, and subject to the precautions described in its previous opinions on this subject<sup>(9)</sup>, the EESC feels it is appropriate to assess the option of making the ESIS and indications regarding interest rates binding for credit intermediaries as well, as per the Directive on credit agreements for consumers. This could bring about greater integration of the European mortgage credit market and comprehensive protection of consumers and households.

4.25 As regards consumer credit advice services, the EESC advocates support for civil society organisations, particularly consumer associations, to develop advice services which can provide those seeking credit with an objective, clear, professional opinion on the suitability of the products on offer to meet their specific needs.

4.26 The EESC stresses that provision of credit advice should be regulated in order to ensure, first and foremost, that both lenders and intermediaries display a high level of transparency and independence.

4.27 To address all these issues, the EESC believes that a coherent, homogeneous European Union single regulatory framework is needed, with principles and rules applying to all credit products.

## 5. Abusive and/or illegal credit practices

5.1 The EESC believes that concurrently, the problems must be addressed of that vast world which is concealed behind bogus intermediary and financial services companies and which actually consists of predatory and usurious practices along with criminal practices in the area of interest rates and extortion. This applies, *inter alia*, to:

- irregular loans to consumers and households who are in difficulties and have exceeded the debt tolerance threshold;
- supply of loans with the aim of robbing clients, as in usury – typical of criminal organisations.

5.2 Irregular credit can take a number of forms:

- provision of ‘unrecorded’ advances of money or other goods, capitalising as much as possible on an individual’s repayment capacity and extending these advances for as long as possible;

- irregular financing where the lender makes profits by failing to respect codes of ethics, by applying misleading clauses or non-transparent conditions or applying pressure to push up the security requested;

- loans typically consisting of abusive non-bank lending activities;

- loans which are clearly usurious, taking various criminal forms and in particular contexts.

5.3 The EESC believes that the growth potential for irregular credit situations is based on the fact that many households and consumers are excluded from the legal credit market, sometimes as a result of irresponsible lending which has left them in a situation of dependence and extreme vulnerability.

5.4 The EESC realises that the problems associated with low household income and the various forms of consumer pressure – which are partly responsible for the fragility that draws consumers and households into illegal loans and parallel money markets – cannot be resolved solely by regulating the credit sector.

5.5 Moreover, abusive and/or illegal credit practices are often punishable under criminal law and should therefore be regulated by specific criminal-law initiatives in the context of the European Area of Justice, enforced by the police forces. Full EU-wide enforcement of national judgments regarding seizure of goods originating from usury or illegal extortion could contribute substantially to combating these practices<sup>(10)</sup>.

5.6 The EESC notes that insufficient data are available in this field, taking all the EU Member States as a whole, to fully reveal the various aspects and extent of the issue on a European scale. It therefore recommends that the Commission, together with the Member States, analyse these situations in detail on the basis of comparable data.

## 6. The role of civil society

6.1 Civil society, particularly consumer associations and charitable organisations, has a major role to play in identifying, analysing and overseeing issues related to abusive and/or illegal consumer and household lending practices.

<sup>(10)</sup> ‘Faced with what are now global phenomena, governments and institutions can go on feigning ignorance or confining themselves to national responses if they so choose. However, if only they would take note of the boost given to the search for fugitives by the introduction of the European arrest warrant, they would proceed systematically and with all speed to define common investigation and prosecution instruments and core criminal law provisions shared by all the Member States, starting with compensation for damages from crimes of mafia association.’ (See F. Forgione, *Mafia export*, 2009, Milan).

<sup>(9)</sup> OJ C 27, 3.2.2009, page 18 and OJ C 65, 17.3.2006, page 13.

6.2 The EESC therefore feels it is important to create and promote civil society networks, in agreement with the public authorities, to analyse, monitor and provide assistance in situations of social exclusion or poverty associated with borrowing or over-indebtedness. These networks have a key role to play in terms of exchange of information and good practice, including as part of a harmonised complaint system.

6.3 The EESC notes that good practice already exists in this area, such as 'supported social credit' or the European Financial Inclusion Network (EFIN), and that this good practice must be encouraged and extended throughout the EU.

6.4 The EESC believes that consumer information and education initiatives, applying education methodology and practices from basic schooling onwards, are something at which the Member States and civil society excel<sup>(11)</sup>. These are important measures for developing financial education at European level throughout the EU.

6.5 The EESC feels that it is important to encourage and develop these activities but stresses that it is the responsibility of lenders to provide information on products and of public authorities to provide education. Moreover, the EESC believes that civil-society initiatives concerning clear, comprehensible information and education will only be effective if they supplement a single, all-embracing regulatory framework.

6.6 At the EESC public hearing held in Brussels on 28 January 2010, involving authoritative representatives of civil society at national and European levels, the need was stressed to bring abusive and/or illegal practices under European control as regards both regulation and support for victims, and education, training and information policies targeting all stakeholders.

6.7 In order to boost a social market economy in the area of credit, the EESC feels it is important to set up and develop social economy businesses such as cooperatives<sup>(12)</sup>. The public authorities are also responsible for supporting and promoting the creation and operation of these kinds of business<sup>(13)</sup>.

Brussels, 28 April 2010.

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

---

<sup>(11)</sup> UNI (Draft standard on financial education of citizens – service requirements), January 2010.

<sup>(12)</sup> See *Resilience of the Cooperative Business Model in Times of Crisis*, ILO, 2009.

<sup>(13)</sup> See OJ C 318, 23.12.2009, p. 22.



**Opinion of the European Economic and Social Committee on the 'European Foundation Statute'  
(own-initiative opinion)**

(2011/C 18/06)

Rapporteur: **Ms HELLAM**

On 16 July 2009, 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 the:

*European Foundation Statute.*

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 30 March 2010.

At its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 134 votes to 2 with 1 abstention.

## **1. General recommendations and conclusions**

1.1 This own-initiative opinion sets out some reflections and proposals on the development of a European Statute adapted to foundations, and proposes guidelines which could govern such a Statute.

1.2 A review of needs and opportunities confirms the necessity for a European company law project for foundations which would offer them an adapted instrument to facilitate their activities in the internal market. A recent study <sup>(1)</sup> and practitioners <sup>(2)</sup> have indicated that the number of foundations and founders who want to develop transnational operations and cooperation has grown significantly over the last decade. They have also testified that foundations which conduct cross-border activities have to face several barriers, including legal barriers, which lead to increased transaction cost, therefore reducing the overall amount of their available funds on public good.

1.3 A European Foundation Statute has been repeatedly called for by the foundation sector and its representative organisations and networks at EU-level <sup>(3)</sup> as the most cost-effective solution for addressing cross-border barriers and thereby stimulating foundation activities across Europe.

1.4 In this context, the EESC urges the Commission to present a proposal for a Regulation on a European Foundation Statute to support public benefit activities for its adoption by the Council and the European Parliament in due course.

1.5 The EESC believes that the European Foundation Statute is an essential instrument to bring citizens at the heart of the internal market and bring Europe closer to the people.

1.6 The EESC sees that the EFS can serve as a new mechanism to support European public good and citizen actions, and address major European socio-economic concerns and pressing needs in such fields as knowledge and innovation, medical research, healthcare and social services, the environment and regional development, employment and vocational training, the conservation of natural and cultural heritage, the promotion of the arts and cultural diversity, international cooperation and development.

1.7 In order to make it effective and attractive, the new statute will have to provide clear and comprehensive rules regarding setting-up, operations and supervision and have a genuine European dimension. It will make cross-border operations, donations and cooperation smoother by providing an efficient management tool for public-benefit purposes, while offering a recognised European label.

## **2. General comments**

### **2.1 Scope and institutional background**

2.1.1 The purpose of this own-initiative opinion is to examine the potential development of a European Foundation Statute (EFS) that should help foundations and funders that are increasingly working across borders face both civil and tax law barriers and give a European scale from the outset to the creation of new foundations.

2.1.2 In November 2009, the European Commission Directorate-General Internal Market and Services released the results of a public consultation <sup>(4)</sup> on a European Foundation Statute (EFS) which generated a large number of responses especially from the non-profit sector and showed a strong support for a EFS from this sector.

<sup>(1)</sup> Feasibility Study on a European Foundation Statute, 2009.

<sup>(2)</sup> The European Foundation Centre (EFC) the principal membership organisation for public benefit foundations at EU level has outlined this trend. Two Thirds of its members are active in other countries than their state of origin.

<sup>(3)</sup> European Foundation Centre, Donors and foundations networks in Europe, Network of European foundations.

<sup>(4)</sup> [http://ec.europa.eu/internal\\_market/company/eufoundation/index\\_en.htm](http://ec.europa.eu/internal_market/company/eufoundation/index_en.htm).



2.1.3 In February 2009, the European Commission published a Feasibility Study on the European Foundation Statute <sup>(5)</sup>. The Study set out the potential benefits of an EFS in terms of reducing or eliminating unnecessary financial costs and administrative burdens, thereby making it easier for foundations that wish to pursue their activities across different countries within the EU.

2.1.4 Two field recommendations also exist with regard to a European Foundation Statute:

— A 2005 proposal for a regulation on a European statute for foundations by the European Foundation Centre <sup>(6)</sup>.

— A 2006 research project The European Foundation – a New Legal Approach, by foundation law and tax law experts <sup>(7)</sup>.

2.1.5 On 4 July 2006 the European Parliament adopted a resolution on prospects in relation to company law <sup>(8)</sup> which calls on the Commission to continue its preparation of Community legislation for other legal forms, such as the European foundation.

2.1.6 In a 2009 opinion on diverse forms of enterprise <sup>(9)</sup>, the EESC has welcomed the start of work on a European Foundation Statute and called on the Commission to conclude the impact assessment in early 2010 by presenting a proposal for a regulation that will enable foundations of European scope to operate on a level playing field in the internal market.

2.1.7 In 2006 the European Court of Justice has ruled <sup>(10)</sup> that the different tax treatment of resident and non-resident public benefit foundations constitutes an unjustified breach on the free movement of capital but only where the Member State recognises the public-benefit status of the foundation according to the Member State law.

2.1.8 In a case on cross-border donations <sup>(11)</sup> the Court ruled that tax laws which discriminate against donations to public-benefit organisations based in other EU Member States are against the EC Treaty, as long as the recipient organisations based in other Member States are to be considered 'equivalent' to resident public benefit organisations.

<sup>(5)</sup> [http://ec.europa.eu/internal\\_market/company/eufoundation/index\\_en.htm](http://ec.europa.eu/internal_market/company/eufoundation/index_en.htm).

<sup>(6)</sup> <http://www.efc.be/SiteCollectionDocuments/EuropeanStatuteUpdated.pdf>.

<sup>(7)</sup> [http://www.bertelsmann-stiftung.de/bst/en/media/xcms\\_bst\\_dms\\_15347\\_\\_2.pdf](http://www.bertelsmann-stiftung.de/bst/en/media/xcms_bst_dms_15347__2.pdf).

<sup>(8)</sup> P6\_TA(2006)0295.

<sup>(9)</sup> OJ C 318 of 23.12.2009, p 22.

<sup>(10)</sup> Stauffer case C-386/04.

<sup>(11)</sup> Persche case C-318/07.

## 2.2 Observations: the foundation sector in the EU

2.2.1 The European foundation sector is an important economic force <sup>(12)</sup> with assets between EUR 350bn and close to approx. EUR 1 000bn and annual expenditures of between EUR 83bn and EUR 150bn. Also a substantial number of European countries are on track for sustained foundation growth.

2.2.2 Foundations play an important role in the labour market. The 110 000 foundations identified by the Feasibility survey on the EFS provide direct full-time employment to between 750 000 to 1 million people in the EU <sup>(13)</sup>. By giving grants or capital support to organisations and individuals they also support employment and voluntary engagement.

2.2.3 The vast majority of foundations in the EU are asset-based and public benefit purpose-driven. As a general rule, they have no members or shareholders and are separately-constituted non-profit distributing bodies. They have an established and reliable income source which is irrevocably dedicated to public benefit purposes. They can derive their income from an endowment, a capital sum provided by an individual, family, company or another organisation. It can take the form of 'movable' property: cash, shares, bonds, works of art, authorial rights, research licences or 'immovable' property: land and real estate such as museums, and care centres. They also acquire their income from other sources e.g. bequests and gifts, appeals to public generosity, self-generated income, contracts, lottery proceeds.

2.2.4 Foundations in the EU work on issues and projects which directly benefit people and are key to developing a citizens' Europe in areas ranging from knowledge, research and innovation, social services and healthcare, medical research, the environment, regional development, employment and vocational training, the conservation of natural and cultural heritage, to the promotion of the arts and culture, international cooperation and development.

2.2.5 An increasing number of foundations and funders are working across borders. However they face administrative, civil and tax law barriers, which are identified in the Feasibility Study including:

— Struggling with different national laws: new European initiatives are delayed or abandoned by lack of appropriate legal tools;

— Difficulty recognising foreign foundations' legal personality;

— Legal insecurity over national recognition of 'general interest' nature of resident foundations' cross-border work and public-benefit status;

<sup>(12)</sup> Feasibility Study executive summary Ad1.

<sup>(13)</sup> See footnote 12.

- Administrative burden and cost of setting up several branches in other countries;
- Lack of possibility of transfer of seat to another Member State;
- Fiscal barriers: non-resident bodies suffer tax discrimination.
- Enhance transparency;
- Provide for an effective management tool to support public-benefit purposes;
- Make donation procedures smoother, for cross-border activities of both natural and legal persons;

### 2.3 The need to set up a suitable tool for foundations

2.3.1 It would be unrealistic to hope for any harmonisation of the vast number of laws governing foundations in the Member States<sup>(14)</sup>, particularly in view of the differences between them as regards the purpose, requirements for establishment, governance and accountability<sup>(15)</sup>.

2.3.2 None of the existing European legal tools<sup>(16)</sup> set up to support the growth of activities of - or cooperation between - private companies and public bodies across borders in the EU are suited to foundations needs and special features as private non profit distributing bodies which pursue a public interest objective and do not have shareholders or controlling members.

2.3.3 It has become necessary to consider the development of a European Foundation Statute that is accessible and tailored to foundations' needs, with a view to facilitating their operations and collaborative ventures within the single market, enabling them to pool resources from different countries and giving a European scale from the outset to the creation of European foundations to support public benefit activities.

## 3. For a European Foundation Statute: basic aims and structure

### 3.1 Aims and benefits

3.1.1 The European Foundation Statute (EFS) is a good policy option in order to foster the work of public benefit foundations across the EU because it would:

- Enhance the European legal framework for foundations;
- Reduce legal and administrative barriers;
- Encourage the creation of new activities;
- Facilitate cross-border work, giving partnership within the single market;

- Contribute to the economic integration process and consolidate a European civil society, in the current globalised context in which common challenges and threats call for a clear, disentangled European approach.

3.1.2 The advantages of an EFS would be multifold as follows:

- Efficiency and simplification: the Statute would allow the creation of a European Foundation (EF) registered in one Member State that would also be recognised in the other 26. It could operate EU-wide according to a single set of rules and a coherent management and reporting system. It would help overcome existing barriers and ease cooperation and work across borders.
- Accountability: the EFS would clarify the concept of foundation by providing a common definition of 'public benefit purpose foundations' across the EU as currently the term 'foundation' is much too loosely used to refer to very diverse undertakings. It could have positive effects on the general governance of foundations by providing a benchmark.
- Economic benefits: in addition to reducing their costs for cross-border activities, foundations that opt for the Statute would be recognised both by public administration and the general public, by having a trusted European 'label'. The EFS would facilitate the pooling of resources into activities for public good and could attract foreign investment. It could also have beneficial effects on the behaviour of donors and giving.
- Political and citizen benefits: the development of trans-national activity and cooperation would encourage European integration in those areas of direct interest to EU residents. The EFS could provide a robust and flexible management tool to support public benefit and citizen action at EU level to address pressing needs and global policy issues.

### 3.2 Core features

3.2.1 An effective EFS should fulfil a series of key principles and features. It would be an additional and optional public benefit tool governed mainly by European law and complementing national and regional laws.

<sup>(14)</sup> EFC Legal and fiscal profiles of foundations in the EU. <http://www.efc.be/Legal/Pages/FoundationsLegalandFiscalCountryProfiles.aspx>.

<sup>(15)</sup> EFC Comparative Highlights of Foundation Laws. <http://www.efc.be/Legal/Pages/Legalandfiscalcomparativecharts.aspx>.

<sup>(16)</sup> The European Economic Interest Grouping, the European Company, the European Cooperative, the European Grouping of Territorial Cooperation.

3.2.2 An EFS could be devised along the following lines, which will have to be detailed in cooperation with the parties concerned. An EFS should:

3.2.2.1 Be an optional and additional instrument that funders and foundations active in more than one EU Member State may want to use instead of setting up several foundations according to national law in different EU countries. It would not replace existing Member States laws governing foundations.

3.2.2.2 Be simple and comprehensive as regards most aspects of foundation law and should only refer to national law in as few legal fields as possible. This will allow founders to save compliance costs by using one legal tool and arrange for a governing structure which would be comparable in all Member States.

3.2.2.3 Be easily accessible. The EF could be created in perpetuity or for a limited-time duration by will by any natural person resident in the EU, by notarial deed by natural and legal persons resident in the EU; by transformation into an EF of an existing public benefit foundation legally established in an EU Member State or by merger between public benefit foundations legally established in one or several EU Member State. A notice of the creation of the EF should be published in the Official Journal.

3.2.2.4 Allow to pursue public benefit purposes only. The description of public benefit could provide for an open list of public benefit purposes in order to allow for flexibility<sup>(17)</sup>. An EF would be regarded as being of public benefit if:

(1) it serves the public interest at large at European/international level either by operating its own programmes or by supporting individuals, associations, institutions or other entities; and

(2) the purpose for which it is established includes the promotion of the public interest in one or more fields determined to be of public benefit.

3.2.2.5 Set a European dimension: the EFS would be intended for activities which have a European aspect in the broad sense, i.e. involving activities of more than just in one Member State.

3.2.2.6 Set a minimum amount of capital. This could be a sign of the seriousness of the purpose and activities of the EF, and increase creditor protection, but should not prevent smaller initiatives to start operations.

3.2.2.7 Set no 'formal' membership but allow some participatory structure which however cannot substitute the rights and obligations of the governing structure.

3.2.2.8 Within the scope of the EF public benefit objective, allow to carry out economic activities directly or through another legal entity provided that any income or surpluses are used in pursuance of its public benefit purposes.

3.2.2.9 Set the right to hold movable and immovable property, to receive and hold gifts or subsidies of any kind, including shares and other negotiable instruments, from any lawful source.

3.2.2.10 Set the registered office inside the EU. It could be transferred to another Member State without the need for winding-up or the creation of a new legal entity.

3.2.2.11 Set clear transparency and accountability rules. An EF should keep records of all financial transactions, use formal financial channels and file annual statements of accounts and activity reports to the competent authority. Larger organisations would have their accounts audited.

3.2.2.12 Provide for clear governance rules and responsibility for the EF but the founders/the board should have flexibility to design the internal affairs in the bylaws of the EF. Model bylaws could be usefully proposed by way of an example. They should provide for the avoidance of conflicts of interest.

#### 4. Applicable law

4.1.1 The proposal for an EFS would set out the various sources of law applicable: the EU Regulation on the EFS, the EF bylaws and other EU laws or national laws.

4.1.2 While the legislation on an EFS would need to be comprehensive, it should also be clear and simple. The grounds for this are obvious: clarity will help European Foundations to comply with the law, and those charged with supervision to enforce it.

4.1.3 The proposal on a EFS should establish the framework in which European Foundations are established, operate, and are accountable. In the areas that it would regulate (e.g. formation, registration, purpose, capital, registered office, legal personality, legal capacity, directors' responsibility, transparency and accountability requirements) the legislation should be comprehensive and not refer to national laws. This will ensure the unity, clarity and the security that the Statute should provide for third parties, partners and donors.

<sup>(17)</sup> EFC's 2005 proposal for a EFS sets out an open list.

4.1.4 With regard to supervision, the oversight over EFs could be delegated to designated competent authorities in the Member States on the basis of the commonly agreed EFS standards regarding registration, reporting and supervision requirements set forth in the EFS Regulation.

4.1.5 On matters not covered by the EFS legislation, provisions of other Community law or law of the Member States would be applicable.

4.1.6 In respect of taxes, the competence to determine the tax treatment of the EF rests on the tax authority of the Member State where the EF is tax-liable.

4.1.7 EU Member States provide for special tax treatment for public benefit purpose foundations<sup>(18)</sup>. A difference of tax treatment between domestic and foreign public benefit/good bodies is considered as being potentially in conflict with the EC Treaty in particular as regards donations, inheritance or gift

tax for legacies and gifts, and foreign-source income of foundations. Thus a EF should also be able to benefit from the tax benefit which domestic legislators have granted to resident foundations including tax exemption on income tax, gift and inheritance tax, tax on the value/transfers of their assets<sup>(19)</sup>.

4.1.8 With respect to the tax treatment of EFs' founders/donors: any founder/donor giving to an EF within or across borders shall receive the same tax deduction or tax credit as if the donation were given to a public benefit purpose organisation in the donor's own Member State.

4.1.9 As regards indirect taxes, in an opinion on the Diverse forms of enterprise<sup>(20)</sup> the EESC had requested the Commission to encourage Member States to study the possibility of granting them compensatory measures on the basis of their confirmed public value or their proven contribution to regional development.

Brussels, 28 April 2010.

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

---

<sup>(18)</sup> A synthesis of foundations tax rules is available in 'Comparative Highlights of Foundation Laws', EFC 2009 <http://www.efc.be/Legal/Pages/Legalandfiscalcomparativecharts.aspx>.

<sup>(19)</sup> See The European Foundation a new legal perspective. [http://www.bertelsmann-stiftung.de/bst/en/media/xcms\\_bst\\_dms\\_15347\\_\\_2.pdf](http://www.bertelsmann-stiftung.de/bst/en/media/xcms_bst_dms_15347__2.pdf).

<sup>(20)</sup> See footnote 9.

## Opinion of the European Economic and Social Committee on 'The European shipbuilding industry dealing with the current crisis'

(2011/C 18/07)

Rapporteur: **Marian KRZAKLEWSKI**

Co-rapporteur: **Enrique CALVET CHAMBON**

On 16 July 2009, the European Economic and Social Committee, acting under Article 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

*The European shipbuilding industry dealing with the current crisis.*

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 9 April 2010.

At its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 29 April), the European Economic and Social Committee adopted the following opinion by 168 votes to 14 with 12 abstentions.

### 1. Conclusions and recommendations

1.1 The European Economic and Social Committee is very concerned at the profound crisis affecting the EU shipbuilding industry, characterised by a complete lack of new orders, major problems in financing existing orders, overcapacity for construction of commercial vessels, irreversible jobs losses with further lay-offs forecast, and an ever growing number of bankruptcies and closures of shipyards and ancillary businesses.

1.2 The Committee is convinced that, as a result of the crisis, there is a need for a joint European strategy for the future of the EU shipbuilding industry and coordinated action by Member States in this regard. The first elements of this strategy should be defined and implemented no later than mid-2010 and should address the following urgent needs:

- stimulating demand (see 4.1 and 4.1.1),
- financing (including a prolongation beyond 2011 of measures under the Framework on State Aid to Shipbuilding),
- ensuring employment measures (including support at the time of shipyard closures),
- countering the absence of a level playing field.

These measures should help counteract the tendency to adopt measures which might hamper competitiveness.

1.3 Given the lack of trade regulations for the shipbuilding sector that are legally binding throughout the world, the Committee believes that the Commission should be urged to invest greater energy and to take more direct action to protect this strategic sector. In the absence of an international agreement at the OECD, however, the EU must take direct and decisive action to protect the European shipbuilding sector from unfair competition.

1.4 European and national decision-makers, businesses in the sector and the social partners must take urgent steps to implement this joint project<sup>(1)</sup>. The political aims of the project are to:

- maintain a strong and competitive industrial base for this high-tech sector in Europe capable of delivering high-levels of sustainable employment in the future;
- avoid short-sighted redundancies during the downturn, maintain jobs and, equally important, to retain a highly-skilled workforce in this strategic sector;
- give special consideration to the environmental and energy-saving arguments in favour of maritime transport – the European shipbuilding industry, and especially the marine equipment sub-sector, has significant potential to improve the situation in these two areas;
- ensure cohesion in endangered coastal regions, including shipbuilding regions;

<sup>(1)</sup> The planned response to the crisis was presented in Bremerhaven at the meeting of high-level representatives within the framework of the LeaderSHIP initiative.



- prevent the manufacturing capacity of shipyards from falling below the critical mass, otherwise the EU will be unable to produce vessels in future;
- safeguard European know-how in the area of shipbuilding finance <sup>(2)</sup>;
- maintain European maritime skills (in research and higher education, among other areas);
- ensure that the sector has significant potential for growth, innovation and expansion in the area of R&D;
- make it clear that the costs of inaction are far greater than those of taking concrete measures to support the sector now (see example from the USA) <sup>(3)</sup>.

1.5 The Committee calls on the Council, the Commission and the Parliament to ensure that, as a matter of strategic priority, Europe seeks to maintain the critical mass that is required for shipbuilding and repair in Europe. This is essential in order:

- To monitor progress on environmental and energy matters in the area of transport and to monitor growth of energy efficiency in this area.
- Not to lose the sector's major technological contribution to European industry, with its impact on other sectors (external economies). Once a shipyard closes, it does not open again.
- To take advantage of future growth potential (e.g. making use of wind energy), which Europe may only do by using its capabilities in the field of shipbuilding.
- To retain a sufficient capacity to respond to unprecedented conditions (in crisis situations, every vessel becomes a strategic element of the struggle, including commercial vessels).

<sup>(2)</sup> Until now Europe has dominated the shipbuilding credit markets. In order to safeguard and build on this know-how, a European guarantee system must be established that allows the shipyards to secure the financing of existing and future orders. Europe must maintain and further develop its role as a centre for ship financing.

<sup>(3)</sup> The commercial impact of a loss of critical mass in the USA was a 300 % increase in the costs of building new vessels following the crisis in the sector.

- To maintain a skilled workforce and sufficient high-level research in the shipbuilding industry, which otherwise would pass entirely into non-European hands in areas such as transport, sustainable growth, environmental conservation, and technological excellence in innovation.

1.6 The Committee warns that the loss of vital critical mass in the shipbuilding sector will lead to the closure of institutions for training engineers and specialist technical staff and vocational schools for specialist workers. This means that the European Union risks losing critical intellectual mass to the benefit of its commercial and political rivals.

1.7 The Committee believes that, as in other sectors (e.g. automotive), Member States should pool their efforts to take joint action at European level with a view to enabling the sector to survive the crisis, with temporary short-term measures that take account of the sector's characteristics.

1.7.1 These measures should ensure that:

- new orders are secured as quickly as possible;
- the link between shipyards, cooperating businesses and workers with vital know-how is maintained when the industry is going through a bad patch so that knowledge is not lost irretrievably as a result of a temporary crisis.

1.8 As regards employment policy in the sector, the Committee believes that all means should be employed to prevent lay-offs. Qualified and skilled workers, of which there has been a lack in recent years, must be kept on. For the duration of the crisis in the sector, the public authorities must put in place common European frameworks for short-time working arrangements with a view to ensuring a level-playing field in Europe and protecting workers. This protection must be available to any worker who is at risk.

1.8.1 These frameworks must guarantee that jobs and purchasing power are maintained wherever possible, and ensure the right of all workers to access training and retraining. Programmes are needed to train and retrain shipyard workers in order to improve their individual skills and the general level of qualifications in shipyards.

#### *Specific recommendations and proposals of the Committee*

1.9 Action should be stepped up at European level in order to facilitate the urgent renewal of the fleet to take account of environmental issues. To this end, it is important to make use of the possibilities arising from the 2008 Community guidelines on State aid for environmental protection. The International Maritime Organisation should solve environmental issues on an international level as a matter of priority. This process is already under way.

1.10 Member States and the EU must address the problem of the long-term financing of the shipbuilding sector. A European financing instrument for shipbuilding should therefore be set up with the EIB. Industry, policy-makers and the EIB must explore how to make EIB funds for the promotion of 'green technologies' and clean transport available to the shipbuilding sector.

1.11 There needs to be stricter control of ship owners' business practices so that they do not use European and national aid to purchase ships from shipyards outside the EU.

1.12 Help and support should be provided for the environmentally-friendly and economically responsible dismantling and modernisation (retrofitting) of old vessels, with European quality requirements for the shipyards that carry this out.

1.13 The Committee supports the LeaderSHIP 2015 initiative as a good framework for all stakeholders to jointly develop policies for the sector. Such a framework should also be extended to other industry sectors.

1.13.1 LS 2015 must develop a dynamic and bold action plan that focuses on strengthening the European shipbuilding industry, maintaining high-skill employment and addressing the environmental challenges linked to the shipbuilding industry. It is vital that the proposals developed in the context of LS 2015 are implemented by all stakeholders, in particular the EU institutions and Member States.

1.14 The Committee recommends that during the crisis the social partners make special use of the opportunities for social dialogue with a view to drawing up joint strategies for the future. Social dialogue is a platform for joint ideas and solutions to tackle current and future challenges for the shipbuilding sector. In this connection, social standards for workers in the European shipbuilding industry must also be agreed and implemented.

1.14.1 The Committee believes that the application in the sector of the principle of corporate social responsibility (CSR) should contribute to its sustainable development.

1.14.2 The Committee urges that *specific measures* be put in place in order to maintain the worker-business link during long periods of weak demand (labour pools, subsidised training, etc.).

1.14.3 The possibility of earmarking some 'social' support (ESF <sup>(4)</sup>, ERDF, globalisation adjustment fund) temporarily for the shipbuilding sector should be reviewed.

1.15 The Committee supports the prompt establishment of a sectoral employment and skills council for the shipbuilding

sector, in accordance with the new Commission strategy providing for the creation of such bodies.

1.16 Given the major importance of 'green' production and energy-saving vessels for the survival of the industry, it is vital to ensure that shipbuilding companies, colleges and the public authorities provide training and retraining programmes to promote and develop a relevant set of skills and competences enabling an effective transition to low emissions and energy-saving vessels. The Committee supports the idea of 'green qualifications' for all workers in the sector.

1.16.1 Use should be made in the shipbuilding sector of the ECVET, EQARF and EQF instruments to facilitate mobility and boost competitiveness and productivity.

1.17 The shipbuilding industry should be urged to broaden its objectives and activities (maritime world, aquaculture, off-shore energies, arctic dimension, etc.).

1.18 Technological measures should be directed towards new fields as well (including research) and the role of technological platforms (for example Waterborne) and collaboration between them strengthened.

1.19 The Commission should be urged to provide more support and to take more urgent action to introduce short sea-shipping, motorways of the sea and suitable vessels to use them which meet European environmental and energy requirements.

1.20 The Committee believes that in looking for solutions for European shipyards we cannot overlook an assessment of the marine equipment manufacturers, which are directly associated with them. The situation of this sector is significantly better than that of the shipyards (not least because businesses can relocate more easily). It is therefore worth examining the reasons why these situations are different and to draw conclusions which could be taken into account when we look for effective solutions for European shipyards.

The Committee intends to prepare a report on this sector and its impact on the shipbuilding sector.

## 2. Introduction – background to opinion and its objectives

2.1 The European shipbuilding industry <sup>(5)</sup> has been hit particularly hard by the current crisis, due to:

— its specific financial requirements, which are greater than in other sectors;

<sup>(4)</sup> European Social Fund.

<sup>(5)</sup> A definition of this term can be found in the glossary at the end of the opinion.

- its enormous sensitivity to changes in world trade, which is now in free fall as far as demand for shipbuilding is concerned, largely as a result of the record growth in the number of commercial vessels in the world, whose surplus clearly outstrips the growth in the need for sea transport;
- its competition, which comes primarily from States that adopt an interventionist approach towards the shipbuilding industry and view this sector as strategically important;
- the fact that this crisis has arisen at a time when there is clear overcapacity of physical capital throughout the world, significantly exceeding requirements;
- the fact that this crisis has occurred just as many European shipyards are emerging from an advanced and often painful process of restructuring, modernisation and enhanced technical development. An example of this is the situation of Polish shipyards;
- the specific features of this sector (huge investments, long production cycles, prototypes and goods that are never mass-produced, etc.), which in a number of ways make shipbuilding inevitably and inherently rigid. In times of deep crisis this leads to drastic measures such as shipyard closures.

2.2 There is a real danger of losing the critical mass<sup>(6)</sup> needed to sustain production of European shipyards and this factor should be considered in order to assess the damage that such an event would cause, from economic, social, technological and strategic points of view, for the future of the Europe we wish to build.

2.3 The abovementioned factors have led the Committee to draw up this opinion, which focuses on the specific consequences of the crisis for the shipbuilding industry. The opinion examines the issue from economic and social perspectives (concerning employment, high-quality jobs, and the regional impact) and from technological and strategic angles.

2.4 In this opinion, the Committee also carries out a mid-term review and evaluation of the implementation of the LeaderSHIP 2015 initiative and seeks to answer the following questions: what can be done to ensure success and avoid failure, and how can this initiative be updated in response to new factors emerging from the economic crisis?

<sup>(6)</sup> A minimum level of total production in the shipyards of EU Member States is essential in order to ensure that the shipbuilding sector continues to function in the EU.

### 3. The specific consequences of the crisis for the shipbuilding industry

3.1 Given the unique nature of the shipbuilding sector, it is important to stress that the accumulation of financial problems in this sector, which is the result of both the ongoing financing problems<sup>(7)</sup>, and an unfavourable stage in the economic cycle, as well as the withdrawal by investors of funding of previously placed orders (and the ever increasing number of cases of trade in second-hand ships<sup>(8)</sup>) poses a serious risk, especially as this branch of industry has always had more financing problems than other sectors.

3.1.1 The EU shipbuilding sector, and in particular the sub-sector of shipyards building large and medium-sized ships, is also suffering from the absence of a level playing field and from unfair competition from other parts of the world, something which has been happening for decades. The sector still lacks a system of trade regulations that are legally binding throughout the world. Furthermore, we cannot overlook the fact that the crisis has highlighted overcapacity in countries that are ruthlessly striving after permanent public funding of national production.

3.1.2 Given the unprecedented overlapping of many of the abovementioned adverse circumstances, the problem with which the sector is currently confronted cannot be treated simply as 'history repeating itself', but rather as a new and dramatic challenge. It is important to point out that the nature of these difficulties is more financial than industrial/structural.

3.1.3 However, the crisis presents an opportunity to take steps to maintain and safeguard the critical mass necessary to retain advanced technologies in this sector which, although at risk of collapse, is key to maritime transport. Unfortunately, European shipyards are at risk of losing this critical mass.

3.2 The shipbuilding industry demonstrates a characteristic tendency to lag behind any economic recovery. Given this unfavourable tendency, unless the sector is supported it may be fatally damaged which might also happen should the temporary support measures already under way be discontinued too early.

3.2.1 In the shipbuilding industry a period of growth has given way to a period of decline. This has been a familiar trend in the shipbuilding industry for decades and the EU should anticipate the effects of the economic cycle in its sectoral policies.

3.3 In discussing the causes and consequences of the difficult situation in the sector, it is important to mention the specific circumstances of countries such as Poland or Romania.

<sup>(7)</sup> Ever increasing funding problems as a result of low profit margins (CESA).

<sup>(8)</sup> The surplus of ships significantly outstrips the growth in the need for sea transport; if all the new ships were placed end to end they would stretch out over an area of 60 nautical miles (according to Bloomberg and Clarkson Research Services).

The dramatic situation in Poland, reflected in the current collapse of production at two major shipyards in Gdynia and Szczecin, is the result of a combination of several disastrous circumstances which were not anticipated several years in advance. These were as follows: the abandonment of efforts to reform and restructure the sector primarily as a result of the political decision between 2002 and 2003 and the failure to take advantage of the benign economic climate in the European and international market between 2003 and 2008.

3.4 This is an industry of strategic importance in itself, and also in relation to other sectors and employment. This is particularly noteworthy and evident in these times of crisis. The Commission and hopefully the current EU presidency have also recognised this fact. Political action should therefore be expected and required of them. Unfortunately to date there has been a lack of clear support on the part of the majority of those Member States which have a shipbuilding sector.

3.5 The social impact of the crisis in the shipbuilding industry is very significant at regional level. Rising unemployment in shipbuilding regions and the loss of a significant proportion of regional GDP may be more drastic than in national industries, in which support measures are being carried out nationwide.

3.6 When a shipyard is closed down, it is usually for good. At this point, know-how or advanced technologies will be lost irretrievably. In practice, all shipbuilding products are pilot or prototype products, with each of them containing a different R&D component. If Europe loses them, then the future of environmentally-friendly and low-carbon transport guaranteed by 'clean ships' will lie in other, uncertain hands. In addition, the loss of critical mass poses the risk of limiting access to energy and raw materials from the oceans and to minerals extracted off-shore.

3.7 The repair sub-sector is not in crisis, but may be beginning to feel the competition from construction shipyards which are shifting their profile towards repair. Recently, however, there have been cases where repair shipyards have purchased (or leased) elements of manufacturing infrastructure from construction shipyards and employed groups of skilled workers from shipyards that have been shut down.

3.8 Shipbuilding and repair and the high-tech equipment and materials used for this purpose play a key role not least in defending Europe, improving protection and security and the environment and in transferring technologies to other areas of industry, which represents an important argument in the search for a way out of the current crisis in the sector.

3.9 In describing the situation of the shipbuilding sector, and especially that of shipyards, we cannot overlook an assessment of the marine equipment manufacturing sector, which is directly linked to it. In Europe, this sector employs almost twice as

many workers as the shipbuilding sector (excluding employment in the yacht and recreational boat-building sector, which is one and a half times greater than in the traditional shipbuilding sector). The EU marine equipment manufacturing sector's share of global production of hi-tech equipment is considerably higher than that of shipyards, amounting to 36 % (compared with Asia's 50 % share, which concerns products of a lower class). The situation of marine equipment suppliers is therefore incomparably better than that of shipyards.

3.10 It is therefore worth examining the reasons why these situations are different and drawing conclusions which could be taken into account when we look for effective solutions for European shipyards. Solutions applied in this sector and its natural ties to shipyards may create valuable synergy worthy of implementation throughout the shipbuilding sector. At the same time, we should not overlook the prognosis of a considerable deterioration in the situation of the European equipment sector in the event of a loss of critical mass by European shipyards.

#### 4. Proposed action and solutions for dealing with the current crisis in the sector

4.1 There is an urgent need to increase demand for the products and services offered by the entire sector (including repair). The Committee believes that, to this end, it is important to encourage the environmentally-friendly modernisation (retrofitting) of old or unsafe as well as 'polluting' ships through legislative measures and economic incentives.

4.1.1 To bridge over the problem of the poor market situation in this sector, the EU and Member States could, among other things, support/finance environmental improvements and energy savings in the EU commercial fleet, together with the subcontracting industry/marine equipment.

4.1.2 European yards should concentrate in building ships which have a comparative advantage i.e.: specialised high quality & high tech ships <sup>(9)</sup>.

4.2 Consideration should be given to specific measures within the framework of 'internal' flexicurity, protecting the link between workers in the sector and their know-how in the dumping phase of the cycle <sup>(10)</sup>. These should be supported through negotiations within the framework of social dialogue and the organisation of state aid measures for this purpose.

<sup>(9)</sup> Without pretending to be exhaustive, we can quote passenger ships, cruise ships, yachts, pleasure crafts, service ships, cars and chemical carriers, LNG/LEG/LPG carriers, offshore ships, middle ice breakers, hotel ships, fishing protection vessels, towing supply vessels, drilling platforms, offshore wind farms, vessels intended for military purpose, ships equipped with dual use technology, modern multi-purpose cargo ships, tugboats and research vessels.

<sup>(10)</sup> The period in which the effects of the crisis and the downturn in the economic cycle appear (very limited number of orders).



4.2.1 Certain regional structural support measures could be reviewed once again and focused on the sector. The ERDF<sup>(11)</sup> could be a source of funding for some instruments of this type.

4.3 To date, the struggle for a level playing field on the competitive market for shipbuilding and ship repair has been neither serious nor fair. Free competition must be ensured in Europe, but this sector, which has to square up to the rest of the world, must be offered the same level of protection as its competitors outside the EU.

4.3.1 If the shipbuilding sector is to be regarded as strategically important, then, as far as competition from outside the EU is concerned, we should take action similar to that which is being taken for example in connection with the motor vehicle sector. At the same time, however, the latest agreement with Korea does not even require fulfilment of its most recent and previous obligations; this is not a serious approach.

4.3.2 Korea must respect its commitment to 'normal value prices' and refrain from bailing out shipyards. The Commission should recommend this at the OECD meeting concerning the negotiations on the new shipbuilding agreement.

4.4 Shipbuilding linked to defence also has an important role to play in the sector's future. Consideration should be given here to action undertaken by the European Defence Agency which should be regarded as forward-looking. It would be worth mentioning at this point the opportunities that dual-use technologies will create for this sub-sector.

4.5 It is important to develop the capacity and potential of the WATERBORNE technological platform in connection with the shipbuilding sector as part of the 7th R&D framework programme and its collaboration with other technological platforms, and in so doing maintain the development of one of shipyards' most important weapons, namely R&D&I measures.

4.6 Maintaining a critical mass of industry at European level is essential if we wish to have safe, 'green' and energy-saving ships, which will have a key influence on the future of environmental protection at sea, the costs of all transport and the protection and maintenance of European transport in terms of energy supply (coastal ships, platforms, worker accommodation on drilling platforms, offshore wind farms, etc.) This is also linked to the idea of organising green transport (short sea shipping, motorways of the sea, etc.)

4.6.1 Community guidelines on state aid for environmental protection [2008/C82/01] explicitly mention the acquisition of environmentally-friendly vessels. These guidelines need to be implemented swiftly and without red tape.

4.7 In light of current challenges, the general system of support for mass production sectors provided by the framework programmes should be adapted to the needs of the sector, ensuring that they are applied in high-tech shipbuilding, which usually produces prototypes or short production runs.

4.8 The 2003 European financial framework on state aid to shipbuilding<sup>(12)</sup>, which was drawn up by the European Commission, is useful and should be prolonged beyond 2011 in order to ensure reliable innovation conditions. The renewed principles should correspond more effectively to the specific and most recent needs of the sector and ensure greater stability within it.

## **5. The LeaderSHIP 2015 initiative – what can we do to ensure it helps the sector in the current crisis and to avoid failure?**

5.1 When the LeaderSHIP 2015 (LS) initiative was drawn up by the sector and supported by EU decision-makers in the 2002-2003 period, the prospects for the European shipbuilding industry appeared to be rather poor. New orders had dried up, and the costs of building new ships were low and falling due to major growth in Asian production capacity.

5.1.1 The LS 2015 strategy is currently at its halfway point but the sector is in a similar or – given the global crisis – possibly even worse situation than at the time the initiative was launched.

5.1.2 Six years ago, the LS 2015 initiative was understood as a vision based on faith in the production capacities and innovative potential of the European maritime sectors and on a determination to fight for the future. It would appear that this approach still applies but the initiative itself must be adjusted and adapted to the here and now in particular by drawing conclusions from the period of its establishment and implementation.

5.2 The assessment of the LS2015 by the social partners from the shipbuilding sector is as follows:

a. The key achievements are:

- A shift in the way of thinking in the sector,
- A change in the perception of the sector by decision-makers and society,
- Politically consistent approach,
- The European nature of the initiative,

<sup>(11)</sup> European Regional Development Fund.

<sup>(12)</sup> OJ C 317 2003, p. 11.



- Concrete progress in individual areas of action (innovation, social dialogue, intellectual property rights, technical principles of the production process).

b. The key shortcomings are:

- Several concrete proposals were not implemented (LPF <sup>(13)</sup>, financing),
- Certain matters were not given proper consideration (structure of the industry).

5.2.1 In short, the social partners believe that the **long-term approach must be adjusted using measures that respond to the crisis**.

5.3 In a document giving its view on the progress of the LS 2015 programme's implementation two years ago, the Commission gave the following final opinion: 'LeaderSHIP 2015 continues to provide an appropriate framework for its policies towards the shipbuilding sector. It should continue and be accelerated where possible, particularly with regard to the issue of ship financing. But it should also be noted that in many areas the ball is largely in the field of industry (e.g. industry structure) or of Member States.' The Commission

declares that it remains committed to LeaderSHIP 2015 and will continue to strive to ensure that the best policy mix is being crafted and applied at EU level.

5.4 Notwithstanding the content or intentions of the above assessment, we need to make it quite clear that, over two years since this document was drawn up, there is an urgent need (largely due to the changes in the sector caused by the crisis) for it to be updated and included in the programme of renewed instruments, although the general outlines of the most important measures relating to the sector do not seem to have lost any of their relevance.

5.4.1 It appears that the main problem in making a success of the LS 2015 initiative is that planned activities are not being implemented effectively and that it is finding limited expression in some Member States, especially those which have not been members for long.

5.5 As regards the impact of the LS 2015 initiative on employment in the shipbuilding industry, assessments in some circles have been quite sceptical <sup>(14)</sup>. They find fault with the initiative for its lack of concrete implementation. They stress that the only **changes achieved due to implementation of LS2015 were mainly of a qualitative nature and concerned new skills for workers**.

Brussels, 29 April 2010.

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

<sup>(13)</sup> Leadership Platform Financing.

<sup>(14)</sup> Presentation: 'Assessment of the impact of the LeaderSHIP 2015 programme on employment in the shipbuilding sector', Jerzy Bieliński, Renata Płoska, University of Gdansk, Poland.

## APPENDIX 1

**Glossary of Terms:**

- **Shipbuilding (including ship repair and conversion):** is directed at the larger (mainly sea-going) vessels, intended for merchant/commercial purposes, but also naval vessels. It also addresses the products and services supplied for the building, conversion, and maintenance of these ships (seagoing and inland) <sup>(1)</sup>. Within the shipbuilding industry two sub-sectors can be distinguished <sup>(2)</sup>:
  - Ship Construction
  - Marine Equipment
- **Ship Construction:** includes the building of ships, ship repair (and conversion) and is directed at larger commercial seagoing vessels. This also includes the mega-yacht sub-sector.
- **Marine Equipment:** comprises all products and services supplied for the building, conversion and maintenance of ships (seagoing and inland) and maritime structures. This includes technical services in the field of engineering, installation and commissioning, and ship maintenance (including repair) <sup>(3)</sup>.

**Facts and Figures:***Shipyards:*

There are around 150 large shipyards in Europe, with around 40 of them active in the global market for large sea-going commercial vessels. Around 120 000 people are directly employed by shipyards (civilian and naval, new building and repair) in the European Union. With a market share of around 15 % in volume terms, Europe is still vying with the countries of East Asia for global leadership in terms of the value of civilian ships produced (EUR 15 billion in 2007) <sup>(4)</sup>.

*Marine Equipment:*

Direct employment in the marine equipment sector is estimated at more than 287 000 whilst indirect employment amounts to about 436 000. The annual turnover of the sector in 2008 was estimated at around EUR 42 billion <sup>(5)</sup>. Nearly 46 % of equipment produced is for export. The marine equipment sector is the third largest in the maritime cluster after shipping and fisheries <sup>(6)</sup>.

---

<sup>(1)</sup> [http://ec.europa.eu/enterprise/sectors/maritime/index\\_en.htm](http://ec.europa.eu/enterprise/sectors/maritime/index_en.htm).

<sup>(2)</sup> ECORYS, *Study on Competitiveness of the European shipbuilding Industry*, Rotterdam, October 2009.

<sup>(3)</sup> [http://www.emec.eu/marine\\_equipment/index.asp](http://www.emec.eu/marine_equipment/index.asp).

<sup>(4)</sup> [http://ec.europa.eu/enterprise/sectors/maritime/index\\_en.htm](http://ec.europa.eu/enterprise/sectors/maritime/index_en.htm).

<sup>(5)</sup> EMEC members: Croatia, Denmark, Finland, France, Germany, Italy, Poland, Sweden, the Netherlands, Norway, Turkey and United Kingdom.

<sup>(6)</sup> [http://www.emec.eu/marine\\_equipment/index.asp](http://www.emec.eu/marine_equipment/index.asp).

## APPENDIX 2

to the opinion of the European Economic and Social Committee

*The following amendment, which was supported by at least a quarter of the votes cast, was rejected in the debate:*

**Point 1.11**

To be deleted:

~~'1.11 There needs to be stricter control of ship owners' business practices so that they do not use European and national aid to purchase ships from shipyards outside the EU.'~~

**Result of the vote**

Votes in favour: 65

Votes against: 108

Abstentions: 18

---

**Opinion of the European Economic and Social Committee on 'New trends in self-employed work: the specific case of economically dependent self-employed work' (own-initiative opinion)**

(2011/C 18/08)

Rapporteur: **Mr ZUFIAUR NARVAIZA**

On 26 February 2009, the European Economic and Social Committee decided to draw up an own-initiative opinion, under Rule 29(2) of its Rules of Procedure, on

*New trends in self-employed work: the specific case of economically dependent self-employed work.*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 February 2010.

At its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 29 April), the European Economic and Social Committee adopted the following opinion by 137 votes to 52 with 11 abstentions.

**1. Executive summary – conclusions and recommendations**

This opinion looks at the definitions that various European organisations have given to the different forms of self-employed work. In particular, it provides a specific analysis of the most recent trends affecting 'parasubordinate work', also known as 'economically dependent self-employed work'. Economically dependent self-employed work is coming under the spotlight in response to the need for a better understanding of the changing nature of self-employment which, affected by profound economic and social change, has moved beyond the forms of independent work traditionally recognised in the countries of the European Union. Only some European countries have legally recognised a new, intermediate category of workers, in between employees and the self-employed. The main objective of the existing national legislation is to afford particular categories of workers better protection, without classing them as employees. In the countries which recognise an intermediate category between employee and self-employed status, economic dependency is the basis for specific rights not recognised for other types of self-employed workers, but less extensive than the rights accorded to employees. The coverage accorded to economically dependent self-employed workers varies considerably from one country to another. The rights of economically dependent self-employed workers may therefore be related to social protection. They may also derive from the guarantees that labour law lays down for workers. To that extent, they may apply to the individual relations between the worker and his client (minimum income, duration of work, etc.), but may also extend to the recognition of the rights of economically dependent self-employed workers to form organisations and act jointly to defend and pursue their professional interests.

Above and beyond differing economic and social realities in the various countries, the diversity of legislation from one country to the next may be explained by the challenges deriving from the legal recognition of economically dependent self-employed work. Intermediate statuses of this kind may in fact lead to legitimate reservations. There is reason to fear that, even with

clarification if the legal categories, any recognition of economically dependent self-employed work might lead to people hitherto defined as employees being transferred to the category of economically dependent self-employed work, in connection, for example with companies' outsourcing strategies. It is true, therefore, that analysis of the issues surrounding the recognition of economically dependent self-employed work cannot be entirely separated from issues of 'bogus self-employment', a reality which can be testified to in a number of EU countries. It is particularly evident in sectors such as construction, where this illegal practice is so widespread as to have warranted the recent adoption of a common position by the sector's European social partners. There are, undeniably, cases of workers who are formally self-employed (with both parties defining their relationship in these terms) but who work under the same conditions as employees. These cases tend to fit the hypothesis of employers qualifying work as self-employment to avoid the application of labour and/or social security legislation. In fact, in many cases the switch to economically dependent self-employed work is not strictly a voluntary choice, but rather one that has been imposed by external factors such as outsourcing of production or the company restructuring, with the resulting layoffs.

Above and beyond the risks that it brings, recognition of the status of economically dependent self-employed worker has nonetheless been a means of extending greater legal protection to workers who are not employees in the legal sense of the term, but self-employed, albeit in a situation where they cannot take advantage of the economic protection they would be afforded were they able to work for a number of different clients. In this respect, as well as extending protection with regard to social security and professional status, recognition of economically dependent self-employed work can also be a means of strengthening entrepreneurship. Moreover, recognising economically dependent self-employed work to balance the contractual relationship binding worker and principal would reduce the economic pressure on the worker and help to ensure a better quality of service to the final consumer.

With the development of cross-border services, the variety of legislation in this area is an issue that concerns the European Union as a whole. Community harmonisation of employment statuses, starting with an actual European definition of economically dependent self-employed work, is clearly not a straightforward matter. No discussion of this issue can ignore the diversity of national regulations and practices: under European social legislation, the definition of worker and entrepreneur is established at national level.

However, the pressing need to gain a better understanding of the developments in independent work must not be ignored either: otherwise, in countries where economically dependent self-employed workers are not defined as employees, a growing sector of European workers risk being left without protection.

**1.1 Means of drawing up an accurate statistical picture of economically dependent self-employed work in the European Union should be developed.**

**1.2 Studies permitting detailed analysis of national experiences in the area of economically dependent self-employed work should be promoted.**

**1.3 The issue of economically dependent self-employed work should be integrated explicitly into the Integrated Guidelines for Growth and Jobs, in ways to be determined.**

**1.4 The European social partners should be encouraged to include economically dependent self-employed work in their work programmes, at cross-sectoral and sectoral level.** The joint analysis of European social partners<sup>(1)</sup> published in October 2007 illustrates how important the issue of professional status is for those involved in the European social dialogue. In this context, it could be helpful to assess the opportunities for developing links between the European social partners and organisations (particularly national bodies) representing independent workers.

**1.5 The aspects common to the definitions of employed persons in the different EU Member States should be identified, not least on the basis of the information and analyses gathered as a result of the above recommendations.** Such an approach would be useful not only to help ensure the proper application of the existing European Labour Law Directives but also to gain a better insight into the increases in cross-border employment in Europe. It would also make it possible to obtain the information needed to gain a better understanding of what economically dependent self-employment work might cover. Before any attempt is made to gain a better insight into self-employed but eco-

nomically dependent work, a clear, accurate definition of employees needs to be established.

## 2. Introduction

Literally speaking, the self-employed are those who work for themselves, rather than for someone else in a relationship of dependence. However, although it may appear to be simple, it cannot be ignored that self-employment covers a broad spectrum of social and economic situations, that cannot be approached in a uniform way. Self-employment presents a similarly differentiated landscape in all the EU Member States. Dependent contractors are the core subject of this opinion. There will be a particular focus on what lies beneath these forms of self-employment so as to understand when they may start to undermine a self-employed worker's economic independence. We shall not try to address the subject of undeclared work or that of so-called 'bogus self-employment', even though both may have, or appear to have, a link with economically dependent self-employed workers.

First and foremost, economically dependent self-employed work is an issue of current concern in the European Union (1). In addition, it has been legally recognised in some European countries, which have established definitions and introduced specific forms of protection (2). Lastly, the issues connected with economically dependent work need to be understood fully (3).

## 3. Economically dependent self-employed work: an issue of current concern in the European Union

### 3.1 *New kinds of self-employed workers for new economic and social realities*

3.1.1 A series of factors may lead to the appearance of 'new' kinds of self-employed workers, or in other words, workers engaged in areas of work, not necessarily integrated into traditional categories of self-employment such as farming and the liberal professions<sup>(2)</sup>. A number of phenomena can be mentioned here:

- company strategies, particularly certain types of job outsourcing;
- the emergence of new social needs, connected in particular with demographic change and the ageing of the population;
- changes affecting labour, such as rising education levels in the general population;
- the increasing participation of women in the labour market;

<sup>(1)</sup> Key Challenges facing European labour markets: a joint analysis of European social partners.

<sup>(2)</sup> See, in particular, the report produced by the EIRO (European Industrial Relations Observatory), Self-employed workers: industrial relations and working conditions, 2009.



- the need to include in the job market certain vulnerable groups that are excluded from it. For these groups, self-employed work can in some cases represent an alternative to unemployment;
- the desire of some workers to reconcile their working and private lives more effectively;
- the growth of the service sector and the new opportunities offered by information and communication technology.

3.1.2 In view of these changes, the academic literature, based on empirical research, has focused on identifying different categories of self-employed workers, the most frequently utilised being <sup>(3)</sup>:

- entrepreneurs who run their business with the help of hired employees;
- ‘traditional’ professionals <sup>(4)</sup> who need to comply with specific conditions laid down in national legislation (skills accreditation, compliance with professional codes of ethics) in order to practise their profession. Although they do sometimes have employees, they tend to work alone or in association with colleagues. Examples of this category would be lawyers or doctors;
- craft workers, traders and farmers, who are at the heart of traditional forms of self-employment and can be assisted by family members and/or a small number of employees, permanent or otherwise;
- the ‘new self-employed’ who work in specialised areas but whose professions are not, in all countries, regulated in the same way as those mentioned above;
- self-employed workers in either specialised or unskilled areas of work, who have no employees, a group which has emerged as a result of the developments in outsourcing various parts of the production process.

3.1.3 Alongside these definitions, in drawing up a statistical picture of self-employment, the EUROSTAT Labour Force Survey distinguishes between the following groups of self-employed workers:

- employers, defined as persons working on their own account (business, profession, farming) for profit and employing at least one person;
- ‘own account workers’ defined as persons who are working on their own account (business, profession, farming) for profit but have not engaged any employees. In 2008, this category of workers accounted for 36 million people in the EU-27, i.e. around 16 % of the working population;
- family workers, defined as individuals who help a family member to conduct an economic activity (commercial or farming), when they cannot be classified as employees.

3.1.4 Pinpointing the phenomenon of economically dependent self-employed work presents very real problems. Only in those countries that have legally recognised this category of workers is there a more accurate approximation of those who are self-employed but economically dependent. Nevertheless, we can assume that a proportion of the workers classified in the statistics as self-employed are actually economically dependent on a client or principal.

3.1.5 Therefore, if we turn to the available European data on the scale of self-employment <sup>(5)</sup>, it shows that in 2007 self-employed workers with no employees represented at least 50 % of all self-employed workers in every Member State. In some Member States, the figure was still higher (70 % or more). This was the case in the Czech Republic, Lithuania, Portugal, Slovakia and the United Kingdom. In view of the economic and social changes behind the appearance of the new forms of self-employment and the experience of countries that have regulated such forms of work, it would be reasonable to assume that a significant proportion of this sizeable group of ‘own account workers’ are working in a situation of economic dependence.

3.1.6 Trends over recent decades show that, in Europe, a greater number of self-employed workers are becoming part of the formal employment system, while there is an increase in forms of dependent work via legal means outside the labour system. It is therefore necessary to identify the criteria defining this economic dependence and establish statistical mechanisms to measure the number of people working in this way.

### 3.2 *Economically dependent self-employed work, a question posed at European level*

3.2.1 The protection of self-employed workers has been a concern for the EU for a number of years. In this context, it

<sup>(3)</sup> See EIRO report mentioned in footnote 2.

<sup>(4)</sup> Recital 43 of Directive 2005/36/EC of 7 September 2005 gives a definition of liberal professions.

<sup>(5)</sup> With reference to the different definitions of the concept used by EUROSTAT.

is worth noting Council Recommendation 2003/134/EC <sup>(6)</sup> of 18 February 2003 concerning the improvement of the protection of the health and safety at work of self-employed workers. The issues arising from the protection of self-employed workers are also reflected in the on-going debate on the proposal for a new directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity.

3.2.2 Moreover, the distinction between employees and self-employed workers is at the heart of ongoing discussions about the review of Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities.

3.2.3 The issue of economically dependent self-employed work, for its part, has been explicitly addressed at European Union level on a number of occasions. For instance, the report by Alain Supiot submitted to the European Commission in 2000 <sup>(7)</sup> recognised the existence of 'workers who cannot be described as employees, and yet are economically dependent on a single client', to argue that they be entitled to the 'social rights' warranted by this dependence.

3.2.4 In its Green Paper on modernising labour law, published in 2006 <sup>(8)</sup>, the European Commission noted that, 'Self-employment is also providing a means of coping with restructuring needs, reducing direct or indirect labour costs and managing resources more flexibly in response to unforeseen economic circumstances. It also reflects the business model of service-oriented business delivering completed projects to their customers. In many cases it reflects a free choice to work independently despite lower levels of social protection in exchange for more direct control over employment conditions and terms of remuneration'. On this basis, the Commission also argued that, 'The concept of "economically dependent self-employed work" covers situations which fall between the two established concepts of subordinate employment and independent self-employment. These workers do not have a contract of employment. They may not be covered by labour law since they occupy a "grey area" between labour law and

commercial law. Although formally "self-employed", they remain economically dependent on a single principal or client/employer for their source of income. This phenomenon should be clearly distinguished from the deliberate mis-classification of self-employment'.

3.2.5 In the EESC's opinion on the Green Paper <sup>(9)</sup>, this issue is also raised.

#### 4. Economically dependant self-employed work: a legal reality in some EU countries

##### 4.1 *The existence of intermediate legal categories between salaried employment and independent self-employment*

4.1.1 The way in which economically dependent self-employed work is approached in law can lead to it being regarded as an intermediate category between salaried employment and independent self-employment.

4.1.2 To date, a small number of Member States specifically recognise the concept of economically dependent self-employed workers as such, albeit in different forms and to different extents, and attempt to define it. The existence of this intermediate category of worker, between self-employed and employee, results in the creation of new forms of employment, although its scope and content differ from one country to another. The main examples include Austria, Germany, Italy, Portugal, Spain and the United Kingdom. Thus, in Italy, the notion of 'parasubordination' is applied to those employed through 'continuous and coordinated contractual relationships' and to 'project workers'. In the United Kingdom there is a separate 'worker' category, distinct from that of 'employee'. A 'worker' is distinguished from an 'employee' in that he or she performs the work without being placed under the authority of an employer. In Austria, there are specific forms of contracts, recognised in the legislation, in which one can see indications of a general recognition of economically dependent self-employed work, particularly in the case of 'free service contracts'. Those working under this type of contract differ from employees in that, although they most often work for a single client, according to a fixed schedule, the working relationship is not one of subordination. In Germany, we find the concept of the 'employee-like person' ('arbeitnehmerähnliche Person'). This category of workers, treated separately from employees in labour legislation, designates those who, under a commercial or service contract, perform the work concerned personally and directly, without hiring employees, and who are reliant on a single client for over 50 % of their income. Spain has the most recent and also the most complete definition of economically dependent work. The Self-Employed Workers' Statute, adopted in 2007, sets out a number of criteria for defining economically dependent workers, being those who usually carry out, personally and directly, an economic or professional activity for lucrative purposes and only for one client, from

<sup>(6)</sup> Some aspects covered by the recommendation are relevant in the present context:

- the coexistence of work by self-employed workers and employees is recognised (points 4 and 5);
- it is claimed that, as a general rule, workers who exercise their occupational activity in a manner which does not involve an employment relationship with an employer are not covered or protected (point 5);
- it is pointed out that the health of self-employed workers may be subject to risks similar to those experienced by employees (point 6);
- the final recommendations mention the need to take measures aimed at raising awareness of self-employed workers via their representative organisations.

<sup>(7)</sup> Transformation of labour and future of labour law in Europe, European Commission, 1999.

<sup>(8)</sup> Green Paper - Modernising labour law to meet the challenges of the 21st century, COM(2006) 708 final.

<sup>(9)</sup> Opinion of the EESC of 30.5.2007 on the Green Paper - Modernising labour law to meet the challenges of the 21st century, Rapporteur Mr Retureau (OJ C 175 of 27.7.2007, p. 65), point 3.1.4.

whom they receive at least 75 % of their income. This status is incompatible with civil or commercial companies <sup>(10)</sup>.

4.1.3 A number of conclusions can be drawn from observation of the national systems which have recognised the existence of a new legal category in law. Firstly, in all cases, we are looking at the creation of an entirely new category, distinct both from employee and self-employed status and, a fortiori, from that of a real entrepreneur. The objective being pursued in these various countries is therefore not to turn self-employed but economically dependent workers into employees, but to give them a specific status, entitling them to specific protection on the basis of their economic dependency. Accordingly, in the various cases cited above, the status of economically dependent self-employed worker does not depend on the existence of a legal relation of subordination, the latter being a key element in legal definitions of employees in the overwhelming majority of EU countries. Accordingly, an employee is someone who works under the direction and supervision of another person, who is then classed as an employer, a situation that is itself determined on the basis of several factors, i.e.: obligation to provide one's own labour, working for a single employer over a specific length of time, employees not being responsible for their company's financial risks and work being conducted on another's account. Looking at this criterion, whilst all employees are economically dependent, it does not follow that all economically dependent self-employed workers are necessarily employees.

4.1.4 It is nonetheless necessary to establish criteria for distinguishing economic dependency. This is a complex task, but not an impossible one, as evidenced by the various national regulations that exist in this area. The first type of criteria that can be used relate to the worker him or herself. Accordingly (as in Spain, for example), an economically dependent self-employed worker is someone who performs the work concerned personally and directly, without hiring employees. Other criteria, which are used in conjunction with the first, relate to the state of economic dependency itself. One factor that may be used here is the proportion of income from a single client (in which case, the next issue is determining the exact proportion of income qualifying economic dependency, or the duration of the relationship between worker and client: the longer the relationship, the greater the economic dependency on the client). Italy uses this factor to determine the existence of 'continuous and coordinated contractual relationships'. Lastly, experts working in this area have sometimes suggested an additional criterion. Thus, Professor Perulli <sup>(11)</sup> considers that a worker can only be qualified as economically dependent if the way s/he organises production is determined by the client's activity. In other words, the worker must be unable to access the market as a result of their entire work organisation (in particular, the material and technology used) being directed towards meeting the needs of a single client.

<sup>(10)</sup> See Article 11 of the Spanish law of 11 July 2007 laying down a statute for independent work.

<sup>(11)</sup> A. Perulli, *Economically Dependent / quasi-subordinate (parasubordinate) employment: legal, social and economic aspects*, Report for the European Commission, 2003.

## 4.2 Protection for economically dependent self-employed workers

4.2.1 In the countries which recognise an intermediate category between employee and self-employed status, economic dependency is the basis for specific rights not recognised for other types of self-employed workers, but less extensive than the rights accorded to employees. The rights of economically dependent self-employed workers may therefore be related to social protection. They may also derive from the guarantees that labour law lays down for workers. To that extent, they may apply to the individual relations between the worker and his client (minimum income, duration of work, etc.), but may also extend to the recognition of the rights of economically dependent self-employed workers to form organisations and act jointly to defend and pursue their professional interests. This is an illustration of the idea that dependency, albeit economic not legal, justifies particular protection.

4.2.2 In relation to social protection, in the countries concerned there can be an intermediate level of social protection, higher than that offered to ordinary self-employed workers. In Italy, this applies to those engaged as 'project workers', who are entitled to guarantees in the event of pregnancy, illness, work-related accidents and retirement that are increasingly similar to those accorded to employees. The same applies in the United Kingdom, where workers are entitled to statutory sick pay.

4.2.3 With regard to the rules regulating the exercise of their professional activity, although they are not employees, economically dependent self-employed workers are generally entitled to some of the protection offered to employees.

4.2.4 Naturally, looking beneath this general picture, the coverage accorded to economically dependent self-employed workers varies considerably from one country to another. In the United Kingdom, 'workers' are entitled to protection in relation to the minimum wage, working hours and holidays. In Spain, the approach is far more ambitious, with the 2007 Statute according the following rights to economically dependent workers:

— work-related rights: right to rest periods, right to holiday;

— rights connected with the breaking of the contract between worker and client: setting the example of requiring the client to give proper grounds for breaking the contract. If such grounds are not given, the worker is entitled to compensation if the contract is broken.

4.2.5 Above and beyond the protection aimed at economically dependent self-employed workers, a minimum level of social protection (for example in the area of social security, vocational training or access to the prevention of occupational risks) should, as laid down by the Council Recommendation of 18 February 2003, cover all self-employed workers in the EU. This would ensure that basic social protection is afforded to all workers in general, regardless of the legal status of the work they do.

## 5. Challenges related to the recognition of economically dependent self-employed work

### 5.1 *Waged work and economically dependent self-employed work: competition or complement?*

5.1.1 As we have seen, only a minority of EU Member States recognise the category of 'economically dependent self-employed worker' in their legislation. Above and beyond differing economic and social realities in the various countries, this also reflects legitimate reservations with respect to intermediate statuses of this kind. There is reason to fear that, even with clarification of the legal categories, any recognition of economically dependent self-employed work might lead to people hitherto defined as employees being transferred to the category of economically dependent self-employed work, in connection, for example with companies' outsourcing strategies. Italy's experience echoes this risk to some extent. When the Italian government introduced project collaboration contracts in 2003, the aim was to ensure that the bogus self-employed were transferred to waged work. However, between 2003 and 2005 there was actually a significant increase in the number of 'parasubordinate' workers. These concerns may explain why, in several Member States, either the government or the social partners are firmly opposed to the creation of any intermediate employment status between those of employees and the self-employed. For example, at its congress in 2009, the British TUC adopted a motion recommending that there should be only two types of workers in the UK: employees and the genuine self-employed.

5.1.2 It is true that analysis of the issues surrounding the recognition of economically dependent self-employed work cannot be entirely separated from issues of 'bogus self-employment', a reality which can be testified to in a number of EU countries. It is particularly evident in sectors such as construction, where this illegal practice is so widespread as to have warranted the recent adoption of a common position by the sector's European social partners. There are, undeniably, cases of workers who are formally self-employed (with both parties defining their relationship in these terms) but who work under the same conditions as employees. These cases tend to fit the hypothesis of employers qualifying work as self-employment to avoid the application of labour and/or social security legislation. In the face of this situation, ILO recommendation No 198 <sup>(12)</sup> calls on governments to adopt clear criteria in their legislation for distinguishing an

employment relationship in order to combat bogus self-employment. This is undoubtedly a key issue. However, it is a separate issue from that of economically dependent self-employed work, which continues to be clearly distinguished in law from waged work, including in those countries which recognise this form of employment. In other words, economically dependent self-employed work can only exist as a status if it is clearly distinguished from waged work. The criterion of legal subordination undoubtedly has a key role to play in this regard. If someone is working under conditions that would qualify them as an employee, it should not be possible for them to be categorised as economically dependent. Naturally, this depends on waged work being defined as clearly and precisely as possible in national law, as recommended by the ILO. Put another way, we need to be able to make a distinction between economically dependent self-employed work and waged work, and in order to do so, each concept needs to be clearly defined. It also requires that measures for ensuring compliance with the law be effective. Only if these conditions are met will recognition of 'economically dependent self-employed worker' status complement employee status and give better protection to the genuinely rather than the bogus self-employed.

5.1.3 A further concern, when economically dependent self-employed work is recognised, is that the duration of a commercial relationship between a client and an economically dependent self-employed worker might be so long as to result in the self-employed worker, in practice, working permanently for his or her client. Even if the relationship is initially a genuinely commercial one, when it continues over a relatively lengthy period, consideration must be given to conditions and means of enabling the economically dependent self-employed worker to attain the status of employee of the former client, who is now an employer.

### 5.2 *Opportunities offered by the recognition of economically dependent self-employed work*

5.2.1 In all the States which have adopted it, recognition of the status of economically dependent self-employed worker has been a means of extending greater legal protection to workers who are not employees but genuinely self-employed, albeit in a situation where they cannot take advantage of the economic protection they would be afforded were they able to work for a number of different clients. In this respect, as well as extending protection with regard to social security and professional status, recognition of economically dependent self-employed work can also be a means of strengthening entrepreneurship and the freedom to conduct a business. Economically dependent self-employed workers might therefore be able to take advantage of specific work-related support (advice, financial aid) enabling them to develop their own business and ultimately emerge from their situation of economic dependence.

<sup>(12)</sup> ILO Employment Relationship Recommendation No 198, 2006.



5.2.2 Lastly, the examination of economically dependent self-employed work must also take account of the interests of consumers. The provision of services to consumers is often accompanied by the creation of chains of subcontracting, involving both self-employed workers and workers who are self-employed but economically dependent. For example, when a consumer contacts a large company for an installation (whether of gas, electricity, telephone or digital TV) or for checks or repairs on a piece of equipment, it is frequently a self-employed worker who comes to do the job on behalf of the company and who will be entirely responsible for providing a satisfactory service. The position of market dominance enjoyed by large companies in a context of oligopoly allows them to impose extremely tough conditions when it comes to the prices they pay to subcontractors, obliging the latter to accept a significantly lower profit margin than would be usual for the service concerned. In this scenario, self-employed workers have two options: either to achieve the required break-even, or to provide a good quality service. In this context, recognising economically dependent self-employed work to balance the contractual relationship binding worker and principal would reduce the economic pressure on the worker and help to ensure a better quality of service to the final consumer.

### 5.3 *Economically dependent self-employed work: a European issue*

5.3.1 The range of employment statuses currently used in the various EU Member States necessarily affects the way the European market functions, particularly where cross-border services are concerned. This is particularly true of cases where the service is provided in one country by a self-employed worker from another, since the worker in question, who is not an employee, will come under the regulations that apply in his or her country of origin <sup>(13)</sup>. This situation raises issues that affect Europe as a whole.

5.3.2 More generally, the joint analysis of the European social partners <sup>(14)</sup> published in October 2007 confirms that employment is tending to be concentrated in the service sector, as a result of the changes affecting production organisations. It could be deduced from this analysis that the modern ways of organising work and production should lead to a review of the very notion of the subordinate employer-employee relationship at work, above and beyond the legal concept of subordination.

Brussels, 29 April 2010.

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

---

<sup>(13)</sup> See, in particular, recital 87 of Directive 2006/123/EC on services in the internal market.

<sup>(14)</sup> Key Challenges facing European labour markets: a joint analysis of European social partners.



## APPENDIX

to the opinion of the European Economic and Social Committee

The following section opinion text was rejected as a result of the amendments adopted by the assembly, but obtained at least one-quarter of the votes cast:

**Point 1.2**

**1.2 Studies permitting detailed analysis of national experiences in the area of economically dependent self-employed work should be promoted.** Such evaluations would enable the priorities regarding protection for workers classed as economically dependent to be identified, together with the risks connected with the recognition of this new legal category and arrangements for collective representation of economically dependent self-employed workers.

Voting: 101 votes for amending the paragraph, 93 against and five abstentions.

**Point 1.6**

**1.6 The establishment of a common body of rights for all workers, whether employees or self-employed, at European level, should be considered.** On this basis, different definitions could be clarified for the levels of dependence that workers might have, ranging from true economic independence at one end of the scale to salaried work at the other, with work that is independent in legal terms but dependent in economic terms in the middle; the corresponding protection could then be established. This path is already being traced in the Member States that have chosen to recognise an intermediate category of workers. It could also be useful for the Commission to issue a Communication on this topic.

Voting: 108 votes for amending the paragraph, 88 against and seven abstentions.

**Point 2 (Introduction)**

Literally speaking, the self-employed are those who work for themselves, rather than for someone else in a relationship of dependence. However, although it may appear to be simple, it cannot be ignored that self-employment covers a broad spectrum of social and economic situations, that cannot be approached in a uniform way. Self-employment presents a similarly differentiated landscape in all the EU Member States. However, it would appear that alongside the professions traditionally regarded as areas of self-employment and already established and recognised some time ago in the European Union, a number of other forms of self-employment have emerged more recently following developments in national economies and labour markets. The latter will be the focus of this opinion. These new forms or trends in self-employed work include, in particular, workers who are not legally bound to, but are economically dependent on, their clients and/or principals. These realities spotlight what is now generally termed 'economically dependent self-employed work', the core subject of this opinion. Consequently, there will be a particular focus on what lies beneath the new forms of self-employment so as to understand when they may start to undermine a self-employed worker's economic independence. We shall not try to address the subject of undeclared work or that of so-called 'bogus self-employment', even though both may have, or appear to have, a link with economically dependent self-employed workers.

Voting: 105 votes for amending the paragraph, 92 against and ten abstentions.

**Point 5.1.3**

**5.1.3** A further concern, when economically dependent self-employed work is recognised, is that the duration of a commercial relationship between a client and an economically dependent self-employed worker might be so long as to result in the self-employed worker, in practice, working permanently for his or her client. Even if the relationship is initially a genuinely commercial one, when it continues over a relatively lengthy period, consideration must be given to conditions and means of enabling the economically dependent self-employed worker to attain the status of employee of the former client, who is now an employer. For example, one possibility would be for continuous commercial contracts with the same client over a certain time period to lead to the reclassification of the relationship between the parties as an employment relationship. This is particularly necessary given that, in many cases, the switch to economically dependent self-employed work is not strictly a voluntary choice, but rather one that has been brought about by external factors such as outsourcing of production or the company restructuring, with the resulting layoffs.

Voting: 105 votes for amending the paragraph, 92 against and five abstentions.

**Point 5.2.2**

5.2.2 Moreover, recognising economically dependent self-employed work could provide an opportunity to develop the way that new self-employed workers are organised and represented as a group, as they are often isolated and their specific professional interests are not always taken into account by the professional organisations existing in the Member States.

Voting: 106 votes for amending the paragraph, 91 against and five abstentions.

---

## III

*(Preparatory acts)*

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

462ND PLENARY SESSION HELD ON 28 AND 29 APRIL 2010

**Opinion of the European Economic and Social Committee on the ‘Green Paper — Reform of the common fisheries policy’**COM(2009) 163 *final*

(2011/C 18/09)

Rapporteur: **María Candelas SÁNCHEZ MIGUEL**

On 22 April 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

*Green Paper – Reform of the Common Fisheries Policy*

COM(2009) 163 *final*.

The Section for Agriculture, Rural Development and the Environment, which was responsible for the Committee's work on the subject, adopted its opinion on 25 March 2010.

At its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 141 votes to 1, with 6 abstentions.

**1. Conclusions and recommendations**

1.1 The main conclusion set out in the Commission's Green Paper on the reform of the Common Fisheries Policy (CFP) is that the current CFP has not solved the problems raised in the previous reform in 2002. The changes made have had no tangible effect on problematic issues such as excess fleet capacity, overfishing and reduced catch sizes. The Commission states that the aim of the new reform proposal is to rectify the 'piecemeal, incremental' nature of previous reforms.

1.2 The EESC recommends that the measures which are adopted protect jobs and safeguard territorial cohesion, and that the strategic objectives maintain a balance between the economic, social and environmental pillars, guaranteeing and promoting responsible and sustainable behaviour throughout the fisheries chain.

1.3 The following points would need to be examined in greater depth in the future reform of the CFP:

— Establishing a differentiated regime for small-scale fleets;

— Including a section on social issues that harmonises fishermen's working conditions;

— Improving market conditions and commercial practices;

— Ensuring the CFP dovetails with marine environment policy, which also requires more and better research that is applicable to fisheries policy;

— Fully integrating the CFP into the framework of international organisations (the UN, FAO).

**2. The legislative context**

2.1 According to Article 3(1)(d) of the Treaty on the functioning of the European Union 'the Union shall have exclusive competence in (...) the conservation of marine biological resources under the common fisheries policy'. It would make sense to take the views of national governments and other stakeholders into account when drawing up policies following the Green Paper consultation, to ensure universal compliance with the rules.

2.2 Since Regulation (CE) 2371/2002 came into force, the Commission has been improving the conservation and sustainable exploitation of fisheries resources through the adoption of management and recovery plans and implementation and control regulations. The Commission has also presented a series of important communications, such as COM(2007) 73 that defines rights-based management systems, which aim to review current national systems and examine the possibility of making them more efficient by using best practice.

### 3. Analysis of, and response to, the issues raised by the Green Paper

#### 3.1 Addressing the structural challenges of the CFP

##### 3.1.1 Excess fleet capacity: striking a balance between profitability and sustainable employment

3.1.1.1 The EESC shares the Commission's assessment of the situation to a certain degree and recognises that the trend in the excess capacity of the European fishing fleet (especially taking account of technical developments) is powerful, so far not showing enough sign of change. However, it is impossible to generalise, and the overly negative picture drawn by the Commission should be qualified somewhat, in so far as several Member States have to varying degrees reduced the capacity of their fleets. In any case, available data on the current state of the fleets of the Member States should be brought up to date.

3.1.1.2 The EESC supports the idea of using legislation to limit capacity, and emphasises the need to give management and control measures greater force through adaption plans co-financed by Member States and the EU. Priority should be given to eliminating capacity in a way that strikes a balance between fishing opportunities and environmental and social criteria. In achieving such a balance, priority should be given to environmental and social adjustments, such as vessels that use non-selective gears or gears which damage the environment, consume large amounts of energy or provide few jobs for the fish caught. The introduction of one-off decommissioning funds must be approached with care. The scrapping of vessels has a social cost which should be taken into consideration. Decommissioning of fishing vessels frequently leads to job losses, with no alternatives being offered to employed fishermen. The EESC is not against the one-off cessation fund proposed by the Commission, which could be a sensible idea, as long as it is not only the vessel owners who benefit, but also their employees who risk losing their jobs. The Community fund should provide for social measures such as support for training and retraining with a view to preventing the net job loss. Nevertheless, the EESC supports the idea that the sector must ultimately become economically viable and stop being dependent on public subsidies, although the latter must be envisaged in the interim, until the sector's structural difficulties have been resolved.

3.1.1.3 The EESC recognises that the use of market instruments – such as transferable fishing rights – can help to address the problem of excess fleet capacity. Whilst acknowl-

edging that this type of management has sometimes reduced capacity in some countries and for particular fisheries, the Committee considers that the Commission should demonstrate the grounds for such a measure and provide further details regarding the protection and safeguard measures it intends to put in place to avoid any unwanted impact on employment and spatial planning, and thereby mitigate the risk of fishing rights being concentrated in the hands of a small number of large companies - which would put smaller fishing communities at a disadvantage.

#### 3.1.2 Focusing the policy objectives

3.1.2.1 The EESC warns against giving the strategic objectives involved in the sustainable development of fisheries different levels of priority. Instead, the Committee would advocate a balanced approach that gives equal importance to the economic, social and environmental pillars. The EESC notes that the Green Paper, like the 2002 reform, does not focus much on the social dimension of the future CFP, which is not clearly set out among the fundamental strategic objectives.

3.1.2.2 Socio-economic impact assessments should be carried out alongside the process of improving fisheries resources and maintaining them at sustainable levels, with financial support measures to boost employment and encourage businesses to invest in innovation and development and provide professional training. Fishermen also need to be guaranteed a decent wage while stocks are recovering.

#### 3.1.3 Focussing the decision-making framework

3.1.3.1 The EESC fully supports the idea of reviewing the decision-making process to ensure that policy is easier to understand, more effective and costs less. There is a need to differentiate between the fundamental principles and objectives, which should be decided by the Council jointly with the European Parliament, and the process of implementing these principles which is delegated to the Member States, the Commission and to possibly new, de-centralised decision-making bodies that represent all stakeholders at a local level. The involvement of local and regional authorities – by decentralising decision-making on technical issues (micro-management) – seems to be going in the right direction. The Committee is aware that shared stocks and ecosystems cover vast areas, and therefore welcomes the idea that Member States should manage the main principles and rules of the CFP by working closely together within marine regions.

3.1.3.2 Opinions drawn up by relevant consultative bodies, namely the Advisory Committee on Fisheries and Aquaculture (ACFA) and the Regional Advisory Committees, should be used to inform the decision-making process. The initiatives and opinions of the Sectoral Social Dialogue Committee for Sea fisheries should also be taken into account.

### 3.1.4 Encouraging the industry to take more responsibility in implementing the CFP

3.1.4.1 The EESC welcomes the idea of ensuring stakeholders take on increasing levels of responsibility. In practice this could be achieved by setting up a system for managing resources based on transferable, individual or collective fishing rights, which would be tailored to local circumstances, while still bearing in mind the point made at 3.1.1.3.

### 3.1.5 Developing a culture of compliance

3.1.5.1 The EESC believes that data collection systems used to enforce the rules should be further developed and given financial support. The catching sector could be encouraged to play a leading role in this measure (see point 3.1.4 above). To improve efficiency, responsibility for implementing control mechanisms should be shared between Member States, the Commission and the Community Fisheries Control Agency, with stakeholders involved as much as possible. The Committee also supports the idea of setting up a system that creates a link between effective exercise of control responsibilities and access to Community funding, as set out in its Opinion <sup>(1)</sup>.

## 3.2 Further improving the management of EU fisheries

3.2.1 In response to the discussion points set out in the Green Paper aimed at further improving the management of EU fisheries, the EESC would like to make the following general points:

3.2.1.1 With a view to making best use of resources, the EESC supports the idea of bringing the management of fisheries resources into line with the MSY objective by 2015, but thereafter using a more conservative management objective that would ensure less risk of stock collapse and more profitable fisheries. This also applies to mixed fisheries, with more flexible measures that would avoid any untoward economic or social effects. The Committee also supports the ongoing process of eliminating discards completely.

3.2.1.2 The EESC would caution against any hasty revision of the TAC and quota system for managing resources. Despite its imperfections, this system would not be easy to replace. Neither of the alternatives, i.e. giving priority to management based either on monitoring the fishing effort or on introducing fishing rights, could be brought in without a rigorous prior socio-economic impact study, demonstrating the grounds for any changes to the fundamental structure of resource management.

3.2.1.3 In addition, the Committee wishes to point out that, were the reduction in fishing effort to lead to the introduction of restrictions on the number of fishing days allowed, this would have unacceptable drawbacks, in so far as it would expose workers to occasional periods of overwork likely to lead to exhaustion and thereby increase the risk of accidents.

3.2.1.4 On the other hand, the EESC would be reticent about the allocation of fishing rights, in case commercial use was made of them, since fishing resources belong to society as a whole. The transfer of fishing rights, on a yearly or multiannual basis, could be an option, provided that the principle of quota management by the public authorities was not in question. The system would be tailored to local circumstances, so that access to resources could be decided using environmental and social criteria. The transfer of individual or collective fishing rights could not be permanent or traded speculatively, however.

3.2.1.5 Catches that exceed the quotas could be deducted from the following year's quotas, and the proceeds from selling these products should go to fishermen willing to give up a proportion of their quotas to ensure that the excess fish is accounted for.

3.2.1.6 The EESC believes that relative stability should remain one of the cornerstones of the CFP. However, the Committee notes that this principle needs to be reviewed to take account of developments since it was first established in 1983. Any changes to the system should be negotiated between Member States. Preferential access could be awarded to regional and local communities, based on social and environmental criteria.

3.2.1.7 The process of integrating the CFP into the Integrated Maritime Policy (IMP) should be encouraged. The EESC suggests that the catching and aquaculture sectors should have a legal right to be consulted in the planning process for marine areas, and that the future CFP should establish mechanisms for compensating fishing businesses and their employees in danger of missing out on fishing opportunities. In particular, this would mean taking proactive steps to promote vocational training – even the creation of integrated training pathways – and a holistic approach to learning about the marine environment, with a view to creating sustainable jobs and encouraging retraining for other occupations in maritime clusters.

3.2.1.8 More funds should be earmarked for research to improve knowledge of the marine environment; fishermen's knowledge should be valued and recognised more.

<sup>(1)</sup> OJ C 277, 17.11.2009, p. 56.



3.2.1.9 The EESC notes that CFP objectives have not been reached in terms of financial support. Economic sustainability should continue to be an objective, provided that there is a thorough review of the way the market is organised. There is also a need to use public funds to support the transition of the EU fishing and processing industries towards sustainable fisheries, including dealing with the socio-economic consequences of the restructuring processes. Finally, the EESC agrees with the idea of establishing a link between access to Community funding and Member States meeting strategic objectives.

#### 4. Specific comments

##### 4.1 *A differentiated regime to protect small-scale coastal fleets?*

4.1.1 Small-scale coastal fleets create many jobs, both directly and indirectly, and play an active role in structuring and invigorating the socio-economic fabric of coastal regions. Under favourable conditions, they could cushion fishery-dependent communities from the economic and social consequences of the structural crisis. The EESC therefore supports the idea of adopting a differentiated approach to the sector, ensuring that competition is not distorted and taking account of the sector's specific characteristics. Access, the 12 nautical mile limit and other rights of small-scale coastal fisheries need to be appropriately allocated and defended, such as by an exclusive proportion of national quotas. The Committee notes however that there is a need to agree on the criteria (e.g. size, time spent at sea, distance from the coast, links to local communities, etc.) that should be used to define this highly diverse type of fishing, which should be done at the most appropriate level - local, regional or national. In the Committee's view, it would be more appropriate to define this concept at national or local level than to impose a uniform definition at Community level.

##### 4.2 *The renewed CFP needs a section on social issues*

4.2.1 The EESC believes that overall the Green Paper does not focus enough on the social aspects of the CFP. The Commission simply sees the decline in jobs, particularly in the catching sector, as inevitable. It is important to bear in mind that employment in the catching sector has decreased by 30 % over the last ten years, and given that any loss of jobs in this sector is bound to have a negative impact on land-based employment (both on the processing sector and on all related upstream and downstream activities), the social impact is a serious cause for concern.

4.2.2 The EESC believes that in reforming the CFP we have a duty to develop a coherent, long-term strategy to make the sector socially sustainable. This will ensure that social issues are integrated horizontally into the different sections of the CFP. The Committee would like to raise a number of points for discussion in order to respond to the social challenges facing the sector:

- Currently, professional qualifications are not systematically recognised in different EU countries. The Commission should therefore consider implementing a system of common core qualifications and recognition of diplomas, which could encourage workers to move from one country to another and help prevent the risk of accidents.
- Fishing is one of the most dangerous jobs in the world. In order to foster a real culture of risk prevention, the EESC recommends that harmonised statistics should be compiled on accidents and their causes. This data is currently lacking at EU level. The database would help to develop appropriate rules, especially for vessels of less than 15 metres in length which are not yet covered by the regulations. The Committee is concerned that Member States have not really been encouraged to ratify the Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), or the protocol to the Torremolinos Convention on the safety of fishing vessels.
- As regards working conditions, the EESC highlights the need to upgrade the sector by guaranteeing decent levels of pay as far as possible. In the Member States that use it, the profit-sharing system has proved its worth, as well as having strong roots in fishing communities. However, this system does not guarantee employees a decent, regular income. And in some Member States, fishermen are considered to be self-employed (as a proportion of their wages is variable), which excludes them from social security schemes. The EESC therefore calls on the Commission to prepare the ground for an EU framework to harmonise fishermen's right to regular, decent pay, and effective social security protection.

##### 4.3 *Improving the market and commercial practices*

4.3.1 As highlighted in the Green Paper, the catching sector only receives a small share of the price the consumer pays for fish in the shops. The market is not well organised, which means that the profitability of the sector is low. The EESC considers that action is needed to address the problem of too many small sellers confronted by a small number of large buyers, who can dictate prices. Nor has there been sufficient political commitment to greater transparency and traceability in the trade in fisheries products. The EESC therefore wishes to highlight the importance of rules being observed and of ensuring that all fisheries and aquaculture products from both within the EU and beyond are correctly identified, preventing confusion for consumers and guaranteeing that they have the information they need to shop responsibly. Finally, the Committee suggests that more resources should be devoted to checking frozen products and products imported by land, sea or air, and ensuring compliance with labelling rules (in line with the relevant regulation).

#### 4.4 *The environment and research*

4.4.1 The CFP depends on other policies which have a considerable impact on the fisheries sector and are not having the expected results either. The marine strategy (Directive 2008/56/CE) is a case in point. Its main aim was to set up a framework of Community action for European marine policy. Action was required not only as a result of the vast oil spills in the Erika and Prestige disasters and also because of urban waste and increasingly intensive construction schemes and other changes in coastal areas.

4.4.2 With rising temperatures, pollution, and changes in ocean currents, climate change is also having an impact on the marine environment. All these factors are affecting the recovery of fish stocks and are preventing biological recovery times from having the intended effects.

4.4.3 Given that environmental policy is a cross-sectoral EU policy, it needs to be incorporated into the CFP. The EESC has emphasised the need to integrate all European policies on several occasions. It is clear that the CFP has a part to play in taking an integrated approach to protecting the marine environment.

4.4.4 It seems that indicators to monitor the effects of protecting the marine environment have been established effectively<sup>(2)</sup>. But these indicators need to be followed up at international level, with scientists working in partnership at the European Environmental Agency or the International Council for the Exploration of the Sea for example.

4.4.5 Information is essential for protecting the marine environment; which is why the studies carried out using data collected at national level are so important. The EESC understands the need to step up research in this field, and advocates introducing the instruments needed to strengthen relations between scientists and the fisheries sector, the responsible authorities and the EU. The Committee also recognises the importance of the Communication on A European Strategy for Marine and Maritime Research<sup>(3)</sup>, and believes that funding is required to carry it out, as funds from the Framework Programme alone will be insufficient.

4.4.6 The EESC believes however that it is not only funding that is needed for marine and maritime research. Incentives are also required to encourage young researchers to get involved in this field, and a system is needed to centralise best practice that could serve as a useful guide for the competent authorities, particularly Regional Fisheries Management Organisations (RFMOs), so that the most beneficial practices can be adopted in each maritime region. Some Member States are currently working hard both to strengthen sustainable fishing practices

and to enhance procedures that will allow the marine environment to recover.

#### 4.5 *Towards a responsible international dimension for the CFP*

4.5.1 Responsible, sustainable fishing practices should be promoted beyond EU waters in the reform of the CFP. By participating actively in the decisions taken by international bodies (the UN and FAO) and RFMOs, the EU has an important role to play – especially in ensuring operations on the high seas are monitored more effectively, and stamping out illegal, unreported and unregulated fishing (IUU).

4.5.2 As regards RFMOs, the EESC considers that the CFP should promote the sustainable management of fishing activities as a whole, focusing on key aspects such as compliance, managing capacity in line with the available resources, strengthening governance by defining long-term management plans and strategies to protect ecosystems.

4.5.3 As regards the Fisheries Partnership Agreements (FPAs), the EESC hopes that financial and technical support will help assist partner countries in the design of sustainable fisheries policies, and at the same time enhance surveillance and control in the waters of the regions concerned. In this regard, the authorities in non-EU partner countries must be held responsible for the proper use of European tax payers' money, by effectively monitoring the objectives set by the FPAs. The EESC suggests that, in order to achieve better management of support, its specific nature should be stipulated, thereby ensuring that the funds granted are actually used for their intended purpose. This would serve to improve social and employment conditions in the partner countries.

4.5.4 The Committee calls for a distinction to be made between access costs for the EU's long-distance fleet, which are borne by shipowners and represent a fair percentage of the catch value, and the FPAs' financial contribution, which is intended to assist development. This assistance should recognise the fisheries sector's important role in alleviating poverty.

4.5.5 The EESC urges that the FPAs be restructured to take due account of the social dimension, with the long-term objective of removing any discrimination between workers from the EU and those from third countries in terms of working conditions, pay and access to training. The Committee also calls for the practices of social dialogue and collective bargaining to be applied in the recruitment of fishermen from non-EU countries, so as to guarantee equitable living and working conditions for crews working on European vessels. The Committee sees this as all the more important, given the absence of specific ILO minimum standards on fishermen's wages.

<sup>(2)</sup> CESE 1369/2002, point 2.7.2.

<sup>(3)</sup> COM(2008) 534.

4.5.6 The EESC notes that the social clause negotiated by the European social partners and inserted into the FPAs represents progress on recognising the rights of local workers and the true value of their work. However, since its effectiveness remains doubtful, and there is a need to evaluate its implementation, the Committee believes that its legal force should be better defined and strengthened.

#### 4.6 *Developing sustainable aquaculture*

4.6.1 The EESC believes that aquaculture should be integrated as a fundamental pillar of the revised CFP. This would bring an end to the current stagnation of aquaculture production at European level. Measures to boost its competitiveness should be promoted, in order to ensure that the industry again becomes economically viable and generates

high-quality jobs while respecting the rules on protecting the marine environment in terms of local water quality, escape of exotic species, sustainability of fishing to produce fish meal and oil, etc. There is also a need to focus particular attention on the quality of aquaculture products, which should be governed by market surveillance rules. In any event, the Committee opinion currently being drafted on this issue (NAT/445) should be taken into account.

4.6.2 The EESC believes that the image of aquaculture and fishing, and of the related processed products, should be improved; it therefore recommends conducting information, education and communication campaigns aimed primarily at European consumers.

Brussels, 28 April 2010.

*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 — Building a sustainable future for aquaculture — A new impetus for the Strategy for the Sustainable Development of European Aquaculture'**

COM(2009) 162 final

(2011/C 18/10)

Rapporteur: **Mr ESPUNY MOYANO**

On 8 April 2009 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 – Building a sustainable future for aquaculture - A new impetus for the Strategy for the Sustainable Development of European aquaculture*

COM(2009) 162 final.

The Section for Agriculture, Rural Development and the Environment, which was responsible for the Committee's work on the subject, adopted its opinion on 25 March 2010.

At its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 150 votes to one, with three abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC reiterates its concern, previously expressed in its opinion on the 2003 strategy <sup>(1)</sup>, that the competitiveness of aquaculture in the EU is being undermined by an unsuitable regulatory framework. It is unnecessarily affected by regulations in various fields, posing further hurdles to the development of the sector.

1.2 The EESC therefore welcomes the Commission's communication and believes that it has come at the right time.

1.3 European aquaculture must return to a pattern of sustainable growth that enables it to meet demand for nutritional, healthy, safe aquatic products. If properly developed, it will boost the socio-economic development of the areas in which it is present, improve the supply of stable, high-quality jobs and help to keep the population in the area.

1.4 The EESC reiterates its conviction that the single market is one of the main assets of the EU. It is therefore concerned by the lack of legislative consistency and uniformity between Member States, particularly in terms of the labelling of aquatic products and the interpretation of European environmental legislation, for example in the context of the Natura 2000 network or the Water Framework Directive.

1.5 With the growing occupation of coastal areas, it is important to step up the search for synergies between compatible activities, including environmental protection. The scarcity of areas devoted especially to aquaculture is one of the main reasons for the stagnation of the sector in the EU. The EESC recommends improving and streamlining processes

for granting authorisations and licences for fish farms, and making procedures simpler and more flexible in order to reduce authorisation times.

1.6 The EESC expresses its concern that current point-of-sale labelling of aquatic products is insufficient and prevents consumers from making responsible, informed purchases. This is borne out, for example, in the difficulties that consumers face in recognising EU-farmed aquatic products as opposed to imports, and in distinguishing fresh aquatic products from defrosted ones.

1.7 The EESC is concerned by the fact that imported aquatic products do not meet the health standards imposed in the EU. The different criteria applied with regard to the traceability requirement are particularly worrying, as this is a key factor in food safety. The EESC is also concerned about socio-occupational conditions, such as work carried out by minors or under conditions approaching slave labour.

1.8 Aquaculture produces high quality food in the aquatic milieu, and it is not compatible with a degraded or polluted environment. It is therefore important to ensure that EU waters are in good condition.

1.8.1 While environmental protection is one of the EU's priorities, this should not prevent activities from being carried out if they can be compatible with it. The Commission should endeavour to explain the key environmental protection legislation, particularly the Natura 2000 network, and its links and compatibility with aquaculture.

<sup>(1)</sup> OJ C 208, 3.9.2003, pp. 89-93.

1.8.2 The EESC recommends encouraging eco-labelling for aquaculture products. This should make it possible to distinguish and promote the environmental excellence of aquaculture products from properly managed fish farms that are focused on sustainable development.

1.9 Given the innovative nature of European aquaculture, the EESC highlights the need to boost technological research and development in the field. The European Aquaculture Technology and Innovation Platform that has recently been set up will form an excellent springboard to achieve this.

1.10 With regard to animal health, the EESC is concerned at the lack of authorised veterinary medicine available for aquaculture.

## 2. Gist of the Commission Communication

2.1 The aim of the communication is to identify the causes of the stagnation observed in the EU's aquaculture industry, and to reinvigorate its development. To this end, the Commission has drawn up a three-pronged proposal designed to promote competitiveness, establish conditions for sustainable growth and improve the image and governance of the sector.

2.2 The Commission proposes to **promote the competitiveness of EU aquaculture production** by developing a competitive, diversified aquaculture sector, supported by innovation.

2.2.1 The sustainable development of aquaculture should be backed by research and innovation. To achieve this, the Commission will promote RDI initiatives, foster the development of research infrastructure and allocate adequate resources.

2.2.2 The Commission proposes making aquaculture an equal competitor, in terms of space, with other activities and finding synergies between activities.

2.2.3 European aquaculture should be able to answer to consumer demands, be adaptable to market requirements and interact on an equal footing with the other players in the marketing chain. To this end, the Commission will address the needs of the aquaculture sector regarding producer organisations, inter-professions, consumer information and marketing instruments.

2.2.4 The external dimension of aquaculture must offer related sectors opportunities for expansion and export. To achieve this, the Commission will promote sustainable aquaculture development in third countries.

2.3 The Commission aims to **establish conditions for sustainable growth of aquaculture**, guaranteeing a high level of protection of the natural environment. Aquatic food products that are manufactured in or imported to the EU will have to comply with high protection standards of consumer health and safety. The Community will promote a high level of protection for animal health and welfare.

2.3.1 Compatibility between aquaculture and the environment must be ensured. The Commission will therefore continue to emphasise the importance of environmentally sustainable aquaculture.

2.3.2 Conversely, aquaculture must have access to a clean environment and water of the highest quality, in order to protect the health of animals and the safety of products, particularly molluscs.

2.3.3 For optimal growth and production, a high-performance aquatic animal-farming industry must be established on the basis of excellent husbandry conditions. The Commission will secure the full implementation of Directive 2006/88/EC <sup>(2)</sup> on aquatic animal health.

2.3.4 Animal welfare is a common concern to consumers, legislators and producers. The Commission will seek advice on fish welfare and will promote the adoption of a species-dependent approach.

2.3.5 The limited availability of authorised veterinary medicinal products remains one of the major problems for the aquaculture industry. The Commission will therefore encourage the implementation of the recommendations of the 'Availability Task Force' in its 2007 report.

2.3.6 The availability of high quality and sustainable feed-stuff for fish remains essential for the development of aquaculture. The Commission will increase the availability of necessary additives for fish feed and will revise legislation on by-products.

2.3.7 The Commission must ensure consumer health protection and recognise the health benefits of aquatic food. The Commission will continue to address the need to ensure that domestic and imported aquatic food products are safe for the consumer. To this end, it will continue to base its actions on science and on the precautionary principle, and will take into consideration the health benefits of eating fish.

<sup>(2)</sup> OJ L 328, 24.11.2006, p. 14.



2.4 The **sector's image and governance needs to be improved**, creating a level-playing field in the EU.

2.4.1 Better implementation of EU legislation by Member States should ensure a level-playing field among economic operators on decisions affecting the development of aquaculture. The Commission will therefore clarify the implementation of its environmental policy, particularly the Natura 2000 network, and will make sure that Member States implement EU animal health and consumer protection law properly. It will ensure that conditions for third countries are equivalent to those in the EU.

2.4.2 Reducing the administrative burden, especially for SMEs, is essential to promote development of aquaculture. The Commission will therefore aim to simplify the legislative environment and reduce the administrative burden in the EU.

2.4.3 The Commission will promote proper stakeholder participation and appropriate information to the public, by means of broad consultations and transparent information. This will help to improve regulation and governance, and will enhance the image of the industry.

2.4.4 The Commission will aim to ensure adequate monitoring of the sector, as the EU's official statistics on aquaculture are currently fairly limited in scope. It will also extend its price information base in order to establish a monitoring system throughout the marketing chain.

### 3. General comments

3.1 Aquaculture currently accounts for 47 % of the aquatic products consumed in the world. Its capacity for further growth remains considerable, which is why aquaculture could be a key aspect of a strategic food supply policy to meet future demand.

3.2 In the last ten years, the world's population has grown by 12 %, while seafood consumption has jumped by 27 %, owing in part to the health benefits of omega 3 acids, of which fish is an excellent source. The EU is the world's main market for aquatic products, consuming more than 12 million tonnes per year and counting. Self-sufficiency barely stands at 35 %. 65 % of the aquatic products consumed are therefore imported, and this percentage is increasing.

3.3 European aquaculture is covered by the Common Fisheries Policy (CFP), which aims to ensure sustainable exploitation of living aquatic resources, taking environmental, social and economic factors into account. The reformed PCP must take the characteristics of aquaculture specifically into account and provide effective sector and market support instruments. It is suggested that the CFP be renamed the Common Fish and Aquaculture Policy (CFAP).

3.4 Within certain coastal and continental areas of the EU, aquaculture is an important business, including the farming of both molluscs and fish in fresh or sea water.

3.5 From an artisanal and small-scale activity, aquaculture in the EU has, since the 1970s, become a modern, dynamic, innovative, high-tech industry with businesses that are often vertically integrated.

3.6 Aquaculture in the EU provides jobs in remote river and coastal areas, which tend to be deprived and lacking in alternative employment opportunities. Both for family businesses and SMEs, jobs in aquaculture are specialised, requiring technical capability, and stable.

3.7 In its 2002 communication (COM(2002) 511), the Commission presented a strategy for sustainable development of European aquaculture, aiming to:

- a) create secure jobs, especially in areas particularly depending on fishing;
- b) guarantee the supply of safe, healthy fish products, in the quantities required by the market;
- c) promote an environmentally-friendly sector.

3.8 The Commission has acknowledged that, since 2002, EU aquaculture has not developed as forecast and has even undergone overall stagnation as regards both molluscs and fish (seaweed and crustacean farming is virtually inexistent in Europe), in stark contrast with the high growth rate in the rest of the world. The Commission therefore considered it appropriate to revise its strategy and take stock of the current situation of European aquaculture.

### 4. Specific comments

4.1 Aquaculture in the EU is not realising its full potential as a creator of wealth and jobs. The overall production figures have stagnated since 2002 and are not offsetting the reductions in fishing catches, resulting in a decline in the foreign trade balance. This is occurring even though Europe has the right physical and environmental conditions, cutting-edge technology and businesses ready to invest. Moreover, the sector has shown that it possesses the knowledge and resources to enable aquaculture to be environmentally sustainable, while providing healthy, safe, high-quality products.

4.2 The EU's complex legal framework, slow administrative procedures, limitations on access to public land and excessive administrative burdens discourage investment and hinder the competitiveness of European aquaculture production.

4.3 Many of the challenges that limit the development of European aquaculture directly depend on policies and actions taken at national or regional level. National and regional authorities should therefore be aware of this, and establish their own appropriate framework. There are some Member States where new aquaculture licences have not been granted for fifteen years. Sometimes, it is the interpretation of European legislation by national and regional administrations that results in distortions, as in the case of the Natura 2000 network, from which some administrations unjustifiably exclude aquaculture. Moreover, both Member States and regions with powers should coordinate their legislation in order to avoid creating artificial barriers to the free market within the EU.

4.4 The common organisation of the markets in fishery and aquaculture products, which should stabilise markets and guarantee income for aquaculture producers, urgently needs to be reformed in order to strengthen producers' organisations.

4.5 The Commission's previous communication (COM(2002) 511) overemphasised the environmental aspects of aquaculture and played down the economic and social aspects of sustainability. The current communication (COM(2009) 162) proposes a better balance between the three (environmental, social and economic) pillars of sustainability. It acknowledges that environmental sustainability is only possible with competitive, profitable businesses.

4.6 On the whole, the EU's aquaculture businesses are efficient and could be fully competitive if they had the same opportunities as those enjoyed by imported products. Current circumstances do not allow for these equal opportunities, in terms of either production or marketing. On the production side, European aquaculture producers must comply with strict rules on feed ingredients, on the restricted use of veterinary medicinal products and on environmental and social aspects, none of which are required of aquaculture producers in third countries who can, for their part, market their products freely in the EU (including those produced using child labour or other infringements of the right to decent work and fair pay). On the marketing side, some countries provide irregular incentives for aquaculture products subsequently marketed in the EU.

4.7 The incomplete information received by consumers on the characteristics of the aquatic products they buy prevents them from properly weighing up the differences in price and quality. This puts European producers, whose products generally offer greater added value than those that are imported, at a serious disadvantage. This misinformation includes, for example, inaccuracies in the country of origin or common name of the product. However, it is particularly serious when it relates to fish fillets which come from remote (often Asian) countries and are defrosted before sale. These fillets are sold alongside truly fresh fillets, but consumers are not clearly informed of the conditions for each type, so that the only thing guiding them in their purchase is the price. This could even lead to public health problems, if the fish were to be refrozen.

4.8 The EESC therefore recommends both simplifying labelling in order to clarify, in particular, information on the country or area of origin, and strengthening the mechanisms for border inspections and controls.

4.9 Along with proper identification of aquatic products, training and information initiatives should be carried out across the distribution and marketing chain, and must also reach consumers. In particular, they should emphasise the presence of omega 3 fatty acids (specifically EPA and DHA).

4.10 The EESC recommends carrying out promotion campaigns to enhance the image of aquaculture and its products and processes. The messages to be conveyed should be identified by a specific study group entrusted with proposing initiatives, with the involvement of the sector. In this context, trans-national campaigns should be implemented, which should be coordinated by the European Commission.

4.11 European aquaculture is a high-tech, innovative business that requires ongoing scientific research. The current 7th framework programme, which covers all Community research initiatives, offers fewer opportunities for aquaculture research than previous framework programmes. It will therefore be difficult to improve the innovation and competitiveness of the European sector. The European aquaculture profession has recently established the European Aquaculture Technology and Innovation Platform, with the aim of defining priorities for the sector with respect to RDI, and providing a strategic vision in order to achieve these.

4.11.1 The search should continue for alternative, safe, sustainable ingredients that still meet the nutritional and biological requirements of fish while ensuring that the end product offers the same nutritional benefits.

4.11.2 Efforts should be maintained to optimise current production systems, particularly those with clear possibilities for future expansion such as offshore sea aquaculture and inland recirculation systems.

4.12 The availability of veterinary medicinal products is a major hindrance to the development of aquaculture. At the moment, European aquaculture does not have sufficient veterinary products such as anaesthetics, vaccines or antibiotics. This undermines the viability of the sector and affects the health and welfare of the animals, food safety and environmental protection.

4.13 The Commission's communication proposes supporting the export of aquaculture production technology to third countries. Although this initiative shows a degree of solidarity that should clearly be supported, it is important to consider that the aquaculture products resulting from this exported technology may end up being imported into the EU where they will compete with European production.

4.14 The Commission communication accurately describes the causes of the current stagnation of aquaculture in the EU. However, it should not be considered as a completed work but, rather, as a starting point for designing and implementing specific actions to revive the sustainable development of aquaculture in the EU.

Brussels, 28 April 2010.

*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 and the European Parliament — Beyond GDP — Measuring progress in a changing world'**

COM(2009) 433 final

(2011/C 18/11)

Rapporteur: **Mr ZBOŘIL**

On 20 August 2009, 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 Council and the European Parliament – Beyond GDP – Measuring progress in a changing world*

COM(2009) 433 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 25 February 2010.

At its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 29 April), the European Economic and Social Committee adopted the following opinion by 168 votes to 3 with 6 abstentions.

## **1. Conclusion and recommendations**

1.1 The EESC welcomes the Commission's communication *Beyond GDP - Measuring progress in a changing world* and the initiatives it outlines. The Committee points out that we are still at an early stage of this journey and choosing the right instruments and benchmarks and integrating them into the management of key policies and strategies will be no easy matter.

1.2 The Commission has the very challenging role of drawing up a pilot version of the comprehensive index of the environment. This will evidently be an aggregate index, which means that it will have to balance the influences of various elements of the environment. It should be designed from the outset in consultation with interested parties.

1.3 Drawing up a comprehensive index of quality of life and social solidarity will be even more difficult. It is vital to put together pilot projects in this area. The Commission should identify this area as the focal point of the whole project and start with pilot projects immediately.

1.4 What is important when it comes to strategic issues and policy-making are the long-term trends in fundamental parameters, so this perspective should determine the choice of parameters to be monitored in real time. The reaction to changes ascertained must be considered and prompt.

1.5 Even for the Community as a whole, the national level – organised within a clear, unifying Community framework –

should remain the cornerstone when it comes to gathering and evaluating data and processing them into indicators and parameters. A global, holistic approach must be taken to evaluation in order to reduce conflicts in the assessment of some instruments and parameters and the risks posed if such conflicts are left unresolved.

1.6 The assessment of sustainable development is really most about capturing trends in two fundamental areas: 1) assessing carrying capacity, and 2) assessing development in the governance of human societies. The proposals in the Commission communication (the scoreboard and the monitoring of threshold values of pollutants) take this line, which the EESC welcomes.

1.7 The EESC also welcomes the Commission's endeavours to extend national accounts to environmental and social issues. A legal framework for environmental accounting is due to be proposed at the beginning of 2010. The social indicators in the national accounts are not yet being used to the full. The need to use these indicators can be expected to grow as a comprehensive and integrated approach to measuring and evaluating progress in a changing world is further refined.

1.8 The process of making the changes that are being prepared will be neither short nor simple. For this reason, the greatest care should be given to the analytical preparation and the planning of the individual instruments, with solid research into their interaction and in-depth consultation with interested parties, in order to facilitate the adoption of these changes in a broad international context.

1.9 Going forward with the work and structuring the next steps will require reference to all available reports and projects. The crucial criterion must be maximum objectivity and preservation of the independence of the statistics and their stringency in terms of quality. The EESC is ready to play a part in assessing the vital changes and will promote their acceptance by civil society.

1.10 The Commission should establish timetables and deadlines for the introduction of the various elements. In particular it should aim to include some of the new measures in the new 2020 strategy as well as in the Sustainable Development Strategy. And it should aim to have a framework in place by 2011 on the basis of which it could develop clear proposals for comparable action on a global scale in time for the World Summit on Sustainable Development that the UN has convened for 2012.

## 2. Introduction

2.1 Gross Domestic Product (GDP) is the best known measure of macro-economic activity. (GDP = private consumption + investment + government consumption + (exports – imports). The framework and rules on how to calculate it are set in the European System of Accounts, which is broadly consistent with the UN System of National Accounts.) It has become a standard reference value used by policy-makers throughout the world and is widely used in public debates. GDP aggregates the value added of all money-based economic activities. It is based on a clear methodology that allows comparisons to be made over time and between countries and regions.

2.2 GDP has also come to be regarded as a proxy indicator for overall societal development and progress in general. It does not however measure environmental sustainability or social inclusion and these limitations need to be taken into account when using it in policy analysis and debates (for a recent overview of limitations of GDP see Stiglitz/Sen/Fitoussi (2008) Issues Paper, Commission on the Measurement of Economic Performance and Social Progress ([http://www.stiglitz-sen-fitoussi.fr/documents/Issues\\_paper.pdf](http://www.stiglitz-sen-fitoussi.fr/documents/Issues_paper.pdf)).

2.3 Discussions of this topic at various levels have been carried out for about ten years and in October 2008 the EESC adopted an own-initiative opinion<sup>(1)</sup> which elucidates current schools of thought and supports endeavours to find suitable complementary indicators that will map the evolution of human society more thoroughly.

2.4 This Communication identifies a number of actions that can be taken in the short to medium term. The overall aim is to develop more inclusive indicators that provide a more reliable knowledge base for better public debate and policy-making. The Commission intends to cooperate with stakeholders and partners to develop indicators that are internationally recognised and used.

## 3. Gist of the Commission document

3.1 The Commission proposes to implement the following five categories of action, which can be revised or supplemented in the light of the review planned in 2012.

3.2 **Complementing GDP with environmental and social indicators:** Indicators that summarise important issues with a single figure are essential communication tools. GDP and unemployment and inflation rates are prominent examples of such summary indicators. But they are not meant to reflect where we stand on issues such as the environment or social inequalities. The Commission services intend, therefore, to develop a comprehensive environmental index and improve quality-of-life indicators.

3.2.1 **A comprehensive environmental index:** There is currently no comprehensive environmental indicator. Close candidates for such a purpose are the ecological and carbon footprints, but both are limited in scope. (The carbon footprint summarises only greenhouse gas emissions. The ecological footprint excludes some impacts, e.g. on water. However, the Commission is testing it, along with other indicators, to monitor the Thematic Strategy on the Sustainable Use of Natural Resources and the Biodiversity Action Plan.) Commission services intend to present a pilot version of an index on environmental pressure in 2010. It will reflect the major strands of environmental policy:

- climate change and energy use
- nature and biodiversity
- air pollution and health impacts
- water use and pollution
- waste generation and use of resources.

3.2.2 **Quality of life and well-being:** Income, public services, health, leisure, wealth, mobility and a clean environment are means to achieve and sustain those ends. The Commission has launched feasibility studies on well-being indicators and on consumer empowerment, as well as, with the OECD, on people's perception of well-being.

3.3 **Near real-time information for decision-making:** GDP and unemployment figures are published frequently within a few weeks of the period they are assessing and this can allow near real-time decision making. Environmental and social data in many cases are too old to provide operational information, e.g. on fast-changing variables such as air and water quality or work patterns.

<sup>(1)</sup> OJ C 100 of 30.4.2009, p. 53.



3.3.1 The Commission will therefore aim to increase the timeliness of environmental and social data to better inform policy-makers all across the EU. Satellites, automatic measurement stations and the internet make it increasingly possible to **monitor the environment in real time** through INSPIRE (Directive 2007/2/EC) and GMES (Global Monitoring for Environment and Security – COM(2009) 223 final).

3.3.2 Whenever possible, the **timeliness of social data will be improved**, e.g. with the new European System of Social Statistical Survey Modules.

3.4 **More accurate reporting on distribution and inequalities:** Social and economic cohesion are overarching objectives of the Community. Existing data from national accounts, e.g. on household income, or from social surveys such as EU-SILC (EU Statistics on Income and Living Conditions) already allow for an analysis of key distributional issues.

3.5 **Developing a European Sustainable Development Scoreboard:** The EU Sustainable Development Indicators (SDIs) (see: Eurostat Statistical Book 'Measuring progress towards a more sustainable Europe – 2007') have been developed together with Member States and are reflected in the Commission's biennial Progress Report. However, this monitoring tool does not fully capture recent developments in important areas that are not yet well covered by official statistics (such as sustainable production and consumption or governance issues).

3.5.1 The Commission is therefore exploring the possibilities of **developing**, together with Member States, a **Sustainable Development Scoreboard**. This SD Scoreboard, based on the EU SDI set, could also include other quantitative and qualitative publicly available information.

3.5.2 The SDS sets respecting the limits of the planet's natural resources as a key objective. These include nature's limited capacity to provide renewable resources and absorb pollutants. It is important to know the 'danger zones' before the actual tipping points are reached. It will therefore be necessary to **identify – and regularly update – such threshold values for key pollutants and renewable resources** in order to inform policy debate and support target setting and policy assessment.

3.6 **Extending National Accounts to environmental and social issues:** The European System of Accounts is the main tool behind EU economic statistics as well as many economic indicators (including GDP). In its June 2006 conclusions, the European Council called on the EU and its Member States to extend the national accounts to key aspects of Sustainable Development. The Commission will ensure that the work is taken further in future revisions of the international System of National Accounts and the European System of Accounts.

In the longer-term it is expected that more integrated environmental, social and economic accounting will provide the basis for new top-level indicators.

3.6.1 **Integrated environmental-economic accounting:** The Commission presented its first strategy on 'green accounting' in 1994 (COM(1994) 670). Since then Eurostat and the Member States – in collaboration with the UN and the OECD – have developed and tested accounting methods to the point where several Member States now regularly provide first sets of environmental accounts. As a following step, physical environmental accounts could be set up for energy consumption, waste generation and treatment, and monetary accounts for environment-related subsidies. To ensure the accounts are comparable, the Commission plans to propose a legal framework for Environmental Accounting in early 2010.

3.6.2 **Increasing use of existing social indicators from national accounting:** The existing European System of Accounts already includes indicators that highlight socially relevant issues, such as the disposable income of households and an adjusted disposable income figure that takes into account the differences in the social protection regimes of different countries.

#### 4. General comments

4.1 Measuring mankind's progress in a more comprehensive way is an issue attracting keen and growing interest from both politicians and the public. New approaches are needed to show how far mankind's demographic changes and continuing economic development can be reconciled with the finite dimensions of the planet and its resources.

4.2 New approaches and methods for measuring progress are essential in today's ever more complex social environment so that we can better formulate a strategic vision for human societies, including the EU. They are important, for example, for mapping the resources needed to achieve strategic goals – especially sustainable development, which depends not least upon effective climate protection and sparing use of all resources.

4.3 Another important area is the formulation of key Community policies that take into account all measurable impacts and influences (and the interaction amongst them) and, of course, the assessment of how well these policies are implemented.

4.4 The EESC therefore welcomes the Commission's communication *Beyond GDP – Measuring progress in a changing world* and the initiatives it outlines. Although a raft of activities and projects are already underway, the Committee points out that we are still at an early stage of the journey and choosing the right instruments and measures and integrating them into key policies and strategies will be no easy matter.

4.5 For any instrument to be effective, it must be as simple as possible and as easy to operate as possible. Instruments that their users do not fully identify with and which are not generally accepted cannot deliver the desired result. It will of course take time for a new instrument to win general acceptance as a measure of progress. But no instrument should exist simply for its own sake and any instrument that proves ineffective should be dropped.

4.6 Clearly, we are moving from the more simple to the more complex, but the complexity should not outweigh the expected benefits. Even for the Community as a whole, the national level – organised within a clear, unifying Community framework – should remain the cornerstone when it comes to gathering and evaluating data and processing them into indicators and parameters.

4.7 At the same time, however, aggregating parameters for the entire Community should mean that strategies and policies can also be adopted in a coordinated and compatible way at both national and Community level, while rigorously applying the principles of subsidiarity and proportionality. At Community level, again, it will be particularly important to act in line with development trends and the instruments chosen should be capable of identifying even weak warning signals of potentially dangerous changes reliably and well in advance.

4.8 Despite its familiar shortcomings, GDP is a unique aggregate instrument that reacts to events quickly. Ideally, the instrument sought should also be an aggregate indicator that brings in social and environmental factors, which will obviously be very difficult. For this reason, the EESC thinks that when several parameters from various areas are being assessed in the formulation of policies, decision-making criteria should be established that favour the sustainable development of the global community.

4.9 The EESC is convinced that a specific approach is only possible for the development of individual instruments. When it comes to their evaluation and effective application, a global, holistic approach must be taken in order to reduce as much as possible conflicts in the assessment of some instruments and parameters and the risk of skewed political and strategic decisions arising from conflicts that are ignored or left unresolved.

4.10 The whole process of making the changes that are being prepared is neither short nor simple. For this reason, the greatest care has to be given to the analytical preparation and the planning of the individual instruments, with solid research into their interaction and in-depth consultation with interested parties.

4.11 Priorities and deadlines need to be set for the further stages of this process and these are only very sketchily set out in the Commission communication. In particular the Committee urges the Commission to establish an early process for inte-

grating the new measures into the objectives and review machinery of the new 2020 strategy for Europe as well as into the longer-term goals of the Sustainable Development Strategy. The EESC also urges that other interested parties, such as the relevant economics DGs of the Commission, be brought into the planning at an early stage. It is not enough to have only DG ENVI, the EEA and Eurostat working on such radical changes.

4.12 Going forward with the work and structuring the next steps will require reference to all available reports and projects, namely: the Report by the Commission on the Measurement of Economic Performance and Social Progress (Stiglitz report: <http://stiglitz-sen-fitoussi.fr/en/index.htm>), the reports of the TEEB (The Economics of Ecosystems and Biodiversity: <http://www.teebweb.org/>), and the work of the European Environmental Agency (EEA), Eurostat and others collaborating on this complex European and worldwide project. The crucial criterion must be to preserve the independence and qualitative stringency of the statistics and the generally accepted explanatory power of the instruments.

4.13 The General Assembly of the United Nations has recently decided to convene a new global summit in 2012 to review progress on sustainable development twenty years after the Rio Earth Summit of 1992. It is understood that ways of moving to a greener, less carbon-intensive global economy will be one of the key themes of the event. It would therefore be desirable for Europe to establish a clear framework for charting its own progress in this direction by 2011, so as to be able to bring well-defined proposals to the global community in 2012.

## 5. Specific comments

5.1 These specific comments address the five key areas and their further subdivisions in the order they are presented in chapter 3.

5.2 The Commission has the very challenging role of drawing up a pilot version of the comprehensive index of the environment. It has pledged to submit this index as early as this year, 2010. It will evidently be an aggregate index, which means that it will have to be evaluated not least in terms of how it balances the influences of various elements of the environment. The present carbon and ecological footprints cover specific elements of the environment and the consumption of resources. Although other concepts, such as the water footprint and the forest footprint, have emerged, the new index must be more comprehensive still. It should be designed from the outset in consultation with interested parties and the importance given to the individual factors should be very carefully balanced.

5.3 Working out the quality of life and well-being indicators <sup>(2)</sup> will be no less demanding –notwithstanding the availability of feasibility and other studies –, since these indicators are in large part about subjective perceptions and not precise measurements. It has to be said, however, that GDP is not entirely objective either.

<sup>(2)</sup> OJ C 100 of 30.4.2009, p. 53.

5.4 Near real-time information for decision-making is very important for operational management of the quality of the environment and corrective interventions in the social sphere. More important when it comes to strategic issues and policy-making are the longer-term trends in fundamental parameters. This distinction should therefore determine the choice of parameters to be monitored in real time in order to avoid detailed information unnecessarily clogging up the decision-making process. What will be more important here is a considered and prompt reaction to change. Monitoring in the GMES system will mostly feed into operational management. Needless to say, to the extent that it also indicates longer-term trends, it will also help in policy-making.

5.5 When it comes to formulating Community policies that require combined efforts, it is important to have information about differences and imbalances at Member State and regional level. The goal is to eradicate stark imbalances with suitably framed policies, and these need more precise data. The success of policies depends on them being widely accepted and embraced, which is virtually impossible if there is a perception of unfair treatment. This approach will also determine how the public sees the Community in the future.

5.6 It is extremely difficult to evaluate sustainable development. Since sustainable development is a long-term, umbrella strategy, it does not – and cannot – have a single goal and deadlines. By the very nature of things, goals must be set that are sufficiently general. In other words, the

assessment of sustainable development is really most about capturing trends in two fundamental areas: 1) assessing the carrying capacity of ecosystems, including the use of renewable and non-renewable resources, and 2) assessing development in the governance of human societies in general. How these two basic factors evolve will determine whether the world community, including the EU Community, will or will not develop in a sustainable manner. The proposals in the Commission communication (the scoreboard and the monitoring of threshold values of pollutants) take this line, which the EESC welcomes.

5.7 The EESC also welcomes the Commission's endeavours to extend national accounts to environmental and social issues. Having enough reliable and well structured information from these accounts can make an important contribution to the desired rational internalisation of external costs in areas where this information is indeed available and where the market balance will not be upset. These accounts already hold valuable data, though there may be problems of comparability between Member States. It is important, therefore, for the players concerned to plan the best possible data systems and collection in line with the need to create physical environmental accounts. The Commission has assumed the difficult task of putting forward a legal framework for environmental accounting at the beginning of 2010. The social indicators in the national accounts are not yet being used to the full. The need to use these indicators can be expected to grow as a comprehensive and integrated approach to measuring and evaluating progress in a changing world is further refined.

Brussels, 29 April 2010.

*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 to the Council — Partnership between the European Union and Africa — Connecting Africa and Europe: working towards strengthening transport cooperation'**

COM(2009) 301 final

(2011/C 18/12)

Rapporteur: **Mr SIMONS**

On 24 June 2009 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 to the Council - Partnership between the European Union and Africa - Connecting Africa and Europe: working towards strengthening transport cooperation*

COM(2009) 301 final.

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 24 March 2010.

At its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 29 April), the European Economic and Social Committee adopted the following opinion unanimously.

## **1. Conclusions and recommendations**

1.1 The Commission's communication is in line with current policy, but aims to go further: it also aims to launch a process of reflection in order to improve links between the continents by taking experience gained in the EU and tailoring it to circumstances in Africa.

1.2 The EESC is in favour of closer cooperation between the EU and Africa, provided it is based on a partnership with equal rights and obligations rather than a donor/recipient relationship as in the past.

1.3 The Committee stresses that infrastructure and transport systems are prerequisites for social, economic and regional integration, thus providing greater access to employment opportunities, healthcare and education and constituting a valuable contribution to combating poverty.

1.4 The Committee regrets the fact that this communication does not adequately integrate the Commission's various policy areas, particularly those covered by DG Development and DG Trade, which should demonstrate the coherence of the EU's policy towards Africa.

1.5 The Committee welcomes the fact that, at the 'TEN-T days 2009' conference held in Naples on 21 and 22 October 2009, it was decided that the EU would work with its African partners to develop an action plan.

1.6 This action plan will be drawn up prior to the upcoming informal transport forum within the EU-Africa Partnership and

published afterwards, i.e. in autumn 2010. The Committee endorses an approach that involves closely monitoring progress in implementation, for example by setting up a joint committee.

1.7 The Committee recommends that the action plan should explicitly state that priority must be given to combating corruption and piracy in Africa.

1.8 With regard, in particular, to planning, to funding the transport infrastructure network and to the action plan as a whole, the EESC believes that it will be necessary to look into the extent to which the economic and social partners involved in implementing the Cotonou Agreement have a role to play.

1.9 The Committee would welcome it if the Economic, Social and Cultural Council of the African Union would assess the proposals included in the action plan and issue an opinion on them.

1.10 The Committee points out that, when allocating EU funds, one of the requirements should be that local, officially registered workers from the African Union benefit from the implementation.

1.11 In the Committee's view, it is important that plans and programmes relating to TEN-T should be based on an assumption of interoperability, making use of the natural advantages of each form of transport and taking account of the co-modal approach taken in the EU.

1.12 Moreover, the cooperation arrangements should, in the Committee's view, pay attention to training, working conditions, and social, safety, environmental and sustainability considerations.

1.13 The construction and expansion of road infrastructure should result in the trend towards urbanisation being reversed dynamically, making use of a well-functioning public transport system.

1.14 One essential requirement is for good traceability and monitoring of how the funds are spent to be established and actually implemented in a focused way.

1.15 The Committee feels that the EU needs to be aware that China has had a presence in Africa for decades, with a different political motive and with different aims. It considers that efforts should be made to develop a trilateral partnership between the EU, China and Africa, with one requirement being that any work and tenders must support 'African employment opportunities'.

## **2. Introductory summary of the Commission communication**

2.1 On 24 June 2009, the European Commission published the communication COM(2009) 301 final, which deals with the partnership between the European Union and Africa in the field of transport.

2.2 This communication emphasises that transport and transport infrastructure are of vital importance for social and economic integration and are essential for transporting people and goods.

2.3 This should take account of the increasing level of urbanisation in Africa: 40 % of the population currently live in urban areas, and if action is not taken this percentage will double by 2030.

2.4 The reference framework for cooperation between the EU and Africa in the field of transport is the infrastructure partnership concluded in 2006, the main aim of which was to improve links between African infrastructure networks, thereby boosting regional integration and hence contributing to the development of the African population.

2.5 Transport infrastructure projects in Africa are primarily financed by the European Development Fund; this fund provides 30 % of the financing.

2.6 In its communication, the Commission notes that cooperation between the EU and Africa relates not only to the physical infrastructure but also to the legal and administrative

aspects, so that the improved infrastructure can promote not only trade and economic growth but also employment, and more effectively combat poverty.

2.7 This is one of the reasons why, on 18 May 2009, the Council adopted a number of conclusions advocating support for the development of regional infrastructure and for the construction of new infrastructure in the countries of sub-Saharan Africa.

2.8 The communication in question fits in with the plans for implementing the strategic infrastructure partnership concluded between the European and African Unions in 2007.

2.9 The concrete outcome of this communication needs to be the launching of consultations between representatives of the European and African Unions, resulting in a plan containing priority actions and associated funding options for inclusion in a declaration issued jointly by the European Union and the African Union.

## **3. General comments**

### **3.1 General**

3.1.1 The Committee advocates closer cooperation between the EU and Africa, based on equal rights and obligations, although in reality there are differences that need to be taken into account. This intention and the means of putting it into practice are set out in the Lisbon Declaration (8 and 9 December 2007).

3.1.2 In the Committee's view, this is a question of socio-economic regional integration, including transport facilities. It believes that regional integration should be a key topic when the Cotonou Agreement is revised in 2010.

3.1.3 It goes without saying that this is a difficult task. The Committee recommends that, when implementing further cooperation plans, it should be borne in mind that they need to be based on reciprocity and shared responsibility.

3.1.4 The Committee would like to stress that the cooperation must relate to a broad range of subjects, including training, working conditions, social, safety, environmental and sustainability issues, citizens' rights, interoperability and public transport in urban areas, administrative and customs issues and, of course, combating corruption, as well as experience gained in Europe with regard to interoperability and best practices.

3.1.5 The Committee finds it regrettable that the Commission communication makes no reference to the importance of social and training issues in the transport sector, and notes that these matters were included in the infrastructure partnership concluded in 2006.



3.1.6 The Committee believes that the cooperation arrangements should take specific account of the fact that all the aforementioned topics and measures can only be successful if they have a solid foundation in the form of well-trained local workers.

3.1.7 The cooperation must relate to all forms of transport and to the way they complement each other, tailored to specific circumstances in Africa.

3.1.8 In the Committee's view, it is vital for certain important conditions to be met: there must be transparency and an adequate level of safety, and cooperation programmes must only be implemented with the assistance of accompanying measures.

3.1.9 In its opinion on the EU-Africa strategy <sup>(1)</sup>, adopted on 18 September 2008, the EESC noted that 'while regional and sub-regional economic integration has progressed significantly, trade potential has yet to be fully exploited. In particular, measures should be coordinated in order to harmonise customs procedures, improve infrastructure and guarantee the free movement of citizens'.

3.1.10 During the 'TEN-T days 2009' conference, held in Naples on 21 and 22 October 2009, speakers at the Euro-African Transport Forum referred to the question of how development in Africa and the trans-African networks could benefit from the EU's experience with the TENs.

3.1.11 One result was that the European Commission, together with its African partners, is going to develop an action plan to strengthen transport networks between the two continents on an ongoing basis; this plan will be published in the second half of 2010.

3.1.12 The Committee considers it important to conclude regional economic partnerships in addition to the existing bilateral economic partnerships, to help to consolidate regional integration.

3.1.13 The details of the measures included in the action plan, bearing in mind the involvement of the social partners, should, in the Committee's view, be developed in close cooperation with the African Union.

3.1.13.1 The structures for involving the social partners in the planning process are less well developed in Africa, and it has emerged in practice that they are not yet even aware of the plans; the provision of information and opportunities to participate in consultations therefore need to be reinforced, in consultation with the African Union.

3.1.14 The Committee feels that, if this is achieved, a joint strategy will need to be developed focusing in particular on

sustainability and the development and welfare of the people of Africa.

3.1.15 Even then, the Committee expects problems to arise in the implementation of the action programme. In particular, it will be necessary to take account of the difference between African and European culture.

3.1.16 The Committee believes that it would be worthwhile for the African Union to ask its Economic, Social and Cultural Council to supervise projects included in the action plan.

3.1.17 The EU has allocated EUR 4,6 billion from the European Development Fund for the period 2007-2013 for the development and improvement of African infrastructure and transport.

3.1.18 The next EU-Africa summit, which will be held in Addis Ababa in late 2010, will assess all the partnerships, and the informal transport forum in autumn 2010 will adopt the action plan for implementing the projects. The Committee calls for the social partners and other non-governmental representatives to be formally involved in this, in accordance with the declaration agreed on this matter at the Lisbon summit.

3.1.19 Better transport networks enable the population to travel more quickly, reduce transport costs and increase the sustainability and reliability of transport, which should particularly benefit poorer people in the form of more affordable prices. This requires a coordinated approach to the planning and construction of infrastructure.

3.1.20 This is all the more important because transport costs in Africa are amongst the highest in the world (15 % of export earnings, compared with 4 % in industrialised countries). There is thus a real need for action, because it is necessary in order to integrate regional and national markets.

3.1.21 Moreover, greater cooperation, including making use of best practices, should result in increased trade, greater safety, more security and a modern transport system.

3.1.22 The slogan 'working together for a better future' can, in the Committee's opinion, be seen as a guiding principle to be followed.

3.1.23 This is also reflected in the results of the Lisbon summit held on 8 and 9 December 2007, which laid the foundations for a strategic partnership on equal terms between Africa and the European Union, as set out in the Lisbon Declaration of 9 December 2007.

3.1.24 This partnership is based on the principles of peace and security, governance and human rights, migration, energy and climate change, trade, infrastructure and development.

<sup>(1)</sup> OJ C 77, 31.3.2009, pp. 148-156.

3.1.25 The Committee notes that the communication relates only to the EU-Africa partnership, even though China has had a firm foothold in Africa for decades, particularly with regard to infrastructure development; China's strategy is to provide low-interest loans separately to each African country, often in exchange for long-term contracts for infrastructure and transport projects and for the exploitation of natural resources.

3.1.26 One possible way of overcoming this could be to establish a trilateral partnership between the EU, China and Africa, with the requirement that any work and tenders must support 'African employment opportunities'. The Committee adopted a very interesting opinion<sup>(2)</sup> on relations between the EU, China and Africa on 1 October 2009.

### 3.2 *Non-governmental players*

3.2.1 In the Committee's view, it is necessary to look into whether the non-state sector has a role to play alongside government when it comes to planning and funding the transport infrastructure network. The state and the public, including NGOs, need to be involved, and investment from big business and major European funds is also essential.

3.2.2 In recent years, groups including, in particular, farmers' associations, trade unions and consumer associations have had a significant role to play, not least thanks to the success of the Cotonou Agreement and the Lomé Convention. The Committee wishes to emphasise that this must continue.

### 3.3 *Corruption and piracy*

3.3.1 The problem of corruption and piracy is, unfortunately, mentioned in the communication only in passing, though it arises in Africa at all levels and is standing in the way of economic development. It also constitutes a barrier to further regional integration.

3.3.2 In the Committee's opinion, any proposal or action relating to cooperation with the African Union must include combating corruption and piracy.

3.3.3 This is also one of the African Union's goals, and has been laid down in the Cotonou Agreement.

3.3.4 As far as the EU is concerned, European funds must only be used if it can be ensured, and checked, that the financial resources are traceable and if it is possible to monitor closely how they are used.

3.3.5 In the transport and infrastructure sector, corruption primarily manifests itself in land transport, particularly road transport, while piracy is connected with shipping.

3.3.6 The EESC stresses that ships, when sailing off the coast of Somalia and the Gulf of Aden, should follow the 'Best Management Practices to deter piracy' (UN) and register their route on the websites of EU – NAVFOR/MSF (HOA). These practices include also a list of self-defence measures of ships.

## 4. **Specific comments**

4.1 It should be noted that all 53 states in Africa have problems regarding transport and infrastructure. In 2006, the Programme for Infrastructure Development in Africa (PIDA) was launched with the aim of improving coordination in the planning and construction of infrastructure.

4.2 The PIDA programme incorporates a number of training initiatives, including in air traffic control, security consultancy, the environment and transport safety.

4.3 The next step is to bring the planning processes in the EU and Africa into line with each other, as is necessary in order to create a Euro-African transport network: in particular, it will be necessary to establish the nodes, especially ports and airports.

4.4 The scarcity of the financial resources being used means that they should only be used for the specific projects that bring the most benefit: in transport terms, this means a co-modal approach, making use of the unique features of each appropriate mode of transport and the characteristics and specific circumstances of each country.

4.5 In this connection, the Committee would also recommend that the action plan should explicitly include the fight against corruption.

4.6 A list of priority rail links should be drawn up, because the rail network is of vital importance in the development of land-locked countries. At the moment, 15 countries have no railways.

4.7 Africa currently accounts for only 4 % of global air traffic, and the safety and quality of aircraft and services are unfortunately lagging far behind mobility requirements. Safety, security and restricting emissions of pollutants are all high on the agenda.

4.8 Shipping accounts for 92 % of Africa's international trade. Closer cooperation between the European and African Unions should result in the establishment of logistics centres and in improvements in the operation of ports in the following respects:

<sup>(2)</sup> OJ C 318, 23.12.2009, pp. 106-112.

— simplification of customs and registration procedures;

— deepening ports to make them accessible to ships that currently have to anchor off the coast, with all of the dangers associated with that;

— security of ports, by implementing the ISPS code.

4.9 A large proportion of continental trade is transported by road, despite the fact that the infrastructure – the quality of which varies considerably from country to country – is completely inadequate: Africa has less than 7 kilometres of road per 100 km<sup>2</sup>, not to mention the long delays for customs clearance formalities and the endemic corruption.

4.10 At the start of 2009 the European Commission provided EUR 3 billion from the European Development Fund (EDF) to develop trans-African transport routes that will in future be linked with the trans-European transport network.

4.11 The Committee would like to stress that the allocation of European funds for infrastructure should be dependent on a requirement that only local, officially registered, salaried workers from the African Union should be used, in order to ensure that the skill levels and welfare of the local population benefit from the projects.

4.12 It is evident from current practice that international road transport is not possible in all parts of Africa and, where it is possible, is hindered by bribery and corruption en

route and at border crossings. Nevertheless, in many cases there is no alternative to road transport.

4.13 In the Committee's view, the African Union is being realistic in taking the EU's approach to TEN-Ts as an example, with the important thing being to use interoperability as an initial objective in the plans and programmes.

4.14 It is not only financial matters that are relevant. When implementing major trans-European infrastructure projects, the European Union appointed coordinators to support the Member States both in finding funding for the projects and in finding solutions to the problems that arise when implementing large-scale projects. In the Committee's opinion, it is a good option to appoint project coordinators for the missing links in eight previously selected trans-African networks.

4.15 The Committee notes that, before we invest in infrastructure in Africa, we must obtain sufficient guarantees with regard to safety and security problems. With regard to combating piracy at sea, there are the support programmes developed by the IMO.

4.16 Particular attention should also be given to measures to improve road safety: according to the Commission communication (point 3.2.4, paragraph 2, first sentence), around 1 million people a year are killed in road accidents, 65 % of them pedestrians.

Brussels, 29 April 2010.

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

---

**Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Solidarity in health: reducing health inequalities in the EU'**

COM(2009) 567 final

(2011/C 18/13)

Rapporteur: **Ms CSER**

Co-rapporteur: **Ms HEINISCH**

On 20 October 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 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Solidarity in health: reducing health inequalities in the EU*

COM(2009) 567 final.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 March 2010.

At its 462th plenary session, held on 28 and 29 April 2010 (meeting of 29 April 2010), the European Economic and Social Committee adopted the following opinion by 51 votes to 1 with no abstentions.

## 1. Recommendations

1.1 The principle of HIAP (Health In All Policies) should become a reality in all EU policies. Therefore, the Commission should evaluate and check its measures, if all policy areas contribute to a high level of health protection and reduction health inequalities. The Commission should develop mechanisms to reverse its policy measures which have a negative impact on health and inequalities.

1.2 The EESC supports the importance of the Member States and the Commission agreeing on a set of comparable indicators and measurable targets within a relevant timeframe as a mean of enabling the national authorities to evaluate progress in reducing health inequalities and help areas where European initiatives could complement national efforts.

1.3 The EESC calls on all Member States to participate in the Commission's plans to improve the data and knowledge base and the mechanisms for measuring, monitoring and reporting health inequalities.

1.4 The EESC urges the Commission to collaborate with the Member States to develop new indicators to monitor health inequalities and a methodology to audit the situation in the Member States in order to prioritise areas for improvement and best practice.

1.5 The EESC calls on the Member States and the Commission to create a pattern of overall economic and social development, leading to greater economic growth and better social justice, as well as greater solidarity, cohesion and health. This should be addressed as a priority in the Europe

2020 Strategy and consideration should be given to the key role of the EU Structural Funds in implementing this priority.

1.6 The Committee urges the Commission and the Member States to deploy the necessary resources to combat all social inequalities which are the source of health inequalities, particularly in terms of education, urban planning and purchasing power.

1.7 Efforts to combat health inequalities in rural areas must be stepped up, particularly in view of the challenges presented by demographic change.

1.8 The Commission should evaluate the impact of existing European platforms and fora (nutrition, alcohol, etc.) on vulnerable groups.

1.9 The Committee invites the Commission and the Member States to reconsider the series of EESC recommendations which were made in the past opinions relating to health and social issues and which, if implemented, would contribute to fighting health inequalities <sup>(1)</sup>.

<sup>(1)</sup> See of Opinions of:

*European Economic and Social Committee on Early childhood care and education* (own-initiative opinion), rapporteur: Ms Herczog

OJ C 255/76, 22.9.2010

OJ C 255/72, 22.9.2010

OJ C 128/89, 18.5.2010

OJ C 228/113, 22.9.2009

OJ C 318/10, 23.12.2009

OJ C 306/64, 16.12.2009

OJ C 317/105, 23.12.2009

OJ C 218/91, 11.9.2009

OJ C 175/116, 28.7.2009

OJ C 77/115, 31.3.2009

OJ C 77/96, 31.3.2009

OJ C 224/88, 30.8.2008

OJ C 256/123, 27.10.2007.

## 2. Background – health inequalities in the EU

2.1 On average, EU citizens now live longer and in better health, however, there are big and growing differences in the health of citizens across the EU which is a significant concern and challenge. Rising unemployment due to the financial and economic situation is also aggravating the situation. The Commission Communication is to launch a debate to define what EU flanking measures can be put in place to assist Member States and other actors at national or regional levels to find responses to this critical situation.

2.1.1 One example of the differences in the health of people living in the EU is that mortality rates for children under one year old vary by a factor of five between Member States. The variations in male and female life expectancies vary by 14 and 8 years respectively. Major health inequalities are also found between regions, rural and urban areas.

2.1.2 Life expectancy from birth varies by ten years for men and six years for women depending on the level of education and socio-economic group. Workers in manual or routine jobs tend to be in poorer health than other groups. There is also a significant gender aspect as women live longer than men, but spend more time in ill health.

2.1.3 The causes of health inequalities originate in social inequalities which are linked to living conditions, behavioural patterns, educational level, employment and income, healthcare, disease prevention and health promotion services as well as public policies influencing the quantity, quality and distribution of these factors. Inequalities experienced in access to education, employment and healthcare, as well as those based on gender and race are critical factors. The combination of poverty with other vulnerabilities (childhood or old age, disability or minority background) further increases health risks.

2.1.4 Socio-economic factors influence living conditions and health; for example, not everyone living in the EU has access to appropriate water supplies and sewerage facilities.

2.1.5 The barriers to accessing health care include lack of insurance (especially statutory health insurance), high treatment costs, lack of information about available services, as well as linguistic and cultural barriers; in addition, poorer social groups have a lower health care take-up.

2.1.6 Health inequalities are not inevitable and are strongly influenced by individuals, governments, stakeholders, and communities and can be tackled by appropriate policies and action. Individual behaviour regarding health is not the main factor explaining the inequalities which have been noted; rather, these have mainly to do with the socio-economic, health and political circumstances in each country, the cumulative effect of which affects people throughout their lives.

## 3. Content of the Commission proposal

3.1 The purpose of the Communication from the Commission is to launch the debate needed to define the potential of EU flanking measures to support the actions by Member States and other actors to address the issue of health inequalities.

3.2 Despite already existing EU initiatives that help in bridging health inequalities in the EU <sup>(2)</sup>, the Commission felt that it could further assist the Member States in addressing the factors that create inequalities in health.

3.3 The Commission Communication identifies five key issues that need to be addressed:

- equitable distribution of health care as part of social and economic development;
- improving the data and knowledge base and mechanisms for measuring, monitoring, evaluation and reporting;
- building commitment across society;
- meeting the needs of vulnerable groups;
- developing the contribution of EU policies.

Each key area is accompanied by a list of EU level actions to be taken forward by the Commission and the Member States.

## 4. General comments - taking action on health inequalities

4.1 The EESC welcomes the Communication as it regards the extent of health inequalities between different parts of the EU and between those that are socially advantaged or disadvantaged as a challenge as it agrees that such inequality undermines the EU's commitment to solidarity, social and economic cohesion, human rights and equal opportunities.

<sup>(2)</sup> There is the Council Recommendation on cancer screening, initiatives on mental health, smoking and HIV/AIDS, as well as a European compilation of best practice, data collection, and a network of Member States and stakeholders. Support also comes from the research framework and action programmes, PROGRESS, studies, and policy innovations. In addition, health also benefits from EU legislation on employment and health and safety at work, the Common Agricultural Policy, environment and market policies. The Cohesion Fund and the Fund for Rural Development are helping to reduce regional disparities.



4.2 The Commission's Communication is the outcome of a wide consultation and the end result is not complete. Unfortunately, some important issues have only been mentioned briefly or not at all. Several of them fall under the competence of the Member States, but the Commission could have a complementary role in addressing them and finding solutions.

4.3 The Communication sets out the key EU policy areas (social protection policy, environment, education, etc.), which interlink with health inequalities and which are mutually reinforcing. The EESC would therefore stress the importance of the Commission and the Member States evaluating the impact of different policies at ALL levels: local, regional, European, on the health status of the population. The EESC points out that reducing health inequalities comes about from political choices and is not a natural phenomenon.

4.4 The EESC believes that the Commission should make best use of the tools available (e.g. OMC, impact assessments, research programmes, indicators, cooperation with international organisations) and should consider with the Member States new methods to ensure that EU policies and actions address the factors which create or contribute to health inequalities across the EU. However, Commission measures to support Member States must be in line with the subsidiarity principle and the Treaties.

4.5 The EESC supports the role of the Commission in coordinating EU policies and measures, assuring policy coherence, promoting the exchange of information and knowledge between Member States, identifying and spreading good practices and facilitating the design of tailored policies for the specific issues relating to special social groups. The EESC expects better cooperation with stakeholders, including EESC, both at EU and international level.

4.6 However, the EESC underlines the role of the Member States to ensure the availability of comprehensive, high-quality, universally accessible and personal healthcare locally, as it is a key factor in reducing health inequalities. This particularly applies to children, patients with chronic illness, those with multiple diseases and the elderly, who need familiar surroundings and contacts with family, friends and acquaintances during their convalescence. Populations and especially vulnerable groups should not be forced to re-locate to areas where there is a concentration of healthcare facilities in order to escape from inequalities in access to care.

4.7 The EESC stresses the fact that Member States have the responsibility for the delivery of health care. In discussing the issue of inequalities it is critically important to take into account the role of national governments in securing social protection systems and in ensuring that there is sufficient, well trained staff to provide services - on a local basis - which does not disadvantage those living in remote communities or vulnerable groups.

4.8 Mostly determined by factors external to the healthcare system, ill-health can be remedied by healthcare and social systems. However, in some cases, new developments in healthcare systems can exacerbate health inequalities<sup>(3)</sup>. New technologies should not lead to new health inequalities.

4.9 In particular, it is important to make the young generation aware that a healthy lifestyle reduces the risk of illnesses. Such knowledge among young people, who in due course will become parents, can have a major impact on their children and future generations.

## 5. Specific comments on the key issues to address

### 5.1 *An equitable distribution of healthcare as part of overall social and economic development*

5.1.1 Health inequalities also have an impact in relation to the Lisbon process, as production losses and the costs of treatment and social benefits may undermine the economy and social cohesion.

5.1.2 The EESC supports the view of the Commission that there is a need to create a pattern of overall economic and social development, which leads to greater economic growth and better social justice, as well as greater solidarity, cohesion and health. This should be addressed as a priority in the Europe 2020 Strategy which should include an indicator measuring health inequalities to monitor social progress achieved under the Strategy. Consideration should be given to the key role of the EU Structural Funds in implementing this priority.

5.1.3 The EESC reminds the Member States of the importance of social health protection, access to health services and health funding in achieving equality in health outcomes. This seems especially important given the demographic trends in the EU.

5.1.4 It should be mentioned that social protection in health - health financing mechanisms such as social and national health insurance or tax-based systems - need to be implemented and extended based on solidarity in financing and on risk pooling, which is the key for achieving equality in access to health services. Effective access to health services should be defined by affordability, availability, quality, financial protection and information about a range of essential services<sup>(4)</sup>.

<sup>(3)</sup> For example, in France limited access to antiretroviral treatment has increased health inequalities between HIV-positive patients.

<sup>(4)</sup> Conventions, nationally and internationally agreed objectives, maternity benefits including sick and maternity leave, most important ILO Conventions and Regulations in the field of social health protection include ILO Convention 130 on Medical Care and ILO Conventions 102 that specifically focuses on social security, particularly social health protection. It has been signed by many countries most recently by Romania and Bulgaria. For full EU ratification, only 2 Baltic states and Finland are missing (due to gender-related wording).

5.1.5 Health inequalities should be addressed by a pragmatic strategy that aims to achieve universal coverage and effective access, as defined above, by coordinating all health financing schemes and systems (social and private insurance, social assistance schemes, public health systems etc.) in order to close gaps in access i.e. of the poor, minorities such as migrants – irrespective of their administrative situation –, ethnic or religious groups, or age and gender-related inequities.

5.1.6 Related reforms should lead to a rights-based approach that is founded on social dialogue in order to ensure a broad consensus and thereby sustainability of solutions for financing and decent work conditions for both the insured and the healthcare work force. In this context, the EESC feels that further privatisation could have adverse effects, introducing a system based on competition rather than solidarity.

## 5.2 *Improving the data and knowledge base and mechanisms for measuring, monitoring, evaluation and reporting*

5.2.1 The EESC agrees with the Commission that the measurement of health inequalities is fundamental for effective action, monitoring and progress.

5.2.2 Therefore, the EESC calls on ALL Member States to participate in the Commission's plans to improve the data and knowledge base and the mechanisms for measuring, monitoring and reporting health inequalities (including the economic and social impact). In this regard, it is very important that the Member States are committed to submit timely and comparable data.

5.2.3 Given the significant importance of data and related gaps, the EESC urges the Commission to collaborate with the Member States to develop new indicators to monitor health inequalities and a methodology to audit the situation in the Member States in order to prioritise areas for improvement and best practice.

5.2.4 The EESC supports the inclusion of measuring and monitoring effective access to health services and universal social health protection coverage as an indicator for progress and importance of breaking down the data by gender and age, socio-economic status and geographical area. The EESC encourages the Commission and the Member States to benefit from the experience of the WHO, ILO, the Dublin Foundation and the EU Agency for Fundamental Rights in this regard.

5.2.5 In terms of research and knowledge base, the EESC supports the stronger emphasis on health-related and socio-economic issues in the EU Research Framework Programme. The EU Health Programme should also include a priority on fighting health inequalities in the next budgeting period.

5.2.6 The Commission should also put in place tools and a framework enabling the Member States to exchange research results as well as create opportunities for pooling research resources between the Member States.

5.2.7 The EESC recognises that tackling health inequalities is a long-term process. The actions in the Communication are intended to create the framework for sustained action in this area and the EESC will look forward to the first evaluation report which should be produced in 2012.

## 5.3 *Building commitment across society*

5.3.1 The EESC welcomes the Commission's plans to cooperate with Member States and to consult relevant stakeholders at European and national level on:

- making the subject of health inequalities one of the priority areas within cooperation arrangements on health;
- developing actions and tools on professional training to address health inequalities using the health programme, ESF and other mechanisms;
- encouraging reflection on target development in the Social Protection Committee through discussion papers.

5.3.2 The EESC would emphasise that building a strong commitment across society depends not only on governments, but also on the involvement of civil society and the social partners. The consultation process, policy-making and implementation should include stakeholders at European, national and local level and the EESC believes that there is potential to increase the effectiveness of these aspects, the development of partnerships and better dissemination of good practice. Clear monitoring and evaluation programmes need to be established in Member States to measure the progress made.

5.3.3 Creating more effective partnerships with the stakeholders will help to promote action on various social determinants and help to tackle health inequalities. For instance, they can play an important role in improving access and appropriateness of health services, in promoting health and preventive care for migrants, ethnic minorities and other vulnerable groups, in promoting the exchange of information and knowledge, identifying and spreading good practices and in facilitating the design of tailor-made policies for the specific issues prevailing in Member States and/or special social groups. The stakeholders can also help with the measurement of health inequalities at work and at leisure in the community as well as support knowledge and training both for health professionals and for other sectors.

5.3.4 The EESC would like to see a more effective consultation with vulnerable groups. The EESC would welcome an opportunity to give further consideration to this point with the Commission.

#### 5.4 *Meeting the needs of vulnerable groups*

5.4.1 It must be remembered that vulnerable groups will be the first victims of the current crises, both in terms of health and access to healthcare.

5.4.2 Therefore, the EESC welcomes:

- collaborative measures between the Commission and Member States to improve access to health services and preventive care for vulnerable groups;
- measures to reduce health inequalities in future initiatives on healthy ageing;
- activities on health inequalities as part of the European Year for Combating Poverty and Social Exclusion 2010;
- in view of demographic change, use of the Cohesion Policy and structural funds in support of the health of vulnerable groups;
- focus on a limited number of measures; however, these need to be developed in greater depth.

5.4.3 The EESC recommends that health inequalities and vulnerable groups, including disabled, should be looked at from the general perspective of equality and discrimination. One of the examples is the gender aspect of ageing. Women tend to live longer, but in ill-health and due to a generally shorter working life, have lower retirement benefits, which have a direct impact on access to healthcare and medicines. Also the situation of migrant women needs special consideration with regard to health education and access to healthcare.

5.4.4 Preventive healthcare and screening programmes, as well as health promotion and education (about healthy lifestyles, treatments available, patients' rights, etc.) are very important, especially within disadvantaged communities. The EESC would recommend that the Commission and Member States come up with campaigns and services targeted at relevant vulnerable groups. Health campaigns addressing the population at large usually have low penetration rates within disadvantaged groups. Targeted campaigns should empower disadvantaged communities in defining their needs and spreading information.

5.4.5 In this context, the Commission should evaluate the impact of existing European platforms and fora (nutrition, alcohol, etc.) on vulnerable groups. The EESC proposes to

organise a platform for patients' organisations to share experience and spread information.

5.4.6 The EESC sees the quality and accessibility of early childhood education as one of the means to prevent health inequalities among future generations. The availability of different forms of childcare is a vital component of social and economic development, and it plays a particularly crucial role in disadvantaged areas and for disadvantaged groups and households living in otherwise good conditions. The provision of childcare can help address the social, economic and health issues that such disadvantaged households face, and support the social integration of excluded groups<sup>(5)</sup>. Similarly, as health inequalities mainly derive from educational inequalities, the EESC deems it essential to guarantee equal access to quality schooling and education so that everyone can acquire the skills enabling them to regain control of their lives.

#### 5.5 *Developing the contribution of EU policies*

5.5.1 The EESC calls upon Member States to make the elimination of health inequalities a priority and to ensure that the policies which have an impact on social, economic and health issues are better co-ordinated, monitored and evaluated in order to promote good practice and disseminate information across the EU.

5.5.2 The impact of different EU policies on health status should be examined.

5.5.3 The EU contribution to reducing health inequalities can be improved, for example through better understanding of policy impact on health and via greater policy integration: education, working conditions, territorial development, environment policy, transport policy, etc. However, the Commission needs to ensure, first and foremost, that the proposed measures do not result in any new inequalities, especially if they impact on vulnerable groups<sup>(6)</sup>.

5.5.4 The objective of ensuring a high level of health protection is enshrined on an equal footing with the Single Market in the Treaty of Lisbon, which also sets out a complementary role for the EU in safeguarding the well-being of EU citizens. The EESC hopes that the Lisbon Treaty will breathe new life into the slogan 'health in all policy areas (HIAP)', which to date remains rather an empty formula at EU level, used to conceal the imbalance with the ubiquitous dominance of the Single Market.

<sup>(5)</sup> *European Economic and Social Committee on Early childhood care and education* (own-initiative opinion), rapporteur: Ms Herczog

<sup>(6)</sup> Particularly vulnerable groups include persons who are not mobile due to illness, do not actively look for the best possible treatment, do not know the language of the preferred country of treatment, do not have the financial resources to pay for specialist treatment/treatment abroad, or are hesitant to seek treatment either abroad or in a distant treatment centre. In particular, demographic change will create new health challenges.

5.5.5 In this context, the EESC calls on the Commission to:

- carry out an evaluation of its measures (before, during and after completion) in all its policy areas, to check if all policy areas are helping to ensure a high level of health protection and to reduce health inequalities <sup>(7)</sup>;
- develop mechanisms to evaluate the health impact of existing policies (ex ante and ex post) on different population groups to produce information for further policy development;
- develop mechanisms to reverse Commission policy measures which have a negative impact on health and inequalities;
- take steps to raise awareness among Member States, associations and professionals about the real impact of health inequalities, the factors determining them and the means of overcoming them.

5.5.6 The EESC would also like Member States to address health inequalities in their work programmes and to develop appropriate cross-sector strategies.

5.5.7 The EESC supports the Commission's proposal to assist Member States to coordinate policy measures more effectively, to analyse the relationship between these policies and the resulting health outcomes for different groups across the Member States. Tackling health inequalities should also be underpinned by better use of the EU Cohesion policy and

better information and coordination of the cohesion funds, enhanced capacity to develop investments in health and social care sectors in the Member States, options under EU rural development policy and CAP.

5.5.8 However, in doing so, it must not encroach on the rights of Member States to organise and finance healthcare systems, in particular their right to define and implement an appropriate level of health protection (Article 168 of the Treaty).

5.5.9 Efforts to combat health inequalities in rural areas must be stepped up, particularly in view of the challenges presented by demographic change. In this connection, the key role played by small healthcare providers (especially self-employed medical practitioners) in ensuring comprehensive, individual and local treatment of patients must be acknowledged and given special support.

5.5.10 The EESC welcomes:

- the proposed policy dialogue with Member States and stakeholders on equity and other key fundamental values in health as set out in the EU Health Strategy and EU Strategy on Health and Safety at Work, and the proposal to set up a forum on health and restructuring to examine measures to reduce health inequalities;
- the Commission's initiative at international level to support other countries in health and related fields by exchanging EU experience on tackling health inequalities.

Brussels, 29 April 2010.

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

---

<sup>(7)</sup> While it is true that many legislative acts already require impact assessments, in most cases there is no evaluation to check whether they genuinely and efficiently achieve their objectives. This is all the more necessary in the current financial and economic crisis, which is increasingly becoming an employment and healthcare system financing crisis, with repercussions on public health.

**Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted'**

(recast)

COM(2009) 551 final/2 — 2009/0164 (COD)

(2011/C 18/14)

Rapporteur: **Mr PÎRVULESCU**

On 26 November 2009 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 on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (recast)*

COM(2009) 551 final/2 — 2009/0164 (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 23 March 2010.

At its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 28 April 2010), the European Economic and Social Committee adopted the following opinion by 136 votes with 2 abstentions.

## 1. Conclusions

1.1 The Committee endorses the objectives set by the Commission with a view to completing the Common European Asylum System (CEAS); it would highlight, however, the disparity between the objectives set at EU level and practices at national level, which could be exacerbated by the economic crisis and its ensuing social and political effects.

1.2 The Committee believes that revising the directive could help create a much more suitable legislative and institutional basis for ensuring a high and consistent level of support to persons seeking international protection.

1.3 The Committee warns, however, that also in the case of this EU policy, there is a risk that excessive rhetoric and declarations of good intent may strip the values upheld by the EU of any meaning. Therefore, in the second phase of implementing this policy, in which the co-decision procedure applies, legislative conditions should be put in place that enable real access for asylum seekers to the labour market and to training programmes.

1.4 The Committee underlines the importance of recognising the role played by civil society in general, and particularly by NGOs specialised in the field of asylum and asylum-related issues concerning refugees, and calls for them to be granted full access to all the procedures and places relevant to their work. However, it stresses the fact that these NGOs cannot take over the role and responsibilities of governments in this field.

1.5 The Committee notes with concern that national and EU practices relating to the expulsion of people who may need international protection lack the transparency that could lend

them legitimacy in the eyes of the citizens of the countries concerned and the international community.

1.6 The Committee believes that the various budgetary constraints ensuing from the economic crisis should not lead to a reduction in the level and quality of protection received by beneficiaries.

1.7 The Committee supports the objective of enhancing the content of international protection by recognising qualifications and facilitating access to vocational training and jobs, as well as to integration facilities and accommodation.

## 2. Introduction

2.1 The idea of creating a Common European Asylum System (CEAS) as part of the Area of Freedom, Security and Justice derives from the aim of fully implementing the Geneva Convention on the status of refugees (1951) and from the common humanitarian values shared by all Member States. The conclusions of the Tampere European Council and subsequently the Hague Programme identified the CEAS as the most important instrument in establishing a common asylum procedure and a uniform protection status valid throughout the EU.

2.2 Significant progress was made over 1999-2006, including the adoption of the four instruments which constitute the current acquis. Council Directive 2004/83/EC ('the Qualification Directive') enabled common criteria to be defined for the identification of persons who may apply for international protection and ensured that at least a minimum level of benefits is available for these persons in all Member States. Under the Hague and Stockholm programmes, the Commission undertook to evaluate progress made in the first phase and to propose a series of measures to the Council and the European Parliament by the end of 2010.



2.3 Since 2002 the European Economic and Social Committee has been involved in shaping and implementing the Common European Asylum System by issuing a series of opinions, including an opinion on the directive that this proposal is seeking to revise<sup>(1)</sup>, an opinion on the Green Paper on the Future Common European Asylum System<sup>(2)</sup>, and an opinion on the Policy plan on asylum<sup>(3)</sup>.

2.4 With the Policy plan on asylum<sup>(4)</sup>, adopted on 17 June 2008, the Commission proposed completing the second phase of the CEAS by raising protection standards and ensuring their consistent application across the EU. The European Pact on Immigration and Asylum, adopted by the European Council on 17 October 2008, provided further political endorsement for this policy and the objectives set.

2.5 The Policy plan proposed amending the Qualification Directive as part of a wider package including amendments to the Dublin and Eurodac Regulations and to the Reception Conditions Directive<sup>(5)</sup>, and the adoption on 19 February 2009 of a proposal to establish a European Asylum Support Office (EASO)<sup>(6)</sup>. Further measures proposed included strengthening the external dimension of asylum, inter alia through an EU programme on resettlement and developing regional protection programmes.

2.6 Amending the directive could help create the legislative and institutional basis on which to ensure a high and consistent level of support for international protection applicants. In the second phase, the co-decision procedure will apply, in accordance with Article 294 TFEU, which requires a qualified majority vote in the Council and the involvement of the European Parliament as co-legislator.

2.7 The directive needs to be recast given the ambiguity of the initial wording, which was identified by Member States as a major reason for its current failings, which include varying rates of acceptance of applications and a large number of contested decisions.

2.8 Amending the directive will enable its contents to be brought into line with the decisions of the European Court of Justice and the European Court of Human Rights, which constitute a suitable basis on which to clarify the wording of the *acquis* and the set of procedures for granting international protection.

2.9 This revision is also necessary because the directive deals with an important aspect of the mechanism for granting international protection. The standards outlined in the directive complement other parts of the *acquis*, particularly the Asylum Procedures Directive. Recasting the directive, in tandem with other institutional and financial support measures, would constitute significant progress towards the construction of an operational and effective Common European Asylum System.

2.10 The Committee, in its capacity as the representative of European organised civil society, has appreciated efforts to consult civil society and experts in the process to frame an asylum policy. It notes the consultations held on the drafting of the Green Paper issued by the European Commission in June 2007<sup>(7)</sup>, on the preparation of studies with a view to implementing the directive (e.g. the *Odysseus* report) and on the external report on the success of asylum policy<sup>(8)</sup>.

2.11 The Committee recognises the importance of local and regional authorities for the success of asylum policy, particularly as regards the integration of international protection beneficiaries; it thus believes that the Committee of the Regions should also be consulted on asylum policy.

2.12 The Committee is extremely concerned about the practices of Member State governments and the Frontex agency as regards the expulsion of people who may need international protection<sup>(9)</sup>. These operations, which have increased in frequency and scale, should be carried out under conditions of full transparency and accountability<sup>(10)</sup>. The Committee would recommend that Frontex and the European Asylum Support Office work together to prevent human rights violations. Expelling people to countries or areas where their safety is at risk is a clear infringement of the principle of non-refoulement. The Committee calls for a report to be drawn up urgently on the activities of Frontex and for procedures to be established governing its handling of expulsions, in cooperation with national authorities. The Committee warns that strengthening Frontex in the absence of procedures to ensure that human rights are upheld could jeopardise the entire Common European Asylum System and the credibility of the EU and its Member States.

<sup>(1)</sup> OJ C 221, 17.9.2002, p. 43.

<sup>(2)</sup> OJ C 204, 9.8.2008, p. 77.

<sup>(3)</sup> OJ C 218, 11.9.2009, p. 78.

<sup>(4)</sup> COM(2008) 360 final.

<sup>(5)</sup> COM(2008) 815 final; COM(2008) 820 final; COM(2008) 825 final.

<sup>(6)</sup> COM(2009) 66 final.

<sup>(7)</sup> COM(2007) 301 final.

<sup>(8)</sup> GHK, Impact assessment studies on The future development of measures on the qualification and status of third country nationals or stateless persons as persons in need of international protection and on the content of the protection granted, based on Council Directive 2004/83/EC and The future development of measures on procedures in MS for granting and withdrawing refugee status, based on Council Directive 2005/85/EC, Multiple framework service contract JLS/2006/A1/004.

<sup>(9)</sup> See the report by Human Rights Watch (HRW): *Pushed Back, Pushed Around, Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers*. HRW 2009.

<sup>(10)</sup> The Committee welcomes the Commission's intention to bring transparency to these procedures.

2.13 The Committee believes that the CEAS cannot function properly unless the principle of solidarity between Member States is put into practice. Certain countries are under considerably more pressure than others, mainly because of their geographical location. The CEAS will only succeed if these Member States are supported by the others and by the EU's specialised agencies.

### 3. General comments

3.1 The Committee welcomes the proposal to recast the directive, the content of which reflects previous recommendations issued by it, especially as regards the treatment of applicants and clarifying the status of persons who may benefit from international protection. However, in order to create an operational Common European Asylum System, much remains to be done. This system cannot be built unless it is firmly anchored within a **set of common values and principles** which place **human dignity and security** at the heart of the actions of the EU and its Member States. Moreover, the construction of this system is undermined by a **lack of instruments and resources** to ensure a transparent and effective procedure for granting international protection, coupled with **policies and programmes for integrating** those receiving protection into the societies and economies of the Member States.

3.2 A **significant divergence** remains between EU legislation on the one hand and national legislation and practices on the other <sup>(11)</sup>. Harmonisation should not be based on the lowest common denominator of protection. Given that national practices vary so hugely, as reflected in the differing rates of acceptance of applications and the level of contested decisions and secondary movements, **the implicit principle of solidarity between Member States** is not being applied.

3.3 The Committee has repeatedly promoted a series of principles which should always guide the actions of Member States and the EU institutions <sup>(12)</sup>: **the principle of non-refoulement**, whereby no refugee may be expelled to a country where their life or freedom would be in danger; **the principle of confidentiality of information** contained in asylum applications; and the **guarantee that asylum applicants shall not be detained** for the sole reason that they are seeking asylum.

3.4 In its opinion on the *Green Paper on the future Common European Asylum System* <sup>(13)</sup>, the Committee supported these

principles, and made **specific recommendations on enhancing the treatment of persons** seeking international protection. It called for EU and national institutions to cooperate to ensure that persons in need of international protection may enter the EU at any time and for applications to be considered seriously and individually. The Committee also recommended discontinuing lists of countries considered safe and setting up a European asylum support office (EASO).

3.5 In addition to clarifying the values and principles underpinning action in the field of asylum, the Committee recommends working towards certain **specific objectives** designed to substantially improve the treatment of persons seeking and benefiting from international protection. The Committee advocates establishing a **set of key indicators** which could be used to monitor and measure progress towards these objectives.

3.6 The Committee supports the creation – via the EASO – of a **European security risk analysis and assessment system** in respect of individuals or groups in third countries. There are many systems in existence for assessing risk and political violence, which have been developed both by national authorities and by NGOs, universities and research centres <sup>(14)</sup>.

3.7 As regards data collection, the Committee would advocate the involvement, where necessary, of the European External Action Service (EEAS), diplomatic representatives of Member States and international and non-profit organisations with access to and activities in third countries. This analysis and assessment system **would serve as a reference point for national authorities** with a view to speedier, more efficient processing of applications for international protection. The system would create a **common assessment basis** and would enable **real-time risk identification**.

### 4. Specific comments

4.1 In its presentation of the legal elements of the proposed directive, the Commission proposes a set of definitions with a view to ensuring higher standards of protection and continued harmonisation of existing standards. To this end, the Committee proposes clarifying and developing certain aspects in order to help establish practices that tie in with the principles and values underpinning the EU.

<sup>(11)</sup> COM(2009) 551 final – SEC(2009) 1374, pp. 14-16.

<sup>(12)</sup> OJ C 193, 10.7.2001, p. 77-83.

<sup>(13)</sup> OJ C 204, 9.8.2008, p. 77-84.

<sup>(14)</sup> Many such assessment systems could be listed, e.g. the Failed States index of the Fund for Peace: [http://www.fundforpeace.org/web/index.php?option=com\\_content&task=view&id=229&Itemid=366](http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=229&Itemid=366); Minorities at risk: <http://www.cidcm.umd.edu/mar/about.asp>; Conflict and peace: <http://www.cidcm.umd.edu/pc/>; the Global report of the Center for Systemic Peace (CSP): <http://www.systemicpeace.org/>; and the Human Security Report: <http://www.humansecurityreport.info/index.php?option=content&task=view&id=28&Itemid=63>.

4.2 *Actors of protection.* The Committee considers it inappropriate to extend the definition of actors of protection and regrets that any non-State bodies such as NGOs and international organisations were initially included in the list of actors of protection. While such actors (international organisations, NGOs) may be willing and even able to protect people from a given country, **ultimate responsibility for this does not lie with them.** International organisations are answerable to Member States, while NGOs are answerable to their members and financial backers. Only the State can provide valid and effective protection in the medium and long term, as it is answerable to its own people, who obviously have the greatest interest in its viability and stability. While actors of protection may provide useful or even vital services in the short term, especially in resolving humanitarian issues, **responsibility for the protection of persons in a given country cannot be entrusted to them, not even partially.** The presence of such actors cannot be cited as grounds for refusing international protection.

4.3 *Internal protection.* The existence of internal protection is not sufficient to ensure the security of potential international protection applicants. In some cases, only a small part of the country is safe, and it is unlikely that all of those at risk could go there. There are also situations where the control of certain areas is disputed and it is unclear with whom responsibility lies for ensuring order and security. Thus an important clarification is needed. **Internal protection is valid only where the bulk of the territory is under the control of a central authority willing and able to ensure internal order,** a minimum level of public services and adequate protection of the rights and safety of individuals.

4.4 *Causal link.* It is particularly useful to provide for a causal link in cases where the persecution is committed by non-State actors. In cases of persecution where there is no government protection, applications for international protection are justified. **There should be a broad, closely-monitored interpretation of this link in all situations in which a government refuses – implicitly or explicitly – to protect its people** (for example, from organised crime).

4.5 *Membership of a social group.* The Committee welcomes the **inclusion of the gender criterion** for the definition of potentially at-risk social groups. Moreover, in order to better detect situations in which women are particularly at risk, a cross-cutting approach should be adopted when interpreting the Geneva Convention. The Committee would also highlight

the fact that sexual orientation can be a cause of persecution. In certain societies the security and welfare of individuals is linked to their gender. Organisations and institutions with expertise in this field should be included in consultations on asylum policy, as such bodies would provide a more complete picture of gender-related risks. The Committee also recommends that the gender issue be recognised in the work of the EASO through the establishment of specialised structures.

4.6 *Cessation of refugee status.* The Committee welcomes the proposed change, considering it in keeping with the set of principles and values underpinning asylum policy. The status of a person under international protection **should only cease when returning to the place of origin no longer presents a risk** to the beneficiary.

4.7 *Differentiation regarding the content of the two protection statuses.* The Committee welcomes the move towards **unifying the two protection statuses**, which it has repeatedly called for. This could enable, in future, more complete protection for persons at risk and help improve their integration in EU Member States. At the same time, unifying the two protection statuses should not lead directly or indirectly to a reduction in the level and quality of protection.

4.8 *Content of protection.* The content of protection is a sensitive area of asylum policy. The divergences between Member States are also more significant than in the case of the procedures for granting international protection per se. It is vital that in developing its asylum policy the Commission **release the funds needed to thoroughly research national policies and programmes in this area.** In the **absence of proactive measures, the granting of international protection will be devoid of substance** and will result in implicit discrimination against beneficiaries of this status. The Committee would recommend involving trade unions and employers' bodies in framing and implementing asylum policy at national level.

4.9 The Committee welcomes the inclusion of provisions on the recognition/equivalence of diplomas and other qualifications as well as on fostering access to vocational training courses for international protection beneficiaries, as these are important steps towards their economic and societal integration and a better quality of life. Access to the labour market should be **promoted through active measures to combat discrimination and encourage businesses.**

4.10 *Family members.* The Committee welcomes the **clarification of the definition of family members** and believes that this will enable a **more accurate and consistent assessment** of international protection applications in all EU Member States.

4.11 The Committee supports the 'child's best interest' criterion as a factor in assessing international protection requests.

Brussels, 28 April 2010.

*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 minimum standards on procedures in Member States for granting and withdrawing international protection'**

(recast)

COM(2009) 554 final — 2009/0165 (COD)

(2011/C 18/15)

Rapporteur: **Antonello PEZZINI**

On 26 November 2009, 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 on minimum standards on procedures in Member States for granting and withdrawing international protection (recast)*

COM(2009) 554 final — 2009/0165(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 23 March 2010.

At its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 28 April 2010), the European Economic and Social Committee adopted the following opinion by 153 votes with two abstentions.

## 1. Conclusions and recommendations

1.1 The EESC welcomes and endorses the Commission's work on bringing the Asylum Procedures Directive into line with the suggestions made in the Green Paper<sup>(1)</sup> and the Policy Plan<sup>(2)</sup>.

1.2 The adoption of the Lisbon Treaty, taking in the Charter of Fundamental Rights, has increased the EU's responsibilities and powers in the area of asylum and immigration considerably.

1.3 The EESC is persuaded that the Commission has done an admirable job of harmonising the previous directives on the complex subject of asylum.

1.4 The EESC considers that cultural, legal, administrative and cooperation processes involving the Member States and third countries should be launched in order to build a Europe of asylum within the social Europe.

1.5 Against what appears to be an ever more complex and rapidly-changing backdrop, not least in view of globalisation trends and economic and environmental crises, non-governmental organisations are emerging and expanding their key role in this area. The EESC calls for this role to be increasingly telling and defined by society and public decision makers.

1.6 It is the natural vocation of NGOs to help and support the most disadvantaged groups. The EESC believes that the role they play in all phases of developing the procedures laid down

by European and national rules in terms of aid and cultural mediation is becoming indispensable.

1.7 According to the EESC, when attempting to harmonise procedures and practice, the Commission must always take great care not to lose sight of the fact that it is dealing with people who are clearly in an extreme state of hardship and suffering.

1.8 The EU must do all it can to avoid repatriating refugees to countries where their physical or psychological wellbeing would be in jeopardy or where fundamental human rights are disregarded.

1.9 It is essential that applicants be able to express themselves in their mother tongue during asylum application procedures and that they be guaranteed free legal aid at all stages.

1.10 Rejections of applications for international protection must be explained with clear reasons and must include information on the possibilities for appeal, including procedures and timeframes.

1.11 Expulsion measures meanwhile must in any case be suspended pending the outcome of any appeals.

1.12 The EESC considers that Member States should do all they can, including by pooling relevant experience, to enable asylum seekers to work, train and take part in cultural activities, within an appropriate social environment.

<sup>(1)</sup> COM(2007) 301.

<sup>(2)</sup> COM(2008) 360.



1.13 The EESC believes that the principle of non-return (*non-refoulement*) must remain firmly in place and that there is a need to agree on a way of expanding the range of people eligible for international protection: women suffering abuse, vulnerable people, environmental refugees, etc.

1.14 The EESC argues that a sense of shared responsibility must be enhanced within the Member States, in order to stem illegal economic migration and improve measures for those who are genuinely in need, attempting to share the burden and the cost.

1.15 It is clear that the Member States should make more financial resources available to the Commission, with a view to improving asylum seeker integration policy.

1.16 The will to harmonise, demonstrated by the Commission with its recent proposals recasting the relevant directives, should be matched by an equivalent commitment from the Member States, which will have to make the necessary changes to their own national legislation.

1.17 The EESC is convinced that creating a Europe of asylum within social Europe, depends above all on the political will and awareness of Member States, facilitated by a single, well-structured procedure proposed by the Commission.

1.18 The Committee would highlight the special situation of women, who have many more difficulties than men when it comes to seeking asylum and obtaining refugee status. Therefore invites the Commission to develop all possible means, involving the Member States, in order to achieve gender equality, an area in which Europe has a long and consolidated history of awareness.

1.19 To the Committee's mind, when properly targeted, education can strengthen social and collective awareness, in terms of accepting those who have greater need of help and assistance and who are looking to the historical-religious traditions of European countries as a reliable point of reference.

## 2. Introduction

### 2.1 Historical background

2.1.1 The origins of the right to asylum go back to ancient Greece, which recognised immunity from reprisals granted reciprocally by two cities to their respective citizens, or granted by the city to persons of high rank, such as ambassadors <sup>(3)</sup>.

<sup>(3)</sup> Immunity also protected fugitives, who could not be captured in certain temples that were considered inviolable, which gives us the etymological root of 'asylum'.

2.1.2 In ancient Rome, too, the *jus gentium* (law of nations) recognised the right to asylum in connection with citizenship status <sup>(4)</sup>.

2.1.3 Developments in asylum law were subsequently intertwined with those in the various forms and expressions of persecution, i.e. repressive measures by the authorities on grounds of religious or philosophical beliefs or of political ideologies considered dangerous to the State.

### 2.2 Prohibition of discrimination and protection of human rights

2.2.1 As the framework of law developed, the right to asylum was extended. Thus, in particular, the constitutions of modern democratic countries usually provide that the government must refuse to extradite foreigners where such extradition is requested in respect of political offences.

2.2.2 Consequently, the fundamental charters currently in force in European countries state that foreigners who are prohibited from genuinely exercising democratic freedoms in their home countries are entitled to asylum.

2.2.3 These provisions expressly refer to the recognition of inviolable human rights and to the principle of non-discrimination. Moreover, prohibition of discrimination is explicitly enshrined in Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms <sup>(5)</sup>.

2.2.4 There can be no derogations from this prohibition, within the meaning of Article 15 of the Convention, where such derogation would be in conflict with other obligations arising from international law.

2.2.5 A logical consequence of this is the elimination of national opt-out clauses on asylum, not least so that the Geneva Convention relating to the status of refugees of 28 July 1951, as included in the New York Protocol of 31 January 1967, can be fully implemented and put into practice.

<sup>(4)</sup> Incidentally, the right of citizenship was generalised by the edict issued by Caracalla in 212 A.D., which abolished any difference in treatment between Roman citizens and other citizens of the Empire.

<sup>(5)</sup> The Convention, which was signed in Rome on 4 November 1950, and the Additional Protocols relating to it, have been ratified and made enforceable by the EU Member States, but also by many third countries in Europe, which gives the provisions wider binding effect in terms of international and domestic law.

2.2.6 The Lisbon Treaty has broadened the EU's capacities in the area of asylum and immigration. It has incorporated the Charter of Fundamental rights, which:

- guarantees the right of asylum;
- provides for the development of common rules;
- introduces an integrated system for the management of external borders;
- recognises the importance of cooperation with third countries;
- extends the powers of the European Court of Justice in the area of asylum and immigration.

### 3. Summary of the proposed recast of the Directive

3.1 The aim of the proposal under consideration is to complete the second phase of the Common European Asylum System, which is to be introduced, along with a single asylum procedure, by 2012.

3.2 The aim is thus to address the gaps and deficiencies in the current minimum standards, which have proven in many respects to be inaccessible, inefficient, unfair and not sensitive to context <sup>(6)</sup>.

3.3 The proposed changes seek above all to improve harmonisation of procedures. They also suggest further procedural safeguards for asylum applicants, particularly with regard to the initial phase of the request for protection and the decision-making process connected to it, in line with developments in the relevant case law of the European Court of Justice and the European Court of Human Rights.

### 4. General comments

#### 4.1 Building a Europe of asylum within social Europe

4.1.1 A Europe of asylum as part of social Europe must be founded on solid educational processes, aimed at pre-teenagers, which will then continue to resonate in the collective social and political awareness of the Member States.

4.1.2 The European Union, being keen to respect fundamental rights and to observe the principles laid down in the EU Charter of Fundamental Rights, adopted Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

<sup>(6)</sup> It appears that the lack of fairness in the procedures adopted by individual Member States can be attributed, in particular, to the excessive discretion provided for by the 2005 Asylum Procedures Directive.

4.1.3 In recent years, however, the rapid process of globalisation has, paradoxically, brought into play seismic shifts in identity, making it impossible to recreate a legal system based on universalism, such as that set up by Roman law.

4.1.4 The interaction between different people groups and the current climate of concern about cultural contact are thus giving rise to new fears and insecurities, to which almost all European countries are responding with restrictive positions on citizenship and, by extension, on asylum.

4.1.5 However, this development is contrary to the process of integration of peoples that had been hoped for and to the objective of building a Europe that is, among other things, a social Europe.

4.1.6 The principle of non-return (*non-refoulement*) should therefore be adhered to firmly; indeed, one could even consider increasing the number of people to be recognised as needing international protection. Moreover, various EU directives already recognise the criterion of specific types of persecution of which some women and other vulnerable individuals are victims.

4.1.7 In the current context, then, whilst refugee status must obviously be refused to those who are deemed to be merely economic migrants, for whom there are specific rules, what is more problematic is the position of environmental refugees.

4.1.8 These are, in fact, people who are forced to face the dangers and uncertainties of enforced migration due to environmental degradation that has a significant impact on exercising of human rights such as the right to life, food, health and development <sup>(7)</sup>.

4.1.9 These issues could, perhaps, be looked at as part of the recast of Council Directive 2004/83/EC of 29 April 2004 on qualification and status; these new problems also deserve more in-depth consideration, including in the Proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office - COM(2009) 66 final.

#### 4.2 Specific procedures

4.2.1 The procedure for recognising refugee status must, of necessity, take a number of factors into account. These include, on the one hand, a series of legislative measures in the area of security aimed at combating illegal immigration and at addressing issues of public safety and order related to migration.

<sup>(7)</sup> The criterion of security as a fundamental value of human beings should, therefore, be expanded. Environmental refugees are victims of environmental destruction and of social imbalances related thereto, as, for example, in the case of the gradual desertification of swathes of sub-Saharan territory caused by new forms of aggressive speculation.

4.2.1.1 On the other hand, however, in line with the commitments made in the 2008 European Pact on Immigration and Asylum, legal immigration must be organised in such a way as to account of the priorities, needs and absorption capacity of each Member State and promote the integration of migrants.

4.2.1.2 With a view to building a Europe of asylum, it would, among other things, be useful to create a global partnership according to the principle of burden-sharing, i.e. the principle of solidarity in receiving asylum seekers and distributing them throughout the European Union.

4.2.1.3 The procedures set out in the draft recast proposal for examining requests for international protection and for revoking and terminating status once granted, as well as those set out in the recast of the procedures directive for appealing such decisions, comply with international rules and the rules set out in EU legislation.

4.2.1.4 It is of the utmost importance that non-governmental organisations be promoted and supported, not least while the procedures for preparing and examining admission requests, rejections, withdrawal of status and appeals are being launched. In this respect, the EESC suggests that the proposal should contain an explicit provision on the matter, in both its recitals and its articles.

4.2.1.5 In EU terminology, international protection includes both recognition of refugee status within the meaning of the Geneva Convention and subsidiary protection, which covers those who, whilst they do not meet the criteria for recognition as refugees, nonetheless cannot be repatriated as they are at severe risk.

4.2.1.6 Individual Member States' implementing legislation for the above-mentioned Asylum Procedures Directive generally break the remit of the administrative authorities down into three levels: receiving applications, considering them and deciding on them.

4.2.1.7 In any case, initiating the procedure brings into play the principle that the applicant is entitled to remain in the country, and be treated in a way that respects his or her human dignity, for as long as is necessary to consider the request, subject to exceptions (European arrest warrant, etc.). In the interests of preserving people's dignity, detention in reception centres should be considered an exception pending better arrangements, not the norm.

4.2.1.8 There is also provision for a number of guarantees to protect asylum seekers: provision of sufficient information to

the applicant on the procedures to be followed and on whether the application has been successful; the ability to contact the UNHCR; the assistance of interpreters; individual interview of the applicant with the competent body, whose members are to receive initial and ongoing training.

4.2.1.9 The EESC would argue that special efforts must be made to train qualified FRONTEX staff, in order to improve:

- the coordination of operational cooperation between Member States;
- the drafting of common training standards;
- the provision of the necessary support for Member States when organising reception and repatriation operations, with help from cultural mediators;
- training for officials on the humanitarian right to asylum as subscribed to by the EU, not least in the light of the launch of the future asylum agency.

4.2.1.10 The EESC takes the view that reception centres should be used only in exceptional circumstances and temporarily, in full compliance with the Charter of Fundamental Rights. Applicants for international protection should be able to lead a decent life, in all respects, i.e. in terms of their personal lives, access to healthcare, social contacts and job opportunities.

4.2.1.11 Directive 2003/09/EC, on minimum standards for asylum seekers in the Member States, leaves room for much flexibility in terms of access to employment. The EESC considers that employment restrictions of any kind tend to undermine people's human dignity while encouraging illegal employment, which leads to social injustice.

4.2.1.12 Finally, there is provision for legal aid for appeals against decisions, at both administrative and judicial level. The EESC considers that free administrative and legal aid must be stepped up and be made compulsory, along with linguistic assistance, at all stages of the procedures.

## 5. Specific comments

5.1 The changes proposed are consistent with the aim of harmonising and updating procedures relating to recognition of refugee status.

5.2 As to the substance of the proposals, it would be useful to take a critical look at the reasons for removing all explicit references to asylum from the proposal.

5.3 As a result, reference in the new text to asylum could continue to be understood as recognition of the right to enter a country's territory, possibly in order to apply for refugee status, pending verification of the requirements for recognition of that status and with the resulting prohibition on expulsion in the interim.

5.4 Furthermore, reference to the right to asylum would lend legitimacy to Member States which decide to apply the new directive even in cases that are beyond its scope (see Articles 3, 4, 11 and 12 of the proposal), where there are serious humanitarian reasons preventing return to the country of origin, irrespective of specific acts of persecution<sup>(8)</sup>.

5.5 The EESC supports the modifications suggested, as they coincide with the above-mentioned objectives.

5.5.1 The following points might, however, be raised:

5.5.1.1 Recital 38: when stating the need for the implementation of the directive to be evaluated at regular intervals, it would be preferable to give a more precise timetable;

5.5.1.2 Recital 41: substantive changes to the earlier directive, whose transposal is mandatory, should be specified more clearly;

5.5.1.3 Article 2(f): the determining authority should be defined more carefully, as a number of national legal systems do not provide for the concept of a 'quasi-judicial' body;

5.5.1.4 Article 3(3): by way of example, the directive should specify any cases where it might be applied to requests for

protection that go beyond its scope (see the comments made on the new environmental refugee phenomenon);

5.5.1.5 Article 6: the provision allowing Member States to require that applications be made in a designated place does not appear to be in line with the subsequent provisions of Article 7, and seems restrictive given the prior objective of providing broader access to the procedure;

5.5.1.6 Article 10(13) (\*): in all cases of negative decisions, the person concerned and his or her legal representatives must be informed in his or her own language, not only of the reason for the rejection of the request, but also of the (reasonable and acceptable) time frames, arrangements and procedures for opposing the decision and lodging an appeal;

5.5.1.7 Article 12(19)(d) (\*\*): allowing the competent authorities to search the applicants and their personal effects may run counter to constitutional guarantees provided for in the legislation of the various Member States;

5.5.1.8 Article 34(1)(c): the serious grounds submitted by the applicant to show that a third country designated as a safe country of origin is, in reality, not safe should be specified more clearly; although the EESC believes it is difficult to establish a unanimously accepted definition of a safe third country;

5.5.1.9 Food for thought on this may be provided by EU Court of Justice judgement C-133/06 of 6 May 2008, which annulled Articles 29(1) and (2) and 36(3) of the Asylum Procedures Directive (2005/85/EC).

Brussels, 28 April 2010.

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

---

<sup>(8)</sup> Provision is not generally made for the recognition of refugee status in cases of refugees leaving their countries not because of individual discrimination suffered but as a result of serious events (civil war, generalised violence, external aggression, natural disasters, environmental disasters, etc.). Nevertheless, the laws on immigration allow for a response to made to humanitarian emergencies caused by exceptional events, providing for the temporary protection measures necessary to receive displaced people in a timely and appropriate manner.

---

(\*) N.B.: Article 10(2) of the English version.

(\*\*) N.B.: Article 12(2)(d) of the English version.

**Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on alternative investment fund managers and amending Directives 2004/39/EC and 2009/.../EC'**

COM(2009) 207 final — 2009/0064 (COD)

(2011/C 18/16)

Rapporteur-general: **Mr GRASSO**

On 3 June 2009 the Council decided to consult the European Economic and Social Committee, under Article 47(2) of the Treaty establishing the European Community, on the

*Proposal for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC*

COM(2009) 207 final – 2009/0064 (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 1 February 2010. On 16 February 2010 the Committee Bureau instructed the Section for the Single Market, Production and Consumption to review the opinion.

The European Economic and Social Committee, in accordance with Rule 20 and Rule 57(1) of the Rules of Procedure, appointed Mr Grasso as rapporteur-general at its 462nd plenary session, held on 28-29 April 2010 (meeting of 29 April), and adopted the following opinion by 136 votes to two with three abstentions.

## **1. Conclusions and recommendations**

1.1 The European Economic and Social Committee (EESC) welcomes the proposal. Despite the fact that certain types of alternative fund have undoubtedly helped to increase leverage and risks in the financial system, this sector was not the source of the main risks to the stability and sustainability of the financial system in the crisis that followed the turbulence in the subprime mortgage market. This view was recently endorsed by the UK Financial Services Authority (FSA) in its February 2010 report on *Assessing the possible sources of systemic risk from hedge funds*, where it claims that 'major hedge funds do not represent a destabilising credit counterparty risk'. The EESC takes note of the debate that the proposal has generated and, in particular, of the proposals from the Council of the European Union and from the European Parliament (rapporteur: Gauzès). The EESC too has a number of comments and recommendations to make with a view to rectifying certain of the proposal's decisions and approaches that, without significantly benefiting investor protection and market integrity, could penalise not just the alternative funds sector but the financial system as a whole. The EESC takes as reference point for its observations the opinion <sup>(1)</sup> issued in 2009 about private equity and hedge funds, which stated that, within the economic framework of the European market economy, their impact in social and employment terms is more serious than their economic and financial impact.

1.2 The Greek crisis placed the issue of sovereign debts in the spotlight. The EESC notes the different views which emerged regarding the role hedge funds may have played in exacerbating the crisis. The EESC believes that this point calls for urgent attention and analysis.

1.3 The directive introduces a harmonised regulatory framework for the alternative funds sector, addressing, *inter alia*, the need for proper monitoring of macro-prudential risk for the European financial sector. The directive also includes detailed rules which the EESC feels would be difficult to adapt effectively to the wide range of products produced by the sector. The EESC therefore calls for a more functional approach to be adopted to take into account the great variety of products covered by the definition 'alternative funds'.

1.4 The EESC considers it essential for discussions to be launched without delay with the authorities of major non-EU countries, to encourage the adoption at international level of common banking supervision standards in the area of alternative investment funds, along the lines of those recommended by the Basel Committee for the banking sector. Otherwise, it could be easy to dodge the rules, transferring certain activities beyond the area covered by European regulations. That would jeopardise the competitiveness of major sectors of the European financial industry, with harmful effects in terms of both jobs and creating well-being and wealth. Establishing the future European Securities and Markets Authority (ESMA) could facilitate implementation of the rules, particularly as regards the cross-border segment.

1.5 *Inter alia*, the directive **introduces the possibility of setting limits to debt financing**. The EESC is not opposed to this, but calls for the criteria for establishing these limits to be clearly stated for the different kinds of product, along with the safeguards that will be put in place to limit the pro-cyclical effect.

<sup>(1)</sup> OJ C 128, 18.5.2010, p. 56.



1.6 The EESC believes that, in order to ensure market transparency and protection of investors, the requirement to submit key information should be extended to all companies. The information should be differentiated according to the products and thresholds. In any case, the EESC believes a more in-depth empirical analysis to be necessary here than has yet been carried out by the Commission.

1.7 As regards the requirements for companies managing **private equity** funds to provide information, the EESC supports the aim of increasing transparency in this connection, especially if the goal is to protect stakeholders such as minority shareholders and employees. At the same time, it feels that these rules should not penalise private equity funds excessively, to the benefit of other investment vehicles owned by private or institutional investors. Lastly, the proposal provides for exemption from these requirements for funds which invest solely in SMEs. The EESC stresses, however, that protection of investors and market integrity are non-negotiable principles which must be applied to all companies managing alternative investment funds.

## 2. Introduction

2.1 The term 'alternative investment funds' refers to all funds which are not covered by the UCITS Directive: for example, hedge funds, private equity funds, venture capital, real estate funds, infrastructure funds and commodity funds, concerning, *inter alia*, **the sector which, in the terminology used by the De Larosière Report, is defined as the 'parallel banking system'**.

2.2 In 2009, the EESC prepared an opinion on hedge funds (HF) and private equity (PE). The opinion did not consider the AIFM Directive. It was focused solely on the impact of these funds on employment and social issues. We note that the proposed AIFM Directive has generated a large debate mainly concerning employment and social issues. The EESC feels that the conclusions and recommendations of that opinion are an important reference for the discussion about the directive.

2.3 As also stressed by the De Larosière Report, the financial crisis was brought on by excess liquidity, significant imbalances in the financial and commodity markets and other macro-economic factors. The abundance of liquidity had led to the risk inherent in liquidity itself being overlooked – in the processes of risk management and control this risk received less attention than credit and market risks both from operators and in terms of prudential rules.

2.4 We cannot now afford to turn a blind eye to the problem and refuse to learn from a mistake which has cost the financial world dear and could have been genuinely fatal. **Liquidity requires financial markets and systems which are as transparent as possible.**

2.5 The directive must provide **an opportunity for real progress towards transparency in the alternative funds sector**, which has certainly proved lacking.

2.6 The EESC believes this to be necessary, not because of faults, shortcomings or risks in the sector, but merely because of the vital need to **put transparency and liquidity at the heart of the agenda**.

2.7 The proposals currently being discussed within the EU on European financial supervision at both macro and micro level are absolutely essential to ensure the survival of the Single Market <sup>(2)</sup>.

2.8 In the USA, President Obama has launched a process for radical change and innovation in the regulatory and supervisory system. It is still too early to assess the results that the US initiatives will yield.

2.9 **In this initiative, the EU must take steps to ensure that international endeavours are made without delay to encourage market transparency and integrity. However, it stresses that regulation alone will not be able to solve problems which can be caused by unwise behaviour on the part of professional investors.**

2.10 The EESC endorses the six high-level principles for the regulation of hedge funds proposed by the International Organisation of Security Commissions (IOSCO) in June 2009. IOSCO has now (25 February 2010) published systemic risk data requirements for hedge funds. These cover eleven different categories of data. The EESC recommends that the Commission take these principles as a basis and implement them for AIFM regulation in the proposed directive.

2.11 While IOSCO has completed an analysis of the risks to the financial system posed by private equity, no regulatory proposals have yet been made. The EESC recommends that the Commission adapt the IOSCO hedge funds principles to fit the profile of private equity ones.

## 3. The proposal for a directive

3.1 The proposal is intended to regulate fund managers rather than products. **The decision not to regulate products directly is based on the fact that alternative investment funds can only be defined by exclusion, as they are not funds harmonised by the UCITS Directive, and the Commission therefore believes that any attempt to regulate products directly would rapidly become obsolete.**

<sup>(2)</sup> Opinion on Macro and micro prudential supervision.

3.2 However, many aspects of regulating fund managers necessarily have significant implications for the operating arrangements and characteristics of the funds themselves.

3.3 The proposal has two key objectives:

- to allow more effective micro- and macro-prudential supervision, which requires in-depth understanding of the sector's dynamics that goes beyond national borders;
- to encourage market integration and development of the Single Market, offering managers a kind of European passport for their products, with clear benefits in terms of economies of scale and options for investors.

3.4 These key objectives can be pursued through a structured set of specific initiatives which give shape to the various elements of the proposal:

3.4.1 **All AIFM whose assets exceed certain thresholds must be subject to authorisation.** Managers managing total assets of less than EUR 100 million are exempt from the provisions of the proposed directive. The threshold rises to EUR 500 million where managers only manage unleveraged funds and investors are not granted redemption rights for the first five years of funds' existence.

3.4.1.1 Authorisation is granted by the competent authorities of the home Member State. It is subject to compliance with highly structured organisational and transparency requirements.

3.4.1.2 Managers must be domiciled in the EU. Administrative tasks can be delegated to non-EU entities: the role of depository can only be played by credit institutions established in the EU. Subdelegation is explicitly prohibited, except of the role of depository, and in any case subject to stringent conditions.

3.4.1.3 The directive gives the Commission the task of setting leverage limits, in order to secure the stability and integrity of the financial system.

3.4.2 Compliance with the requirements laid down by the directive would enable managers to freely market their products to professional investors (according to the definition in the MiFID Directive) in all Member States. Managers can also distribute funds domiciled in third countries, but are subject to a number of conditions to avoid further risks being introduced on markets and distortion of taxation systems.

#### 4. EESC assessment

4.1 The EESC has already issued an opinion commenting on the **De Larosière Group's** recommendations<sup>(3)</sup>, and fully

agrees that there is a need for supranational supervision, which, however, requires a sufficiently uniform regulatory framework. The setting-up of the new European supervisory authorities does not remove national supervisory bodies' powers, and so it is important that the European supervisory authorities draw up a common supervision rulebook. Greater understanding and transparency in the alternative investment funds sector could be important to increase market integrity and protection of investors and establish effective macro-prudential supervision. The directive could be an opportunity to pursue this important objective, **provided that unnecessarily burdensome restrictions are avoided.** This is why the Committee advocates particular caution and attention when calls for regulation exceed the minimum information framework required for micro-prudential supervision.

4.2 The EESC believes that a regulatory framework that strengthens conditions for better quality governance criteria for Alternative Investment Fund Managers urgently needs to be defined. This condition is more important than many other detailed rules that will raise costs for companies without necessarily increasing guarantees for the market, as firmly emphasised in Recommendation 1 of the **De Larosière Report**.

4.3 The EESC also draws attention to two other points raised in the **De Larosière Report**, which, in the context of the review of the Basel 2 framework, points out that the crisis has taught us two important lessons:

- the crisis has shown that the economic and financial system should hold more equity capital;
- the crisis has revealed the strong pro-cyclical impact of the current regulatory framework, which, instead of having a dampening effect, has amplified market swings.

4.3.1 The proposal to set limits to debt financing and the level of leverage employed by funds (the so-called leverage cap) is a step in the right direction, namely that of raising capital requirements. Indeed, the EESC shares concerns about the risk that excessive leverage introduces to the financial system: when addressing over-indebtedness, other aspects of funds, such as their size, must, in any case, be taken into account as well. The EESC calls for the possibility to be assessed of setting a clearly-defined leverage ceiling.

4.3.2 To keep systemic risk under control, it should be borne in mind that the largest banks are often primary brokers and therefore lenders of funds for hedge funds. Controls on these primary brokers are just as important as controls on fund borrowers. When revising the Capital Requirements Directives concerning banks, the relevant authorities should ensure that these loans are covered by sufficient capital.

<sup>(3)</sup> OJ C 318/2009, p. 57.

4.3.3 Lastly, the fact that the leverage cap tends to be pro-cyclical must be taken into account. Indeed, the leverage cap is likely to be exceeded when the value of investment falls, with the result that the manager may be forced to liquidate their assets in order to get back within the limit, pushing the market value of these assets down further. The EESC has already addressed the issue of pro-cyclicality in the legislative framework in its opinion on the De Larosière Report: although it acknowledges that it might be difficult to establish when to relax and when to tighten constraints, it feels that some flexibility in certain constraints could limit pro-cyclicality in legislation.

4.4 The EESC is concerned about the issue of *de minimis* thresholds below which companies would not be covered by the rules of the directive. As a general rule, the EESC believes that all companies should be required to record and subsequently submit the key information necessary to ensure the minimum pre-requisites for genuine market transparency and protection of investors.

4.4.1 In order to secure transparency and investors' protection, more detailed information should be required, possibly differentiated by products and thresholds. On this subject, however, the EESC feels that a more in-depth empirical analysis than has yet been carried out by the Commission is needed in order to find an appropriate criterion for setting these thresholds.

4.4.2 The EESC believes that the newly published IOSCO systemic risk data requirements for hedge funds (which can be adapted for other AIF) provide a way forward. Eleven categories of data are specified, from information on management and advisors, which should be required of all funds, to information on borrowing, risk and counterparty exposure, which would be most needed from large leveraged funds. These guidelines have international support, derive from G20 and FSB initiatives and will come into effect in September 2010.

4.5 The above points are related to the fact that the alternative funds sector is too varied to put a perfectly homogeneous regulatory framework in place for all the different products it covers. In practice, management companies specialise in specific areas (such as real estate funds, hedge funds and private equity funds). The proposal focuses only on leveraged funds and private equity funds. As stressed by the EESC Opinion on the impact of funds on industrial change (rapporteur: Mr Morgan), the diversity of alternative funds is such as to require a more differentiated approach.

4.6 The EESC hopes that Commissioner Barnier's initiative of introducing a single European passport extended to managers and funds which are not domiciled in the EU marks the launch of joint international solutions.

4.6.1 The EESC agrees with the possibility offered of also putting investment funds domiciled outside the EU on the same footing. It calls on the Commission to ensure that the quality and transparency standards of non-EU managers and funds are genuinely equivalent to standards in the EU.

4.6.2 Since the directive's objective should also be to improve the guarantees provided by funds from outside the EU, and not to penalise them and effectively exclude them from the single market, the EESC calls for immediate clarification concerning what requirements these funds will have to meet in order to enter the single market freely.

4.7 The EESC feels that if adoption of the directive does not go hand in hand with similar measures in the major non-EU countries, it could be easy to dodge the rules, transferring certain activities to outside the area covered by European regulations. That would jeopardise the competitiveness of major sectors of the European financial industry, with harmful effects in terms of both jobs and creating well-being and wealth.

4.8 The EESC enquires about the reason behind the rule that the depositary has to be a credit institution. Independent depositaries can be an important guarantee against fraudulent or harmful practices for investors. Introducing more stringent rules is undoubtedly to be welcomed. However, the EESC calls for clarification of why it is intended to restrict the role of depositary to credit institutions, given, not least, the fact that the MiFID Directive authorises other brokers to take custody of clients' business.

4.9 Alternative funds also include private equity funds, which invest in the share capital of non-listed companies.

4.9.1 Private equity is an important source of risk capital for start-ups and innovative companies, not to mention expanding or restructuring companies. The EESC has already discussed <sup>(4)</sup> the impact that private equity funds can have on the economic system and industrial change.

4.9.2 The proposal for a directive dedicates a number of articles (Chapter V, Section 2) specifically to funds that acquire a controlling influence in non-listed companies (more specifically to funds that acquire 30 % or more of the voting rights).

4.9.3 The information to be provided is quite detailed and, in many respects, specifically templated on information requirements for the takeover of listed companies. It is also necessary to draw up a similar corporate governance code to the one for listed companies. All this information must be provided to the company, the shareholders, employee representatives and the employees themselves.

<sup>(4)</sup> OJ C 128, 18.5.2010, p. 56.

4.9.4 The EESC welcomes the scope and depth of the proposed governance, information and communication obligations, especially if they are intended to protect the interests of stakeholders such as minority shareholders and employees. Moreover, it feels that these rules should not penalise private equity funds to the benefit of other investment vehicles owned by other private or institutional investors.

4.9.5 The EESC calls for the application of these rules from 25 % of the voting rights onwards and for the corporate governance code to explicitly safeguard collective labour agreements in force. The potential consequences for employees must be shown and the information must be given accurately and without any delay. Non-compliance with the information and consultation requirements must lead to the

consequence that any decision taken by the AIFM and/or target company have no legal effect.

4.9.6 The EESC suggests that the directive should introduce minimum solvency and liquidity ratios for the target companies. Dividend payouts should be limited to one disbursement per year and should not exceed earnings. For target companies not fulfilling the minimum ratios there should be no dividend payout.

4.10 These information obligations do not apply to acquisitions of control in SMEs. The EESC criticises this point of the directive because protection of investors and market integrity are non-negotiable principles which must be applied to all companies that manage alternative investment funds.

Brussels, 29 April 2010.

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

---

**Opinion of the European Economic and Social Committee on the '25th Annual report from the Commission on monitoring the application of Community law (2007)'**

COM(2008) 777 final

(2011/C 18/17)

Rapporteur: **Mr LECHNER**

On 18 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

*25th Annual report from the Commission on monitoring the application of Community law (2007)*

COM(2008) 777 final.

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 2 March 2010.

At its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 29 April 2010), the European Economic and Social Committee adopted the following opinion by 120 votes to four.

## **1. Conclusions and recommendations**

1.1 Some Member States still encounter difficulties when it comes to drafting rules that transpose the provisions of Directives. When it comes to implementation, Directives permit various degrees of latitude, from non-explicit provisions leaving Member States fairly extensive leeway in choosing national transposition measures, to explicit or prescriptive provisions. The right balance has to be found here between blind copying and excessive leeway.

1.2 The Committee endorses the Commission's main objectives, namely:

- to deal with the problem of extensive late transposition of directives;
- to step up preventive measures, including the continuing need to develop the analysis of implementation and compliance issues when preparing Impact Assessments;
- to improve information and informal problem-solving in the service of citizens and business; and
- to prioritise the most important cases and work closely with Member States to accelerate correction of infringements.

1.3 The Committee welcomes the Commission's assertions that priority will continue to be given to problems which have a wide-ranging impact on fundamental rights and free movement. It also welcomes the priority given to infringements

where citizens are extensively or repeatedly exposed to direct harm or serious detriment to their quality of life.

1.4 The Committee would suggest a more pro-active approach, e.g.:

- drawing up 'easier to transpose' Community legislation;
- establishing an accurate and constantly updated correlation table from the outset;
- allowing transposition by means of a specific reference to prescriptive or explicit provisions in a Directive.

1.5 However, the Committee would also draw attention to those areas in which planning, drafting and transposition of legislation should be based on the pro-active law approach; in this connection the EESC notes that provisions and rules are not always the only, and certainly not always the best, way of achieving the desired objectives.

1.6 The Committee considers that the Commission should improve the management of infringement procedures, especially on how the Commission implements this accelerated process to follow up on late transposition.

1.7 The Committee considers that other problem-solving mechanisms - such as SOLVIT, IMI, the information exchange system in the context of posting workers and EU PILOT - are good opportunities to reduce the Commission's workload when dealing with infringement procedures.



1.8 The Committee considers that it is necessary to improve the way in which civil society and the public are provided with information on the various complaint mechanisms available via the 'Europa Portal', in respecting the exception based on the protection of the public interest, as defined by the jurisprudence.

1.8.1 The Committee also suggests further increasing the information available on the relevant website and publishing Commission decisions relating to infringements, from registration of the complaint to completion of the infringement procedure.

1.9 EU-wide collective redress mechanisms are also to be examined, with a view to completing the initiatives currently underway in the areas of consumer and competition law to strengthen self-regulating mechanisms in the Member States.

1.10 The Committee suggests that the Commission regularly request an opinion from it on the Annual Report, so as to register the views of organised civil society and thus strengthen the application of legislation in the EU.

## 2. Report from the Commission <sup>(1)</sup>

2.1 As guardian of the Treaty, the Commission has the authority and responsibility to ensure respect for the law of the European Union, verifying that Member States respect Treaty rules and secondary legislation. The rules of the Treaty – 10 000 regulations and over 1 700 directives in force for 27 Member States – make up a substantial body of law. Issues and challenges in the application of law are inevitably many and varied. Certain areas face particular implementation challenges.

2.2 In September 2007 the Commission adopted a Communication on 'A Europe of results – applying Community law' <sup>(2)</sup> stating that it would 'develop the focus of its Annual Report on strategic issues, evaluation of the current state of the law in different sectors, priorities and programming of future work' to 'assist strategic inter-institutional dialogue on the extent to which Community law achieves its objectives, the problems encountered and possible solutions'.

2.3 The report highlights challenges in the application of law, indicating three main priority areas of action: 1) prevention, 2) information and problem-solving for citizens, and 3) prioritisation in handling complaints and infringements. It further stresses the importance of a strong partnership between the Commission and Member States, working in expert groups to manage the application of the legal instruments and co-operating pro-actively to resolve problems.

2.4 Sector analysis: complaints and infringement procedures are numerous in the spheres of the environment, the internal

market, taxation and customs, energy, transport, employment, social affairs and equal opportunities, health and consumer issues, and fundamental rights, freedoms and security. In some other sectors as agriculture, education and culture there are hardly delays in transposition of Directives <sup>(3)</sup>.

2.4.1 In 2007, late transposition of Directives led to new infringement procedures in the various spheres as follows:

- the internal market and services: 206 procedures;
- Community provisions on the free movement of goods: 227 procedures;
- health and consumer protection: over 330 procedures;
- Community environmental law: 125 procedures.

2.5 The following specific examples illustrate the varying degree of transposition problems and their consequences for citizens.

Public procurement:

- 344 public procurement infringement files were handled in 2007. Of these, 142 cases (4 %) were closed; only 12 (about 3,5 %) had to be referred to the Court. Around 200 of these 344 files were infringement cases, 25 % of which were priority cases.
- During 2007 infringement procedures were opened against 7 of the 10 Member States who had not notified their national transposition measures before the deadline in relation to the transposition of the public procurement Directives <sup>(4)</sup>. By the end of that year only three Member States – Belgium, Luxembourg and Portugal – had not yet notified their transposition measures. Now Luxembourg is the only Member State remaining under an infringement procedure <sup>(5)</sup>.

Consumer affairs:

- The deadline for transposition of the Directive concerning unfair business-to-consumer commercial practices in the internal market <sup>(6)</sup> expired on 12 June 2007. Twenty-two Member States had failed to notify transposition measures to the Commission by that date, which led to the Commission sending out formal letters of notice to them. Six Member States then notified transposition measures before the end of 2007.

<sup>(1)</sup> COM(2008) 777 final; SEC(2008) 2855; points 1 and 2.

<sup>(2)</sup> COM(2007) 502 final, 5.9.2007. See also the related EESC opinion, OJ C 204, 9.8.2008, p. 9.

<sup>(3)</sup> [http://ec.europa.eu/community\\_law/docs/docs\\_directives/mne\\_sector\\_na\\_20091124\\_en.pdf](http://ec.europa.eu/community_law/docs/docs_directives/mne_sector_na_20091124_en.pdf).

<sup>(4)</sup> OJ L 134, 30.4.2004, p. 1 and OJ L 134, 30.4.2004, p. 114.

<sup>(5)</sup> COM(2008) 777 final, SEC(2008) 2854, 18.11.2009, p. 206.

<sup>(6)</sup> OJ L 149, 11.06.2005, p. 22.

— During 2007, the Commission also verified transposition by the ten countries that joined the EU in May 2004 of Directive 93/13/EC on unfair consumer contracts. Varying degrees of transposition problems were identified in nine of those Member States and pre-infringement letters sent.

— A number of potential transposition problems were identified with the Directive on distance marketing of consumer financial services<sup>(7)</sup>, but no complaints were registered in 2007 as a result of public dissatisfaction with its implementation.

2.6 Further details on the situation in the different sectors of Community law, as well as the lists and statistics concerning all infringement cases are contained in Commission Staff Working Documents annexed to the report<sup>(8)</sup>.

### 3. General comments

3.1 The report and attached working documents, which are very difficult to understand in parts, show that some Member States still encounter difficulties when it comes to drafting rules that transpose the provisions of Directives. Although transposition may appear to be simple in theory, in practice there are instances where Community law concepts, which seem clear and precise, have no equivalent in national legal terminology<sup>(9)</sup>, or where the Community law concept does not include referral to Member States' law to determine its meaning and scope<sup>(10)</sup>.

3.2 Moreover, when it comes to implementation, Directives permit various degrees of latitude, from non-explicit provisions leaving Member States fairly extensive leeway in choosing national transposition measures, to explicit or prescriptive provisions such as definitions, lists or tables detailing substances, objects, or products which require that Member States enact 'simple transposition measures' to comply with the provisions of the Directive.

3.3 Any new provisions drafted must ensure legal certainty: in other words, any redundant or contradictory statements must be removed from national law. The right balance has therefore to be found between blind copying and excessive leeway.

3.4 However, transposition is not only a matter of drafting Community law legal concepts into national law; it is also matter of concrete process. In this respect, once a Directive has been published in the *Official Journal of the European Union*, Member States should speed up their transposition processes by entrusting national implementation authorities - which could and should have an updated database established for this purpose - to cooperate with the authorities of other Member States via a network where they could exchange

experiences and explain their difficulties in transposing particular provisions.

3.5 The Commission highlights the need to:

— deal with the problem of extensive late transposition of directives;

— step up preventive measures, including the continuing need to develop the analysis of implementation and compliance issues when preparing Impact Assessments;

— improve information and informal problem-solving in the service of citizens and business; and

— prioritise the most important cases and working closely with Member States to accelerate correction of infringements.

3.5.1 Concerning the latter point, the Committee considers that prioritisation of infringement procedures is a good idea. It also notes that it involves political and not merely technical decisions without external scrutiny, control or transparency. In this respect, civil society should be duly consulted by the Commission over decisions to prioritise the treatment of infringements. However, the Committee is satisfied that some of its previous recommendations, in particular regarding consultation of civil society organisations, the social partners, experts and professionals during the preparation of the transposition process<sup>(11)</sup> have been taken into account.

3.5.2 The Committee also welcomes the Commission's assertions that priority will continue to be given to problems which have a wide-ranging impact on fundamental rights and free movement. It also welcomes the priority given to infringements where citizens are extensively or repeatedly exposed to direct harm or serious detriment to their quality of life.

3.6 The Committee would like to take this opportunity to suggest a more pro-active approach. In order to facilitate correct transposition of EC Law, the Committee suggests that several rules should be respected, including:

— drawing up 'easier to transpose' Community legislation, by providing conceptual consistency and a degree of continuity, which are essential for legal certainty; in 2007 national courts in the Member States sought a preliminary ruling from the European Court of Justice under Article 234 of the EC Treaty in 265 cases<sup>(12)</sup>;

<sup>(7)</sup> OJ L 271, 09.10.2002., p. 16.

<sup>(8)</sup> COM(2008) 777 final; SEC(2008) 2854.

<sup>(9)</sup> ECJ 26 June 2003, *Commission v French Republic*, C 233/00 ECR I, p. 6625.

<sup>(10)</sup> ECJ 19 September 2000, *Grand Duchy of Luxembourg v Berthe Linster and Yvonne Linster*, C 28798, ECR I p. 6917.

<sup>(11)</sup> OJ C 24 of 31.1.2006, p. 39; OJ C 24 of 31.1.2006, p. 52.

<sup>(12)</sup> COM(2008) 777 final, SEC(2008) 2854, Annex VI, p. 1.

- establishing an accurate and constantly updated correlation table with national law from the outset of discussions on draft directives. (This is already a reality in many Member States. It should be generalised to all of them);
- allowing transposition by means of a specific reference to prescriptive or explicit provisions in a Directive, such as tables annexed to the Directive.

3.7 However, the Committee would also draw attention to those areas in which planning, drafting and transposition of legislation should be based on the pro-active law approach<sup>(13)</sup>; in this connection the EESC notes that provisions and rules are not always the only, and certainly not always the best, way of achieving the desired objectives. Sometimes the best way for the regulator to support valid objectives is precisely by not regulating, and if appropriate encouraging self-regulation and co-regulation. Where this is the case, the key principles of subsidiarity, proportionality, precaution and sustainability have greater importance and scope.

#### 4. Specific comments

4.1 In 2007, 1 196 new infringements concerned a failure to notify, or late notification of national measures relating to the transposition of Community Directives. 12 months is the general maximum reference period of the Commission<sup>(14)</sup>, which may not be exceeded for referral to the Court of Justice to decide or close a case, even if this may require close examination. The Committee considers that more rapid action should be required for cases of this type that do not demand special analysis or evaluation. The Commission should improve the management of infringement procedures, especially on how the Commission implements this accelerated process to follow up on late transposition.

4.1.1 However, it should be noted that national implementation measures have already been notified in the case of 99.4 % of total Directives adopted (as at September 2009)<sup>(15)</sup>.

4.2 The Committee supports the idea of creating networks and information exchanges between national implementation authorities, as long as this system does not create new administrative burdens or add more opacity to the current situation.

<sup>(13)</sup> OJ C 175, 28.7.2009, p. 26.

<sup>(14)</sup> Meanwhile the Commission has improved Impact Assessment evaluation of implementation requirements in the revised Commission Guidelines on Impact Assessment adopted in 2009. ([http://ec.europa.eu/governance/better\\_regulation/impact\\_en.htm#\\_guidelines](http://ec.europa.eu/governance/better_regulation/impact_en.htm#_guidelines)) and others and plan to adopt a policy statement on the application of Article 260 TFEU for the imposition of financial sanctions by the ECJ.

<sup>(15)</sup> See [http://ec.europa.eu/community\\_law/directives/directives\\_communication\\_en.htm](http://ec.europa.eu/community_law/directives/directives_communication_en.htm).

4.3 The Committee considers that other problem-solving mechanisms such as SOLVIT, the Internal Market Information system (IMI)<sup>(16)</sup>, the information exchange system recommended by the Commission in the context of posting workers<sup>(17)</sup> and EU PILOT are good opportunities to reduce the Commission's workload when dealing with infringement procedures, provided that the Commission continues to carry out systematic and exhaustive risk-based conformity evaluations of transposed texts.

4.4 The Committee agrees that there is a need for 'continued pro-active' cooperation between Member States and the Commission, as highlighted in the Commission's report. This cooperation would be still more efficient if it came at an earlier stage and took the form of training courses for national officials on the implementation of EC Law. The Commission could help in identifying training needs.

4.5 The Committee considers that it is necessary to improve the way in which civil society and the public are provided with information on the various complaint mechanisms available on the 'Europa Portal'. It is currently a challenge for an 'average citizen' to understand under which circumstances s/he should submit a complaint to the Commission, or whether it would be preferable to use other means, such as seeking national redress mechanisms or consulting the national Ombudsman<sup>(18)</sup>.

4.6 The Committee welcomes the Commission's new working method (EU PILOT), under which requests for information and complaints received by the Commission will be directly forwarded to the Member State concerned when an issue requires rapid clarification of the factual or legal position in the Member State.

4.7 EU-wide collective redress mechanisms should be examined, with a view to completing the initiatives currently in the pipeline in the areas of consumer and competition law<sup>(19)</sup> to strengthen self-regulating mechanisms in the Member States.

4.8 The Commission has set up a website, 'Application of Community law'<sup>(20)</sup>, which already provides important information on the transposition of Community law, in respecting the exception of the protection of the public interest as defined by the jurisprudence.

<sup>(16)</sup> See EESC 1694/2009, 5.11.2009 on *Delivering the benefits of the single market through enhanced administrative cooperation*.

<sup>(17)</sup> See OJ C 85, 4.4.2008, p. 1.

<sup>(18)</sup> See [http://ec.europa.eu/community\\_law/your\\_rights/your\\_rights\\_en.htm](http://ec.europa.eu/community_law/your_rights/your_rights_en.htm).

<sup>(19)</sup> OJ C 128, 18.5.2010, p. 97.

<sup>(20)</sup> See [http://ec.europa.eu/community\\_law/index\\_en.htm](http://ec.europa.eu/community_law/index_en.htm).

4.8.1 The protection of the public interest justifies refusal of access to the letters of formal notice and reasoned opinions drawn up in connection with infringement proceedings and relating to inspections, investigations and court proceedings <sup>(21)</sup>. It is important, nevertheless, to point out that the Commission cannot confine itself to invoking the possible opening of an infringement procedure as justification, under the heading of protecting the public interest, for refusing access to the entirety of the documents identified in a request made by a citizen <sup>(22)</sup>.

4.9 In addition, since an efficient policy relies on an efficient information and communication system, the Committee

suggests that the available information be posted on relevant Internet sites, publishing the infringement decisions adopted by the Commission from the registration of the complaint to the end of the infringement procedure, subject always to the protection of the public interest as defined in case-law.

4.10 This is the first time that, at the Committee's initiative, the Commission has consulted the Committee on its Annual Report on Monitoring the Application of Community Law. The Committee suggests that the Commission regularly request an opinion from it on the Annual Report in future, so as to register the views of organised civil society and thus strengthen the application of legislation in the EU.

Brussels, 29 April 2010.

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

---

<sup>(21)</sup> Judgment of the Court of First Instance of 5 March 1997. WWF UK (World Wide Fund for Nature) v Commission of the European Communities. Case T-105/95 points 63 and following.

<sup>(22)</sup> Judgment of the Court of First Instance of 11 December 2001 In Case T-191/99, David Petrie et.al. vs. Commission.

**Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the enforcement of the consumer *acquis*'**

COM(2009) 330 final

(2011/C 18/18)

Rapporteur: **Mr PEGADO LIZ**

On 2 July 2009 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the enforcement of the consumer *acquis**

COM(2009) 330 final.

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 2 March 2010.

At its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 29 April), the European Economic and Social Committee adopted the following opinion by 119 votes to 10 with three abstentions:

## **1. Conclusions and recommendations**

1.1 The Committee welcomes the Commission's initiative in which, for the first time, it sets out its concerns about the application of the Community *acquis* on consumer protection.

1.2 It would point out, however, that - from a strictly legal point of view - the application of Community legislation on consumer rights is not substantially different from the application of Community legislation in general. In this connection, it would refer to the various opinions issued on the matter.

1.3 Nevertheless, it recognises that - from a social point of view - the unfavourable position in which consumers find themselves in general in consumer affairs, and which, as is well-known, puts them in a weak position in a legal relationship that, by its very nature, is unbalanced, does warrant particular attention to the way that this legislation is applied in the different various national legal systems.

1.4 Also from an economic point of view, the clear difference in the way that this legislation is applied in the different Member States is likely to create distortions in the internal market and jeopardise the smooth operation of healthy, fair competition.

1.5 In spite of the progress referred to in points 2.1, 3.14, 4.2, 4.3, 4.4, 4.5 and 4.6, the EESC does regret the fact that here the Commission has wasted an opportunity to submit an informative, structured paper on the actual situation in the application of the Community *acquis* on consumer protection, to define strictly and precisely the nature and fundamental

parameters of the application of the law and to make progress with a list of proposals for well-defined, feasible measures for improving the situation in the near future.

1.6 It is disappointed to see that the Commission has not even concluded that there are in fact serious shortcomings in the application of the Community *acquis* in this area, which it neither quantifies nor qualifies and the causes of which it neither lists nor analyses.

1.7 It is likewise disappointing that, on the contrary, the Commission has gone no further than stating that which has already been agreed, missing out on a political opportunity, issuing a series of unfounded opinions of no practical value and inexplicably not announcing any new initiatives, without even querying what financial resources would be necessary.

1.8 Even the positive developments in the guidelines already defined in previous strategy documents are missing a link and therefore they lack in consistency. It would have been valuable, in particular, to take into account the positive results from applying Regulation (EC) 2006/2004 <sup>(1)</sup> and its well-drafted implementation report, which it is essential to read at the same time in order to understand the Communication.

1.9 The Committee regrets the fact that the Commission has not taken advantage of this opportunity to take on board the frequently expressed request that recommendations on the principles applying to the bodies responsible for extra-judicial settlement of consumer litigation be turned into directives or regulations which are mandatory in nature.

<sup>(1)</sup> OJ L 364 of 9.12.2004, p. 1.



1.10 The EESC thoroughly recommends that the Commission take another look at the enforcement of the consumer *acquis* in the near future, this time in the broader framework of an instrument based on wider research and consultation of all stakeholders, such as a White Paper, on the basis of which it can define a genuine Community-wide policy strategy for this area in greater depth.

## 2. Introduction

2.1 By drawing attention to the enforcement of the Community *acquis* on consumer protection, the Commission seems - for the first time - to place the matter of the effectiveness of legislation at the heart of its concerns, and this is to be welcomed. It demonstrates that, over and above 'law in the books', it is also interested in 'law in action', i.e. the way in which legal standards are accepted, interpreted and applied by those concerned, namely, public authorities - particularly the courts - businesses and the public in general.

2.2 For many years, this concern has been a key point made in various EESC opinions, which have repeatedly drawn attention to the importance thereof and put forward recommendations and suggestions for action<sup>(2)</sup> to be taken, including those contained in the following own-initiative opinions: 'Consumer policy post-enlargement'<sup>(3)</sup>, 'How to improve the implementation and enforcement of EU legislation'<sup>(4)</sup> and 'The proactive law approach: a further step towards better regulation at EU level'<sup>(5)</sup>.

2.3 Against this background, it is essential to distinguish between voluntary compliance with the law by the parties targeted by the rules - whose motivation and incentives may be highly diverse, sociologically speaking - and the imposition or enforced implementation of the law, in principle by the courts in their capacity as judicial power, but also by other administrative bodies with the power to enforce compliance or punish non-compliance.

2.4 From a social - as well as economic and legal - point of view, the different situations warrant different ethical assessments and have distinct behavioural components; this has to be taken into account when generally assessing compliance and implementation in any branch of law - in this case, Community legislation on consumer affairs.

2.5 The EESC agrees with the Commission that one of the objectives - albeit not the only one - of consumer policies will be 'to create an environment in which consumers can purchase goods and services without having regard to national borders'. However, the EESC does not deem consumer policy to be subsidiary to completion of the single market; neither does it

consider consumers to be mere instruments for the 'operation of the single market'. Unlike the Commission, the EESC therefore considers that the directive on unfair commercial practices, if deemed to be a 'good example', has to be seen as a good example of 'worse lawmaking'<sup>(6)</sup>, since it has given rise to chaotic implementation in most Member States. Rather, it regrets the fact that such an 'example' has been followed in recent directives on consumer credit and time-share and is still to be found in the directive on 'consumers' rights'.

2.6 It is with this in mind - placing the definition of consumers' rights in the broader framework of citizens' rights - that the EESC, like the Commission, feels that effective application of the consumer *acquis* is a priority for consumer policy, in so far as only by applying the law effectively can the underlying values be protected.

## 3. General comments

3.1 Contrary to what its title would indicate at first glance, the Communication focuses on 1) the end result of the application of Community law, more precisely the way in which public authorities comply with and enforce compliance with national rules flowing from the transposition or incorporation of Community law, and 2) the role that the Commission can play here.

3.2 In addition, this Communication should only be read in close conjunction with the well-written report published on the same day on 'the application of Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws'<sup>(7)</sup>, which, although not sent to the EESC for an opinion, should be considered as the basis for the Communication; it is important to stress the positive impact of the implementation of this regulation in Member States.

3.3 Even considering the limited scope of the Communication, the EESC feels that, in order for it to be framed correctly, the Commission should provide concrete data on the transposition and application of the Community *acquis* in EU Member States; such as those contained in the Annual Reports on monitoring the application of Community law<sup>(8)</sup> and in separate communications referring to other directives<sup>(9)</sup>.

<sup>(6)</sup> As the EESC foresaw in its Opinion (OJ C 108 of 30.4.2004, p. 81).

<sup>(7)</sup> COM(2009) 336 final.

<sup>(8)</sup> Cf. 25th Annual Report from the Commission on monitoring the application of Community law (2007) COM(2008) 777 final, and SEC (2008) 2854 and 2855, and the EESC Opinion INT/492 in the pipeline.

<sup>(9)</sup> For example COM(2006) 514 final on Distance Contracts (EESC Opinion: OJ C 175 of 27.7.2007, p. 28); COM(2007)210 final on certain aspects of the sale of consumer goods and associated guarantees (EESC Opinion: OJ C 162 of 25.6.2008, p. 31); COM(2007) 303 final on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange (EESC Opinion: OJ C 44 of 16.2.2008, p. 27); COM(2008) 9 final on the safety of toys (EESC Opinion: OJ C 77 of 31.3.2009, p. 8).

<sup>(2)</sup> The opinion currently in the pipeline on the 25th Annual report from the Commission on monitoring the application of Community law (2007) COM(2008) 777 final, (INT/492) warrants particular attention.

<sup>(3)</sup> OJ C 221 of 8.9.2005, p. 153.

<sup>(4)</sup> OJ C 24 of 31.1.2006, p. 52.

<sup>(5)</sup> OJ C 175 of 28.7.2009, p. 26.

3.4 Moreover, instead of simply listing the existing mechanisms, the Commission should have carried out an in-depth critical analysis of the way these mechanisms work and their outcome in the light of the information collated for the Consumer Markets Scoreboard<sup>(10)</sup>, set out in the final report from the Health and Consumers DG entitled 'Ex-post evaluation of the impact of the Consumer Policy Strategy 2002-2006 on national consumer policy' of 22.12.2009<sup>(11)</sup>, following the guidelines set out in its own 'Communication on better monitoring of the application of Community law'<sup>(12)</sup>. Besides, it is not even clear from its text whether the Commission considers there to be shortcomings in the application of the Community *acquis* requiring new measures and if so, which ones.

3.5 Quite the opposite, the Committee believes that there is widespread poor application of the Community *acquis* in the Member States, referred to extensively and caused, inter alia, by the following:

- a) the way in which many Community directives are drafted<sup>(13)</sup>, out of line with the standards of 'better lawmaking'<sup>(14)</sup>, particularly as regards *ex-ante* assessment studies;
- b) the over-hasty manner in which standards - badly designed and drafted from the outset - are transposed into national legislation;
- c) the incorrect or incomplete incorporation of Community rules into national legislation, where they are often deemed to be undesirable or to run contrary to national customs and interests;
- d) the lack of political will on the part of national authorities to comply and ensure compliance with rules which are not seen as 'fitting in' with the body of national law and national traditions and the persistent tendency to add new, unnecessary regulatory mechanisms to Community rules or to choose some but not other parts of these rules (the well-known phenomena of 'gold-plating' and 'cherry-picking');
- e) the lack of basic preparation and specific training on the part of national authorities in order to understand and ensure application of the Community *acquis*, particularly in relation to consumer protection;

- f) the poor operation of some courts and lack of preparation on the part of some judges and other players in the judicial system (lawyers, court officials, etc), which often leads to erroneous application or lack of application of transposed laws, and very often to the application of 'parallel' rules under national legislation<sup>(15)</sup>;
- g) the lack of broad administrative cooperation measures to involve civil society organisations, particularly consumer protection associations.

3.6 In this domain, the EESC has repeatedly drawn attention to the fact that discussions on the (non-) application of the Community *acquis*, should place emphasis on voluntary compliance with laws - spontaneous or induced.

3.7 This means above all that, in matters pertaining to its competences, the Commission will have to focus its efforts and initiatives on improved information and training for consumers and professionals and their motivation and incentives to comply with Community law transposed into national legislation.

3.8 Commission action should also target, as a priority, information and training for national public authorities, in particular those with direct responsibilities for the application of Community law in the Member States. Here, priority should be given to information and training for judges and other public prosecutors in general, whose responsibility it is ultimately to interpret and apply the law to specific cases which are the subject of dispute.

3.9 Unlike the Commission, the EESC does not however agree that mere information is enough to 'empower' consumers. On the contrary, the EESC has drawn attention to the need to provide consumers with proper resources and instruments to ensure that the law is applied effectively and their rights efficiently safeguarded.

3.10 In the light of the above, the role of self-regulation - and particularly co-regulation - takes on particular importance, as long as the parameters for the credibility of voluntarily accepted or negotiated systems between interested parties are guaranteed and safeguarded, in order to warrant the trust of all parties concerned.

<sup>(10)</sup> COM(2009) 25 final.

<sup>(11)</sup> Compiled by Van Dijk Management Consultants.

<sup>(12)</sup> COM(2002) 725 final.

<sup>(13)</sup> In the Own-Initiative Opinion (OJ C 24 of 31.1.2006, p. 52) the EESC 'argues that better lawmaking and implementation and enforcement are closely linked: a good law is an enforceable and enforced law'.

<sup>(14)</sup> It is, to say the least, surprising that the inter-institutional agreement entitled 'Better Lawmaking', concluded between the EP, Council and Commission (OJ C 321 of 31.12.2003), is not even mentioned in the Commission Communication.

<sup>(15)</sup> One well-known example is the widespread lack of application of Directive 85/374/EEC (OJ L 210 of 7.8.1985) amended by Directive 1999/34/EC (OJ L 141 of 4.6.1999) on producer liability, neglected in favour of the corresponding national legislation, as was clearly noted at the conference organised by the *Centre de Droit de la Consommation* (Centre for Consumer Law) in Louvain-la-Neuve on 23-24.3.1995 on 'Council Directive 85/374/EEC concerning liability for defective products: ten years on'.

3.11 Mediation, conciliation and arbitration systems, which complement the judicial system, should also receive special attention from the Commission, and their credibility and efficiency should be consolidated. Accordingly it is strange that the Commission has, once again, not taken on board the EESC's frequent request that the Recommendations on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes<sup>(16)</sup> be turned into generally binding directives or regulations. The situation becomes particularly serious when, in the absence of harmonisation, the different Member States' legal traditions lead to quite different situations developing in the provision of alternative means of dispute settlement.

3.12 However, it is in the domain of civil procedural law that there is more of a gap in the Commission's initiative; despite progress achieved by DG Justice initiatives<sup>(17)</sup> - especially as regards procedures which take into account the specific nature of the collective rights and interests of consumers - this gap has not been plugged by the Green and White Papers on non-compliance in anti-trust measures<sup>(18)</sup> after more than 20 years of 'studies' and 'consultations'. Furthermore, with the recent Green paper on Consumer Collective Redress<sup>(19)</sup>, there is even less prospect of securing the political will to forge ahead, as was clearly demonstrated in the recent EESC opinion<sup>(20)</sup>.

3.13 For this reason, it was essential that the Commission, in its capacity as guardian of the Community's legal order, attach particular importance to how it exercised its discretionary - but not arbitrary - powers<sup>(21)</sup> to deal with infringements under Article 211 of the Treaty, in particular 'the necessary internal organisation measures to allow it to carry out its task effectively and impartially, in accordance with the Treaty'<sup>(22)</sup>, namely priority criteria, assessment mechanisms, examination of complaints, specific instruments to detect infringements unofficially, means to improve the action of national courts and other complementary instruments (SOLVIT, FIN-NET, ECC-NET, alternative and extra-judicial means).

3.14 In the same vein, although not a direct indicator of how legislation is being implemented, complaints submitted

by consumers do constitute an important indicator of how those parties targeted by the legislation perceive it, as clearly demonstrated in the second Consumer Markets Scoreboard<sup>(23)</sup>. For this reason, the EESC welcomes the Commission's initiative, along the lines of the EESC's previous recommendations, to start developing a harmonised method for dealing with consumer claims and complaints<sup>(24)</sup>.

#### 4. Specific comments

4.1 The EESC notes that, in the Communication, the Commission is reiterating existing priorities; it is not adding anything new to the 2005-2010 Priority Action programmes<sup>(25)</sup>, doing no more than confirming that which is set out in the 2007-2013 EU Consumer Policy Strategy<sup>(26)</sup>, without presenting any innovative measures. To that extent, the EESC can do no more than reiterate its comments made in previous opinions<sup>(27)</sup>.

4.2 The EESC welcomes the fact that the Commission finally seems to be willing to use Article 153 of the Treaty for new initiatives to consolidate cooperation measures between Member States. However it does not identify which new initiatives it is envisaging other than the ones it has already launched and on which the EESC has commented, namely the directive on General Product Safety and the New Legislative Framework (NLF)<sup>(28)</sup> and the RAPEX system, particularly as regards the safety of toys<sup>(29)</sup>; special mention should however be made of the weekly publication of the list of dangerous consumer products logged under RAPEX.

4.3 As regards the CPC network, the EESC fully subscribes to the well-drafted Commission report on this subject referred to above, the difficulties encountered and its conclusions, as well as the results of the second Consumer Market Scoreboard, particularly as far as 'enforcement' is concerned<sup>(30)</sup>.

4.4 One aspect to consolidate would be the publicity given to measures carried out by the Commission and national authorities for monitoring compliance with transposed laws by public and private bodies targeted by the legislation so as to raise the profile of consumer protection policy, and as a way of deterring detrimental practices and giving consumers a greater feeling of safety.

<sup>(16)</sup> Recommendations of 30.3.1998 and of 4.4.2001 to be found in OJ L 115 of 17.4.1998 and OJ L 109 of 19.4.2001 respectively.

<sup>(17)</sup> To be highlighted in this connection are: Regulation (EC) No 861/2007 establishing a European Small Claims Procedure, OJ L 199 of 31.7.2007, p. 1; COM(2006) 618 final on Improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts; and COM(2008)128 final on the transparency of debtors' assets; these are, however, mainly aimed at facilitating the collection of payments by businesses, and not for the benefit of consumers (Cf Opinions OJ C 10 of 15.1.2008, p. 2 and OJ C 175 of 28.7.2009, p. 73).

<sup>(18)</sup> COM(2005) 672 final and COM (2008) 165 final; see Opinions in OJ C 324 of 30.12.2006, p. 1 and OJ C 228 of 22.9.2009, p. 40.

<sup>(19)</sup> COM(2008) 794 final.

<sup>(20)</sup> EESC Opinion 586/2009 (INT/473) of 5.11.2009; on this subject also see the Own-initiative Opinion (OJ C 162 of 25.6.2008, p. 1) on 'Defining the collective actions system and its role in the context of Community consumer law'.

<sup>(21)</sup> Cf. For all of these, see the Judgment dated 01.6.1994, Commission/Germany, C-317/92 and the Judgment dated 10.5.1995, Commission/Germany, C-422/92.

<sup>(22)</sup> COM(2002) 725 final.

<sup>(23)</sup> COM(2009) 25 final and mainly SEC (2009) 76, part 1.

<sup>(24)</sup> COM(2009) 346 final (CESE 97/2010).

<sup>(25)</sup> Namely the need to carry out a more in-depth analysis of each market, establishing common methodologies for processing data for the purposes of comparison and creating indicators on the implementation of legislation.

<sup>(26)</sup> COM(2007) 99 final.

<sup>(27)</sup> OJ C 95, of 23.4.2003 and OJ C 162 of 25.6.2008, p. 20.

<sup>(28)</sup> Regulation EC 765/2008 and Decision EC 762/2008, EESC Opinion in OJ C 120 16.5.2008, p. 1.

<sup>(29)</sup> COM(2008) 9 final, EESC opinion in OJ C 77 of 31.3.2009, p. 8.

<sup>(30)</sup> SEC(2009) 76 final, Part 3.

4.5 The EESC welcomes the initiative setting out new ways to communicate market information to consumers, so that they can be better informed and thus make responsible decisions; it would be valuable for the Commission to specify the way in which this initiative is to be implemented. Moreover, the database on unfair commercial practices is eagerly awaited; it is only to be hoped that it will not suffer the same fate as CLAB (Unfair Contract Terms database).

4.6 As regards the proposed definition of 'standard' interpretations of Community legislation for 'national implementing authorities', the EESC welcomes the explanation provided by Commission representatives at study group meetings to the effect that this initiative is only directed at administrative authorities, not judicial ones, and does not throw into question the exclusive jurisdiction of the Court of Justice under the preliminary ruling procedure in order to set down interpretation of Community law.

4.7 In the area of international cooperation with third countries, the Communication does not present concrete data regarding what will have been done, nor does it identify the strategy proposed for the future, namely its extension to cover other international bodies and organisations dealing with regional economic integration. Thus, the EESC expresses its concern about efficient monitoring of compliance with the Community *acquis* on products from third countries, in terms of the low profile of such monitoring and how transparent its results are.

4.8 Lastly, the EESC expresses concern about the adequacy of the financial resources available to the Commission to carry out this action, given the reduced budget for consumer policy, a situation potentially made worse in the new functional structure of the Commission, because these subjects are divided up between two directorates-general.

Brussels, 29 April 2010.

*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 and the European Economic and Social Committee — Enhancing the enforcement of intellectual property rights in the internal market'**

COM(2009) 467 final

(2011/C 18/19)

Rapporteur: **Mr RETUREAU**

On 11 September 2009 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 Council, the European Parliament and the European Economic and Social Committee. Enhancing the enforcement of intellectual property rights in the internal market*

COM(2009) 467 final.

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 2 March 2010.

At its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 29 April), the European Economic and Social Committee adopted the following opinion by 132 votes to five with four abstentions.

## **1. Recommendations and conclusions**

1.1 The Committee regrets that it has not been possible to take account of recent events in the Commission proposals, namely the ratification by the European Union and Member States of the World Intellectual Property Organization (WIPO) 'Internet treaties', i.e. the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

1.2 It also requests to be kept abreast of the ongoing ACTA (Anti-Counterfeiting Trade Agreement) negotiations and to be informed of any differences that may arise between this agreement and (i) the recently ratified WIPO treaties, with particular regard to the 'Internet' part of the ACTA, and (ii) Directive 2004/48/EC on the enforcement of intellectual property rights (the so-called 'counterfeiting directive' <sup>(1)</sup>).

1.3 Nonetheless, the Committee takes note of the Commission's intention to hold a meeting of stakeholders in the near future. It hopes that this will take place as soon as possible and before any final decision is taken; the European Parliament should also be involved at as early a stage as possible.

1.4 The Committee rejects the idea of any special set of rules of the kind introduced into the legislation of some Member States for the exercise of copyright on the internet, and which may infringe the individual's privacy. Instead, it advocates active education and training measures for consumers, especially young people.

1.5 The Committee supports the Commission's main proposal, which advocates the establishment of an EU Counterfeiting and Illegal Copies Observatory. This would collate and disseminate useful information on how counterfeiters operate; moreover, it would offer support specifically geared to SMEs and SMLs, who often fall victim to counterfeiting, in order to ensure that they are better informed of their rights.

1.6 The Committee considers the rapid information exchange network proposed by the Competitiveness Council, built on the IMI (Internal Market Information system), to be very useful, particularly if the Member States succeed in overcoming obstacles in administrative cooperation. This also depends on how effective contacts are at national level. In addition, the Commission should regularly publish a report on the data collected by the Observatory and its activities.

1.7 The need to fight organised crime in counterfeiting should be reflected in greater cooperation between customs services and enforcement agencies, with the involvement of Europol at EU level. The Committee considers that harmonised European criminal law is essential, as long as those involved adhere to the principle of the punishment fitting the crime, including the crime of selling illegal copies on the internet. Such copying activities should not lead to excessive or disproportionate legislation against illegal copying or commercial-scale counterfeiting.

1.8 Subject to its criticism of the lack of transparency with regard to ACTA, and allowing for the uncertainty generated by unilateral declarations from several Member States on ratification of the WIPO treaties in December 2009, the Committee can, then, endorse the Commission proposals. It supports a European position that does not go beyond the current *acquis*.

<sup>(1)</sup> Directive of the European Parliament and the Council of 29 April 2004, OJ L 157, 30.4.2004, pp. 45-86.



1.9 The Committee advocates, essentially for orphan works, a harmonised system for the registration of copyright and related rights, to be updated periodically so that rights holders can easily be found. This system could detail the character and title of the work, as well as the various rights holders. It calls on the Commission to look into the feasibility of such an idea.

1.10 Finally, the Committee insists that the European Union Patent be created and properly implemented in all Member States. It will provide less cumbersome and more effective protection for safeguarding the intangible rights of SMEs and SMIs related to innovation.

## 2. Commission proposals

2.1 The Commission stresses the need to reinforce Intellectual Property Rights (IPR) in the knowledge-based society. The protection afforded to IPR in the EU and at international level (TRIPS <sup>(2)</sup> and sectoral agreements) must be stepped up, since businesses – both large companies and SME-SMIs – are attaching increasing importance to these rights. Start-ups can thus protect their intangible assets and, on this basis, obtain capital or loans to launch their activities.

2.2 The EU must support them with an intellectual property (IP) culture which protects European talent and creates opportunities for businesses, as well as for academic research and campus spin-offs <sup>(3)</sup>.

2.3 The very value of IPR makes them a target for counterfeiters and pirates, who make use of a variety of devices to achieve their ends, including the Internet, which is an international tool for the market in illicit goods; this is stifling innovation and threatening jobs, with severe economic consequences for businesses, especially at a time of economic recession.

2.4 The market in illicit goods has expanded beyond the one in 'traditional' copied or counterfeited products (films, fashion, music, software and luxury goods) to include new mass-consumption goods: foodstuffs, hygiene products, spare parts for cars, toys, electrical and electronic equipment, etc.

2.5 The health sector is also affected by fake medicines, placing people's health at risk.

2.6 The effects of counterfeiting and trade in illegal copies are becoming increasingly worrying, especially since organised crime is heavily involved in counterfeiting.

2.7 A Community regulatory framework has been put in place, including Directive 2004/48/EC <sup>(4)</sup> on IPR enforcement;

civil law has been harmonised; and a proposal on criminal sanctions is currently before the Council. The EU Customs Regulation provides for the seizure of illicit copies and penalties for trade in such items; moreover, the Commission is currently consulting Member States on how it can be improved.

2.8 As part of a comprehensive European anti-counterfeiting plan, the Commission wants to adopt complementary non-legislative measures in line with the Competitiveness Council Resolution of 25 September 2008.

2.9 In line with the findings of the advisory expert group, which focused in particular on the situation of SMEs, the Commission wants to increase support for pursuing offenders, and is planning a number of related projects to help SMEs incorporate IPR into their innovation strategies and business plans.

2.10 At global level, the Commission is developing a protection strategy in relation to third countries (e.g. EU-China anti-counterfeiting agreements, customs inspection initiatives). A China-IPR-SME Helpdesk is now in operation.

2.11 Public-private partnerships (PPPs) should be consolidated with a view to a more participatory European strategy. The May 2008 High Level Conference was followed by the Commission's Industrial Property Rights Strategy for Europe and the adoption of the afore-mentioned Competitiveness Council Resolution on an anti-counterfeiting and anti-piracy plan. The Competitiveness Council also called on the Commission to step up border controls in cooperation with the Member States.

2.12 However, it is particularly difficult to assemble information on the nature and extent of counterfeiting and trade in illegal copies and to assess their actual impact on our economy. Information held by various national bodies is hard to collate and assimilate, apart from the data collected by the Commission on border detentions, which in any case only shows a small part of the picture. The source database should be widened to fully assess the global, but also local, implications of illegal activities linked to counterfeiting and to understand why some products, sectors and regions are more vulnerable than others. That would enable better-targeted action plans to be devised.

2.13 The Competitiveness Council advocated the creation of a European Counterfeiting and Piracy Observatory to generate a more precise understanding of these phenomena. The Commission is now establishing such an observatory in order to gather all possible information on IPR infringements. However, it believes that the observatory should play a much wider role, becoming a platform for representatives from the relevant national authorities and stakeholders to exchange information and expertise on best practice, with a view to developing joint strategies for combating counterfeiting and piracy and to making recommendations to policymakers.

<sup>(2)</sup> International agreements on the aspects of intellectual property rights relating to trade, including trade in counterfeit goods (TRIPS).

<sup>(3)</sup> See INT/325, OJ C 256, 27.10.2007, p. 17; INT/448, OJ C 218, 11.9.2009, p. 8; INT/461, OJ C 306/2009, p. 13 and INT/486 (not yet published).

<sup>(4)</sup> OJ L 157, 30.4.2004, pp. 45-86 (CESE Opinion in OJ C 32, 5.2.2004, p. 15).

2.14 If the observatory is to become a key resource, it must provide a forum for close cooperation between the Commission, the Member States and the private sector and feed into a partnership with consumer organisations in order to define practical recommendations and raise consumer awareness. The publication of an annual report would enable the public to understand the problems and ways of resolving them.

2.15 The Commission then sets out the observatory's role for achieving the afore-mentioned goals.

2.16 The observatory would become a platform serving all stakeholders, with one representative per country, reflecting a broad range of European and national bodies and the sectors that are most affected and most experienced in this domain. Consumers and SME representatives would also be invited.

2.17 Consistent IPR enforcement means enhancing and expanding genuine administrative cooperation to combat counterfeiting and piracy, establishing a real partnership to implement a border-free internal market. To this end, an efficient network of contact points across the European Union is necessary.

2.18 Internally, better coordination in combating counterfeiting is also needed. For this purpose, national coordinators with a clear mandate should be appointed.

2.19 Transparency also needs to be promoted in respect of national structures at cross-border level to facilitate legal action by businesses thus despoiled. National IP and copyright offices likewise have a role to play in providing information. They must also take on new functions such as awareness-raising and providing specific support for SMEs, in association with the European Patent Office (EPO), national offices and the Office of Harmonisation of the Internal Market (OHIM) in respect of trade marks.

2.20 The Competitiveness Council also called on the Commission to set up a cross-border network for the rapid exchange of key information, drawing on national contact points and modern information-sharing tools. An electronic network for rapid, effective information-sharing on IPR infringements will need to be available to all enforcement agencies and national industrial property offices.

2.21 The Commission is currently analysing how an appropriate interface could be designed and how it could build on the existing IMI system network so that essential information can circulate easily.

2.22 In setting out all the serious consequences of IPR infringements, the Commission is trying to encourage holders

of these rights and all stakeholders in the commercial chain to join forces to combat piracy and counterfeiting in their common interest. One approach worth exploring would be voluntary agreements to combat counterfeiting and piracy on the ground, and to find technological solutions for detecting counterfeit goods; these agreements could extend beyond Europe's borders. Whatever approaches are adopted must naturally remain strictly within the bounds of legality.

2.23 Trading in counterfeit goods on the Internet raises very specific issues, and the Commission has launched a structured dialogue with stakeholders, since the Internet gives counterfeiters and pirates particular flexibility to operate globally and evade local law. Meetings are already being held with a view to drawing up specific procedures to force offers of counterfeit goods to be removed from websites under the terms of voluntary agreements. In the absence of agreements between trademark proprietors and Internet businesses, the Commission will need to consider legislative solutions, in particular under the IPR Enforcement Directive.

### 3. The EESC's comments

3.1 The Commission proposal focuses on the protection of European SMEs' IPR. The EESC feels that they do need particular support to help them enforce their rights in accordance with the provisions of the relevant legislation and Directive 2004/48. However, the criminal law aspect is still missing and it would be useful for the Member States to look for a balanced, proportionate solution. The EESC is hoping that a solution will be found, based on the TFEU <sup>(5)</sup>, to support holders of intangible rights.

3.2 The observatory should help combat all forms of IPR infringement, irrespective of the size of the business involved, whilst placing particular emphasis on the specific needs of SMEs and SMIs.

3.3 Some proposals, such as voluntary agreements, are already being implemented, while others are still at the draft stage, and the communication does not point out the obstacles to be overcome in some areas, such as administrative cooperation, which in many cases does not seem to function properly.

3.4 A new element has emerged in unlawful copying and counterfeiting via the Internet: the European Union and the Member States ratified the WIPO 'Internet treaties' last December, which will, in principle, result in uniform application of European law, but, for all that, declarations at national level made upon ratification risk jeopardising a unified European approach. These treaties require action to be taken against unlawful copying and counterfeiting for commercial purposes, as provided for in Directive 2004/48 on Copyright and Related Rights in the Information Society.

<sup>(5)</sup> Treaty on the Functioning of the European Union.

3.5 At the same time, however, 'secret negotiations' are taking place between the USA, the EU and certain 'selected' countries with a view to drawing up an international treaty to prevent counterfeiting (ACTA). The American side wants this treaty to share many similarities with the Digital Millennium Copyright Act (DMCA). According to the American negotiator, the secrecy is designed to forestall a general outcry from civil society in the United States and in Europe. European consumers, whose organisations have not been invited to the negotiations, and European businesses condemn these procedures for their lack of transparency<sup>(6)</sup> and democratic accountability, and for the fact that they can potentially be used, in the guise of combating Internet counterfeiting (one of the headings of the draft treaty), by the forces of law and order - including private police forces - to monitor Internet trade and communications. In certain quarters, moreover, it is thought that the distinction between a commercial counterfeiting activity and the making of a private copy would be lost. In a situation where North American producer lobbies are accorded permanent access to the negotiations, it is a matter of urgency that these negotiations be made more transparent and that civil society be allowed to have its say.

3.6 The EESC wishes to be kept abreast of discussions and proposals currently on the table and to be able to put forward its point of view on them. It would be a matter of regret if the contested provisions in the American DMCA were to be transposed into an international treaty, only then to compete with the WIPO treaties and add to the confusion surrounding copyright and related rights at European and international level. In any case, the European position should not go beyond the current *acquis*.

3.7 In the Committee's view, a special set of rules on Internet copyright does not entitle right holders either to monitor the use of technology, as the national legislation cited above currently tends to specify, or to interfere in private communication. The excessive length of the protection period (from 50 or 75 years after the author's death or 75 years for a corporate body) and the over-generous rights granted to multinational entertainment companies for media control would very clearly stifle innovation and technological development and would not create an environment open to competition. The aim of this protection is to secure a fair reward for authors and

entertainers, not a guaranteed income for the distributors (the 'majors') coupled with an entitlement to interfere.

3.8 The Committee advocates unifying copyright on its traditional basis, without a punitive set of rules for the Internet.

3.9 The Committee suggests compulsory registration - in the case of a European copyright, for example, in a harmonised Register of Copyrights and Related Rights - for a very small fee covering registration costs only, to be updated every 10 or 20 years, for instance, so that right holders and their addresses are known. Such a tool, freely accessible and constantly updated, would mean that orphan works could be more easily re-used and allow any interested company that wanted to use a work for commercial purposes to translate them more easily into other media or languages and to obtain the necessary licences and permissions more easily.

3.10 It would also enable backup copies of works (films, tape recordings, etc.) to be made, especially if the storage media were fragile. Works are often lost, never re-edited or re-used, and some media - old films, for instance - risk being lost forever.

3.11 The lack of registration or fee requirements already sets copyright apart from patents and other industrial property rights. Its length of protection is also considered by many to be excessive given the information society's and the knowledge economy's need for innovation and exchange of know-how. The Committee advocates the registration of copyright and related rights in such a way as to detail the character and title of the work, the copyright and other rights related to the work, and the name and address of the right holders. This information should be updated every 10 or 20 years, if it is possible to do so, for a minimum fee covering the actual cost of registration. Those wishing to make commercial use of a work would thus be able to obtain the necessary licences and permissions more easily. In other words, copyright is often confused with the right to property, but should be considered as a temporary monopoly on use and an exclusive right to issue usage licences for protected works for as long as they remain protected.

Brussels, 29 April 2010.

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

---

<sup>(6)</sup> Declaration on ACTA, European consumers, Transatlantic dialogue (see BEUC – European Consumers' Organisations - site).

**Opinion of the European Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council on the participation by the Community in a Joint Baltic Sea Research and Development Programme (BONUS-169) undertaken by several Member States'**

COM(2009) 610 final — 2009/0169 (COD)

(2011/C 18/20)

Rapporteur-general: **Mr RETUREAU**

On 12 November 2009, the Council decided to consult the European Economic and Social Committee, under Article 169 and the second paragraph of Article 172 of the Treaty establishing the European Community, on the

*Proposal for a decision of the European Parliament and of the Council on the participation by the Community in a Joint Baltic Sea Research and Development Programme (BONUS-169) undertaken by several Member States*

COM(2009) 610 final — 2009/0169 (COD).

On 15 December 2009, the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, at its 462nd plenary session, held on 28-29 April 2010 (meeting of 29 April), the European Economic and Social Committee, under Rule 57 of its Rules of Procedure, appointed Mr Retureau as rapporteur-general and adopted the following opinion by 140 votes to 4 with 3 abstentions.

## 1. Conclusions and recommendations

1.1 The Baltic Sea brings together major challenges: it is affected by global warming and pollution due to human activity and is a strategic area of economic and social activity given the nature and number of jobs that depend on it. Its preservation is vital for current and future generations and it must be managed on the basis of consultation between all the countries that border on it and their people.

1.2 However, it is not clear whether the national and European social partners from these sectors will be properly included in the stakeholder consultation procedures by the Bonus consortium. The Committee calls for this to be spelt out clearly.

1.3 The system for governing these consultation platforms and the sectoral research forum must include civil society stakeholders and in particular the relevant national and European social partners. It is also essential that the R&TD projects of the BONUS-169 programme involving social scientists include research and measures which take account of stakeholders involved in the process of managing jobs and skills in the sectors concerned by the programme.

1.4 The SIAs (sustainable impact assessments) could be a useful and effective instrument for supporting the decision on the choice and implementation of R&TD projects carried out within the framework of the BONUS-169 programme, which could take account of the three dimensions of sustainable devel-

opment by involving a significant cross-section of civil society stakeholders in the challenges linked to these three dimensions.

1.5 However, the impact analysis carried out in the framework of the Bonus-169 programme has certain shortcomings, particularly in terms of the consideration given to the social and employment dimensions, especially as the civil society stakeholders (particularly trade unions and the European social partners) did not participate in the drawing-up of the programme.

1.6 Civil society stakeholders could become involved on the basis of at least two types of measure:

- a) improving the distribution of information, its collection and the processing of contributions from civil society stakeholders from countries concerned by the Bonus-169 programme as well as the feedback systems; to this end, ensuring transparency as regards the recognition and use of contributions from all relevant civil society stakeholders, including the European social partners and providing for appropriate feedback;
- b) incorporating the questions raised by all relevant civil society stakeholders, including the European social partners, into the debates and analyses. The challenge would be to put forward an approach with a tangible impact on the development and implementation of the Bonus-169 programme taking account of the three dimensions of sustainable development (environment, social, economic).



1.7 The Committee reiterates its support for the programme and its financing arrangements, which provide fresh resources for Bonus-169, and not just existing resources, except in the case of research tools particularly suited to the research objectives. These will be allocated in full for a set period, with a limited budget.

1.8 Research into the Baltic Sea is justified by the fact that it is bordered by a large number of Member States affected by the heavy pollution which built up during the industrial era and which continues today. As a result, the Baltic Sea has become one of the most polluted major bodies of water in the world, to the point where this is jeopardising a number of industrial and craft activities, given that population and activities are concentrated in the coastal area. The Committee believes that all the countries concerned including, where appropriate, the Russian Federation, should be involved in the research and make their contribution according to their circumstances and taking account of the situation of sparsely populated and third countries.

## 2. The Commission's proposals

2.1 The European Community's 7th Framework Programme for research, technological development and demonstration activities of 20 December 2006 specifies the 2007-2013 regional guidelines surrounding four types of activity: 'cooperation', 'ideas', 'people' and 'capacities'.

2.2 The Decision of the European Parliament and of the Council of 29 October 2009 on the participation by the Community in a Joint Baltic Sea Research and Development Programme (BONUS-169) undertaken by several Member States applies this framework to the issues of the Baltic Sea and specifies the project's objectives and the details for financing its implementation.

2.3 In order to reach its objectives, BONUS-169 is being implemented in two distinct phases:

- a) an initial strategic phase, lasting two years, during which appropriate consultation platforms for active stakeholder involvement will be set up, a Strategic Research Agenda prepared, and precise implementation arrangements will be broadened and developed;
- b) an implementation phase, of minimum 5 years, during which a minimum of three joint calls for proposals will be launched in view of funding strategically targeted BONUS-169 projects addressing the objectives of the initiative.

2.4 The topics shall originate from the BONUS-169 Strategic Research Agenda, respect as much as possible the established roadmap and cover research, technological development, and training and/or dissemination activities.

2.5 One of the initial phases of the BONUS-169 project was broad public consultation. An internet page was set up, impact assessments carried out and NGOs consulted. These consultations were necessary and should continue during the projects' implementation. The abovementioned civil society stakeholders must participate in the monitoring of the funds' management and developments throughout the life of the projects so that they are properly carried out with a view to 'investing more and better in knowledge for growth and jobs' <sup>(1)</sup>, as advocated by the revised Lisbon Strategy. Article 5 of the Decision of the European Parliament and the Council of 29 October 2009 stipulates that Bonus EEIG, which is responsible for managing BONUS-169, must report to the Commission, on behalf of the Community. According to Article 13, the Commission shall communicate the conclusions of the evaluation of the activities undertaken within the framework of BONUS-169 to the Parliament and the Council. The EESC can therefore only monitor *a posteriori* and cannot express its views on the development of BONUS-169 projects.

2.6 Annex 1, point 1 of the decision sets the objectives of BONUS-169. Even though point d) states that the initiative shall 'establish appropriate Stakeholder Consultation Platforms including representation from all relevant sectors', no objective mentions the project's socio-economic objectives or its importance for the development of employment around the Baltic Sea.

2.7 Annex 2 is vital as it establishes the bodies that manage the BONUS-169 project. Point 4 creates a consultative committee composed of scientists of high international standing, representatives of sectors of stakeholders and of civil society with an interest in these sectors. It is within this framework that representatives of employees and employers, NGOs and associations will have observation, monitoring and proposal rights as regards the BONUS-169 project.

2.8 This is a long-term programme, and its duration could correspond to that of the implementation of joint measures.

2.9 The twelfth recital of the decision indicates that the BONUS-169 initiative 'cross-cuts a number of related Community research programmes on a range of human activities having accumulated impacts on the ecosystem such as fisheries, aquaculture, agriculture, infrastructure, transport, training and mobility of researchers as well as socio-economic issues'.

2.10 Establishing the programme in two phases should 'ensure the effective use and uptake of results for policy and resource management arrangements across a wide array of economic sectors'.

<sup>(1)</sup> COM(2009) 610 final, pt. 1.4.



2.11 Likewise, the impact assessment mentions the economic and social impact in its assessment of the possible economic, environmental and social effects (point 5, which is however particularly limited on social and environmental aspects). Some options would make it possible to assist 'other economic sectors such as maritime infrastructure, mining, and windmill parks, transport, fishing, oil, gas and telecommunication companies to adopt more environmentally-friendly, ecosystem-based, operations'. This point of the analysis remains seriously inadequate (underdeveloped), but it indicates clearly the general focus of the programme's strategic phase.

2.12 The three projects to be chosen and implemented by EEIG BONUS must certainly take account of the social and human challenges of climate change in the coastal areas of the Baltic Sea. The latter is likely to cause population movements with social consequences for employment that must be anticipated, as stated by the EESC own-initiative opinion on *The sustainable development of coastal areas* of 13 October 2009. The labour regulations of certain sectors of activity such as fisheries and maritime transport might change. The European Commission must take account of these factors and provide for a section on training and retraining in its evaluation and guidance of projects, with the support of civil society stakeholders and the EESC.

2.13 The EU will deal directly with BONUS EEIG, the Baltic Organisations Network for Funding Science, established in Helsinki, Finland, which is the dedicated implementing structure of BONUS-169 and will be in charge of allocating, administering, monitoring and reporting on the use of the Community contribution and the Member State cash contributions.

2.14 The BONUS-169 programme will be managed by BONUS EEIG through its secretariat. BONUS EEIG must establish the following structures for the purposes of the programme: Steering Committee, Secretariat, Advisory Board, Forum of Sector Research, and the Forum of Project Coordinators.

2.14.1 The Advisory Board will assist the Steering Committee and Secretariat. It will be composed of scientists of high international reputation, representatives of relevant stakeholders, including for example, tourism, renewable energies, fisheries and aquaculture, maritime transport, biotechnology and technology providers and including both industry and civil society organisations with an interest in these sectors, other integrated Baltic research programmes and other European regional seas.

2.14.2 It will provide independent advice, guidance and recommendations, regarding scientific and policy-related issues of the BONUS-169 programme. That includes advice on the objectives, priorities and direction of the BONUS-169 programme, ways of strengthening the performance of

BONUS-169 and delivery and the quality of its research outputs, capacity building, networking, and the relevance of the work to achieve the objectives of BONUS-169. It will also assist in the use and dissemination of the results of BONUS-169.

2.14.3 Furthermore, the BONUS Advisory Board comprising a spectrum of stakeholders such as HELCOM, ICES, DG MARE, WWF, and Finnish Farmers Association also played a pivotal role in the preparation of the BONUS-169 Science Plan and Implementation Strategy.

2.15 The revised BONUS-169 Outline Research Agenda submitted to DG RTD in June 2009 is largely based on the work and consultations carried out for the original BONUS-169 initiative.

2.16 It is foreseen that an extensive and strategically-driven programme of stakeholder consultations will be carried out during the strategic phase of the programme addressing stakeholders from other relevant sectors such as agriculture, fisheries, aquaculture, transport and water-management.

## 2.17 The Stakeholder Consultation Platforms

2.17.1 On the basis of a comprehensive analysis of the BONUS-169 relevant stakeholders in local, national, regional, and European contexts, Stakeholder Consultation platforms and mechanisms will be established aiming at strengthening and institutionalising the involvement of stakeholders from all relevant sectors for the identification of critical gaps, the prioritisation of research themes and the enhancement of research output uptake. This will include participation of scientists, including from other relevant non-marine natural sciences and from social and economic science disciplines, to ensure the required multi-disciplinarity in developing the Strategic Research Agenda, its strategic vision and research priorities.

2.17.2 A Forum of Sector Research (a body of representatives from ministries and other actors dealing with Baltic Sea System research and governance) will be established as a permanent body in support of the programme, responsible for discussing the programme's planning, outcomes and emerging research needs from the decision-making perspective. This forum will promote progress towards pan-Baltic integration of research, especially the joint use and planning of infrastructure; it will also help to highlight research needs, promote use of the results of research and promote integration of financing.

## 2.18 The challenges of sustainable impact assessments:

2.18.1 Sustainable impact assessments (SIAs) are a key policy tool for measuring the consequences of policies and measures on the three pillars of sustainable development (economic, social and environmental).

2.18.2 These SIAs have been conducted and employed by the European Commission above all in the framework of trade agreement negotiations (but also less formally in the framework of negotiations prior to the adoption of the European Reach regulation and directives under the European climate-energy package) and they represent a substantial challenge for consultation and taking account of the positions and requirements of civil society stakeholders.

2.18.3 A set of indicators has been established to support the SIAs:

- for the economic pillar, indicators from the World Bank and the UN Commission on Sustainable Development (CSD);
- for the social pillar including decent work, indicators from the CSD and the ILO;
- and for the environmental pillar, indicators from UNDP, the European Environment Agency and the CSD;

2.18.4 A European Commission communication <sup>(2)</sup> on SIAs introduced a complete framework for impact assessments in all areas of work undertaken by the European Commission, particularly trade negotiations and agreements. In March 2006, a methodological guide put together by DG External Trade formalised the SIAs on the negotiation and implementation of trade agreements between the European Union and third countries.

2.18.5 These SIAs could be used in an approach that consults the significant and representative stakeholders from civil society.

### 3. General remarks

3.1 In 2009, the EESC believed it was necessary to simplify the planned management arrangements. It proposed therefore, in its exploratory opinion on Macro-regional cooperation – Rolling out the Baltic Sea Strategy to other macro-regions in Europe <sup>(3)</sup>, establishing a Baltic Sea Civil Society Forum in order to facilitate public debate and raise public awareness of the strategy's implementation.

3.2 In a process of overall macro-regional governance, it is essential to provide information on projects and carry out assessments of the impact of projects on populations and employment. It is necessary to involve and create cross-border networks among sister organisations in various countries, such as trade unions, consumer associations and local and voluntary organisations in order to create a civil society that is competent in terms of the socio-economic issues linked to the Baltic Sea. The general public and workers should be the beneficiaries of the fruits of research projects. It is necessary to anticipate devel-

opment needs in terms of training, particularly as regards the changes that will affect the region in the near future - consequences of the current state of resources and of global warming.

3.3 Point 2.2.2 of the Communication on stakeholders does not stipulate the nature of these stakeholders, except the emphasis on the participation of researchers. This point should mention the importance of civil society in the implementation of these stakeholder platforms, including the useful role of the EESC's European social partners as well as the European sectoral social dialogue committees concerned by the BONUS-169 programme.

3.4 The useful role of the European social partners should be recognised in the system of managing the BONUS-169 programme.

3.5 In order to optimise the role of the social and civil partners, it would be useful to train their representatives in the work of consultation platforms, included under a budget heading.

### 4. Further comments

4.1 This is a programme designed to promote research into the de-pollution of the Baltic Sea and the international coordination of researchers.

4.2 It is quite clear therefore that this research programme has very direct implications for:

- the economic and industrial fabric of the region;
- sectoral developments (intra and inter-sectoral);
- the types of employment, and the necessary skills, with the long-term likelihood that some workers will have to change careers or face extensive changes.

4.3 The EESC makes the following proposals, which have two objectives:

- that the BONUS-169 programme takes account of the social impact, and the impact on jobs, the requirements for new skills and the redundancy of other skills currently used; and if possible that these effects are anticipated (forecast, and measures to redirect some people into new careers);
- that measures to promote positive effects and mitigate negative ones are established in cooperation with representatives of civil society.

<sup>(2)</sup> COM(2002) 276 final.

<sup>(3)</sup> OJ C 318, 23.12.2009, p. 6.

4.4 In order to satisfy the two abovementioned objectives, the proposal would be twofold:

- a) to fully integrate economic and social representatives;
- b) to carry out the impact assessment not using the Commission's internal impact assessment model, but rather the SIA model (with some improvements).

4.4.1 To fully integrate economic and social representatives (a)

- to integrate the European and national social partners from 'participating countries', as mentioned above, into the sectoral research forum;
- but also to provide certain clarifications on the 'consultation mechanisms' of the stakeholders' consultation platform: simply creating an internet link or providing periodic information will not have any impact:
- if everyone speaks at once no-one will be heard – society's voice needs to be organised;
- the establishment of a limited working group of social and economic partners could be proposed which would work in concert and add another voice to that of the researchers;
- it would even be possible to go further and suggest that the working group act as a reference point for the establishment of an impact assessment (participation in the study steering committee) and produce an advisory opinion for the European Commission. The impact

study must be publicised, with reports made public in the 'participating countries'.

4.4.2 To carry out the impact assessment not using the Commission's internal impact assessment model, but rather the SIA model (b)

- suggest that the impact assessment is indeed an assessment of the impact on sustainable development and incorporate social, economic and environmental elements;
- in particular, not to forget to include elements associated with economic and industrial changes, and employment transitions; for example, the study could include elements such as:
  - mapping of jobs around the region;
  - identification of jobs at risk (those which might disappear) and jobs with strong potential for growth, on the basis of different research agendas;
  - identification of capacities in terms of skills development: levels of knowledge, possibilities for adapting to new knowledge/know-how, existence of local learning/training channels;
  - integration of jobs linked to a restructured and future-oriented industry;
- these elements underpin regional job and skills forecast management <sup>(4)</sup>, and cannot be carried out in isolation among researchers.

Brussels, 29 April 2010.

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

---

<sup>(4)</sup> Job and skills forecast management provides for better anticipation of the adaptation of skills to jobs, a better knowledge of the consequences of technological and economic changes, better synthesis of the factors underpinning competitiveness, qualification-based organisation and development of workers' skills, better career management, reduction of the risks and costs linked to imbalances, better selection and programming of necessary adjustment measures (source: [www.wikipedia.org](http://www.wikipedia.org)).

**Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council concerning European Union financial contributions to the International Fund for Ireland (2007-2010)'**

COM(2010) 12 — 2010/0004 (COD)

(2011/C 18/21)

Rapporteur-general: **Mr SMYTH**

On 19 February 2010 the Council of the European Union and on 18 February 2010, the European Parliament, decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union (TFEU), on the

*Proposal for a Regulation of the European Parliament and of the Council concerning European Union financial contributions to the International Fund for Ireland (2007-2010)*

COM(2010) 12 — 2010/0004 (COD).

On 16 February 2010 the Committee Bureau instructed the Section for Economic and Monetary Union and Economic and Social Cohesion to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Smyth as rapporteur-general at its 462nd plenary session, held on 28 and 29 April 2010 (meeting of 29 April 2010), and adopted the following opinion by 103 votes to 1 with 3 abstentions.

## 1. Conclusions

1.1 The EESC notes that the Commission's proposal for a Regulation governing the European Union's contributions to the International Fund for Ireland (period 2007 to 2010) has been now based on Articles 175 and 352(1) of the TFEU, thus complying with the decision of the European Court of Justice of 3 September 2009 in case C-166/07.

1.2 The EESC approves the aforementioned proposal.

## 2. Reasons and recommendations

2.1 The International Fund for Ireland (hereafter IFI) was set up in 1986 by the UK and Irish Governments with a view to

*'promote social and economic advance and to encourage reconciliation between nationalists and unionists on the island of Ireland'*. The European Union has been one of the main donors, alongside the US, Canada, Australia and New Zealand, of the EUR 849 million that has supported over 5 700 projects in Northern Ireland and the border counties of Ireland for over 20 years.

2.2 The EESC has, in its own-initiative opinion **The role of the EU in the Northern Ireland peace process** <sup>(1)</sup>, underlined the importance of the IFI and supports rapidly rectifying the legal basis upon which the EU's financial contributions to the IFI are governed for the period 2007-2010 in the light of ECJ court case C-166/07.

Brussels, 29 April 2010.

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

---

<sup>(1)</sup> OJ C 100 of the 30.4.2009, p. 100, point 6.4.8.







<u>Notice No</u>	Contents (continued)	Page
2011/C 18/16	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on alternative investment fund managers and amending Directives 2004/39/EC and 2009/.../EC' COM(2009) 207 <i>final</i> — 2009/0064 (COD) .....	90
2011/C 18/17	Opinion of the European Economic and Social Committee on the '25th Annual report from the Commission on monitoring the application of Community law (2007)' COM(2008) 777 <i>final</i> .....	95
2011/C 18/18	Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the enforcement of the consumer <i>acquis</i> ' COM(2009) 330 <i>final</i> .....	100
2011/C 18/19	Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee — Enhancing the enforcement of intellectual property rights in the internal market' COM(2009) 467 <i>final</i> .....	105
2011/C 18/20	Opinion of the European Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council on the participation by the Community in a Joint Baltic Sea Research and Development Programme (BONUS-169) undertaken by several Member States' COM(2009) 610 <i>final</i> — 2009/0169 (COD) .....	109
2011/C 18/21	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council concerning European Union financial contributions to the International Fund for Ireland (2007-2010)' COM(2010) 12 — 2010/0004 (COD) .....	114

## 2011 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 100 per year
EU Official Journal, L + C series, paper + annual DVD	22 official EU languages	EUR 1 200 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 770 per year
EU Official Journal, L + C series, monthly DVD (cumulative)	22 official EU languages	EUR 400 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, DVD, one edition per week	multilingual: 23 official EU languages	EUR 300 per year
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual DVD.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

### Sales and subscriptions

Subscriptions to various priced periodicals, such as the subscription to the *Official Journal of the European Union*, are available from our sales agents. The list of sales agents is available at:

[http://publications.europa.eu/others/agents/index\\_en.htm](http://publications.europa.eu/others/agents/index_en.htm)

**EUR-Lex (<http://eur-lex.europa.eu>) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.**

**For further information on the European Union, see: <http://europa.eu>**



Publications Office of the European Union  
2985 Luxembourg  
LUXEMBOURG

EN