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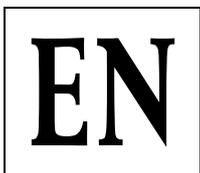
Information and Notices

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III

(Preparatory Acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

432nd PLENARY SESSION HELD ON 17 AND 18 JANUARY 2007

Opinion of the European Economic and Social Committee on the Proposal for a Decision of the European Parliament and of the Council establishing a Community programme to improve the operation of taxation systems in the internal market (Fiscalis 2013)

COM(2006) 202 final — 2006/0076 (COD)

(2007/C 93/01)

On 23 June 2006 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 December 2006. The rapporteur was **Mr Burani**.

At its 432nd plenary session, held on 17 and 18 January 2007 (meeting of 17 January 2007), the European Economic and Social Committee adopted the following opinion by 153 votes to two with three abstentions.

1. Conclusions and recommendations

1.1 The EESC is broadly in agreement with the document presented by the Commission, but has a few comments to make and a few reservations about aspects it believes need to be clarified.

1.2 With regard to training, the comments concern the efficacy of the actions undertaken hitherto: it appears that holding seminars at Community level provides poor value for money, which raises the question whether it would be more appropriate to concentrate more on training efforts at national level involving experts trained by the Commission. Training the trainers should thus become the keystone of the Community programme.

1.3 The reservations concern the unclear aspects surrounding the provision of data to public bodies other than tax authorities: the conditions and arrangements for access to data by these bodies have not been clarified and give some cause for concern, in particular as regards privacy. The aspect of ownership and availability of data should also be clarified. Similarly, nothing is said about the criteria for determining the costs to be passed on to third parties who request data.

2. Introduction

2.1 Customs and tax administrations play a key role in carrying out checks at external borders and protecting the EU's financial and other interests. In the light of the new challenges and of the changes that are taking place, it is essential to make improvements and promote developments, especially in IT. This communication sets out a Community programme to improve the operation of taxation systems in the internal market (Fiscalis 2013).

2.2 The operational costs to be borne by the Community can be broken down into two main categories: Joint Actions and IT Actions. Joint actions include seminars, project groups, working visits, multilateral controls and training, whilst IT actions cover the functioning and evolution of existing trans European systems and the development of new systems. The total amount to be borne by the Community's budget is EUR 156.9 million for the 2008-2013 period. The 2013 programme is a six year programme aligned with the duration of the financial perspectives 2007–2013.

2.3 The preamble of the mid-term evaluation document ⁽¹⁾ of the 2007 programme pays particular attention both to candidate countries, who are able to benefit from practical measures to enable the tax administrations of those countries to undertake the full range of tasks required under Community legislation as of the date of their accession, and to countries participating in the European neighbourhood policy, who will be invited, under certain conditions, to participate in selected activities of the programme.

2.4 The said mid-term evaluation has confirmed the need for organising in a more structured way the information sharing and knowledge exchange between administrations, between administrations and the Commission as well as the consolidation of knowledge created during programme events. Therefore, particular attention should be paid to these aspects.

3. Content of the proposal for a decision

3.1 After a brief introduction to the Fiscalis 2013 programme, defining its terms and content, the document sets out the following **objectives**:

- a) in respect of value added tax, excise duties and taxes on income and on capital:
 - i) to secure efficient, effective and extensive information exchange and administrative co-operation;
 - ii) to enable officials to achieve a high common standard of understanding of Community law and of its implementation in Member States;
 - iii) to ensure the continuing improvement of administration procedures to take account of the needs of administrations and taxable persons through the development and dissemination of good administrative practice;
- b) in respect of taxes on insurance premiums, to improve cooperation between administrations, ensuring better application of the existing rules;
- c) in respect of candidate and potential candidate countries, to meet the special needs of those countries as regards tax legislation and administrative capacity;
- d) in respect of third countries, in particular those participating in the European Neighbourhood policy, to improve cooperation with the tax administrations of those countries.

3.2 In order to achieve these objectives, the Commission is annually to establish a work programme. This programme will be based on the operation of the communication and information exchange systems, which the Commission will provide to all participating countries. The communication and information exchange systems will comprise various common networks and systems (CCN/CSI, VIES, EMCS, etc.). The non-Community components of the said systems will comprise the national databases forming part of these systems, the network connections between the Community and non-Community components and

⁽¹⁾ Commission staff working paper — Mid-term evaluation of the Fiscalis 2007 programme (SEC(2005) 1045), available in German, English and French.

such software and hardware as each participating country deems appropriate for the correct operation of those systems throughout its administration. The participating countries are to ensure that the non-Community components are kept operational and are interoperable with the Community components. For its part, the Commission is to coordinate, in cooperation with the participating countries, aspects relating to the establishment and functioning of the Community and non-Community components of the systems and infrastructure.

3.3 The Commission and the participating countries are to organise joint seminars and project groups and ensure the dissemination of the outcome of these. The participating countries, for their part, are to organise working visits for their officials. The Commission, in cooperation with the participating countries, is to develop the systematic and structured sharing of information resulting from programme activities.

3.4 The expenditure necessary for the implementation of the programme is to be shared by the Community and the participating countries.

The Community is to bear the following expenditure:

- a) the cost of the acquisition, development, installation, maintenance and day-to-day operation of the Community components of the communication and information exchange systems (set out in Article 6(3));
- b) the travel and living expenses incurred by officials from the participating countries relating to multilateral controls, working visits, seminars and project groups;
- c) the organisational costs relating to seminars, as well as travel and living expenses incurred for the participation of external experts and participants (referred to in Article 11);
- d) the cost of the acquisition, development, installation and maintenance of training systems and modules insofar as they are common to all participating countries;
- e) the costs of any other activity referred to in point f of Article 1(2).

The participating countries are to bear the following expenditure:

- a) cost of the development, acquisition, installation, maintenance and the day-to-day operation of the non-Community components of the communication and information exchange systems (set out in Article 6(4));
- b) costs relating to the initial and continuing training, including linguistic training, of their officials.

3.5 As regards monitoring, it is mentioned — without any details being given — that the programme is to be subject to continuous joint monitoring by the participating countries and the Commission. Mid-term and final evaluations of the programme are also provided for.

4. Introduction: main guiding principles of the programme

4.1 The document put forward by the Commission is simply the fulfilment of the commitment made to the European Parliament and the Council under Article 15(4)(a) of the *Fiscalis* 2003-2007 decision. On the basis of that commitment, the Commission adopted a communication (COM(2005) 111, 6 April 2005), which stated that it would be appropriate to launch two programmes, *Fiscalis* 2013 and *Customs* 2013, both aimed, under the respective competences, at continuing the two existing programmes *Fiscalis* 2003-2007 and *Customs* 2007. This EESC document comments on the *Fiscalis* programme; a separate opinion deals with the *Customs* programme.

4.2 The 2013 programme, which runs for the period 2008-2013, does not introduce anything significantly new in comparison with the current programme. Instead, it is aimed at improving its efficiency along lines inspired by the relaunch of the Lisbon strategy; thus, its purpose is to **continue and develop cooperation among tax authorities** of Member States (and those about to accede) in pursuing the goals set in the initial programme:

- ensuring common application of *Community* tax legislation;
- the protection of *national* and *Community* financial interests;
- the smooth functioning of the internal market through the combating of tax avoidance and evasion;
- the avoidance of distortions of competition;
- reducing the burden of compliance on authorities and taxpayers.

4.3 The Commission document was drawn up following in-depth analyses of the current situation, based inter alia on visits to various Member States and contacts with authorities, experts and taxpayers. The result is that the 2013 programme is set up as **an extension of the 2007 programme reinforced with additional financial resources** to support new policy initiatives on the one hand and to foresee a marginal increase of the budget of all other sub-headers on the other hand'. The EESC agrees with this decision.

4.4 **As stated in point 2.2, the total cost** of the 2008-2013 programme is EUR 168.47 million; the **operating costs** to be covered by the EU budget make up the bulk of this (EUR 156.9 million). These latter are subdivided into two main categories: Joint Actions and IT Actions. Joint Actions cover seminars, project groups, working visits, multilateral controls, training, and any other activities necessary to achieving the objectives. IT actions cover the functioning and evolution of existing trans-European systems and the development of new systems.

5. General comments

5.1 The EESC can only agree that there is a need to continue the *Fiscalis* programme along the same broad lines as before; it therefore supports the Commission's initiative, not least because it is confident that **some aspects will be improved**, in particular those relating to the efficacy of joint training courses and to the use of languages. Moreover, the Commission itself has highlighted these deficiencies in a document ^(?) that also contains suggestions as to how to resolve them.

5.2 There are two main types of **training**: one at Community level, financed out of the EU budget, and the other at national level, generally financed by the individual Member States concerned. The term 'training' includes training in the strict sense of the word (i.e. instruction in clearly specified subjects of a technical, legal or administrative nature under the guidance of specialists in each subject), **seminars** (generally of a multi-disciplinary nature and with the participation of officials from more than one country), and **staff exchanges** (of individuals or in groups).

5.3 In the document mentioned in point 5.1 above, the Commission provides a detailed report on the initial results of the **training programmes**. The picture that emerges from this is fairly satisfactory; the document is honest enough not to gloss over various **gaps and deficiencies**, and sketches out possible ways to eliminate or reduce the problems. That said, things could not really be otherwise if everything is taken into consideration: the complexity of the programme, the number of Member States involved, the diversity of existing systems, the varying levels of experience and organisation of national authorities, and not least the large number of languages — this latter being an obstacle that is common to all EU programmes and is often underestimated. The main problem remains that of **setting a common minimum standard of knowledge and professional skills** measurable within minimum parameters acceptable and applicable to all Member States.

5.4 As stated in point 3.5, **the Commission will monitor the proper implementation of the programmes**; the EESC believes that **it is especially important that the proper implementation of common standards** and full awareness of Community values are monitored. **Such checks are essential**, not just because it must be ensured that Community funds have been properly spent in accordance with the general principles of public accounting, but also because it cannot be left to the Member States alone to determine the standard of training for their own officials.

5.5 **Given the complexity of the subject matter, the EESC will refrain from making suggestions, but will simply express a few — hopefully objective — thoughts**, without worrying about whether or not these are politically correct.

^(?) See footnote 1.

5.5.1 First of all, it is well known that the level of professional skills and experience of national officials varies considerably from one Member State to another. It is therefore extremely difficult to envisage a common training module using **seminars** open to a wide range of participants. Linguistic diversity adds a further concern: the impression gleaned from listening directly to the speaker in his own language is one thing; the effectiveness of hearing the message via an interpreter is quite another. Moreover, audiovisual aids (slides, diagrams, acetates, etc.) cannot be seen in the participants' languages — and the importance of visual memorisation of messages is well known. In conclusion, one might wonder whether such seminars — whose organisation is expensive in terms of human and financial resources — should perhaps be **reduced to a minimum** or at least postponed until the programme is more mature. The savings this would bring, in terms of money and human resources, could perhaps be used to **finance** — at least in part — **training at national level** in relatively disadvantaged countries, in particular those that recently joined the EU.

5.5.2 In the Commission's evaluation document, there is no mention of what appears to be a fundamentally important element: **training at EU level of national trainers**. This should be the **keystone of the whole system**: only a trainer who speaks the participants' language can ensure that the message gets across efficiently, and above all that the *discussions*, a key part of the training, are effective. Above all, however, *only a national trainer is able to adopt a teaching method for the transition of his own national system, of which he needs an in-depth knowledge, to the Community system*. The selection of persons qualified for this task should be left to individual national authorities. A high level of expertise and teaching ability should be essential prerequisites; the same applies to the people who will have to take care of EU training of national trainers. Finally, experts believe that this kind of training cannot be done through short seminars: there need to be courses lasting at least a couple of months.

5.6 An important and entirely different aspect is that of **connecting the Fiscalis system** — in particular the part concerning VAT and excise duties — **with the Customs 2013 system**. In its opinion on the *Proposal for a Decision of the European Parliament and of the Council on the implementation of a paperless environment for customs and trade programmes* ⁽³⁾, the EESC drew attention to the second recital of the proposal for a decision of the EP and the Council ⁽⁴⁾: 'The pan-European eGovernment action ... requires measures to increase the **efficiency** ...

⁽³⁾ EESC opinion on Paperless environment for customs and trade , OJ C 318, 23.12.2006, p. 47, point 2.5.

⁽⁴⁾ Proposal for a Decision of the European Parliament and of the Council on the implementation of a paperless environment for customs and trade programmes (COM(2005) 609 final).

to help combat fraud, organised crime and terrorism'. That opinion emphasised that a structural link between the files of customs and VAT administrations could be useful for detecting fraud concerning goods imported from third countries, in particular counterfeiting of origin marking.

5.6.1 In the Fiscalis programme, there is no mention of any structural link between Fiscalis files and those managed by other authorities: only in the fifth recital of the proposal for a decision does it say that 'it should be possible to include in the programme further tax related information exchange systems such as the Excise Movement Control System (EMCS)', but this obviously only refers to information exchanged between tax authorities.

5.6.2 In the opinion mentioned in point 5.6, the EESC also mentioned the recommendation by the EP and the Council ⁽⁵⁾, which set out a series of measures 'securing police, customs and judicial cooperation' so as to facilitate the implementation of the **Hague Programme** ⁽⁶⁾ on **EU security**, including the fight against trafficking in restricted or prohibited goods. The link mentioned in the previous point would make possible, via customs services, checks that are currently not possible. This would be a way for tax authorities to make an indirect contribution to the Hague Programme. The EESC is well aware that, with the programmes already in progress and with procedures that are now well established, it is no longer possible to carry out a project of that kind. All that remains is to recommend that it should be borne in mind that **structural links between the EU's and Member States' various databases** should be part of the EU's *strategic programmes*, not just for the purposes of security, but also for those of numerous other economic and social policy objectives.

6. Specific comments

6.1 **Article 3: Participation in the programme**. The programme is open to Member States, candidate countries and 'potential' candidates, as well as to certain partner countries of the European neighbourhood policy, on the condition that these have reached a sufficient level of approximation of the relevant legislation. The aim of that provision is certainly laudable and consistent with the objective of creating as large a 'tax area' as possible. However, the EESC does wonder whether the project might be too ambitious, given the resources available and the difficulties in implementation already encountered, which would increase if more participants were included.

⁽⁵⁾ Communication from the Commission to the Council and the European Parliament: Area of freedom, security and justice: Assessment of the Tampere programme and future orientations COM (2004) 401 final.

⁽⁶⁾ Communication from the Commission to the Council and the European Parliament: The Hague Programme: Ten priorities for the next five years — The Partnership for European renewal in the field of Freedom, Security and Justice (COM(2005) 184 final)

6.2 Article 6: Communication and information-exchange systems. The **Community components** of the system are limited to hardware, software and network connections shared by all the participating countries. Everything else (databases, network connections between the Community and non-Community components, hardware and software for the operation of individual systems) is considered as constituting the **non-Community components**.

6.2.1 The classification mentioned in the previous point seems proper; however, some concern is aroused by the rule in **Article 6(6)**, according to which 'the Commission may make the communication and information exchange systems available to other public services for tax or non-tax purposes provided that a financial contribution is paid to the programme budget'. **The word 'other' seems somewhat ambiguous: the Commission has a duty to specify which public administrations would be authorised to obtain information, with what guarantees and what checks. The EESC suggests that, in order to eliminate any doubt, it should be specified that information can only be supplied within the scope of the plan for judicial cooperation and with the guarantees provided by the applicable rules, and always in accordance with the rules on privacy.**

Brussels, 17 January 2007.

6.2.2 The EESC believes that this provision should be made clearer: at first reading, it does not appear that the Commission has the power to disclose to third parties — whoever they may be — information that is certainly the property of each Member State if said information is contained in the databases of that country; on the other hand, if we are talking about information that is in the Commission's immediate possession, this raises the question of whether the Commission can make use of it freely without the consent or knowledge of the Member States. In other words: do data sent to the Commission, or collated by it on the basis of communications from Member States, automatically become the property and the business of the Commission? **What criteria are used to determine the costs to be passed on to requesting third parties, and to whom does the money thus acquired belong? And, in any case, can the data in the Commission's possession be passed on to third parties without the relevant Member States being informed, either beforehand or afterwards? The EESC believes that these questions are of fundamental importance, and that the Commission should answer them in a way that clarifies its position without leaving any room for doubt.**

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the Impact and consequences of structural policies on EU cohesion

(2007/C 93/02)

On 20 July 2006 the European Parliament decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Economic Community, on the *Impact and consequences of structural policies on EU cohesion*.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 December 2006. The rapporteur was Mr Derruine.

At its 432nd plenary session, held on 17 and 18 January 2007 (meeting of 18 January 2007), the European Economic and Social Committee adopted the following opinion by 164 votes to two, with one abstention.

1. Conclusions and recommendations

1.1 This exploratory opinion is in response to the letter from the European Parliament President of 20 July 2006, requesting the EESC's input into the EP's report on the impact and consequences of structural policies on EU cohesion.

1.2 The EESC points out that, as laid down in the Treaty (Articles 2, 158 and 159), all policies are required to contribute to the objective of cohesion, which must not be solely dependant on structural policies. This message was underlined by the European Council of March 2006.

1.3 In the Committee's view, cohesion should not be understood solely in terms of GDP. It therefore calls for a *'more representative indication of cohesion [which should include] in addition to GDP, parameters such as employment and unemployment levels, the extent of social protection, the level of access to general interest services etc.'*

1.4 Measures taken to strengthen cohesion, including its territorial dimension, should be given more prominence in the Lisbon Agenda national reform programmes and the Community Lisbon Programme, as well as in the Commission's impact analyses and proposed integrated guidelines.

1.5 The Structural and Cohesion Funds effectively amounted to an early incarnation of the Lisbon Strategy, in all of its dimensions: growth, cohesion, more and better jobs, environmental sustainability, etc. They helped consolidate the European social model.

1.6 The Funds have had an undoubted impact, helping the least favoured countries/regions to catch up in terms of employment, growth and infrastructure; they created a leverage effect, established the (still developing) principle of grassroots partnership, helped to impose discipline on local authorities and to raise the EU's profile.

1.7 Structural policy also bolsters the internal market by means of the trade and jobs generated from the conception and implementation of Structural Fund-based projects which, moreover, would often never have come about without the catalyst effect of EU intervention.

1.8 Despite this, the EESC points out that the general consensus that previously existed to develop structural policy (instruments, appropriations, etc.) in tandem with the internal market and EMU has broken down in recent years.

1.9 Over time, a zone known as the *pentagon*, taking in London, Hamburg, Munich, Milan and Paris, has emerged, comprising 20 % of the EU's surface area, 40 % of its population and 50 % of its wealth, and has acted as a driving force for the other EU regions. In light of recent and planned enlargements, we should consider developing other dynamic regional hubs throughout the whole EU area.

1.10 Infrastructure would be needed to interconnect these hubs and link up their urban centres and outlying rural areas. However, budget cuts agreed under the financial perspectives and the constraints imposed by the Stability and Growth Pact make such modernisation more difficult.

1.11 The EESC believes that consideration should be given to the budgetary criteria laid down by the Stability and Growth Pact, and to their impact on the funding of trans-European networks, and specifically on the missing sections, in view of the fact that projects eligible for EU funding need to be co-funded by national governments.

1.12 The Committee reiterates its proposal for the financial engineering of the Structural Funds to be improved and calls for an end to the practice of refunding unused EU budget appropriations to the Member States, thereby reducing their contribution.

1.13 The EESC repeats its call to the Commission to draw up (1) proposals for organising ways of involving socio-occupational actors in structural policy, which would be binding on the Member States and (2) indicators on the consultation process in the Member States. It believes that the Member States should explain, in any case, how they organise feedback on how the partnership principle is implemented in the context of the monitoring committees.

1.14 The EESC asks for the support of the European Parliament to ensure that this opinion is duly taken into account when the Commission presents its EU budget reform document in 2008/9 and in future reflection on the EU's future and the contribution of regional policy.

2. Cohesion in the Treaties

2.1 Back in 1957, the Treaty of Rome set the objective of *'reducing the differences existing between the various regions and the backwardness of the less-favoured regions'*. Amsterdam specified *'balanced and sustainable development as one of the basic principles of the European Community'*. This is also laid down in Article 158: *'In order to promote its overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion. In particular, the Community shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas'*.

2.2 Article 159 stipulates that *'Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article 158. The formulation and implementation of the Community's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 158 and shall contribute to their achievement. The Community shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing financial instruments'*.

2.3 At this point, it is important to emphasise that, as laid down in the Treaty, all policies are required to contribute to the objective of cohesion, which must not be solely dependant on structural policies. This message was underlined by the European Council of March 2006 ⁽¹⁾.

2.4 Before proceeding, it may be helpful to establish what is meant by *cohesion*. This term is often understood in terms of per capita GDP. However, in its opinion on *The contribution of other Community policies to economic and social cohesion* ⁽²⁾, the Committee called for *'a more representative indication of cohesion [which should include] in addition to GDP, parameters such as employment and unemployment levels, the extent of social protection, the level of access to general interest services etc.'*

2.5 The draft Constitutional Treaty broke new ground by enshrining the *territorial* dimension of cohesion policy. This aspect of cohesion has been neglected to date, despite the adoption of a European Spatial Development Perspective (ESDP), whose experience is, in fact, very instructive; it should be updated under the German Presidency to take account of recent and planned enlargements.

2.6 In line with the conclusions of the informal Council meeting on territorial cohesion ⁽³⁾, the territorial dimension should therefore be incorporated in the Lisbon Agenda national reform programmes as well as in the Community Lisbon Programme. It should also be given greater consideration by the Commission in both its integrated guidelines and its impact analyses, which have so far focused primarily on competitiveness, to the detriment of other issues.

3. The purpose and nature of structural policies

3.1 When they drew up the Treaty of Rome in 1957, the six founding members were aware that to achieve economic integration, the strategic coal and steel industries would have to be restructured. This led them to establish the European Social Fund (ESF) which aimed to mitigate the effects of such industrial change by funding recruitment and training schemes.

3.2 The European Regional Development Fund (ERDF) was set up in 1975, following the first wave of enlargement, which saw the accession of a group of countries that were poorer than the founding members, and following the oil crises and the ensuing economic fallout. It was founded following a specific request from the UK, which was then in the throes of major industrial restructuring. Revised in 1988 (and further developed in 1994), the ERDF was intended to supplement the ESF and the EAGGF — Guidance section by providing financial aid to less-developed regions through productive investment to create and safeguard sustainable jobs, investment in infrastructure, aid for SMEs, transfer of technology, development of financing instruments, direct aid to investment and aid for local services.

3.3 The mid 1980s were marked by the accession of young democracies in need of strengthening. The EUs' political leaders were keen for those countries to attain the same level of development as the existing Member States and were prepared to step up their financial solidarity accordingly by doubling appropriations for the Structural Funds (as well as for the EAGGF — Guidance section, former Objective 5b). Economic and social cohesion became a new Treaty objective and regional policy expenditure was doubled in order to facilitate their convergence. The idea that such catching-up would be achieved without social dumping but by adhering to the Community *acquis* and implementing regional development programmes involving the social partners was central to their vision. It was also recognised that the *laissez-faire* approach to market forces would not by itself create the cohesion sought by the founding fathers and that achieving such cohesion would necessitate public intervention aimed at redressing the balance between the regions. From 1988 on, cohesion policy came into effect, with the aim of reducing disparities between the levels of development of the EU's regions. It aimed to offset the tensions and disparities arising from efforts at national level to comply with the rules of EMU.

⁽¹⁾ Paragraph 70.

⁽²⁾ OJ C 10 of 14.1.2004, p. 92.

⁽³⁾ Presidency conclusions, EU Informal Ministerial Meeting on Territorial Cohesion, 20/21.05.2005 (cf. §2.3 *et seq.*).

3.4 It should be clear from the previous paragraphs that the Structural and Cohesion Funds effectively amounted to an early incarnation of the Lisbon Strategy, in all of its dimensions: growth, cohesion, more and better jobs, environmental sustainability, etc.

3.5 The Cohesion Fund was set up in 1994. Unlike the ERDF, this fund is directed at countries rather than regions. It is specifically aimed at countries whose GNP per capita is less than 90 % of the EU average and funds environment and transport infrastructure projects.

3.6 When the European Commission was drawing up its proposals on the 2007-2013 financial perspective, Commissioner Barnier warned that given the increased disparities following the 2004 enlargement, resources allocated to structural policy would need to amount to at least 0.45 % of EU GDP, or cohesion would be jeopardised. In the end, expenditure was fixed at 0.37 % of GDP ⁽⁴⁾ — a decision deemed unacceptable by the EESC. The governments were not willing to step up their solidarity towards the new Member States.

3.7 This brief review of the past has shown that up until a few years ago there was a general consensus to develop the Structural Funds (in terms of their remit and their scale) in response to the challenges facing the EU (deepening of the internal market, single currency, enlargement). The EESC points out that this consensus traversed all political groupings involved in decision-making across the EU institutions. The breakdown of this implicit agreement puts in perspective all pompous rhetoric on the importance of the 'European social model'.

4. Impact of the Structural Funds and cohesion

4.1 It is difficult to assess the impact of structural policies on cohesion because of a gap in the Eurostat statistics on GDP and on employment at NUTS-2 and NUTS-3 levels. However, there is generally an interval, possibly of several years or even up to a decade, between the point of investment co-financed by the EU and the point when projects become operational and profitable. This timescale issue does not mean, however, that the Structural Funds are ineffective in the short term.

4.2 *'Between 1994 and 2001, growth of GDP per head in the cohesion countries, even excluding Ireland, was 1 % a year above the EU average [3 % as against 2 %], and the proportion of working-age population in employment in all apart from Greece increased by much more than the average. In Greece, on the other hand, as in Ireland, growth of labour productivity was over twice the EU average over this period and it was also well above average in Portugal.'* ⁽⁵⁾

⁽⁴⁾ Fourth Progress Report on Cohesion, COM(2006) 281, p.10.

⁽⁵⁾ Third report on economic and social cohesion: A new partnership for cohesion: convergence, competitiveness, cooperation (February 2004), p. VIII.

4.3 *'In Spain, GDP in 1999 is estimated to have been some 1½ % higher than it would have been without intervention, in Greece, over 2 % higher, in Ireland, almost 3 % higher and in Portugal, over 4½ % higher. In addition, GDP in the new German Länder is estimated to have been increased by around 4 % as a result of intervention.'* ⁽⁶⁾

4.4 It would be easy to play down the real impact of the Structural Funds by attributing this success to economic conditions, national policy direction, other EU sectoral policies etc. However, the following findings support the theory that structural policy brings real added value in terms of cohesion and convergence.

— *'Each euro spent at the EU level by cohesion policy leads to further expenditure, averaging 0.9 euros, in less developed regions (current Objective 1) and 3 euros in regions undergoing restructuring (current Objective 2).'* ⁽⁷⁾

— With regard to Structural Funds overall, *'The evidence suggests that, on average, around a quarter of structural expenditure returns to the rest of the Union in the form of increased imports, especially of machinery and equipment. This 'leakage' is particularly large in the case of Greece (42 % of expenditure) and Portugal (35 %).'* ⁽⁸⁾

4.5 Despite this evidence, pointing to a gradual convergence in the socio-economic performance of Member States, these comments must be qualified by the fact that this trend is occurring much more slowly at regional level.

4.5.1 *'FDI (Foreign Direct Investment) tends to go disproportionately to the stronger rather than the weaker parts of the Union. Within countries, FDI is generally concentrated in and around large cities, especially national capitals, with very little going to lagging regions.'* ⁽⁹⁾

4.6 Between 2000 and 2004, approximately 3 600 large-scale projects were approved within the framework of cohesion policy, including almost 1 600 involving the European Investment Bank (EIB). With a view to promoting cohesion and the Lisbon/Gothenburg strategy the EIB intervenes in five specific areas: economic and social cohesion, i2i (Innovation 2010 initiative), trans-European networks, protection and improvement of the environment, and support for SMEs. Its input is particularly effective in large-scale high-risk projects (major infrastructure projects, R&D, etc.). The EIB's method of funding innovative programmes also generates a leverage ratio of between 1:3 and 1:6.

⁽⁶⁾ Ibid, p. XIX.

⁽⁷⁾ Community Strategic Guidelines, 2007-2013, COM(2005) 299, p. 8.

⁽⁸⁾ Third report on economic and social cohesion: A new partnership for cohesion: convergence, competitiveness, cooperation (February 2004), p. XIX.

⁽⁹⁾ Ibid, p. XIV.

4.7 Another important point that should be made is that structural policy is not merely limited to helping the EU's regions and countries exploit their development potential by investing in physical and human capital and technologies, in order to mitigate any negative effects of close economic or monetary integration (common interest and exchange rates, liberalisation, increased competition, etc. and the ensuing restructuring and redundancies); it also bolsters the internal market by means of the trade and jobs generated from the conception and implementation of Structural Fund-based projects which, moreover, would often never have come about without the catalyst effect of EU intervention.

4.8 As well as examining the financial element of structural policy, we must also consider other effects of cohesion policy:

- a seven-year financial framework is established, which provides a certain stability and enables planning;
- the grassroots partnerships that arise from Structural Fund projects (though these need further development) ⁽¹⁰⁾;
- the discipline cultivated within local authorities when managing projects partially funded by the EU;

- projects carried out help raise the EU's public profile (even though governments sometimes stand in the way of this by 'forgetting' to mention the source of (at least part of) their funding).

5. A model ill-suited to an expanding Europe?

5.1 While over the last fifty years the European project has seen only minor adjustments, today's Europe now bears little resemblance to the Europe of 1957.

5.2 In the course of fifty years, more than twenty countries have shown an interest in the EU project — often unappreciated and discredited by its existing members — to the extent of requesting membership. Following several waves of enlargement, the EU's surface area has more than tripled and its population has doubled. Its original uniformity (in terms of levels and territorial distribution of socio-economic development) has been diluted and its social, economic and territorial cohesion has been eroded by the accession of generally poorer countries.

	Year of enlargement	EU surface area		Average population density of new Member States	% difference in per capita GDP in PPS between the existing and new Member States	where per capita GDP in PPS=100 before the enlargement, the new Member States bring a change of ... %
		in km ² (000s)	% change from previous enlargement			
EU-6	1957	1 284	—	241,3	—	—
EU-9	1973	1 641	+ 27,7	143,7	17,2	5,72
EU-10	1980	1 773	+ 8,0	84,0	25,0	2,50
EU-12	1986	2 371	+33,7	99,5	37,4	6,23
EU-15	1995	3 243	+36,8	53,8	2,5	0,50
EU-25	2004	4 297	+ 32,5	204,8	49,2	19,68
EU-27	2007	4 646	+ 8,1	80,5	65,5	4,85
EU-29	???	5 486	+ 18,1	87,0	??? (depends on date of accession)	

NB. EU-29 = EU-27 + Turkey + Croatia

Sources:

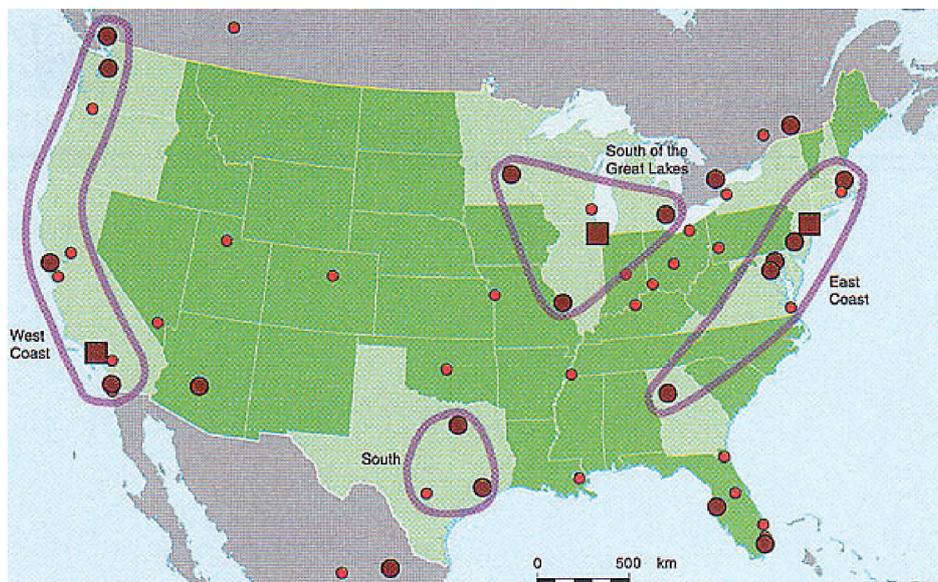
- Economic data: Ameco (re per capita GDP in PPS)
- Geographic and demographic data: United Nations World Population Prospects, 2004
- Own calculations

⁽¹⁰⁾ EESC opinion on *The role of civil society organisations and cohesion policy*, OJ C 309 of 16.12.2006, p.126, and EESC opinion on *Strategic guidelines for cohesion policy (2007-2013)*, OJ C 185 of 8.8.2006, p.52.

5.3 As a result of various factors including its 'historical heritage', a pentagon of economic growth taking in London, Hamburg, Munich, Milan and Paris has emerged as an economic hub comprising 20 % of the EU-15 surface area, 40 % of the total population and generating 50 % of wealth. This backbone of Europe incorporates 7/10 of the EU's decision-making power and over 85 % of its cities have good transport links ⁽¹⁾. This backbone is referred to as a *pentagon*.



Europe: the pentagon



United States: the 4 economic integration zones

Maps from *European Spatial Planning*, edited by Andreas Faludi, 2002 and available at:
http://www.planum.net/showspace/bookreview-esp_images.htm

⁽¹⁾ G. Baudelle, B. Castagnède, *Le Polycentrisme en Europe*, 2002, pp. 160-161.

5.4 While their economic strength is only 5 % of the EU total, the countries that joined the EU in 2004 have increased the EU's surface area by 33 %. In this new context, the pentagon alone cannot act as a driving force for the peripheral regions. *'The concentration of economic activity in relatively strong regions can, in the short term, bolster the EU's economic production. But in the long term, it may damage the production potential of the weakest regions and reduce their ability to exploit their comparative advantages. An excessive concentration of enterprise and population in certain regions also goes against the objective of sustainable development. In some of these regions this concentration can create congestion and put great pressure on the environment, while in others, it can cause decline and depopulation'* ⁽¹²⁾ (see also 4.5). Following the example of the USA, where several economic hubs have developed, we should promote the emergence of similar zones, spread evenly across the EU, adopting what specialists refer to as *polycentrism*.

5.5 Furthermore, technological progress, globalisation and mobility give rise to an increasing number of city-regions and metropolitan areas across Europe outside the traditional pentagon but comparable to it, such as Copenhagen-Malmö, Dublin, Madrid, Vienna-Bratislava, Katowice and others. This change of the European landscape also fosters new ambitions and new challenges among regions. These ambitions and challenges will also (hopefully) progressively affect EU views and policies ⁽¹³⁾.

5.6 While regional planning is not within the EU's remit — given the subsidiarity principle — there is no doubt that managing the EU's territory is a shared responsibility. On this basis, the EU-15 and the Commission drew up the European Spatial Development Perspective (ESDP) which was adopted at the Potsdam Council of Ministers of 11 May 1999 and followed up that same year in Tampere with a programme of twelve measures ⁽¹⁴⁾.

5.7 In line with Article 159 of the Treaty, the ESDP is aimed at increasing the coordination of EU policies that have a spatial impact, such as regional policy or certain sectoral policies (agriculture, transport, etc.).

5.8 Identifying areas where the links between cities and between the centre and the periphery need to be reinforced falls outside the scope of this opinion. However, it is the Committee's

⁽¹²⁾ DATAR (the French state secretariat for spatial planning), 'European Spatial Development Perspective', 2002 (Unofficial translation).

⁽¹³⁾ See also EESC Opinion on European Metropolitan Areas: Socio-economic implications for Europe's future, July 2004, OJ C 302 of 7.12.2004, p. 101.

⁽¹⁴⁾ It should be pointed out that some of these measures — including some major ones — have never materialised, such as spatial impact studies, and others have not been sufficiently followed through, such as support for cross-border, interregional and transnational cooperation (*Interreg*, whose budget allocation was revised downwards in the course of agreement on the financial perspectives). Fortunately though, others, such as setting up a European Spatial Planning Observatory Network (ESPON) have been implemented, although such work remains undervalued.

duty to stress the importance of seriously tackling this problem, failing which Europe is destined to slow down and fragment.

6. The key to success: modern infrastructure throughout the whole of Europe ⁽¹⁵⁾

6.1 Of course, this polycentric structuring of the EU (emergence of major regional hubs that boost surrounding areas, strengthened links between rural and urban areas), ensuring renewed and stronger cohesion, is dependant on the upgrading of infrastructure: transport, energy, telecommunications, etc.

6.2 Delays in the implementation of the 14 priority projects identified in Essen (1994), particularly regarding the cross-border sections and the drastic reduction in the TEN heading in the 2007-2013 financial perspective ⁽¹⁶⁾ do not bode well for the sustainable development and territorial cohesion of the EU.

6.3 However, the effectiveness of the Structural Funds in the upgrading and interconnecting of infrastructure in the cohesion countries and poorest regions, aimed at opening up the full benefits and opportunities of the internal market, is beyond doubt.

6.3.1 The density of the motorway network in the four cohesion countries increased from 20 % below the EU-15 average in 1991 to 10 % above in 2001. In the other Objective 1 regions, progress (on a more modest scale) has also been made.

6.3.2 Some modernisation of the rail network across the Union has occurred over the past decade, but the rate of electrification of lines and conversion to double track has occurred at much the same pace in the lagging parts of the EU as elsewhere, so the gap remains large.

6.4 In order to consolidate the 2004 and 2007 enlargements, it will be crucial to ensure that sufficient resources are allocated to infrastructure linking the old and new Member States, for four specific reasons:

— while EUR 21 billion was provided in loans by the EIB, the World Bank and the EBRD (European Bank for Reconstruction and Development) for upgrading infrastructure to EU-15 standards between 1990 and 2001, there is still a great

⁽¹⁵⁾ For the sake of simplicity, we shall, where necessary, consider the Cohesion Fund as part of the Structural Funds, though this is not technically correct.

⁽¹⁶⁾ The EUR 20 billion proposed by the Commission was whittled down to just over EUR 8 billion while the total cost of completing the 30 priority projects by 2020 was estimated in 2004 to be EUR 225 billion..

need for investment in communications infrastructures (road and rail). The investment needed was estimated at no less than EUR 90 billion (at 1999 prices) ⁽¹⁷⁾;

- the new Member States are experiencing faster economic growth than the majority of old Member States and with increasing trade, their growth gives a knock-on boost to the more stagnant old Member State economies;
- in return, the new Member States will benefit from improved access to the internal market;
- *'In the least developed regions and countries [particularly the new Member States], international and interregional connections may offer higher returns over the longer term in the form of increased business competitiveness and also facilitate labour mobility ⁽¹⁸⁾.'*

6.5 The redeployment and upgrading of this infrastructure is a key issue for the new Member States given that in the COMECON era, the bulk of their infrastructure converged towards Moscow; between 1993 and 2003, trade with the EU-15 increased threefold to the extent that it now represents the majority of their trade, and their infrastructure is below EU-15 standards.

6.6 With regard to energy ⁽¹⁹⁾, there is a clear need to deal with *'insufficient investments in relation to increased transmission demand and distances. The interconnection of both electricity and gas grids throughout Europe has advanced, but important structural bottlenecks exist between Member States.'* To this end, the European energy markets observatory which will be set up in 2007 could provide useful pointers for the way forward.

6.6.1 In the case of electricity, *'the period of overcapacity is ending and investments of 600-750 GW of power generation capacity are needed until 2030 in order to meet rising electricity demand and replace ageing plants. The need for investment in additional generation capacity, in particular for peak load, could be partly counteracted by fully interconnected grids'*.

6.7 Generally, the upgrading of infrastructure poses a challenge in terms of environmental sustainability. The EESC reiterates its view that fully comprehensive sustainable development

criteria should be built into assessments of Structural Fund eligibility and ex-post evaluations. It also reaffirms its support ⁽²⁰⁾ for the goal of creating sustainable communities (Bristol Accord ⁽²¹⁾).

6.8 Investment in infrastructure is complicated by the budgetary constraints imposed by the Stability and Growth Pact as well as by the ongoing effort necessitated by EMU membership. The majority of these investments emanate from national governments, with a smaller proportion coming from Structural Funds and the EIB.

6.9 While 78 % of the EU's population now lives in cities and towns, it is important not to lose sight of the specific needs of rural areas and ensure that they do not lag behind.

6.10 The EU endeavours to support such areas through ad hoc programmes. It has allocated more than EUR 60 billion to rural development between 2000 and 2006. However, as the Court of Auditors has reported ⁽²²⁾, the use made of these funds is far from ideal. It has pointed out that programmes do not sufficiently take into account the characteristics of the geographical area supported. The Court also pointed out shortcomings regarding the selection and targeting of projects, as well as insufficient evaluation of their results.

7. Strengthening the links between rural and urban areas

7.1 Remote areas are particularly prone to an ageing population, as their remoteness from centres of activity leads young people and skilled workers to move away to cities. This rural exodus risks accelerating the decline of such areas. Furthermore, large cities in which the bulk of resources are concentrated encounter particular difficulties and show disparities within the cities themselves, between neighbourhoods and/or social groups. *'Almost all cities where unemployment is at a level of 10 % or higher, have certain areas within which unemployment rates are at least double the city average'* ⁽²³⁾. The Commission rightly identifies four key issues requiring attention: transport, accessibility and mobility; access to services and amenities; the natural and physical environment; and the cultural sector ⁽²⁴⁾.

⁽¹⁷⁾ The investment required over the coming years to complete the TEN-Ts will amount to approximately 1.5 % of the region's expected GDP. Current levels of investment, which are running at EUR 2 to 3 billion per annum, will have to be raised to some EUR 10 billion by 2005-2010 in order to cope with demand pressures and to provide services within the EU commensurate with economic growth. In the longer term, the Commission has estimated the total cost of upgrading transport networks to an acceptable level at EUR 258 billion. (EiB, 'The development of TENs: perspectives', 2001).

⁽¹⁸⁾ Cohesion Policy in Support of Growth and Jobs: Community Strategic Guidelines, 2007-2013, COM(2005) 299, p. 15.

⁽¹⁹⁾ EESC opinion on *The energy supply of the EU: a strategy for an optimal energy mix* (exploratory opinion), OJ C 318 of 23.12.2006, p. 185.

⁽²⁰⁾ EESC opinion on a *Thematic Strategy on the Urban Environment*, OJ C 318 of 23.12.2006, p.86.

⁽²¹⁾ Bristol Accord, December 2005 (http://www.communities.gov.uk/pub/523/PolicyPapersUKPresidencyEUMinisterialInformalOnSustainableCommunities_id1162523.pdf). The Bristol Accord defines eight characteristics of a sustainable community: 1) active, inclusive and safe; 2) well run; 3) well connected; 4) well served; 5) environmentally sensitive; 6) thriving; 7) well designed and built and 8) fair for everyone.

⁽²²⁾ See press release ECA/06/20.

⁽²³⁾ COM(2006) 385 final, p.11.

⁽²⁴⁾ European Commission, *Cohesion Policy and cities — The urban contribution to growth and jobs in the regions*, COM(2006) 385 final.

7.2 The EESC would also stress here the key role of general interest services, and particularly general interest social services, in ensuring economic, social, territorial and inter-generational cohesion. It reiterates its call for a framework directive on the organisation of these services, in addition to sector-specific directives ⁽²⁵⁾.

8. The crucial need for civil society to get behind the projects

8.1 While the Commission acknowledges the need to involve socio-occupational actors in structural policy, emphasising that this plays a decisive role in ensuring better adoption of this policy at local level, the EESC regrets that it does not present any proposals for organising ways of doing this, which would be binding on the Member States.

8.2 The Committee calls for guidelines to be drawn up in future for the conduct of consultations on Member States' strategic and programming documents.

8.3 The Committee feels that the Member States should explain how they organise feedback on how the partnership principle is implemented in the context of the monitoring committees.

8.4 The Committee believes that the Member States and regional authorities should make greater use of the potential existing within civil society organisations by involving them in the preparation of promotion plans. Grass-roots initiatives should also be supported by allocating adequate financial resources for this purpose from the funds available for the promotion of and information about the Structural Funds.

8.5 In the case of cross-border or interregional programmes, it would also be worth promoting joint consultations and socio-occupational partnerships which are also cross-border or inter-regional.

9. Future funding innovations

9.1 Given, on the one hand, the challenges facing a larger EU, with widened external borders and increasingly diverse regions in terms of characteristics and economic performance and, on the other hand, the entirely unjustified meagreness of

the budgetary allocation and the growing influence of globalisation, we must come up with more effective and modern ways of funding our economic and social model and restore the public's confidence (entrepreneurs, workers, the unemployed, etc.) in the EU's ability to regain control of its destiny. To this end, the recent JASPERS, JESSICA and JEREMIE initiatives are a step in the right direction.

9.2 The Structural Funds are currently limited to the granting of subsidies. In a previous opinion ⁽²⁶⁾, the EESC proposed revising their financial engineering to create a multiplier effect through the involvement of the European Investment Fund and the EIB. It proposed transforming these subsidies into financial products to create a leverage effect. For example, one euro set aside to guarantee a risk capital loan would make it possible to finance five to ten euro of a SME's investment. This system has three advantages:

- it encourages public/private sharing of the financing of investments regarded as risky by the traditional financial partners;
- it gives beneficiaries more responsibility than would granting non-refundable subsidies;
- it increases the number of beneficiaries, despite the limited budget.

9.3 It would also be worth considering the possibility of utilising unused appropriations of an already meagre EU budget rather than refunding the Member States. These appropriations represent only a very small percentage of the annual budget. However, in this way, an additional EUR 45 billion could be allocated during the first half of the Lisbon timeframe to common interest projects.

EU budget surpluses (in million EUR)	
2000	11 613
2001	15 003
2002	7 413
2003	5 470
2004	2 737
2005	2 410
Total for 2000-2005	44 646

Note: surpluses include both unused appropriations (including special reserves) and additional revenue.
Source: European Commission, IP/06/494

⁽²⁵⁾ See EESC opinion on *Services in the internal market*, OJ C 221 of 8.9.2005, p.113, opinion on *The future of services of general interest*, OJ C 309 of 16.12.2006, p.135, and more specifically in the opinion being drawn up on *Social services of general interest in the European Union*.

⁽²⁶⁾ EESC opinion on *Strategic guidelines for cohesion policy 2007-2013*, OJ C 185 of 8.8.2006.

9.3.1 It should be clear from the previous paragraphs that even a fraction of these appropriations could speed up completion of the missing links — the Achilles heel of the trans-European networks — thereby interconnecting the Member States, eliminating bottlenecks, accelerating European integration and promoting increased intermodality.

9.3.2 Another tranche could serve to swell the coffers of the European Globalisation Adjustment Fund (EGF). This instrument, which does not have its own budget, helps workers who have been made redundant and who are 'victims of globalisation', and complements the Structural Funds. Unlike those instruments that necessitate long programming periods for similarly long-term projects, the EGF is a short-term instrument. Although the Council did approve it, it halved the initial budget allocation proposed by the Commission (the EGF receives

EUR 500 million). Given this, it is hard to have confidence in the effectiveness of this scheme which many see as a marketing tool. The eligibility threshold should be revised downwards by reducing the number of workers made redundant required to trigger the fund. (Basing this calculation on the US Trade Adjustment Assistance Programme, dating back to 1962, the fund's initiators failed to realise that unlike the US economy which is based around large-scale corporations, the EU is a SME-based economy ⁽²⁷⁾.)

9.3.3 These changes are all the more important given that closer spatial integration of the EU risks intensifying competition between regions leading to restructuring and therefore to job losses, which could create a public perception that the EU is bad for employment.

Brussels, 18 January 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽²⁷⁾ Thus, in the USA, the 100 biggest companies generate 74 % of GDP, while in Europe they generate only 34 %. In the non-financial business economy, SMEs (which employ fewer than 250 people) represent 99.8 % of companies (of which 91.5 % are micro-enterprises with fewer than 9 employees!) and 67.1 % of total employment.

Opinion of the European Economic and Social Committee on the Proposal for a Council Directive on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures

COM(2006) 605 final — 2006/0192 (CNS)

(2007/C 93/03)

On 10 November 2006, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 December 2006.

At its 432nd plenary session, held on 17 January 2007, the European Economic and Social Committee adopted the following opinion by 156 votes to none and with four abstentions.

1. The Commission has presented a proposal for the codification of the directive in question in order to comply with the decision taken by the Council on 1 April 1987 on the clear formulation of Community legislation ⁽¹⁾.

2. Most of the proposal's 26 articles are the result of the adaptation of the original 1976 text to the many modifications introduced by subsequent legislation. This will have been a lengthy and painstaking task, carried out with the appropriate resources.

3. For the EESC to check the exact correspondence of the Commission's work would mean repeating the complex work already done without the necessary resources and with a very short deadline: clearly an impossible task. In any event, the Commission is well known for its professional expertise and this offers assurance that on this occasion as in previous cases of codification, the result will be faultless.

4. In view of the above, the EESC approves the text of the proposal.

Brussels, 17 January 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽¹⁾ COM(87) 868 PV.

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts

COM(2006) 195 final/2 — 2006/0066 (COD)

(2007/C 93/04)

On 29 June 2006 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the abovementioned proposal.

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 14 November 2006. The rapporteur was Mr van Iersel.

At its 432nd plenary session, held on 17 and 18 January 2007 (meeting of 18 January), the European Economic and Social Committee adopted the following opinion by 140 votes to 14 with 10 abstentions.

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6. Glossary

1. Introduction

1.1 In 1991 and 1993 two directives came into force regarding the application of review procedures for the Classical and Utilities Directives respectively. They were introduced to provide an element of enforcement and remedy which had been missing from the earlier Classical directives ⁽¹⁾.

1.2 As the Public Procurement Directives are intended to create an open, fair and transparent climate for companies across the EU to compete on an equal basis, these Remedies Directives provide procedures for companies wishing to complain about the tendering and award of public contracts in which they are interested.

1.3 The Remedies Directives have two linked purposes:

- to provide a means to coerce Awarding Authorities to comply with the Directives; and
- to provide a means whereby a tenderer who believes that an Awarding Authority has breached the Directives can take action to protect his interests.

⁽¹⁾ See Glossary footnote 9.

1.4 All action by an aggrieved tenderer against an Awarding Authority has to be taken through national courts, tribunals or similar bodies which are established within that Member State; the Commission only takes action against a Member State, not against an Awarding Authority, and then only when there is evidence that a Member State is not regulating its Awarding Authorities properly.

1.5 It is noteworthy that the Court of Justice had already specified in 1999 that the provisions of both Remedies Directives should seek to reinforce existing arrangements for ensuring effective application of the Public Procurement Directives, in particular at a stage where infringements can still be rectified ⁽²⁾.

1.6 Effective Remedies Directives are an integral part of public purchasing law, and the amendments provided by the New Directive should ensure a more effective functioning of the Public Purchasing Directives.

1.7 In June 2006 the Commission proposed the New Directive which amends above mentioned Remedies directives and which, it is hoped, will improve them and make them more effective.

1.8 The main proposals in the New Directive are the introduction of a 10-day standstill period between the decision to award a contract and finalisation of the award so that anyone who believes they have been badly treated can protest, and the repeal of the attestation and conciliation procedures.

2. Consultations and content

2.1 In March 2003 the Commission started consultations on the validity of the Remedies Directives. Two questionnaires were carried out. The Member States were consulted in the framework of the Advisory Committee for Public Procurement. In addition to that consultation enquiries were carried out among Awarding Authorities and through *Interactive Policy Making* on the internet among lawyers, business associations and NGOs and enterprises.

⁽²⁾ Impact assessment report — Remedies in the field of public procurement, SEC(2006) 557, of 4 May 2006, page 5: Alcatel judgement, Case C-81/98, paragraph 33.

2.2 The New Directive is based on a thorough impact assessment. This assessment mentions two main problems: the lack of effective remedies against the practice of illegal direct awards of public contracts, and the 'race to signature' of public contracts by Awarding Authorities which actually deprives economic operators of the possibility to put Remedies actions effectively in place before the contract has been started ⁽³⁾.

2.3 The impact assessment contains a number of excellent analyses of the opinions of stakeholders. The impact assessment itself is an illustrative example of an open and transparent way of communicating in a very complex area.

2.4 Quite interestingly the outcome shows that there are substantial differences between the Member States in handling complaints which can make for confusion in the minds of tenderers:

- Awarding Authorities — among them in particular regional and local authorities — were reluctant to respond to the enquiries;
- individual economic operators were not yet accustomed to participating and to reviewing procedures in this area;
- quite substantial reactions came from law firms, business associations and NGOs.

2.5 The overall conclusion among the respondents is that illegal awards have to be fought and that competition, particularly cross-border, must be fostered.

2.6 Business is usually very reluctant to challenge Awarding Authorities, whereas experience shows that some Member States are as yet rather hesitant over adopting legislation that promotes transparency and opening of markets. This underlines the need for action at EU level. Other Member States, however, have invested considerable effort in implementing the Directives.

2.7 The proposed amendments provide two important new safeguards for tenderers:

- notification of the intention to award a contract must be given at least ten days before the intended award date — the 'standstill period'; and
- if a tenderer lodges a protest, the procedure must be suspended for a period, in principle while the problem is resolved.

2.8 There is, however, provision — for example, in cases of urgency — for contracts to be awarded without going through the normal tendering process. There is also provision for the standstill period to be ignored in cases where it is obviously irrelevant. The Competitive Dialogue procedure, however, must always have a standstill because of the way in which it operates.

⁽³⁾ Impact assessment report — Remedies in the field of public procurement, SEC(2006) 557, of 4 May 2006.

Amongst other aspects, the probability that the tendering process will be left with only one 'preferred bidder' in its final stages could be seen to open the way to abuse and the standstill is obviously necessary to avoid such a situation.

3. General comments

3.1 The impact assessment proves very useful in making clear that Member States and the Awarding Authorities do, in many cases, often take a different line over the need to open public markets.

3.2 The Commission offers five potential solutions to tackle the issue of complaints: 'do-nothing', a communication or a directive on a standstill period, and a communication or a directive on an Independent Body ⁽⁴⁾.

3.3 The EESC agrees with the Commission that:

- do-nothing is not a viable solution, as shortcomings and substantial differences between Member States will persist;
- neither will communications be an attractive approach, as these are insufficiently compelling: long lasting traditions, mutual relationships and dependencies in the Member States will continue to prevail.

3.4 Consequently, to put pressure on the public sector and to increase professionalism on both sides, the choice is between the establishment of an Independent Body or a standstill period between the decision to award a contract and the actual award itself.

3.4.1 Independent Bodies exist in some Member States ⁽⁵⁾. It is noteworthy that the majority of private stakeholders are in favour of this approach although it would mean a rise in costs and administrative procedures. Some Member States recommend the appointment of experts to such bodies.

3.4.2 By contrast the large majority of Member States are in favour of a limited standstill period which directly affects public purchasers and complaining companies, halting the procedure for the duration of the standstill.

3.5 The EESC agrees with the Commission's proposal on the introduction of a standstill period. It accepts that such an arrangement at EU level, if well implemented, should conceivably promote on the one hand effectiveness, clarity and legal certainty, and, on the other a more open and transparent public procurement regime leading to increased competition. Standstill should not necessarily, however, be seen as an exclusive alternative to Independent Bodies, which Member States are, of course, at liberty to establish.

⁽⁴⁾ See the Glossary for a definition of an Independent Body and the distinction from a Review Body as used in this paper.

⁽⁵⁾ For example, the Competition Authority in Denmark and the Swedish central government Agency for Public Procurement.

4. Specific issues

4.1 Drafting

4.1.1 The numbering of the New Directive is confusing as the section on Utilities is Article 2 notwithstanding that a large part of the Classical section on the previous pages and of the Utilities on the following pages is numbered Articles 2a through 2f. It would be easier if the Classical and Utilities sections were headed as Chapters. Once the amendments provided in the New Directive have been implemented it will, of course, cease to be of interest but, in the meantime, ease of comprehension would be a help.

4.1.2 It would also have been helpful if consolidated versions of the two Directives could have been made available.

4.1.3 There are also a few typographical errors which will doubtless be corrected in later versions.

4.2 Standstill periods

4.2.1 The concept of standstill periods is generally well accepted.

4.2.2 The possibility — favoured by some respondents to the Commission's consultation — of the establishment of Independent Bodies to act as referees was rejected in favour of standstill, largely at the urging of Member States. The concept has been discussed since the early days of the directives but, superficially attractive though it is, it suffers the same defects as did the conciliation procedure, itself a similar concept. There remains, however, a persisting problem which is discussed *infra* under 'Conciliation and settlement of disputes'.

4.2.3 With the exception of periods of five days (which are working days) all other periods, including references to three days, are calendar. That obviously raises problems. The matter is expanded upon *infra* under 'Standstill'.

4.3 Annulment of contracts

4.3.1 Although the objective of the directive is to catch problems *before* the contract is actually awarded, provision is made for the annulment of contracts which slip through and are thus awarded illegally.

4.3.2 Two circumstances may exist: firstly where the parties are in collusion and both are well aware of the consequences of the contract being found to be illegal, and secondly where the economic operator is innocent and unaware that the contract risks being annulled.

4.3.3 In the first case, there is little need to have concern for any losses which the economic operator may suffer.

4.3.4 In the second case there is concern that, bearing in mind that a challenge to an award may in some instances be launched up to six months after commencement of the contract, an innocent economic operator may suffer serious damage. Because the contracting authority will have been found to be acting *ultra vires* the economic operator may have no means of claiming damages against it ⁽⁶⁾. Although such an outcome may be unlikely to recur, the EESC believes it appropriate to warn of the danger.

4.3.5 It may be argued that a tenderer should satisfy itself that the Awarding Authority has observed the standstill and has published the necessary notices regarding the intention to award the contract and furthermore that, should the tenderer still not be satisfied, it should seek formal confirmation from the purchaser. The New Directive provides (Article 2 f 2) that the only grounds for annulling a contract once it has been awarded are that an Awarding Authority has failed to give proper notice of its intention to award a contract or has failed to apply a standstill period. Those limited conditions, particularly in large and important contracts, would seem to be easily capable of verification. But the thresholds for Supply and Service contracts cannot be described as 'large and important', even to SMEs, although the consequences of unrecoverable damages in the event of annulment most certainly are. Offloading to the tenderer the risk of error, and the serious consequences thereof, does seem to the EESC to be unbalanced and should be reconsidered; *caveat vendor* with its potentially draconian consequences is not an appropriate mechanism to prevent illegality on the part of Awarding Authorities. Whilst the consequences in *Hazell vs Hammersmith and Fulham* might not be possible in other circumstances or in other countries, legislation either at Community level or at national level is desirable to the point of being essential if tenderers are not to be put at unmanageable risk in annulment of contracts.

4.4 Attestation

4.4.1 The New Directive proposes that the attestation procedure should be deleted because it has been little used. Attestation was included in the Utilities Remedies Directive as a form of audit similar to that in quality assurance or to some aspects of modern financial audit. At the time it was suggested that a Utility which obtained a clean attestation report might be able to derogate from some or all of the detailed provisions of the directive as long as it abided by the principles, but this suggestion was not acceptable to the Commission.

⁽⁶⁾ See *Hazell vs Hammersmith and Fulham Councils UK House of Lords 1992* in which the local authorities had entered into interest rate swaps in order to reduce their costs or to generate profits for themselves. In the event, interest rates moved against the local authorities and the banks called for the difference. The local authorities, unable to pay, then claimed that such contracts were outwith their powers and were thus void. The court found in favour of the local authorities and the participating banks, who had entered into the contracts in good faith, stood a substantial loss.

4.4.2 There was thus little incentive to use attestation and its lack of use is little surprise. It has also been subject to criticism on the basis that it only demonstrates compliance at a particular point in time, giving no assurance that compliance will continue on the morrow. That is to misunderstand the process, whose equivalent processes work effectively in quality and modern financial audit. The essence is to ensure that a system of procedures is in place which, if followed, will lead to satisfactory compliance with the directive, and that the contracting entity did in fact comply with its own procedures. Most substantial organisations operate on the basis of internal procedures and, in the absence of fraud or drastic corporate breakdown, follow those procedures reliably. Certification provided by attestation that the procedures are satisfactory in principle and being followed in practice gives reasonable assurance that the organisation is compliant; it would, of course, need to be revalidated at intervals.

4.4.3 Effective attestation could provide a mechanism whereby individual Utilities could obtain all or most of the benefits offered by Article 30 (7) of the Utilities Directive in circumstances where the general criteria of that Article were not met.

4.4.4 In the absence of an incentive to use the procedure it is obviously of little use. However, if it were to be amended to include a tangible incentive, its retention in such a form should be envisaged.

4.5 Conciliation and settlement of disputes

4.5.1 The EESC notes that there is a generally accepted opinion that the deletion of the little-used procedure is appropriate.

4.5.2 There is, however, quite a widely-held view, which the EESC endorses and has argued for extensively in a number of opinions, that some form of alternative dispute resolution is desirable. The existing mechanisms available differ widely between the various Member States, ranging from relatively informal bodies with easy access and low cost, to recourse to litigation with all the cost and diversion of resources which that entails. Independent Bodies are evidently effective in those Member States which have adopted them but the practice is not universal (see also 3.4.1 *supra* and its footnote).

4.5.3 A universal solution to the problem is not obvious, given the differing cultural and legal backgrounds in the various Member States.

(7) Article 30 (1) states 'Contracts intended to enable an activity mentioned in Articles 3 to 7 [the definition of a Utility] to be carried out shall not be subject to this Directive if, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted.' The rest of Article 30 sets out in more detail the criteria and the procedure to be followed in seeking exemption.

4.5.4 The conciliation procedure has not been popular because, apparently, it cannot produce enforceable decisions and, if unsuccessful, eats up the time within which a formal complaint can be launched. But enforceable decisions — absent agreement by the parties as in arbitration — must inevitably require litigation. This paradox may create problems in dispute resolution.

4.5.5 Further examination of alternative dispute resolution mechanisms in use in other countries or in other contexts might well yield a useful tool which would overcome the objections to the conciliation procedure whilst retaining low cost, thereby contributing to improvement in compliance with the directives.

4.6 Standstill

4.6.1 The standstill periods provided in the draft directive require further consideration.

4.6.2 Firstly, most of them (except the five-day periods) are defined as calendar days and are fairly short (three, seven or ten days). In some Member States and at certain times of the year, ten calendar days can be as short as three working days and three calendar days can include no working days at all. This can plainly be unsatisfactory. In 2006 there are at least 42 weekdays (out of 260 in the whole year) which are public holidays somewhere in the EEA. There is one ten-day period with only two working days and there are three periods with only three working days.

4.6.2.1 A balance has to be struck between allowing economic operators a reasonable time in which to lodge a protest and not introducing an unnecessary delay into all the contracts with which there is no problem.

4.6.2.2 Ideally, the standstill should be defined as working days but this raises the problem of different public holidays in different Member States.

4.6.3 Secondly, in the case of a tender which has been properly conducted, the tenderers will be expecting the notice which will, in any case, be sent to each of them personally; they should thus have little difficulty in responding promptly should they have reason so to do.

4.6.4 In the case of a directly-awarded contract or one awarded on an 'in-house' basis to an entity which is not in-house, the problem of awareness is more acute.

4.6.5 Potential tenderers may have no knowledge that the contract is even in contemplation and will be dependant on seeing the public notice to alert them to its existence. Even if the ten calendar days only include one week-end and thus amount to eight working days, there will be very little time to take action from a standing start.

4.6.6 Since it is the general consensus that directly awarded contracts constitute the majority of abuses, more consideration needs to be given to the duration of the standstill period as well as to a mechanism which ensures that interested potential tenderers can become aware of the proposed contract as early as possible. A reasonable increase in the standstill period for this type of contract — not applicable to those which have been offered properly for competitive tender — would be helpful.

4.6.7 The Remedies Directive applies, of course, only to contracts above the thresholds, but contracts slightly below the threshold — and thus outwith the Directives — upon occasion 'creep' until the value is above the threshold, sometimes quite substantially. This is an all too common area of abuse.

4.6.8 A requirement to publish all contracts including those well below the thresholds and those placed with in-house entities would be disproportionate. Attention is drawn in this context to the fact that in-house services are not covered by the Directive on the awarding of contracts. In this context, too, the fundamental question arises as to why the standstill period is to be applied in this case.

4.6.9 In order to provide an easy and timely means of alerting potentially interested economic operators to the imminent award of a contract above the thresholds (or, possibly, above a lower value of, say, 80 % of the thresholds) a special web site hosted or sponsored by the Commission and used exclusively for this purpose might be beneficial. If such a website were to be established, its use should be compulsory.

4.6.10 Furthermore, the development of an automatic search tool for use on such a site to alert tenderers to published notices likely to be of interest to them would make a great difference to the effectiveness of the notices. Trawling the website each night and flagging up an alert for anything which it recognised as of interest, it would improve the likelihood that tenderers would become aware in a timely manner of impending contract awards which they wanted to challenge.

5. Fees

5.1 It has been suggested that a fee should be payable by a tenderer wishing to launch a bid challenge in order to discourage vexatious or tactical challenges. The EESC is not in favour of such a measure because, on the one hand, the effort necessary to mount a challenge is already expensive enough and, on the other hand, the Review Body⁽⁸⁾ to whom the protest is addressed is well able to dismiss frivolous applications.

⁽⁸⁾ See the Glossary for a definition of Review Body and the distinction from an Independent Body as used in this paper.

5.2 In countries where the Review Body has no power to dismiss frivolous complaints, a fee might be justified but it would have to be set at an appropriate level so as not to deter genuine complainants and thereby act as a defensive measure for contracting authorities which have abused the Directives.

5.3 Whilst not strictly part of consideration of the New Directive, it has come to the EESC's notice that some Awarding Authorities have adopted the practice of requiring a fee from tenderers who wish to submit a bid. The EESC is strongly opposed to such a measure which is not only prejudicial to SMEs but is also too easy to use as a means of covert discrimination contrary to the spirit — and, possibly, to the letter — of the Directives.

6. Glossary

Classical Directive Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public services contracts. Applies to all public authorities (central, regional, municipal etc) except those which are subject to the Utilities Directive (see below).

Utilities Directive Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal sectors. Applies to all entities operating in these sectors regardless of their ownership, be it public or private.

Public Procurement Procurement by public authorities (subject to the Classical Directive) and public utilities (subject to the Utilities Directive).

Remedies Directives In 1991 and 1993 two directives now being amended came into force regarding the application of review procedures for the Classical⁽⁹⁾ and Utilities Directives⁽¹⁰⁾ respectively. They were introduced to provide an element of enforcement and remedy which had been missing from the earlier Classical directives.⁽¹¹⁾

⁽⁹⁾ 92/50/EEC of 18 June 1992 (services), 93/36/EEC (supplies) and 93/37/EEC (works) both of 14 June 1993.

⁽¹⁰⁾ 93/38/EEC of 14 June 1993.

⁽¹¹⁾ 71/305/EEC of 26 July 1971 (works) and 77/62/EEC of 21 December 1976 (supplies). There was no services directive at that time.

New Directive	Amendment to Remedies Directives that is the subject of this Opinion.	Independent Body	An independent body which would receive complaints, as outlined in paragraph 2(3) in the explanatory memorandum on page 5 of the New Directive.
Directive(s)	Any or all, as the context may admit, of the directives defined above.		
Awarding Authority	A contracting authority (Classical sector) or a contracting entity (Utilities sector) which is involved in the processes contemplated by the Directives.	Review Body	A judicial or quasi-judicial body 'independent of the contracting authority' which is appointed to hear complaints and which has the power to adjudicate thereon.

Brussels, 18 January 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

APPENDIX

to the Opinion of the European Economic and Social Committee

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

'1.2.1 The principles of economy and efficiency are without doubt important criteria in respect of such a transparent climate of competition with regard to procurement transactions. We must, however, not lose sight of the fact that public investment does, at the same time, represent an instrument of economic policy and, with an eye to the Lisbon objectives, employment-policy aspects and social and environmental aspects should also be taken into account when taking decisions. Importance should consequently also be attached to this principle in the review procedures with regard to the award of public contracts.'

Outcome:

78 votes for deleting the paragraph, 67 against and 10 abstentions.

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/49/EC and Directives, 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC of the European Parliament and of the Council as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increases of shareholdings in the financial sector

COM(2006) 507 final — 2006/0166 (COD)

(2007/C 93/05)

On 19 October 2006 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

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 10 January 2007. The rapporteur was Mr Retureau.

At its 432nd plenary session held on 17 and 18 January 2007 (meeting of 18 January), the European Economic and Social Committee adopted the following opinion by 124 votes to none, with three abstentions.

1. Summary of the EESC's conclusions

1.1 The principle of having a restrictive list of criteria and making the necessary information transparent deserves to be supported. A harmonised, or even uniform set of rules would be created in all the Member States, but only for cross-border operations concerning the acquisition or increase of shareholdings in the financial sector (banking, insurance and securities).

1.2 The proposed rules provide businesses and investors with speed, transparency, identical treatment and legal certainty; Member States should align their domestic rules on cross-border transactions accordingly, in order to have a unified set of rules for all operations of the same kind.

1.3 Information considered to be incomplete may be a reason for rejecting a bid; additional requests for information should not therefore exceed the list drawn up beforehand or impose additional conditions, and so should not be able to be used as a pretext for an unjustified rejection if all the elements on the list have been made known in a satisfactory manner.

1.4 The investors concerned should be able to ask for extra time to provide certain additions (things can be complex in companies with many subsidiaries and holdings). In accordance with the general monitoring principles laid down by the directives, the principle of monitoring by the home Member State should also be applied when assessing the reputation of a would-be buyer. For this reason buyers who have already been assessed in one Member State and whose reputation has already been judged as sound, as in the case of enterprises that have their registered office inside the EU, should be exempted from undergoing a new examination, unless new facts have emerged.

1.5 The method chosen by the Commission could indeed turn out to be lacking flexibility in practice, where realities are more or less complex and each case has its peculiarities.

1.6 The risk of a rapid examination is that it could prove to be superficial; monitoring by the Commission should not be

limited to cases of rejection, but instead should take the form of surveys from time to time to assess whether or not the directive is being applied properly in the Member States.

2. The Commission's proposals

2.1 These consist of a directive amending the Markets in Financial Instruments Directive (MiFID) and several sectoral directives concerning prudential authorisations to acquire or increase holdings in the capital of financial entities (insurance and re-insurance, UCITS management companies and other regulated markets).

2.2 The proposed amendment to the financial directives (Directive 92/49/EC of the Council and Directives 2002/83/EC, 2004/39/EC (MiFID), 2005/68 EC and 2006/48/EC of the EP and of the Council) as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increases of shareholdings in the financial sector puts forward new rules designed to simplify and clarify the prudential authorisation of mergers and acquisitions in the financial services sector. The proposal encourages and simplifies cross-border consolidation, and is thus opposed to the perceived attitude of the supervisory authorities in certain countries, which are suspected of having blocked cross-border mergers on alleged national interest grounds.

2.3 The new rules aim to establish in the European Union a harmonised, rapid and transparent prudential authorisation process for mergers and acquisitions of regulated financial companies. The three-month examination period currently in force would be reduced to thirty working days as from receipt of the request, but this deadline could be extended by ten days if the competent authority considered the submission to be incomplete. The rule will also be applicable to potential purchasers subject to non-EU legislation seeking to acquire or increase their shareholding in an entity within the EU.

2.4 The proposal wants to prevent any risk of prudential authorisations being used to obstruct cross-border consolidation. Current legislation applies to domestic or cross-border operations by financial institutions or investment firms. As things stand, the competent authorities have three months to assess a takeover bid and can block it if 'bearing in mind the need to guarantee sound and careful management of the enterprise concerned, they are not satisfied with the quality of [the purchaser]'.

2.5 Member States and their competent authorities were therefore free, to a certain extent, to interpret this single criterion very broadly and to accept, discourage or reject a planned acquisition as they thought fit, in the absence of sufficiently defined criteria.

2.6 The list of evaluation criteria given is restrictive. The main rule is that any natural or legal person, whether acting alone or in concert with others, is obliged to notify the competent authorities of the target company if he intends:

- to acquire a holding of 10 % or more of the capital or of the voting rights of an insurance company (or a lower percentage that would make it possible to exert a significant influence on the management of the insurer); or
- to increase such a holding so as to reach or exceed the thresholds of 20 %, 30 % (previously 33 %) or 50 %, or more;
- or to acquire the whole of the insurance company. The proposal sets out a number of criteria which the competent authorities should use to consider whether the character of the prospective buyer is suitable and the planned acquisition is financially viable.

2.7 These criteria will be communicated to all market participants and will be applied uniformly in all the Member States. The competent authority then must only take account of:

- the reputation of the potential buyer: the preamble to the draft directive states that this means checking if there are any doubts about the buyer's integrity and professional competence (e.g. as a result of past business conduct) and if these are founded;
- the assessment of integrity is considered particularly relevant if the buyer is not another regulated financial institution or an investment undertaking;
- the reputation and experience of any person who may actually direct the business of the insurance undertaking as a result of the proposed acquisition;
- the financial soundness of the proposed acquirer, in particular in relation to the business pursued and envisaged in the insurance undertaking in which the acquisition is sought;

- if the insurance undertaking will continue to fulfil the obligations imposed by the prudential and solvency rules laid down by the European Union;
- whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase such a risk;
- the competent authority receiving notification must acknowledge receipt of it in writing within two working days;
- the competent authority will then have a maximum of thirty working days (the 'assessment period') from the date of the acknowledgement of receipt to assess the proposed acquisition. The assessment period may be increased to a maximum of fifty working days if the prospective buyer is regulated outside the Community and is situated in a non-EU country where there are legal impediments to the transfer of the necessary information;
- the competent authority may, if necessary, request further information from the buyer. While the information required is being provided, the assessment period is suspended for a maximum of ten working days.

2.8 Any further requests for information by the authority may not result in an interruption of the assessment period.

2.9 Assessment is limited to prudential matters and aspects relating to the fight against money laundering. The competent authorities will have no discretionary power to impose preconditions as to the size of the holding to be reached, or to study the acquisition in terms of the economic needs of the market. Competing takeover bids for the same target will have to be treated in a non-discriminatory manner.

2.10 Under the proposals, the Commission will have the right to ask to be informed of the reasons why any authorisation has been granted or opposed, and to request copies of the documents on which the competent authorities based their assessment.

2.11 The Commission will also be able to use its executive powers to propose and decide on any adaptation of the evaluation criteria that may be necessary in order to take account of market trends and of the need for uniform application within the European Union.

3. Comments of the Committee

3.1 **As regards form:** it is logical for directives to be amended by means of one or more directives; and for the amending directive, in this case, to have the same legal basis as the directives that it amends.

3.2 *As regards content:*

3.2.1 The principle of having a restrictive list of criteria and making the necessary information transparent deserves to be supported. A harmonised, or even uniform set of rules would be created in all the Member States, to facilitate cross-border operations.

3.2.2 The proposed rules provide businesses and investors with speed, transparency, identical treatment and legal certainty; they can only be interrupted once, in strictly defined circumstances, and in the worse cases cut the decision-making process for operations within the Community to six weeks instead of twelve or thirteen.

3.2.3 Having said this, the Committee would also point out that, according to the specialists, slightly more than half of all mergers/acquisitions result in failure, that the synergies anticipated are in most cases over-estimated and that in the banking sector, 5 to 10 % of customers leave their bank after the operation.

4. Specific comments

4.1 The rules on suspending the assessment period and their link with the provision of additional information should be more precise; information considered to be incomplete may be a reason for rejecting a bid; such requests should not be able to be used as a pretext for an unjustified rejection: additional information should not therefore exceed the list drawn up beforehand or impose additional conditions. The investors concerned here should be able to ask for extra time to provide certain additions (things can be complex in companies with many subsidiaries and holdings).

4.2 The risk of a rapid examination is that it could prove to be superficial; monitoring by the Commission should not be limited to cases of rejection, but instead should take the form of surveys from time to time. In addition, reservations on the draft amendments have been expressed by the committees that regulate financial services in Europe (the Committee of European Banking Supervisors, the Committee of European Insurance and Occupational Pensions Supervisors, and the Committee of European Securities Regulators). They are concerned about the reduction of the assessment period, the restrictive character of the list

of evaluation criteria, cooperation between supervisory authorities in the home Member State and the host Member State, and the power of the Commission to review a decision (a priori negative).

4.3 The method chosen by the Commission, including a number of proposed detailed administrative procedures (e.g. (1) the requirement for the competent authority of the Member State to issue written acknowledgement of the receipt of an application within two working days rather than, as is current practice in the Member States, on delivery; (2) the starting date of the period of time within which the competent authority must examine an application to be the date of issue of the written acknowledgement of receipt of the application rather than the actual date of receipt), could turn out to be lacking flexibility in practice, where realities are more or less complex and each case has its peculiarities. This could make it difficult to achieve the basic aim of the directive, which is to 'improve the legal certainty, clarity and transparency of the supervisory approval process'.

4.4 In accordance with the general monitoring principles laid down by the directives, the principle of monitoring by the home Member State should also be applied when assessing the reputation of a would-be buyer. For this reason buyers who have already been assessed in one Member State and whose reputation has already been judged as sound, as in the case of enterprises that have their registered office inside the EU, should be exempted from undergoing a new examination, unless new facts have emerged. Consequently, the authority responsible for supervising the target enterprise should not oppose the planned acquisition on the grounds of the supposed lack of reliability of the would-be buyer or his management if such a buyer is an enterprise that has already been checked out by the competent authority of another Member State, which should be consulted by the first authority. A situation where the same enterprise receives divergent assessments from different national authorities should be avoided as far as possible.

4.5 The Committee, which approves the proposed changes, takes the view that the Commission's executive and supervisory powers should, in the light of experience, serve to promote genuine harmonisation in the use of criteria, adjust certain criteria if necessary, and review certain decisions if necessary.

Brussels, 18 January 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the Review of the Single Market

(2007/C 93/06)

On 5 October 2006, Ms Margot Wallström, Vice-President of the European Commission, asked the European Economic and Social Committee to draw up an opinion on the: *Review of the Single Market*.

The EESC Bureau assigned preparation of the Committee's work on the subject to the Section for Single Market, Production and Consumption.

In view of the urgency of the work, the European Economic and Social Committee decided at its 432nd plenary session of 17 and 18 January 2007 (meeting of 17 January) to appoint Mr Cassidy as rapporteur-general, and adopted the following opinion by 136 votes to 42, with 9 abstentions:

1. Conclusions and Recommendations

1.1 The EESC would like to see the following measures as part of the Commission's Single Market priorities.

1.1.1 In order to overcome remaining obstacles, completion of the Single Market requires a balance to be struck between economic momentum, the social dimension and sustainable development. It will only be possible to complete the Single Market if all citizens — employers, employees, consumers, etc. — perceive it as being in their interest. There should be as many beneficiaries as possible from the Single Market, with compensatory measures for those who lose out. Public scepticism vis-à-vis Europe can only be overcome if policies address citizens' pressing concerns. Communication alone will not suffice.

1.1.2 To meet the challenges of globalisation — coping with global competition, ensuring growth and employment, creating the requisite infrastructure, overcoming climate change, achieving security of energy supplies, responding to the increasing influence of financial markets on the economy as a whole — and take advantage of the resulting opportunities, the full capacity of the Single Market must be used. Measures to promote liberalisation and competition must therefore be accompanied by flanking employment- and growth-oriented macroeconomic policies together with measures to build a knowledge-based society, whilst the overall objective of the European Union remains that of improving the living and working conditions of its peoples (an objective set out in the Preamble to the Treaty of Rome and in all the subsequent texts). This will significantly help to complete the Single Market.

1.1.3 Europe needs to invest more in education, training and research at national and European level. Investments in education, training and research are a necessity, not a luxury for Europe. Achieving the European Research Area and lifelong learning is thus a priority.

1.1.4 The credibility of the EU research policy has been more than dented by the repeated setbacks over the introduction of the Community patent. In view of the fact that it has not been possible to reach agreement within a reasonable timescale on the formulation of this instrument, which is of key importance

to the knowledge-based economy which the EU is doggedly pursuing, we should now seriously consider whether it would be advisable to apply this instrument initially to all the EU Member States if it continues to be impossible to reach unanimous agreement ⁽¹⁾.

1.1.5 In addition to the important issue of patents and the related matter of intellectual property, the EESC believes that the question of economic intelligence should also be addressed at EU level. In this context, the EESC wonders whether steps should not be taken to strengthen the role and raise the profile, amongst economic operators, of the European Network and Information Security Agency (ENISA) ⁽²⁾, in order to help maintain the competitiveness of EU enterprises and to prevent confidential data relating to their production processes and research and innovation processes from being 'tapped into' by competitors from outside the EU.

1.1.6 In the context of transatlantic relations, the Commission and the Council should be firmer in requiring the United States to comply with the principle of non-discrimination. Thus, they should call for the abolition of the Committee on Foreign Investments in the US (CFIUS), set up more than 30 years ago to look at and, if necessary, prohibit foreign shareholdings in American companies on the basis of the sole — and undefined — criterion of 'national security'. Similarly, commercial court cases between foreign companies and American ones are biased in favour of the latter.

1.1.6.1 If it proved impossible to ensure non-discrimination in mergers and acquisitions or commercial practices, the EU should look seriously at the possibility of bringing these matters before the WTO's dispute settlement system or setting up mechanisms similar to the CFIUS. These principles should also apply to relations with the EU's other partners.

1.1.7 The better regulation approach can simplify conditions for business as well as create greater transparency for citizens and consumers. However, creating fewer regulations does not necessarily produce a better regulatory framework. The EESC is also in favour of using legal instruments in important areas such as those covered by minimum health and safety legislation — where the establishment of national legislation is inadequate.

⁽¹⁾ Cf., for example, OJ C 185, 8.8.2006.

⁽²⁾ Further information available at www.enisa.europa.eu.

1.1.8 Collective agreements between social partners, which are a crucial part of political decision-making processes in many Member States, can also help to shape policies and secure acceptance of measures at European level. However, for this to happen, both parties to social dialogue must be willing.

1.1.9 The European Commission and Member States have promised to reduce the administrative burden for companies by 25 % by 2012. However, the EESC is concerned that this promise is too broad and needs to be refined. Unless a more considered approach is adopted, failure to deliver will only further undermine credibility.

1.1.10 The use of regulations would also where possible create a clearer legal environment and be a factor of coherence.

1.1.11 The Single Market is based on the mutual recognition of professional qualifications and diplomas such as that for midwives, lawyers, etc. who in spite of European directives have not been able to take advantage of them.

1.1.12 The EESC recalls that upward harmonisation even over 27 countries, difficult though it may be, is an important element of the Single Market.

1.1.13 The social partners should be consulted at all stages to ensure that the required degree of administrative simplification and better regulation are achieved within a reasonable time-frame. It is important that tangible results in this direction are achieved if the Union is not to further lose credibility with its citizens.

1.1.14 The EESC would like to see faster progress towards improving the single market in services. Otherwise, the internal market cannot be said to be complete. The Committee welcomes the European Parliament's amendments to the Services Directive, which are broadly in line with its proposals. Some points still need to be cleared up and improved, for example in the field of services of general interest. Now that the European Parliament has adopted the Services Directive enterprises expect to reap real benefits derived from freedom of establishment of enterprise and to provide cross-border services.

1.1.15 In the field of financial services ⁽³⁾, the EESC has called for dynamic consolidation while avoiding goldplating; however, it has also pointed out that this must happen in the spirit of the Lisbon strategy while taking the specific features of the European social model into account. This also applies to cross-border provision of such services (for example, share trading and the portability of supplementary pensions rights) and basic financial services such as providing universal access to a bank account. In view of the growing influence exercised by financial transactions on the economy and of dynamic and creative innovations in the field (such as hedge funds and private equity), regulation of the sector must take into account the resulting systemic risks and consequences for the real economy,

while putting in place conditions to prevent counter-productive effects. The EESC would urge the Commission to present, as soon as possible, its draft legislative provisions aimed at stepping up the information provided by institutional investors with regard to their policies in respect of investment and voting. Presentation of such draft legislation would be in line with the Commission's Action Plan on the Modernisation of Company Law and Corporate Governance.

1.1.16 Tax policy measures — to the extent that they may be adopted at European level — must further the completion of the single market, taking due account of the balance between economic momentum, the social dimension and sustainable development mentioned above. This also includes harmonising the tax basis for company taxation and the avoidance of double taxation. Double taxation has no place in a Single Market.

1.1.17 The EESC also asks the Commission to examine restrictions on the Single Market maintained by Member States, public bodies or professional groups. ⁽⁴⁾

1.1.18 The key issue is that product design of assurance products, for example, is heavily influenced by local legal and tax features. This is the case for compulsory insurance, but also for many other essential insurance products, for instance through divergent solutions to issues such as cover for natural catastrophes as part of household fire policies or the cover for acts of terror through common insurance product.

1.1.19 One of the hindrances to the completion of the Single Market is the maintenance of significant restrictions on free movement of workers. The EESC urges those Member States who do not permit free movement to remove their obstacles to worker mobility. The free movement of people is one of the fundamental elements of the single market, and mobility also has its attractions for workers.

1.1.20 SMEs do not seem to benefit from the Single Market as much as they might. The existence of significant barriers to services trade in the EU means that it accounts for only 20 % of all trade in Europe. The Services Directive should add significantly to business and employment opportunities especially through the proposed screening mechanism and the use of single contact points for foreign service providers.

1.1.21 Transparency and openness in public procurement is vital to the functioning of the internal market. As a follow-up to the procurement legislation package that was adopted in 2004, it is most important that the present review of the so called 'remedies' directives is pursued swiftly. The proposals for reform made by the Commission ought not to be allowed to be diluted, especially with regard to a sufficiently long standstill period between award decision and the signing of a contract, and with regard to the consequence of a contract becoming ineffective if certain publication criteria are not met.

⁽³⁾ Opinion on the White Paper on Financial Services, OJ C 309, 16.12.2006

⁽⁴⁾ Directive 2005/36/EC of the European Parliament and the Council of 7 September 2005 on the recognition of professional qualification OJ L 255, 30.9.2005.

1.1.22 Opening the market for public procurement is subject to intensive consultations among public and private stakeholders, with substantive differences of views over the approach to be taken. Opening the public contracting market has to take into account important dimensions such as employment and social and environmental considerations which are of equal significance in this process.

1.1.23 The SOLVIT dispute resolution network is working satisfactorily and could ideally help overcome legal barriers (often on the grounds of misapplication due in turn to either a lack of information, insufficient training of officials and protectionism) but definitely needs more resources and personnel in national capitals. A structured publicity campaign should be conducted to create the awareness among SMEs about the existence and facilities provided by this mechanism.

1.1.24 The EESC has produced a detailed catalogue of obstacles to the Single Market ⁽⁵⁾ to allow for a realistic understanding of the regulatory challenges which are still impeding the full realisation of a European Internal Market. These are not always governmental obstacles.

1.1.25 As a follow-up to the Interinstitutional Agreement of 2003, the EESC, in cooperation with the European Commission, is developing a database (PRISM II) to map EU co-regulation and self-regulation initiatives ⁽⁶⁾. The EESC and particularly the members of its Single Market Observatory (SMO) are a resource which the Commission and the Member States are welcomed to exploit. The SMO in particular conducts public hearings in different Member States each year with particular emphasis on employment issues in the new Member States.

1.1.26 In view of the expertise which it possesses and its representative nature, the EESC believes that it could play a role in the drawing-up of the impact assessments which the Commission intends to introduce on a systematic basis. It is vitally important that draft legislation reflects a plurality of views and is most scrupulously and objectively well-founded. Forwarding the impact assessments first of all to the EESC and giving it the opportunity to comment on these assessments before they are forwarded to the European Institutions would make it possible, in the spirit of the Partnership for European Renewal, to secure much greater approval of EU legislative initiatives ⁽⁷⁾.

1.1.27 Finally, promoting the benefits of the Single Market to consumers and encouraging them to take advantage of it should be seen as a priority to drive the completion of the Internal Market forward.

2. Introduction

2.1 This opinion follows on a request for an exploratory opinion from Commissioner Wallström, Vice-President of the European Commission, to the European Economic and Social Committee, dated 5 October 2006.

⁽⁵⁾ The Single Market Observatory (SMO) of the EESC has produced a detailed catalogue of obstacles which is available via the SMO website:

http://eesc.europa.eu/smo/news/index_en.asp.

⁽⁶⁾ This database will be available on the website of the Single Market Observatory in the first half of 2007

(http://eesc.europa.eu/smo/index_en.asp).

⁽⁷⁾ See, for example, OJ C 221, 8.9.2005.

2.2 The Committee was asked to reflect on the priorities set up by the European Commission with a view to contributing to the report due to be tabled at the 2007 Spring Council Summit and, ultimately, to the final report.

2.3 Given the tight timetable to which the Committee has had to work, it has decided to concentrate on a few key messages and identify a few key areas where further progress is, in the view of the Committee, desirable.

3. General comments

3.1 The original logic of the Single Market was to replace different sets of national regulations with one set of EU-wide regulations, and hence to create a level playing field which would enable the European economy to realise its full potential. In reality, EC regulations are too often perceived of as being additions to, rather than replacements for, national regulations.

3.2 A factor which has increased its importance is 'Globalisation' which is both a challenge and an opportunity. The challenge can only be met if the full potential of the Single Market is realised.

3.3 In this context, the EESC endorses the European Commission's intention of delivering a new policy agenda based on a new partnership, with the institutions working more effectively together. As part of this shared agenda, national, regional and local governments should also take responsibility for delivering results and bringing Europe closer to its citizens.

3.4 The view that somehow more legislation means 'more Europe' must be resisted. Are they the most effective means for achieving the desired end? The promotion of alternatives to legislation such as best practice in co- and self-regulatory initiatives, or Collective Agreements should be given importance and more widespread use of these practices should be encouraged, whilst not forgetting the pursuit of the social dialogue — which the Treaty calls upon the Commission to promote — with a view to reaching collective agreements.

3.5 However, the effective use and quality of impact assessments, evaluations and public consultations should be better guaranteed in the legislative and policy-making processes (did draft legislation deliver as intended? If not, why not?). In this connection, the Committee will also be issuing an exploratory opinion on 'Quality standards for the contents, procedures and methods of social impact assessments from the point of view of the social partners and other civil society players'.

3.6 The Single Market has been successful in certain areas affecting large numbers of consumers (e.g. product safety or sale guarantees) while in other areas progress has been slow to materialise or remains non-existent for the end-user (e.g. financial services or the Community patent).

3.7 Job creation and worker mobility are among the key objectives of the single market, and training and education programmes need to be directed more towards paving the way for the 'knowledge-based economy'. However, on its own, the setting-up of the single market will not resolve the problems on the European labour market: additional pro-active measures will also be required.

3.8 Legislative proposals should be drafted in such a way as to be easily understandable for the potential end-users, and not only for the legislative authorities. The same logic should apply to regulation.

3.9 A higher priority should be accorded to Better Regulation. The EESC has referred to this in a number of opinions ⁽⁸⁾. There is abundant evidence both from the Commission's own consultation and from Member States that directives are frequently made more onerous by national administrations when implementing them into national law (i.e. *gold plating*). This bears more heavily on SMEs than on large companies. SME owners frequently have to combine all of the tasks which large organisations can delegate to specialists.

3.10 Better implementation and enforcement is a prerequisite for a Single Market to exist in the first place. The EESC opinion on the 'EU and national administration practices and linkages' ⁽⁹⁾ draws attention to the shortcomings at present:

- in some Member States there is little liaison between their officials negotiating in Brussels and those responsible for implementing at home,
- in other Member States, confusion arises because a number of different government departments are negotiating over different elements of a proposed directive and the governments concerned do not always have a coherent position as a result.

3.11 Better implementation and enforcement ensure against the fragmentation of the Single Market.

3.12 There is an obvious lack of coherence within national administrations while the effectiveness of the European Union is threatened by Member States not complying with their own decisions. In some Member States there is little communication and information policy on Single Market issues, including success stories, at national level. Governments, national Parliaments or the media do not feel morally compelled to play their part. The Social Partners and Civil Society should be more involved if the citizens of Europe are really to feel that they are an integral part of developments including the stalled Constitution. Attention should not, however, focus on communication problems alone. The first step in winning back the confidence of citizens in the EU must continue to be finding a solution to the urgent problems of the Union.

Brussels, 17 January 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽⁸⁾ Notably on *Better lawmaking*, OJ C 318, 23.12.2006, rapporteur Mr Retureau, *Better implementation of EU legislation*, CESE 1069/2005, rapporteur Mr van Iersel, OJ C 24, 31.1.2006, *Strategy for simplification*, OJ C 309, 16.12.2006, rapporteur Mr Cassidy, an Information Report on the *Current state of co-regulation and self-regulation in the Single Market* CESE 1182/2004 fin, rapporteur Mr Vever, and the Single Market Observatory publication on *What is the state of the enlarged Single Market*, October 2004, EESC-C-2004-07-EN. Annex I provides a list of more recent opinions adopted by the EESC.

⁽⁹⁾ OJ C 325, 30.12.2006, rapporteur Mr van Iersel.

APPENDIX

to the Opinion of the European Economic and Social Committee

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

'1.1.11 The EESC recalls that in-depth harmonisation even over 27 countries, difficult though it may be, is an important element of the Single Market. This underlines the importance of mutual recognition.'

Outcome:

89 for amending the point,

72 against and

24 abstentions.

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate:

Delete point 1.1.16

~~'The EESC also asks the Commission, Member States (or public bodies) to examine restrictions on the Single Market maintained by professional groups. (1)'~~

Outcome:

67 for deleting the point,

93 against and

33 abstentions.

Delete point 1.1.17

~~'The key issue is that product design of assurance products, for example, is heavily influenced by local legal and tax features. This is the case for compulsory insurance, but also for many other essential insurance products, for instance through divergent solutions to issues such as cover for natural catastrophes as part of household fire policies or the cover for acts of terror through common insurance product.'~~

Outcome:

82 for deleting the point,

94 against and

20 abstentions.

Amend point 1.1.18 as follows

'One of the hindrances to the completion of the Single Market is the maintenance of significant restrictions on free movement of workers. The EESC urges those Member States who do not permit free movement to remove their obstacles to worker mobility. The free movement of people is one of the fundamental elements of the single market, and mobility also has its attractions for workers. However, as a result of differences in standards and rules between the Member States, a Single Market for workers is starting to emerge that fails in every respect to meet the requirements of a level playing field consistently called for in so many other single market fields. Cases such as Laval ⁽²⁾ — which was before the European Court of Justice on 9 January 2007 — or Viking Line clearly demonstrate the need for action on this front. Moreover, instead of asking people to go where the jobs are, it would be more effective and also more compatible with people's needs to create the jobs where people are. ⁽³⁾ This would necessitate an appropriate locational, regional and structural policy as an adjunct to the single market. Such a policy would also significantly enhance the public's acceptance of Europe.'

(1) Directive 2005/36/EC of the European Parliament and the Council of 7 September 2005 on the recognition of professional qualification OJ No L 255.

(2) This is a dispute between a Latvian construction company and the Swedish trade unions about the working conditions of Latvian workers building a school in the Swedish town of Vaxholm. This case is crucial for the future of employer-worker relations and is the result of differing standards between Latvia and Sweden. Such differences also exist between other Member States as well.

(3) OJ C 234, 30.9.2003

Outcome:

79 for amending the point,

99 against and

17 abstentions.

Delete last sentence of point 3.1

'The original logic of the Single Market was to replace different sets of national regulations with one set of EU-wide regulations, and hence to create a level playing field which would enable the European economy to realise its full potential. ~~In reality, EC regulations are too often perceived of as being additions to, rather than replacements for, national regulations.'~~

Outcome:

85 for amending the point,

86 against and

23 abstentions.

Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands, and the French departments of Guiana and Réunion from 2007 to 2013

COM(2006) 740 final — 2006/0247 (CNS)

(2007/C 93/07)

On 18 December 2006 the Council decided to consult the European Economic and Social Committee, under Articles 37 and 299 of the Treaty establishing the European Community, on the abovementioned proposal.

On 12 December 2006 the Committee Bureau instructed the Section for Agriculture, Rural Development and the Environment to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed **Mr Sarró Iparraguirre** as rapporteur-general at its 432nd plenary session, held on 17 and 18 January 2007 (meeting of 17 January), and adopted the following opinion by 81 votes to 3 with 7 abstentions.

1. Conclusions and recommendations

1.1 The EESC endorses the Commission's proposal for a Regulation introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the outermost regions of the EU from 2007 to 2013.

1.2 The EESC recommends that the Commission clarify the scope of this compensation with regard to fishing vessels flying the Venezuelan flag and operating in Community waters.

2. Introduction

2.1 Since 1992, the European Union has provided support to the producers of fishery products in the outermost regions in order to offset the extra costs of transporting those products to European markets.

2.2 In 2003, the Council adopted Regulation (EC) No 2328/2003 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the following regions:

- Azores
- Madeira
- Canary Islands
- French Guiana
- Réunion.

2.3 Regulation (EC) No 2328/2003 expires on 31 December 2006. As called for therein, the Commission has put forward a new Regulation proposing a longer period of application (from 1 January 2007 to 31 December 2013) and with an annual budget of EUR 15 million (the same as the previous budget).

2.4 On 29 October 2003, the EESC issued an opinion ⁽¹⁾ in favour of Regulation (EC) No 2328/2003, in which various recommendations were made.

⁽¹⁾ CESE 1396/2003. OJ C 32 of 5.2.2004.

3. General comments

3.1 The Commission's current proposal was provided for in the previous Regulation, which required the Commission to submit, by 1 January 2007, a first report accompanied by proposals for any measures needed to achieve the compensation objectives for outermost regions which market fishery products on the European mainland.

3.2 The measures introduced by the Commission in the new Regulation take into account the consultations of interested parties and regional administrations, together with the conclusions of an external study on the structural aspects of the Common Fisheries Policy in the outermost regions, and the recommendations made by the European Parliament and the EESC.

3.3 On the basis of these principles and having analysed all the measures proposed by the Commission, the EESC endorses the new Regulation submitted to it.

4. Specific comments

4.1 The proposal for the continuation of the compensation scheme introduces a higher degree of subsidiarity, as it leaves the determination of eligible products, quantities and compensation amounts to the Member States.

4.2 It is therefore easier for Member States to adjust their compensation plans, within the overall financial allocation, if justified by changing conditions.

4.3 Submission and acceptance procedures have been updated so as to minimise the administrative burden for Member States' national and regional authorities and the Commission services. The proposal therefore falls within the Commission's rolling programme for the simplification of Community legislation.

4.4 The total amount of compensation per year must not exceed:

a)	Azores	and	Madeira	EUR 4 283 992
b)	Canary		Islands	EUR 5 844 076
c)	French Guiana	and	Réunion	EUR 4 868 700

4.5 For the period 2007-2013 an annual budget of around EUR 15 million is envisaged (the same as for the previous period), covered by the European Agricultural Guarantee Fund.

4.6 These changes in relation to the previous regulation are in line with the recommendations made by the EESC in its earlier opinion, and the EESC therefore endorses them.

4.7 Support is limited to fishery products harvested and processed in accordance with the rules governing the Common Fisheries Policy.

4.8 The list of fishery products not eligible for compensation specifically excludes those caught by 'fishing vessels that fly the flag of Venezuela and operate in Community waters'. The EESC believes that if any agreement between the EU and Venezuela allows vessels from that country to benefit from the proposed compensation scheme then this should be expressly stated, and mention should be made of the Community waters in the outermost region in which the country's fishery products are eligible for said compensation.

4.9 Lastly, each Member State is to submit an annual report on the implementation of compensation, and the Commission is to submit a report, before 31 December 2011, to the European Parliament, the Council and the European Economic and Social Committee on this implementation, accompanied, if necessary, by legislative proposals.

Brussels, 17 January 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on Equal opportunities for people with disabilities

(2007/C 93/08)

On 24 May 2006, the Austrian presidency decided to consult the European Economic and Social Committee under Article 262 of the Treaty establishing the European Community on *Equal opportunities for people with disabilities*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 December 2006. The rapporteur was Mr Joost.

At its 432nd plenary session, held on 17 and 18 January 2007 (meeting of 17 January 2007), the European Economic and Social Committee adopted the following opinion by 152 votes, with one vote against and with one abstention:

1. Introduction

1.1 The European Economic and Social Committee (EESC) welcomes the Austrian presidency's request to draw up an opinion on *equal opportunities for people with disabilities*. Promoting equal opportunities for people with disabilities must be seen as an ongoing process that should feature high on the work programme of every EU Council presidency.

1.2 With the current opinion the EESC wants to look ahead and start outlining the challenges that the Commission will have to face on the disability front during the second half of its current mandate and even beyond. The present opinion should also be framed in the wider context of the identification of priorities for the last phase of the Disability Action Plan (2008-2009), as well as the re-opening of the budgetary discussions

(with its subsequent impact on programming and priority definition) in two years time.

1.3 People with disabilities make up 15 % of the total population — a figure that is rising as the population ages. This means that, in the enlarged EU, more than 50 million people are currently living with disabilities ⁽¹⁾. They therefore represent a very significant share of EU citizens and providing them with equal opportunities is a social, ethical and political imperative, which should be at the top of the EU's agenda. Furthermore, there is a clear business case for the integration of people with disabilities and for making services and goods fully accessible to them.

⁽¹⁾ According to Eurostat figures for 2002, 44.6 million people in the 16-64 age group — i.e. one in six (15.7 %) — stated that they had a long-standing health problem or disability (LSHPD).

1.4 In efforts to secure equal opportunities for people with disabilities, the EESC considers it vital to draw fully on all the activities planned under the European Year of Equal Opportunities for All in 2007. Disability associations must also be involved in these activities, as they were during the European Year of People with Disabilities in 2003. Furthermore next year should be the opportunity for the European Union and Member States to reinforce policies and legislation promoting equal opportunities for disabled people.

1.5 People with disabilities do not form a homogeneous group. There are different needs for different disabilities, which can only be accommodated if society recognises the requirements of people with disabilities and has as comprehensive a range of relevant information at its disposal as possible. The disability movement plays a key role in this regard.

1.6 In the European Union there is a significant number of people with disabilities who are excluded from full participation and inclusion in society and from exercising fundamental human and civil rights. Full inclusion of disabled children should be highlighted.

1.7 The EESC welcomes the UN Convention on the Rights of Persons with Disabilities adopted in December 2006 ⁽²⁾.

2. Conclusions and recommendations

2.1 The EESC urges that the 2007 European Year of Equal Opportunities for All be put to the fullest possible use in securing equal opportunities for people with disabilities.

2.2 The EESC urges the Commission to submit a proposal for comprehensive legislation on disability issues that extends anti-discrimination protection for people with disabilities into areas other than employment and also consolidates the principle of mainstreaming disability policy. Such legislation would ensure a minimum level of protection against discrimination in all areas of life across the EU. As it would cover the area of access to goods and services, it would also contribute to a more efficient single market and to the achievement of the Lisbon Strategy.

2.3 The EESC urges the Commission and Member States to go further in focusing on disability — moving from the Disability Action Plan (DAP) to a broad-scale EU strategy for people with disabilities.

2.4 The EESC invites Member States and the Commission, within their respective competences, to continue efforts to ensure full inclusion and participation in society of people with disabilities, recognising that they have equal rights vis-à-vis

other citizens; to examine possible alternatives to existing institutions where people with disabilities live segregated from the community, sometimes in undignified or inhuman conditions; and progressively to set up such alternatives.

2.5 The EESC reiterates the priorities necessary to focus on in order to achieve equal opportunities for people with disabilities: raising awareness of the rights of people with disabilities; disability access to public buildings; access to the information society and to modes of transport; drafting of new national legislation; and support for families, priorities which should exist in every society. It is especially important to focus on children with disabilities and to provide them with appropriate education, integration and support, thus helping them to become more active members of society and reducing their dependence on social security.

2.6 The EESC urges the European Commission and the Member States to be prepared to do considerably more to support the disability movement. The philosophy of 'Nothing about disabled people without disabled people' can only be enforced if governments realise the need to support the network of disability organisations. In June 2004, just after the last enlargement of the European Union, the national councils of disabled people's non-governmental organisations from the 10 new Member States and Bulgaria and Romania adopted the Budapest resolution ⁽³⁾ on that issue.

2.7 The EESC calls on the Commission and the Member States to make information available on best practices and effective approaches (such as the Agenda 22 method) so as to involve disability representatives in drawing up local authorities' action plans, thereby also securing equal opportunities for people with disabilities at local level. The EESC calls on the member states to follow the High Level Group on Disability guidelines on mainstreaming disability in different policy areas ⁽⁴⁾.

2.8 The EESC welcomes the Commission's determination to launch a European Initiative on e-Inclusion in 2008 and calls for it to be as far-reaching and ambitious as possible and a definitive step towards the mainstreaming of e-Accessibility in all relevant EU policies.

2.9 At a more concrete level, the EESC calls for the new regulations (currently in discussion) setting out the new electronic communications framework and the TV without frontiers directive to mainstream accessibility in order to make sure that people with disabilities can fully benefit from such important means of communications.

⁽²⁾ See for instance:

http://www.eudnet.org/update/online/2004/jun04/edfn_02.htm.

⁽⁴⁾ Discussion Document for the meeting of the High Level Group on Disability, 18–19 March 2004. Concept paper on 'Mainstreaming disability in different policy areas', High Level Group on Disability.

⁽²⁾ United Nations Convention on the Rights of Persons with Disabilities, New York, 2006.

2.10 The EESC calls for a strengthening of Directive 2001/85/EC ⁽⁵⁾ in order to bring it into line with new EC legislation on the rights of disabled air passengers.

2.11 The EESC calls on the Commission and the Member States to devote all necessary efforts and resources to make sure that Council Directive 2000/78/EC ⁽⁶⁾, which provides a legal framework for equal treatment in employment, is effectively implemented.

2.12 The EESC believes that the transition from institutions for disabled people to high quality, community-based alternatives for everyone is indispensable to allow inclusion and participation of disabled people in the life of society, and calls on the European Commission to include this issue in the future initiatives on social services of general interest, and as a priority for EU structural funds.

2.13 The EESC calls on the Commission and Member States to place emphasis on social services and personal assistance for people with disabilities, keeping in mind that supportive services will make it possible for people with disabilities as well as carers to lead a normal life and contribute actively to society.

2.14 In the context of the Commission's initiative on 'better regulation', the EESC calls for impact assessment in preparation of new draft legislation, taking into account the specificities and needs of people with disabilities. In addition, all ICT tools used to improve the quality, adoption, transposition and enforcement of EU legislation should fully respect accessibility requirements.

2.15 Families which include one or more persons with disabilities, have a higher risk of finding themselves in situations of poverty, as disability involves greater family spending, which can amount up to EUR 30 000 per year ⁽⁷⁾. This justifies the adoption of positive discrimination measures, such as allowances (in cash or in kind) or tax incentives.

2.16 The EESC calls on the Member States to enforce and monitor relevant legislation which influences the equal opportunities for people with disabilities. The EESC notes that directives on air and rail transportation only apply to international transport, leaving people with disabilities without any accessible means of transportation at regional and local level.

3. Equal opportunities for people with disabilities — taking stock in various fields

3.1 Awareness and education

3.1.1 The awareness and visibility of disability was strongly emphasised during the European Year of People with Disabilities

⁽⁵⁾ See Directive 2001/85/EC of the European Parliament and of the Council of 20 November 2001 relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat, and amending Directives 70/156/EEC and 97/27/EC.

⁽⁶⁾ See Directive for equal treatment in employment and occupation, 2000/78/EC of 27.11.2000.

⁽⁷⁾ The 'Study on the economic inequality of people with disabilities in the city of Barcelona. The overstrain economic effort provoked by disability' carried out by the Local Institute of People with Disabilities of Barcelona City Council in March 2006 has revealed that family spending derived from the disability of any of the members of the family could amount up to EURO 30 000 per year, depending on the social protection level and the type of disability. (<http://w3.bcn.es/fitxers/baccessible/greugecomparatieconmic.683.pdf>).

2003. Enabling real changes in securing equal opportunities for people with disabilities, and information on disability should be incorporated into the provision of education. High quality media coverage of the problems faced by people with disabilities should be seen as an essential means of changing social attitudes to disability; schools and media should both work together in order to achieve this goal.

3.1.2 Without inclusive education provided for disabled children and youth, integration into the labour market would be difficult to achieve. Improving access to education for people with disabilities should become a priority for forthcoming action plans and strategies for people with disabilities.

3.1.3 Although the EESC recognises that progress has been made since the Madrid Declaration and the European Year of People with Disabilities, there is still a long way to go. To cite just one example, over 80 % of public websites, including those of the European institutions, are generally not accessible to people with disabilities. Furthermore it is critical that all websites providing services to the general public are also accessible.

3.1.4 The EESC calls in particular for making standards which are agreed by the European standardisation bodies mandatory for public procurement of goods and services, and for legislation on access to ICT goods and services.

3.1.5 The 'Design for All' concept should be promoted among all interested parties i.e. designers, manufacturers, those responsible for devising standards as well as the users themselves, namely people with disabilities, who have the right to a wide choice of goods and services that meet their needs.

3.1.6 The EESC welcomes the Riga Ministerial Declaration on ICT for an inclusive society and it hopes that it will be an important milestone in the e-Inclusion of people with disabilities. ICT, apart from being an important driver of growth and employment, is also a powerful tool for the integration of people with disabilities.

3.1.7 Ahead of the revision of the existing regulations for state aid for the training and employment of people with disabilities, the EESC calls on the Commission to maintain its current approach in the forthcoming block exemption regulation.

3.2 Employment

3.2.1 The EESC is aware that, on the employment front, significant disparities remain between disabled and non-disabled people. In 2003, Eurostat confirmed that significantly more people with disabilities are economically inactive: 78 % of the severely disabled are outside the labour force as opposed to 27 % for those without long-standing health problems or no disability ⁽⁸⁾.

3.2.2 The EESC welcomes the resolute steps taken by the European Commission to monitor the transposition and implementation of the employment directive ⁽⁹⁾. Monitoring should be carried out jointly with the social partners and the non-governmental organisations active in this field. The EESC feels that better monitoring creates better conditions for making workplaces more disability-friendly, creating new jobs suitable for people with disabilities and encouraging the establishment of support services.

3.2.3 The EESC hopes for greater involvement by national disability associations in drawing up the reform plans. The revised Lisbon agenda requires broader civil society involvement in order to achieve the planned objectives, which will not be attained if people with disabilities (15 % of the EU's population) are left out or their needs are not adequately considered and catered for.

3.2.4 Following ongoing discussions on employment, growth and flexible labour market (*inter alia* at the informal EU summit that took place in Lahti on 20 October 2006), the EESC calls on the Commission to analyse the impact and exploit possible synergies that flexible working and supportive measures may create for increasing the employment rate of people with disabilities.

3.2.5 The EESC also supports the European Social Fund (ESF) initiatives to integrate people with disabilities into the labour market. The EQUAL initiative has proven very effective in fostering equal opportunities among people with disabilities. As the separate initiative of EQUAL will cease to exist, the EESC calls on the Commission to integrate its approach and philosophy adequately into the new ESF mechanisms.

3.2.6 The new framework of the European Social Fund should emphasise that investment in people cannot succeed unless it is, at the same time, accompanied by investment in improved facilities and improved accessibility.

3.2.7 The EESC still believes that an adequate policy framework which provides financial incentives to companies to make their premises and services accessible is required and calls for it

to be complemented, when needed, with binding legislation to make accessibility standards compulsory.

3.3 A barrier-free society

3.3.1 The EESC believes that establishing a barrier-free society is vital to making equal opportunities for people with disabilities a reality. A barrier-free society means an environment that is adapted at a technical level to the needs of people with disabilities and in which barriers to communication and participation are being torn down.

3.3.2 The EESC believes that information must be made available in digest form on disability measures in place in the Member States and on specific national legislation in this field. It calls on the Commission to bring the requisite information together in its future biennial report on the situation of people with disabilities in Europe.

3.3.3 One major obstacle to securing equal opportunities is the difficulty experienced by people with disabilities in gaining access to education. Although the employment framework directive bans any discrimination with regard to vocational training (including higher education), people with disabilities still have limited access in this area. The reasons for this include an environment that is unsuited to the needs of people with disabilities, a shortage of appropriate facilities, poor communication, lack of information and consultation, as well as the education provided to children and young people with disabilities, which in practice often deprives them of educational opportunities right from the start.

3.3.4 The EU Structural Funds make a crucial contribution to integration provided due account is thereby taken of the principles of non-discrimination and accessibility for people with disabilities. The EESC welcomes the recent approval of the new Structural Fund Regulations, which are a step in that direction and will preclude EU-funded projects from creating new barriers to people with disabilities. The EESC calls for other EU programmes and initiatives, in particular those that are better funded, to take the same approach, and to play a crucial role in meeting the Lisbon Strategy goals.

3.3.5 The EESC feels that more needs to be done to create an environment that is suited to the needs of people with disabilities — particularly in terms of access to public transport and to an obstruction-free urban environment. Many sections of society benefit from an environment that is suited to the needs of people with disabilities — families with small children, older people and, for instance, people with temporary mobility problems as a result of physical injury.

⁽⁸⁾ Statistics in Focus, Theme 3: *Employment of disabled people in Europe* 2002 Eurostat 26/2003.

⁽⁹⁾ Directive 78/2000/EC, 27 November 2000.

3.3.6 Action is urgently needed to change attitudes. Human rights must be the basic premise for securing equal opportunities for people with disabilities: i.e. the principle that every person has the right to take an active part in society. It is very important to ensure that support services are in place for people with disabilities — including measures to promote employment, such as facilitating sheltered and supported work as a pathway into the open labour market.

3.3.7 The Member States should achieve conformity in the particular processes and methods for securing equal opportunities. With equal opportunities in practice we have to understand the wide scale of realistic possibilities for each individual. This proposed change to strengthen the truly individual approach towards people with disabilities will in the medium term require higher expenditures from public sources as well as from the Structural Funds. This leverage principle will result in stable long-term savings on social expenditure.

3.3.8 Social economy enterprises are crucial to securing equal opportunities for people with disabilities. Such companies help integrate people with disabilities into society and the labour market and promote the mainstreaming of disability policy with the use of the self-help principle which is much used by cooperatives.

3.3.9 The EESC is still convinced that the new EU directives on public procurement offer a good tool to promote the employment of disabled people, the accessibility of public transport and the built environment, as well as the production of accessible goods and services, and calls on all public authorities (local, regional, national and European) to use them for that purpose. Exchange of best practices should be supported by the European Commission.

3.4 *Involvement in the decision-making process*

3.4.1 European disability organisations are actively working to mainstream disability issues. The EESC welcomes these activities and feels that compliance with the mainstreaming principle is the key to achieving the desired results. Mainstreaming can only succeed if disability organisations are involved in the decision-making process at an early stage.

3.4.2 The European Commission has developed effective participation procedures, which the EESC feels play a crucial part in securing equal opportunities for people with disabilities.

Promoting mainstreaming can, in conjunction with legislative measures, produce results in areas such as accessible transport and housing suited to the needs of people with disabilities, and access to goods, services and information.

3.4.3 The European Year of People with Disabilities (2003) was a milestone on the road to greater participation. It was, in the main, a success, thanks to the bottom-up approach that allowed European disability groups to be very much involved in the preparatory work and to continue to play a role throughout the entire year. Mindful of the mainstreaming principle, steps were also taken to work together with a broad spectrum of decision-makers.

3.4.4 It is also of vital importance that equal opportunities for people with disabilities become an integral part of those European Union procedures that are subject to the open method of coordination. This is particularly important since many decisions relating to disability policy are still the responsibility of the Member States.

3.5 *Legislative measures to improve equal opportunities for people with disabilities*

3.5.1 A number of political moves have been made at European level to secure equal opportunities for people with disabilities. During the European Year of People with Disabilities in 2003, the Council adopted resolutions on employment and vocational training, the accessibility of cultural activities and training, and e-accessibility⁽¹⁰⁾. Other EU institutions also launched initiatives on access⁽¹¹⁾ and employment.

3.5.2 The 2006-2007 EU Disability Action Plan is now being implemented. The EESC is pleased that the objectives remain geared towards basic issues facing people with disabilities. The primary objective of the second phase of the action plan is the active integration of people with disabilities. This builds on the 'citizens' concept' of disability⁽¹²⁾, i.e. that disabled people have the same choices and control in their everyday lives as non-disabled people.

3.5.3 The EESC feels that additional legislation is needed to combat discrimination in all EU areas of activity. The Committee awaits with interest the findings of the feasibility study on additional legislative initiatives in the field of non-discrimination. The Committee also firmly believes that a proposal for a disability directive must be submitted with all possible speed.

⁽¹⁰⁾ Council Resolution of 15 July 2003 on promoting the employment and social integration of people with disabilities (2003/C 175/01).

Council Resolution of 6 May 2003 on accessibility of cultural infrastructure and cultural activities for people with disabilities (2003/C 134/05).

Council Resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training (2003/C 134/04).

Council Resolution of 6 February 2003 on 'eAccessibility' — improving the access of people with disabilities to the knowledge-based society (2003/C 39/03).

⁽¹¹⁾ 2010: A Europe accessible for all: report by a group of accessibility experts:

http://europa.eu.int/comm/employment_social/index/7002_en.html.

⁽¹²⁾ Under Article 26 of the Charter of Fundamental Rights of the European Union, the Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

4. The EESC's role in promoting equal opportunities for people with disabilities

4.1 The EESC recalls that the role of the social partners is vital for the full integration of people with disabilities. There are many examples of good practice among employers both in employing disabled people and in designing their goods and services in an accessible way. The EESC is committed to fostering progress in that area within its competences.

4.2 In addition, the EESC encourages employers and trade unions to make use of social dialogue mechanisms to propose new initiatives for the employment of disabled people, including job retention.

4.3 The EESC is committed to securing equal opportunities for people with disabilities. To help enhance the success of the European Year of People with Disabilities in 2003, the EESC set up a task force on disability issues, made up of Committee members and officials. Its job was to prepare and execute EESC activities undertaken as part of this special European year.

4.4 The EESC opinion on the European Year of People with Disabilities (2003) ⁽¹³⁾ gives a clear overview of EESC activities to promote disability issues. Although the EESC has made great efforts and considerable progress in mainstreaming disability in all its relevant opinions, the Committee is fully committed to multiplying those efforts during 2007 (European Year of Equal Opportunities for All) and beyond.

4.5 The EESC has adopted a range of opinions dealing specifically with disability issues, as the one adopted in 2002 titled: 'The integration of disabled people in society' ⁽¹⁴⁾ which presented a global approach of the disability issue for the first time and the one on the situation of disabled people in the enlarged European Union. Other opinions too have called for equal opportunities for people with disabilities. These include, for instance, the opinion on 'eAccessibility' ⁽¹⁵⁾, the opinion on the European Year of Equal Opportunities for All (2007) ⁽¹⁶⁾ and that on the mental health green paper ⁽¹⁷⁾. The issue was also touched on in the opinion on social tourism ⁽¹⁸⁾.

4.6 The new EESC headquarters building, which opened in 2004 is fully accessible for people with disabilities. Disability associations have thus been able to attend and hold seminars

there. The other EU institutions should take a lead from this example.

4.7 The Committee notes that disability associations now have stronger representation on the Committee. Moreover, a number of representatives of social economy organisations and of the social partners have been working hard to help secure equal opportunities for people with disabilities.

4.8 With a view to foster the exchange of best practice, the EESC proposes to organize a seminar during 2007 European Year of Equal Opportunities, with particular emphasis on disability and multiple discrimination issues.

4.9 The EESC calls on the national Economic and Social Councils or similar bodies to use 2007 as a platform to promote disability mainstreaming in their work. In addition, the EESC could explore the possibility of commissioning a study on best practice on disability mainstreaming amongst social partners.

5. Towards a barrier-free Europe: targeted action

5.1 The EESC notes that, so far, Europe has been without broad-based anti-discrimination legislation covering all areas of EU activity.

5.2 Disability issues must be put on the agenda of the various EU strategies. Consideration must also be given to the impact this has on securing equal opportunities for people with disabilities. The disability issue must continue to be given high priority, not least since the question is, for instance, no longer addressed in the revamped Lisbon strategy or in the national reform plans submitted in 2005. The EESC thus welcomes the working document on disability mainstreaming in the European Employment Strategy and asks the European Commission to carry out an impact assessment of this document.

5.3 The EESC would stress the need to again take up the proposal put forward during the UK presidency to hold an annual ministerial meeting on disability issues so as to take the debate forward at a high political level, with input from the appropriate disability organisations. The public has not, so far, been sufficiently aware of this initiative.

⁽¹³⁾ EESC opinion 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 implementation, results and overall assessment of the European Year of People with Disabilities 2003, 14 February 2006 (CESE 236/2006), rapporteur: Mrs Anča. OJ C 88 of 11.4.2006.

⁽¹⁴⁾ EESC opinion on Integration of disabled people in society, (Own-initiative opinion), 17 July 2002 (CESE 853/2002), rapporteur: Mr Cabra de Luna. OJ C 241 of 7.10.2002.

⁽¹⁵⁾ EESC opinion on the Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee and the Committee of the Regions — eAccessibility, 15 March 2006 (CESE 404/2006), rapporteur: Mr Cabra de Luna. OJ C 110 of 9.5.2006.

⁽¹⁶⁾ EESC opinion on the Proposal for a Decision of the European Parliament and the Council on the European Year of Equal Opportunities for All (2007) — Towards a Just Society, 14 December 2005 (CESE 1507/2005), rapporteur: Mrs Herczog. OJ C 65 of 17.3.2006.

⁽¹⁷⁾ EESC opinion on the Green Paper Improving the mental health of the population — Towards a strategy on mental health for the European Union, 17 May 2006 (CESE 739/2006), rapporteur: Mr Bedossa. OJ C 195 of 18.8.2006.

⁽¹⁸⁾ EESC opinion on Social tourism in Europe (own-initiative opinion), 14 September 2006 (CESE 1155/2006), rapporteur: Mr Mendoza Castro.

5.4 The EESC stresses once again the need for a common European definition of disability, which will make EU disability policy more effective. By the same token, more exhaustive data on the situation of people with disabilities in the EU would also contribute to a better informed and targeted policy-making. Therefore the EESC calls on the Commission, Eurostat and Member States to devote more resources to the elaboration of statistics analysing aspects such as the employment situation, the economic weight of disabled people, their role as consumers or the access to services of people with disabilities.

5.5 Under the Amsterdam Treaty, the European Community is committed to taking account of the needs of people with disabilities when drawing up measures relating to the single market. Regrettably, Declaration 22 has not been implemented,

and this has even resulted in further obstacles in access to goods and services.

5.6 The EESC is also keeping a close eye on the United Nations Convention on the Rights of Persons with Disabilities adopted in August 2006 and calls on EU Member States to ratify it. The Committee also calls the Commission to ensure that the principles enshrined in the UN Convention are promoted and followed at EU level.

5.7 The EESC hopes that the EU action plans to secure equal opportunities for people with disabilities will be the catalyst for more new measures in this field that will in turn produce quantifiable results.

Brussels, 17 January 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Promoting decent work for all — The EU contribution to the implementation of the decent work agenda in the world

COM(2006) 249 *final*

(2007/C 93/09)

On 13 July 2006 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 December 2006. The rapporteur was Mr Etty.

At its 432nd plenary session, held on 17 and 18 January 2007 (meeting of 17 January 2007), the European Economic and Social Committee adopted the following opinion by 128 votes to 3 with 11 abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the Commission Communication. It is confident that the Commission in close cooperation with the Member States, will make a major contribution to the realisation of Decent Work, both within the EU and in third countries.

The Committee shares the view of the Commission that the endorsement of social objectives must not be used for protectionist purposes.

1.1.1 The Committee urges the Commission to involve the EESC in the preparation of the follow-up report to the Communication to be presented by the summer of 2008.

1.1.2 It requests the Commission to develop adequate indicators for assessing the implementation of the Decent Work Agenda by the EU.

1.1.3 The Commission should give a clear indication of the financial implications of its contribution to the promotion of decent work, both within and outside the EU. This should include information on the way it intends to support the ILO in the execution of its Decent Work Agenda.

1.2 The Commission should follow the same approach as recommended in the European Economic and Social Committee's Opinion on the Social Dimension of Globalisation of March 2005: retain and reinforce the positive impact of Globalisation, while taking appropriate action so as to combat its negative repercussions. The Committee reiterates its conclusions of the March 2005 Opinion.

1.3 Decent Work policies, both within and outside the EU, can only succeed with full involvement of social partners and the broader civil society.

1.4 In pursuing the Decent Work objective, policy coherence and coordination at all levels, including national, is of crucial importance.

1.5 A key factor in the promotion of Decent Work is strengthening the ILO supervisory system.

1.6 The EESC calls upon the Commission to analyse with Member States the reasons for non-ratification by receiving countries in relation to the UN International Convention on Migrants.

1.7 The ratification and implementation in law and practice of the relevant ILO Conventions within the EU and in relation to third countries is essential.

1.8 The EESC calls upon the Commission to promote the importance of occupational health and safety as one of the key factors in achieving decent work.

1.9 The Commission should present an Action Plan on its Decent Work policies, both within and outside the EU, including budgetary data.

2. General observations

2.1 The Committee welcomes the Communication. The Decent Work Agenda is an important response to globalisation and it can make a major contribution to realising the Millennium Development Goals as acknowledged by the United Nations. The European Union, as an important member of the world community, can bring significant added value by implementing it — both 'at home' and in promoting it in its diverse relations with third countries, groups of countries, and international institutions. Decent work has a direct relevance for the implementation of the Lisbon Agenda by contributing significantly to shaping working life in the EU in a sustainable way. Playing an active role in promoting decent work for all not only forms an integral part of the European Social Agenda and of the EU efforts to promote its values; it is also in the interest of the EU in order to ensure that globalisation does not undermine the European Social Model.

2.2 'Decent work' is a concept, introduced by the International Labour Organisation (ILO) in 1999⁽¹⁾. It has been defined as 'the converging focus' of all the ILO's four strategic objectives:

— the promotion of rights at work,

— employment,
— social protection, and
— social dialogue.

The concept is a central part of the EU Social Model which focuses on the right to productive and freely chosen work in which rights are protected, which generates an adequate income, with adequate social protection and in which there is an emphasis on equal opportunities. Tripartism and social dialogue guarantee participation and democratic process.

Gender and development are considered to be cross cutting themes.

2.2.1 In line with the ILO Decent Work Agenda, the Commission should stress the importance of gender equality and the empowerment of women to overcome poverty in greater detail; in particular as regards equality of opportunities and equality of treatment.

2.3 In its opinion on the Social Dimension of Globalisation⁽²⁾ the EESC has identified decent work as a key objective, and as a priority issue for the EU and its Member States, both at home and in external relations and in development assistance.

2.4 The Committee subscribes to the statement in the Introduction of the Communication which characterises the Decent Work Agenda as a number of universal strategies which are not tied to a specific developmental model, and as an instrument tailoring development to values and principles of action and governance which combine economic competitiveness with social justice. Underlying Decent Work is the understanding that every country, at whatever level of development, sets its own goals to reduce the gap between the objective and the absence of sufficient employment opportunities, the denial of rights at work, inadequate social protection and shortcomings in social dialogue.

2.5 The Committee further welcomes the emphasis in the Communication on the need to establish an effective commitment to Decent Work across the full range of multilateral institutions and by all governments, as endorsed by the UN ECOSOC Declaration of July 2006.

2.6 The Committee notes with interest that several recommendations, made in the EESC opinion on the Social Dimension of Globalisation, have been taken on board in this Communication.

2.7 It regrets that the element of policy coordination and coherence in and between the International Financial Institutions (IFI's), the World Trade Organization (WTO) and the International Labour Organization (ILO), in particular at the level of the Member States, has not been pursued in the way the EESC would have hoped. The Committee had requested the Commission as well as the Council of Ministers to take certain action in order to promote more coordination and coherence at the level of the Member States, with full involvement of civil society.

⁽¹⁾ Decent work, Report of the Director General of the ILO to the 87th Session of the International Labour Conference, ILO, Geneva, 1999.

⁽²⁾ EESC opinion of 9.3.2005 on 'The Social Dimension of Globalisation — the EU's policy contribution on extending the benefits to all'. Rapporteurs: Mr Tom Etty and Ms Renate Hornung Draus (OJ C 234 of 22.9.2005).

The Committee reiterates this request with a view to the promotion of Decent Work by the Commission and the Member States in these institutions.

The Commission should promote a more united approach in the IFI's by the Member States, in particular with regard to their policy advice, development assistance programmes with Governments, and their loans to private companies.

2.8 The Committee is of the opinion that, generally speaking, the proposals for action made by the Commission in the Communication are well taken and constructive.

2.8.1 A major aspect missing is an acknowledgement that strengthening the supervisory system of the ILO is a key factor in the promotion of Decent Work. Ratification of Conventions is important, but not sufficient. The reality on the ground, i.e. full implementation in law as well as in practice, must also be a point of permanent concern. The Committee encourages the Commission to stimulate and coordinate joint action by the Member States, in close cooperation with the ILO, to this effect.

2.8.2 Another element which the Committee wishes to highlight is that globalisation not only necessitates the ILO to bring and keep its Conventions and Recommendations up to date, but that it will inevitably also require the Organisation to formulate new standards in order to deal with new realities in the world of work as they immerge. It is necessary to ensure that the new instruments are the subject of relevant topics and these contain provisions that are rooted in reality. The EU and its Member States (and the social partners in the Member States) must be encouraged to seek a pro-active role, as far as this is concerned.

3. Specific observations

3.1 *Re: A factor in development, governance and performance*

3.1.1 In the Communication, the Commission speaks of bipartite and tripartite social dialogue, as well as of 'the involvement of the social partners and civil society'/'the involvement of the social partners and other social society stakeholders'. The Commission should make clear that 'social dialogue' takes place between social partners with or without Government representatives, whereas 'civil dialogue' also involves NGOs and other stakeholder groups. In the context of the Communication, it must be understood that genuine social dialogue is something which can only be achieved by free and independent, democratic organisations.

3.1.2 All the elements of the Decent Work concept are being touched upon in this section. What is striking is the fact that occupational safety and health is only slightly dealt with (the brief mentioning of 'the quality of employment'). It seems that this is not by chance as occupational safety and health does not feature prominently in the text of the Communication as a whole. This may have to do with the problematic position of the Commission and the Member States vis-à-vis the ILO's Conventions in this area. They have been very poorly ratified by EU Member States, although the level of protection to workers offered by the relevant EU legislation is — understandably — usually higher than the corresponding ILO instruments. This

poor ratification record is not a recommendation to other countries to ratify the ILO occupational safety and health Conventions. Thereby, the EU is not promoting the Decent Work Agenda in this respect. The Committee calls on the Commission and on the Member States to review the present unsatisfactory situation with a view to improving it significantly in the near future. The Committee also considers that the Member States should denounce an ILO health and safety convention only when they have decided to ratify an up-to-date convention covering a similar area.

3.1.3 The Committee shares the view of the Commission that the endorsement of social objectives must not be used for protectionist purposes. At the same time it wishes to observe that a 'social clause' in multilateral trade agreements, as discussed in earlier EESC Opinions, could not possibly be used for protectionist purposes, as it consists exclusively of the eight fundamental human rights standards of the ILO (on the right to organise/collective bargaining, forced labour, discrimination in labour and occupation, and child labour) which have all been ratified by an overwhelming majority of ILO Member States. If these Member States have lived up to their constitutional obligations, they have made them part and parcel of their own national legislation or other relevant regulations, as required and supervised by the ILO.

3.1.4 In its development policy, the EU must fully integrate Decent Work and back up its policy statements with adequate budgetary support.

3.2 *Re: Commitments and strategies for EU policies*

3.2.1 The EU should promote Decent Work 'at home' by ratification and implementation of all the relevant ILO Conventions, including those concerning the non-discrimination and integration of vulnerable groups, by the Member States.

3.2.2 In the sub-section 'Harnessing the EU's external policies more effectively', under the heading 'Enlargement', ILO Conventions 87 and 98 on Freedom of Association and on Collective Bargaining, and the rights protected therein appear to be conceived by the Commission as dealing with trade union rights only. That is incorrect: they are explicitly also employers' rights. Both these fundamental trade union and employer's rights must be promoted by the Commission.

3.2.3 The Committee agrees with the Commission views on 'Neighbourhood'. However, it thinks that due attention should also be paid to social dialogue/ratification of ILO Convention 144 on Tripartite Consultation in this area.

3.2.4 With regard to the sub-section on 'Bilateral and regional relations' the Committee observes that China poses a special problem which should be discussed and also addressed by the Commission. China openly opposes freedom of association and the right to bargain collectively by independent trade unions and employers' organisations. Given the importance of China in the world this cannot be ignored if one aspires for progress by means of the Decent Work Agenda.

3.2.5 In the list of measures envisaged under the heading 'Development cooperation' the Commission should include actions to be taken, in cooperation with the ILO, to help to integrate the informal economy into the formal economy. Decent Work is as important for the informal as for the formal economy. The Commission should cooperate with the ILO to explore new ways to help existing actors to develop forms of action to defend the rights and strengthen the capabilities of those earning their living in the informal economy, and to enable new actors to enter the field of interest representation.

3.2.6 Also, under this heading, the Committee would propose to include the promotion of social economy organisations such as cooperatives. This is one of the priority issues, identified in the EESC's Opinion on the Social Dimension of Globalisation.

3.2.7 The Commission should also consider policies to strengthen, in close operation with the ILO, the role of small and medium sized enterprises in promoting Decent Work.

3.2.8 As regards the heading 'Trade: a factor in sustainable development' the Committee refers to the suggestions made in the Opinion on the Social Dimension of Globalisation with regard to Joint bilateral observatories and Export Processing Zones.

3.2.9 The Committee welcomes the support of the Commission for the wide ratification and genuine application of ILO Conventions, but notes that in the area of international trade, this commitment could be made more concrete. First at the multilateral level, the Commission needs to make the promotion of Decent Work one of the objectives of the EU at the WTO. The creation of a Committee on 'Trade and Decent Work' within the WTO structure, similar to the 'Trade and Environment' Committee needs to be considered; Decent Work should be taken up a component of 'sustainable development' under the trade policy reviews of the WTO; and a WTO work programme, together with the ILO, is required. The Commission and Member States should engage in active efforts with other WTO members in order to convince them of the benefits of such attention to Decent Work within the WTO structures.

3.2.10 Second, in its bilateral trade relationships, as in Economic Partnership Agreements (EPAs), the Commission should put the ratification and implementation of the ILO core labour standards high on the agenda of the negotiations. In all

these negotiations, sustainability impact assessments (SIAs) that include decent work indicators should be undertaken, and their recommendations addressed.

3.2.11 With regards to the GSP plus system of trade incentives, strong accompanying measures are required if it is to be effective, notably by mid-term reviews of the GSP plus countries to be conducted in early 2007 in order to ensure the governments recognise they must actually implement the Conventions concerned and start to take appropriate action.

3.2.12 Under 'Better management of economic migration' the Committee wishes to raise, once more, the issue of the UN International Convention on Migrants. This is a difficult and complicated issue. Not one single important 'receiving country' has so far ratified this Convention. The Committee has taken a favourable attitude towards the Convention in its June 2004 Opinion⁽³⁾. It is striking that the Commission ignores the instrument totally in its Communication. The Committee requests the Commission to analyse, with the Member States, the reasons for non-ratification and to define a clear policy, based on that analysis. It also encourages the Commission to explore, together with the Member States which have so far not ratified the ILO Conventions 97 and 143 on Migrant Workers, possibilities for ratification in the near future.

3.2.13 The Commission intends to support efforts to conclude transnational collective agreements and global framework agreements (heading 'Working with civil society and the business sector'). The Committee insists that this should be explored in close cooperation with the relevant employers' and trade union federations.

3.2.14 The Commission should also discuss with these organisations and other relevant civil society organisations the promotion of corporate social responsibility policies in countries where the gap between legislation and implementation of the law in practice is particularly high. The Committee underlines that corporate social responsibility is complementary to legislation and cannot replace it.

The Committee recommends the Commission to encourage companies to include, in their voluntary codes of conduct, explicit references to the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration on Multinational Enterprises and Social Policy.

Brussels, 17 January 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽³⁾ EESC opinion of 30.6.2004 on 'International Convention on Migrants'.
Rapporteur: Mr Pariza Castaños (OJ C 302 of 7.12.2004).

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 89/391/EEC, its individual Directives and Council Directives 83/477/EEC, 91/383/EEC, 92/29/EEC and 94/33/EC with a view to simplifying and rationalising the reports on practical implementation

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(2007/C 93/10)

On 20 September 2006 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 December 2006. The rapporteur was Mr Janson.

At its 432nd plenary session, held on 17-18 January 2007 (meeting of 17 January) the European Economic and Social Committee adopted the following opinion by 150 votes to 1 with 6 abstentions.

1. Conclusions and recommendations

1.1 Health and safety at work is an area of EU competence which is important from the point of view of sustainable competition in the internal market and a social Europe. Companies must not be able to compete with each other at the expense of workers' health and safety.

1.2 Most of the directives on health and safety at work require Member States to draw up reports on the practical implementation of the directives. The current provisions lay down different intervals for the submission of national practical implementation reports to the Commission (four or five years). The purpose of the Commission's proposal is to remove these disparities and to rationalise the existing framework by providing for a single report every five years on the practical implementation of all of the directives.

1.3 The EESC welcomes the Commission proposal. Reporting has taken up a large amount of the national authorities' time, and the proposal will bring significant savings in time and cost.

1.4 Harmonising the frequency of reporting and bringing together reporting obligations in a single report will enable the national authorities in Member States to obtain a better overall view of the situation and make it easier to report on the links between the various health risks which the directives seek to prevent. Regular reporting on the practical implementation of the provisions of the directives is an important instrument for assessing the impact of the various measures on workers' health and safety in the European Union. However, the EESC considers that the Commission should propose the introduction of a requirement for Member States to consult with the social partners on all sections of the report and to include their comments in the report before sending it to the Commission.

1.5 The proposed directive will also help to increase transparency for stakeholders and the public at large, thus bringing Europe closer to the people and strengthening democracy.

2. Background

2.1 Gist of the Commission Communication

2.1.1 The proposal aims to simplify and rationalise the provisions of the Community directives concerning protection of the health and safety of workers at work, which require Member States and the Commission to draw up reports on their practical implementation.

2.1.2 Many of the directives on health and safety at work require Member States to draw up reports on the practical implementation of the directives. The current provisions lay down different intervals for the submission of national practical implementation reports to the Commission (four or five years). The purpose of the Commission's proposal is to remove these disparities and to rationalise the existing framework by providing for a single report every five years on the practical implementation of all of the directives, which would include a general section with general principles and common aspects applicable to all the directives, complemented by specific chapters dealing with the aspects particular to each directive. The first report will cover the period 2007 to 2012.

2.1.3 At present, the drawing up by Member States of practical implementation reports — on which the Commission's report is based — is provided for by Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to improve the health and safety of workers at work ⁽¹⁾ and by the individual directives ⁽²⁾ within the meaning of Article 16(1) of that directive. Three other directives also provide for reports to be drawn up ⁽³⁾.

2.1.4 Under the Commission proposal, three other directives in the field in question that do not require practical implementation reports would now be included in the reporting procedure. These are: Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work ⁽⁴⁾; Directive 2000/54/EC of the European Parliament and of the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) ⁽⁵⁾; and Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC) ⁽⁶⁾.

⁽¹⁾ OJ L 183, 29.6.1989, p. 1.

⁽²⁾ Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (OJ L 393, 30.12.1989, p. 1), Council Directive 89/655/EEC of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work (OJ L 393, 30.12.1989, p. 13), Council Directive 89/656/EEC of 30 November 1989 concerning the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (OJ L 393, 30.12.1989, p. 18), Council Directive 90/269/EEC of 29 May 1990 concerning the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (OJ L 156, 21.6.1990, p. 9), Council Directive 90/270/EEC of 29 May 1990 concerning the minimum safety and health requirements for work with display screen equipment (OJ L 156, 21.6.1990, p. 14), Council Directive 92/57/EEC of 24 June 1992 concerning the implementation of minimum safety and health requirements at temporary or mobile construction sites (OJ L 245, 26.8.1992, p. 6), Council Directive 92/58/EEC of 24 June 1992 concerning the minimum requirements for the provision of safety and/or health signs at work (OJ L 245, 26.8.1992, p. 23), Council Directive 92/85/EEC of 19 October 1992 concerning the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (OJ L 348, 28.11.1992, p. 1), Council Directive 92/91/EEC of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (OJ L 348, 28.11.1992, p. 9), Council Directive 92/104/EEC of 3 December 1992 concerning the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (OJ L 404, 31.12.1992, p. 10), Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (OJ L 307, 13.12.1993, p. 1), Council Directive 98/24/EC of 7 April 1998 concerning the protection of the health and safety of workers from the risks related to chemical agents at work (OJ L 131, 5.5.1998, p. 11), Directive 99/92/EC of the European Parliament and of the Council concerning minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (OJ L 23 of 28.1.2000 p. 57), Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 concerning the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration) (OJ L 177, 6.7.2002, p. 13), Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003 concerning the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) (OJ L 177, 6.7.2002, p. 13), Directive 2004/40/EC of the European Parliament and of the Council of 29 April 2004 concerning the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (OJ L 159, 30.4.2004, p. 1), Directive 2006/25/EC of the European Parliament and of the Council of 5 April 2006 on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation) (OJ L 42, 15.2.2003, p. 38). Three directives in the field in question do not require practical implementation reports, namely: Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work, Directive 2000/54/EC of the European Parliament and of the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) and Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC).

⁽³⁾ Council Directives 91/383/EEC of 25 June 1991, supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed duration employment relationship or a temporary employment relationship (OJ L 206, 29.7.1991, p. 19), 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels (OJ L 113, 30.4.1992, p. 19), and 94/33/EC of 22 June 1994 on the protection of young people at work (OJ L 216, 20.8.1994, p. 12).

⁽⁴⁾ OJ L 263, 24.9.1983, p. 25.

⁽⁵⁾ OJ L 262, 17.10.2000, p. 21.

⁽⁶⁾ OJ L 229, 29.6.2004, p. 23.

2.2 *General comments*

2.2.1 Health and safety at work is an area of EU competence which is important for sustainable competition in the internal market and for a social Europe. Companies must not be able to compete with each other at the expense of workers' health and safety.

2.2.2 The EESC welcomes the Commission proposal, which will bring significant savings in terms of time and cost. Reporting has taken up a large amount of the national authorities' time. At the moment, the different time intervals imposed by the various directives mean that evaluation exercises are carried out virtually continuously, resulting in disproportionately high administrative costs.

2.2.3 Harmonising the frequency of reporting and bringing together reporting obligations in a single report will enable the national authorities in Member States to obtain a better overall view of the situation and make it easier to report on the links between the various health risks which the directives seek to prevent. Problems relating to health and safety at work are often intertwined and a single report could help to give a better picture of the overall effects of the directives. Regular reporting on the practical implementation of the provisions of the directives is an important instrument for assessing the impact of the various measures on workers' health and safety in the European Union.

2.2.4 However, the EESC considers that the Commission should propose the introduction of a requirement for Member States to consult with the social partners on all sections of the report and to include their comments in the report before sending it to the Commission.

2.2.5 The proposed directive will also help to increase transparency for stakeholders and the public at large, thus bringing Europe closer to the people and strengthening democracy.

Brussels, 17 January 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on Taking stock of the reality of European society today

(2007/C 93/11)

On 5 October 2006, the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on *Taking stock of the reality of European society today*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 December 2006. The rapporteur was Mr Olsson.

At its 432nd plenary session, held on 17 and 18 January 2007 (meeting of 18 January 2007), the European Economic and Social Committee adopted the following opinion by 153 votes to 3 with 6 abstentions.

1. Introduction

1.1 In June 2006 the European Council stressed the importance of bringing the social dimension closer to citizens and welcomed the European Commissions intention to take stock of the social realities in the EU. The Council invited the Commission to issue an interim report before the spring summit in 2007 ⁽¹⁾.

1.2 Against this background the European Commission asked the EESC for an exploratory opinion on how to 'take stock of the reality of European society and launch an agenda for access and solidarity, a social dimension in parallel and close coordination with the single market review.' ⁽²⁾ This opinion covers the first aspect. Another EESC opinion reviews the advancement of the single market.

1.3 The Commission believes 'it is necessary that European solidarity policies and programmes must promote a higher quality of life, social cohesion and increase opportunities for the Unions citizens working with the national, regional and other authorities on the ground as well as with the social partners, promoting social dialogue and engaging civil society' ⁽³⁾. The stock-taking will examine the major factors driving social transformation and also serve as a basis for European policy-making into the next decade in view of building a new consensus on the social challenges facing Europe ⁽⁴⁾.

1.4 The initiative reflects a renewed interest in social issues at highest level in the aftermath of the no-votes in the referenda in France and the Netherlands. The UK Presidency invited Member States to a special summit (Hampton Court) dedicated to the European social model in October 2005. The German and Austrian Chancellors have proposed to include a 'social chapter' in a reformulated constitutional treaty.

1.5 The EESC appreciates the intentions of the Commission. It notes that stock-taking the reality of European society is a broader approach than just reviewing social issues in the traditional sense. The stock-taking can be an important tool to bring the EU closer to citizens and to answer their expectations of what European policies should deliver. The initiative can also be seen as a way to strike a balance between the social and economic dimension of the EU.

1.6 The EESC underlines that the idea of a stock-taking process must be precise in its aims and how it is to be pursued over time. In order to be worthwhile and not only remain an academic exercise, it must also bring value added to, and be coherent with, other EU policies, actions and debates that tackle social realities. The stock-taking must therefore have a clear relation to the Lisbon strategy and the social agenda, and it must assess the instruments of EU social policy and their implementation. The stock-taking must also be given sufficient time really to involve organised civil society at all levels.

1.7 This opinion is a first contribution of the Committee and will be followed up by other activities during the stocktaking process.

2. General remarks

2.1 The realities of European society are already well characterised by scholars, institutions and organisations ⁽⁵⁾. They have also been taken stock of in various EESC opinions to serve as a basis for conclusions and recommendations.

The positive aspects of economic and social development in Europe that are the major factors behind present social realities must be emphasised: a worldwide recognised quality of life, increasing longevity, new economic opportunities, social mobility, better working conditions and high levels of education and social welfare. The 'Trente Glorieuses' within a context of full

⁽¹⁾ European Council June 2006 point 21.

⁽²⁾ Letter from the Vice-President of the European Commission, Mrs Wallström of 5 October 2006.

⁽³⁾ See letter *ibid* and COM(2006) 211 final. A Citizens Agenda for Europe Page 4-5.

⁽⁴⁾ See EU Commission work programme COM(2006) 629 final.

⁽⁵⁾ The Bureau of European Policy Advisers — EU Commission 'think tank' — will soon publish a document to serve as a background.

employment and comprehensive social protection cover favoured the construction of a relatively homogeneous welfare state in Europe underpinning economic growth.

2.2 The EESC strongly believes that those positive aspects are closely linked to a mutually reinforcing blend of economic policy, employment and social policy. The EESC underlines that social policy should be regarded as a productive factor.

2.3 However, as over the last decades, European society is facing deep social changes: employment and the labour market are undergoing major transformations which will lead to rapidly changing social realities for working people. Europe is facing unprecedented demographic change. The reasons for the falling birth rate must be highlighted and analysed. Experience from some Member States shows that a properly designed family policy that reconciles family and working life, with comprehensive and well-managed childcare and measures to bring more women into employment, could result in a higher birth rate. Also immigration will be an ever more important component of stemming the downward population trend. Integration of immigrants and ethnic minorities is an important challenge.

2.4 The socio-economic changes reflected in the transition to a global, post-industrial and ageing society have created new opportunities, but also new social risks. Larger layers of the population than before will be affected. The capacity of the welfare state to guarantee the well-being of all its citizens through adequate and sustainable employment and social protection policies is being undermined. Poverty persists, with the risk of long term social exclusion and lack of job security, primarily affecting women, immigrants, young people and the unskilled. This poverty is on the increase in certain areas where unemployment levels remain high. Rapid transition to the knowledge economy makes skills obsolete and professional careers less stable. Flexibility has to be coupled with new forms of social protection as well as active employment and life long learning policies, in order to counteract any lack of job security that might come with it.

2.5 New family structures, life style, cultural patterns demographic change, urban concentration, increasing mobility, easier access to information, patterns of consumption and individual behaviour are also factors transforming society, and environmental and climatic changes will very soon greatly affect citizens and society. Public opinion and attitudes must also be taken into consideration.

2.6 The overall economic and social progress in Europe often conceals the diversity and inequality of existing social realities at all levels. However, in the final analysis, it is the

social reality on the ground and the quality of life of each individual person that count. Stocktaking of social realities must therefore start at the base level of society.

2.7 Diversity has increased significantly by the latest two enlargements. Each earlier enlargement made the European Union tackle social realities in order to pave the way for a smoother accession process. Many EU priority social policies can be seen in that context, for instance social security for migrant workers, social cohesion, social dialogue, employment policy and gender equality.

Enlargement involves major challenges for EU cohesion as well as for the achievement of some of the Lisbon goals, particularly in the area of social and employment policy. The Kok Report on the mid-term review of Lisbon warns that enlargement leads to tensions within the EU, which 'will increase further unless there is some prospect of convergence'. The emphasis of integration policy in the years ahead must be placed once more on the social strengthening of the Union. For this, the EU needs, among other things, basic macro-economic conditions that are geared to promoting growth and jobs.

The EESC notes the persistence of wide economic and social disparities between Member States. It believes that enlargement must not be perceived as a risk for downgrading the social dimension, but rather that, if accompanied by a more focused EU economic policy, it could be an opportunity to improve living and working conditions not only in the new Member States but all over Europe.

2.8 Stocktaking can be seen as an important step in fleshing out the contents of a European social model for the future on the basis suggested in a recently adopted EESC opinion ⁽⁶⁾: a dynamic model, responsive to new challenges and providing an idea of a democratic, environment-friendly, competitive, solidarity-based and socially inclusive welfare area for all citizens.

3. Specific remarks

3.1 As stated above, the Committee has taken stock of realities in European society in almost all societal fields not only responding to ordinary Commission referrals but also through own initiatives and exploratory opinions.

3.2 Recent EESC opinions cover for instance; citizenship, employment, working conditions, life long learning, social and territorial cohesion, social protection, social exclusion, persons with a disability, gender issues, youth, children's rights, ageing, immigration and integration, environment and sustainable

⁽⁶⁾ See the EESC opinion of 6.7.2006 on the 'Social cohesion: fleshing out a European social model', rapporteur: Mr Ehnmark, OJ C 309, 16.12.2006.

development, food safety and consumer protection, communications and transport, tourism services of general interest, public health, obesity and the social consequences of climate change as well as the more comprehensive Lisbon strategy.

Some of the exploratory opinions and own initiatives drawn-up over the last period are very pertinent to the stock-taking ⁽⁷⁾. There is also on-going work on opinions which will feed into the process.

3.3 In order to assess specific and overall social realities, as well as to measure the efficiency of its policy measures the EU must have at its disposal indicators that provide a sufficiently detailed and accurate picture. In order to develop 'welfare performance', benchmarks and more reliable and qualitative indicators have been suggested by the EESC ⁽⁸⁾ and should be part of the stocktaking process. The EESC reiterates its call for stakeholders to be invited to take part in formulating and evaluating indicators ⁽⁹⁾.

3.4 The EESC notes the lack of labour market and migration statistics, as well as the need for a more comprehensive data from a gender and poverty perspective. The EESC therefore proposes that Eurostat should be given the task and resources to develop such statistics that accurately reflect the social trends in society, supplemented by the Dublin Foundation for a more qualitative analysis.

⁽⁷⁾ See the following EESC opinions:

- 29.9.2005 on 'Poverty among women in Europe', rapporteur Ms King (OJ C 24, 31.1.2006).
- 16.12.2004 on 'Relations between the generations', rapporteur Mr Bloch-Lainé (OJ C 157, 28.6.2005).
- 13.9.2006 on 'Immigration in the EU and integration policies: cooperation between regional and local governments and civil society organisations', rapporteur Mr Pariza Castaños, OJ C 318, 23.12.2006.
- 13.9.2006 on 'Civil society participation in the fight against organised crime and terrorism', rapporteurs Mr Rodríguez García-Caro, Mr Pariza Castaños, Mr Cabra de Luna, OJ C 318, 23.12.2006.
- 14.9.2006 on 'Making European citizenship visible and effective', rapporteur Mr Vever, OJ C 318, 23.12.2006
- 9.2.2005 on 'Employment policy: the role of the EESC following the enlargement of the EU and from the point of view of the Lisbon Process', rapporteur Mr Greif (OJ C 221, 8.9.2005).
- 7.6.2004 on 'Industrial change and economic, social and territorial cohesion', rapporteur Mr Leirião and co-rapporteur Mr Cué.
- 14.7.2005 on 'The scope and effects of company relocations', rapporteur: Mr Rodríguez García-Caro, and co-rapporteur: Mr Nusser, OJ C 294, 25.11.2005.
- 17.5.2006 on 'Flexicurity: the case of Denmark', rapporteur: Ms Vium, OJ C 195, 18.8.2006.
- 31.3.2004 on 'The social dimension of culture', rapporteur: Mr Le Scornet (OJ C 112, 30.4.2004).
- 16.3.2006 on 'Domestic violence against women', rapporteur: Ms Heinisch (OJ C 110, 9.5.2006).
- 14.9.2006 on 'Meeting the challenges of climate change — The role of civil society', rapporteur: Mr Ehnmark, OJ C 318, 23.12.2006.

⁽⁸⁾ See the EESC opinion of 13.7.2005 on the 'Communication from the Commission on the Social Agenda', rapporteur: Ms Engelen-Kefer (OJ C 294, 25.11.2005).

⁽⁹⁾ See the EESC opinion on Social Indicators (own-initiative Opinion), Rapporteur: Ms Giacomina Cassina (OJ C221, 19.9.2002).

4. A new consensus on the social challenges facing Europe — some outlines

The necessary involvement of organised civil society

4.1 The EESC underlines that a stocktaking of the social realities with a view to building a new consensus must be based upon a process that involves organised civil society at all levels in a bottom-up approach. The stocktaking process must be given sufficient time to really reach citizens and their organisations. Otherwise there is a risk it will only be a superficial consultation at high level among experts.

4.2 As stocktaking of social realities has to be done at the lowest echelon, there is an important role for the social partners and other concerned actors, along with local authorities, to identify and articulate emerging societal needs and problems. The shared experience can be used to mobilise enterprises and citizens for local actions, and will also serve a more systematic stocktaking that will take place at national and European level.

4.3 In order to promote a bottom-up approach and appropriate 'methods', the EESC believes that the EU Commission should financially support the organisation of stocktaking at national and regional level and give logistic help in order to have the stocktaking process take off. It is also important to develop new methods and transfer good practice on how to involve all stakeholders.

4.4 A bottom up approach of stocktaking the social realities must be defined by the participants themselves. There can be no restrictions in the debate. However, in line with the Commission, the EESC recommends that some transversal themes should be considered such an equal opportunity and non-discrimination, social rights and access to services of general interest, as well as the links between the economic and social dimensions ⁽¹⁰⁾.

4.5 National governments must take the process seriously and let the stocktaking and its conclusions feed into the national reform programmes of the Lisbon strategy and other policies.

4.6 The EESC can play an active role both at national and European level through the members and the organisations it represents. Economic and Social Councils in countries where they exist, or other similar bodies, should also be mobilised.

4.7 At European level the EESC can organise a stakeholders' forum in cooperation with the Commission, both at the start of the process to set up a roadmap of actions, as well as a follow up as the process draws to an end. The Committee proposes to associate the Liaison Group ⁽¹¹⁾ to its activities in this field.

⁽¹⁰⁾ The stocktaking process will take place during 2007, the European Year for Equal Opportunities.

⁽¹¹⁾ The Liaison Group with European civil society organisations and networks is both a liaison body and a structure for political dialogue between the EESC and these organisations and networks.

5. A new social action programme

5.1 The stocktaking cannot take place without simultaneously addressing the different methods and instruments of EU social policy and their efficiency in meeting the new social challenges. The right balance has to be found between the demarcation and complementarity of competence between the EU and Member States and the use of European legislative actions and the Open Method of Coordination (OMC). At the same time, implementation of existing *acquis communautaire* is necessary.

5.2 Current EU instruments should be analysed in order to determine their efficiency, also against the background scenario of eroding EU social policies and social *acquis*. The Finnish Presidency organised in November 2006, a conference on the theme 'The Europeanisation of social protection', where one of the conclusions was that the European dimension of social policy should be further developed, and include better use of the OMC.

5.3 There are question marks about the efficiency of the OMC, as there is no real commitment by many governments. Through the stocktaking process ways of strengthening the OMC must be analysed in order for it to play a decisive role in achieving the goals of the Lisbon strategy.

5.4 Diversity and national priorities limit the scope for social legislation at the EU level. However findings of the stocktaking process must be assessed against the need for initiating, amending or simplifying legislation. Pertinent key legislative actions may be necessary when excessive differences hinder economic performance and become a source of strained relations between Member States.

5.5 The EESC underlines the specific and important role of the social dialogue at all levels both in stocktaking social realities and in taking initiatives to find common solutions to the challenges encountered. At European level the social dialogue based in the Treaty should be fully exploited. The Committee supports the three year programme of the European social partners and notes with satisfaction that the EU underpins the social dialogue in the new Member States.

5.6 Participation of other representative civil society organisations in policy shaping should be reinforced. These organisations are active in all societal fields and at all levels in order to give voice to citizens and to mobilise them for collective action to improve living conditions. Their role both in stocktaking and governance of the social policies should be recognised. Furthermore the role of the social economy to organise production and services in a way that respond to the needs of citizens and to improve their living conditions must be better promoted.

5.7 When summarising the stocktaking process the EESC suggests that the European Commission should organise a 'citizens summit' on social realities with representation from all stakeholders. The Commission has a decisive role in identifying those social realities that are best addressed at the EU level. Organised civil society, national parliaments and regional authorities should be invited to formulate their own proposals. As a follow up the EESC suggests that a second special European Council dedicated to the European social model be organised (Hampton Court 2).

5.8 In order to build the basis of a new consensus on social challenges facing Europe, a new 'social action programme' may be outlined, taking into account both economic realities and social expectations. The Committee would point out that the introduction of the '1992' single market strategy in the 1980's was accompanied by such a programme and the Commission is now asking for a 'social dimension in parallel and close coordination with the single market review'.

5.9 The programme would necessarily be based on shared values, on a strong affirmation of the link between social and economic progress and on a (re)definition of the common bond of European society binding together both citizens and Member States creating a high level of social capital. It would be accompanied by a precise and concrete agenda putting together the different actors, reflecting about the efficient use of current EU-instruments, being able to address social needs and expectations both at the EU and national level, in the context of globalisation and within the broader frame of European social *acquis*.

Brussels, 18 January 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS
