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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

448TH PLENARY SESSION HELD ON 21, 22 AND 23 OCTOBER 2008

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 Small and medium — sized enterprises — Key for delivering more growth and jobs. A mid-term review of Modern SME policy

COM(2007) 592 final

(2009/C 100/01)

On 4 October 2007 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication from the Commission to the Council, the European Parliament, the European Economic and social Committee and the Committee of the Regions Small and medium-sized enterprises — Key for delivering more growth and jobs. A mid-term review of Modern SME policy.

The Section for Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 1 October 2008. The rapporteur was Mr Burns.

At its 448th plenary session, held on 21, 22 and 23 October 2008 (meeting of 22 October 2008), the European Economic and Social Committee adopted the following opinion by 85 votes with 1 abstention.

1. Conclusions and recommendations

1.1. The development of students to be more entrepreneurial has to start very early. Students need to be encouraged to recognise that starting their own business is a normal employment option and not just something that is done by people with money or a university education.

1.2. The Commission has to encourage the various national Governments to cooperate with organisations such as CEDEFOP, the various SME business organisations and the EESC to develop a creditable, employer lead, business oriented, Trans-European, Vocational Qualifications system that meets the needs of businesses especially SMEs.

1.3. The Commission along with National Governments should cooperate to develop and implement a European wide, robust system to protect intellectual property, inventions and innovations.

1.4. Government consultation should detail all changes that were accepted after any consultation process and before any Directives, Legislation or Acts are implemented.

1.5. The Commission needs to review its consultation procedures with SME Associations and trade specific organisations. Recognition has to be given to the costs incurred by SMEs if they become involved in any government consultation and consideration should be given to awarding costs to business owners of SMEs who are invited to become actively involved in any consultation process.

1.6. National and Regional governments must become more involved with the SME processes and procedures as detailed in the Mid Term Review. Good work being promoted by the European Commission is failing to meet expectations because of the apathy or opposition to SME friendly proposals of some National and Regional Governments.

1.7. Subsidies and unfair competition upset the marketplace. The Commission has to consider the affect on SMEs both upstream and downstream when open competition is disrupted by subsidies. If subsidies are paid they should be for social, environmental or other reasons other than the subsidising of production. The principle of 'one mans subsidy is another mans unfair competition', should become a standard for all future grants or subsidies.

1.8. Legislation that affects business has to be written in language that is clear and understandable. It should not include clauses that are vague, confusing or open to third party interpretation.

1.9. The definition of SME has to be reviewed and evidence provided to show what would be the effect if alternative annual turnover and annual balance sheet figures were used to define micro and SMEs (see 4.5.2).

1.10. Special procedures should be implemented concerning access to EU grants and project funding for micro and SMEs. These procedures should take into consideration the special time constraints on smaller businesses.

1.11. Transmission of enterprises from one generation to another is a problem that needs to be recognised and addressed.

2. Introduction (background)

2.1. The development of SMEs and micro businesses is recognised by most politicians and economists as key sectors in the development of the European economic and social policy.

2.2. In 2005, the European Commission adopted its 'Modern SME Policy for Growth and Employment'. It aims to ensure that all aspects of EU policy to help SMEs are coordinated, and that the needs of SMEs are more fully assessed in drawing up such policies. The policy includes action in five areas:

1. Promoting entrepreneurship and skills.

2. Improving SMEs' access to markets

3. Cutting red tape.

4. Strengthening dialogue and consultation with SME stakeholders.

5. Improving SMEs' growth potential.

2.3. The basic remit of this policy was to make Europe an SME-friendly business environment. It was recognised that to achieve this objective there would have to be concerted efforts from all relevant authorities (both EU, national and regional) to ensure the various policies that were developed, complement each other and did not hinder the development of SMEs.

2.4. On 4th October 2007 the Commission produced – 'Small and medium-sized enterprises - Key for delivering more growth and jobs. A mid-term Review of Modern SME policy' ⁽¹⁾. This paper is the Commission's report to the politicians and to the various authorities as to how successful 'Europe' has been (to date) in achieving the objectives laid out in the original 2005 Policy.

3. Comments on the mid-term review

3.1. The European Economic and Social Committee recognises that the European Commission has pushed the issue of SMEs higher up the economic and social agenda. We also recognise that even with all the various constraints of national governments, the Commission has tried to improve the economic environment for SMEs across Europe. We also agree with the Commission that there is still a lot to do before we could assume that Europe is truly SME friendly.

3.2 The EESC agrees with the principle that politicians and legislators should 'Think Small First'. We are however concerned that although the Commission may support this principle, the EESC is not convinced that all other sectors of national and regional government with its various agencies and organisations, share the same foresight or objective.

3.3. The EESC agrees that 'SMEs' as a title or a description of a sector of business is now being included in most Commission documents dealing with business, but we are concerned that including the term 'SME' in a document, does not necessarily guarantees the inclusion of these businesses in the process or in the policies being recommended. We are also concerned that the opinions from the liberal professions, the self-employed and micro businesses are not being taken into consideration. We therefore do not agree that '*SMEs are now fully integrated into Community policies*'.

⁽¹⁾ COM(2007) 592 final.

3.4. All legislation impacts on small businesses. The cumulative effect of many pieces of legislation creates a serious problem for SMEs and this is seldom recognised by politicians and civil servants. Small businesses need to use their limited time and resources in dealing with their customers. The more time that is devoted to government form-filling and dealing with red tape, the less time is available to creating wealth and employment by providing goods and services.

3.5. Many SMEs still find European and National government procedures are too bureaucratic, too reliant on third party accreditation and too expensive to process. There is also a failure by officials to understand the risk/time/cost benefit equation which most SMEs have as a high priority when evaluating their involvement in any projects, developments, consultation, compliance or applications for business 'support'.

3.6. The one constant statement that has come from small, medium and micro businesses is that they want a level playing field throughout Europe. We believe that we are a very long way from that goal. Too often, a claim from SMEs about unfair competition is interpreted as a call for subsidies or special treatment, where as, all they are asking, is the right to compete fairly and on an equal basis.

3.7. SMEs complain about legislation because it is not clear and understandable. Big businesses have lawyers to interpret the law. Many small businesses can not afford such costs. It is therefore vital that legislation is written clearly and is not vague, confusing or open to interpretation.

3.8. The EESC believes that the Commission and the European national governments has failed to understand this problem and as a result, throughout Europe we have too many different interpretations of the same legislation. We also believe that there is far too much 'gold plating' of legislation by national governments. This makes national legislation difficult for SMEs to understand and implement. It also stops cross border business development.

4. Specific issues

4.1. Promoting entrepreneurship and skills

Entrepreneurism and education

4.1.1. The need to create a more favourable social and economic environment for entrepreneurship is based on an integrated policy with a view to not only changing attitudes but also improving the skills of citizens. However, those making educational policy have not themselves been brought

up in an educational environment that encouraged entrepreneurship and therefore have little practical knowledge of what makes someone entrepreneurial or encourages them to be self sufficient and start a business.

4.1.2. Despite massive investment to encourage a more entrepreneurial attitude through education, supportive structures have been largely ineffective and have failed to address entrepreneurship education, or create a culture that is conducive to self sufficiency. Students should be made aware that setting up a business can be just as interesting an option as looking for a job with an employer or studying at university.

4.1.3. Much of the investment has been targeted at students aged 16 years and older. We believe that this is too late in a person's development and we believe that encouragement has to take place at a much younger age.

4.1.4. Special consideration should have been given to entrepreneurship and education in relation to students who were in full-time education and who may/would take over family run businesses (transmission of enterprises). In certain parts of Europe this has become a serious problem and needs to be urgently addressed.

4.1.5. Social partners play an important role in promoting entrepreneurship and education. It is therefore important that there is greater cooperation between businesses and these partners so that entrepreneurship and education can be better understood and promoted in a positive manner.

4.1.6. Students need to be encouraged to see work as an opportunity to take control of your own life, develop opportunities, be entrepreneurial, take risks and if appropriate start their own business.

Training and accreditation of skills

4.1.7. All small businesses train their staff but few employees have been awarded qualifications. This is particular problem in areas such as health and safety, environment and areas where there are legal implications. More should have been done by the Commission and National Government Agencies who are responsible for Vocational Education Training (VET) to ensure that qualifications reflect what tasks are actually done in business. In the liberal professions this has produced a particular problem with training that meets their needs.

4.1.8. The EESC believes that the failure to develop an employment-led vocational qualifications and training system is a major block to the development of entrepreneurs and European businesses especially staff who work in SMEs. We believe that failure to recognise and act upon this problem fundamentally challenges the supposition that the Commission makes; that they have been successful in promoting entrepreneurship and skills.

4.2. *Improving SMEs' access to markets*

4.2.1. We accept that the Commission has tried to remove unnecessary barriers that hinder access to markets. We are however concerned that the best intentions of the Commission have not been enacted by European governments. In particular, the failure to develop and implement a European wide robust system to protect intellectual property, inventions and innovations is a barrier to improving the access of SMEs to new markets. It should not be forgotten that EU entrepreneurs may use capital investments or concessions to set up SMEs in third countries, employing EU citizens. Such SMEs should receive similar benefits and there should be no obstacles to placing their products on the EU market, at least when they are starting up their business activities.

4.2.2. Public Procurement is another market that we believe could have been made more open and accountable and therefore easier for SMEs to access. Public Procurement represents about 16 % of EU GDP, and although there has been a slight improvement in SMEs participation, some fundamental issues have not been addressed and should have been identified in the Mid Term Review:

- it is too easy to ignore the SMEs aspect in public procurement,
- the perceived lack of creditability of SMEs by local and national Government official, often result in unreasonable barriers being placed upon SMEs. In particular, the need to obtain third party accreditation as a condition for tendering is a very expensive and often unnecessary hurdle for most SMEs when tendering for Government contracts,
- SMEs who tender for public contracts, and believe they have been treated unfairly, complain that the procedures to investigate such complaints are not transparent.

4.3. *Cutting red tape*

4.3.1. There is so much red tape and unnecessary legislation that it is difficult to evaluate what has been done to reduce this

burden. The volume of unnecessary rules, regulations and government enforced policies (via agencies, public bodies and licensing authorities) is a huge barrier to SMEs and small businesses. The EESC is particularly concerned that the mid term review did not highlight this problem especially concerning red tape that is created by government agencies, public bodies and licensing authorities. With these bodies there is often no recognised procedure to pursue a complaint as they are often defined as independent, non-governmental bodies and therefore not under governments control.

4.4. *Strengthening dialogue and consultation with SME stakeholders*

4.4.1. Consultation with SME Associations is a serious problem that is not recognised in the Mid Term Review. Consultation with a limited amount of trade and business associations does take place at European level⁽²⁾ but the number of business associations that are consulted is very small and there appears to be very little trade specific representation on behalf of smaller businesses.

4.4.2. At the National Government level SMEs have little faith in any consultation and believe that their complaints are ignored by the policy makers. As far as most small businesses are concerned, 'consultation' is a process with little or no intention of changing original recommendations.

4.4.3. Micro businesses and SMEs are often described as 'too diverse', 'too disorganised' and therefore their opinions are too difficult to include in any final recommendations. This happens even when the consultation is about SMEs and small business development. In these situations the opinions of larger companies are all too often given more creditability than the opinions of micro businesses and SMEs.

4.5. *Definition of Small Businesses*

4.5.1. The EESC is disappointed that the Mid Term Review has not identified the problems associated with the definition of SMEs which we believe is out of date⁽³⁾. Improvements in productivity through mechanisation and changes in working practices have radically altered how businesses operate.

- Over 98 % of all European businesses fall into the present SME category,
- What was once done with 50 employees is now done with 10 employees,

⁽²⁾ E.g. UEAPME, the officially recognised SME representative in the European Social Dialogue.

⁽³⁾ http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/sme_user_guide.pdf

— If we want to help Micro, small and medium sized businesses then we need a realistic definition of those businesses. This is one of the main reasons why the present SME legislation is not regularly hitting the target.

4.5.2. The present definitions are:

Enterprise Category	Head count of Staff	Annual Turnover		Annual Balance Sheet Total
Medium size	< 250	EUR 50 million	or	EUR 43 million
Small	< 50	EUR 10 million	or	EUR 10 million
Micro	< 10	EUR 2 million	or	EUR 2 million

4.6. *Status of small businesses and the self employed and liberal professions*

4.6.1. The EESC is disappointed to note that the Mid Term review has not identified the present problems relating to 'Self Employment'. Too many European countries have constructed artificial barriers to those citizens who want to develop their entrepreneurial abilities and create a small business. There are no European legal definitions of 'Self Employment' and as a result, it is being abused and is causing confusion with businesses and officials.

4.6.2. This administrative abuse is hindering the development of 'official' Self Employed people who are running small businesses, paying their taxes and complying with all the appropriate legislation.

4.6.3. This issue should have been identified as a problem. The definition of 'Self Employment' should have been high on the agenda of the Commission, but so far, this problem has either, not been identified, or ignored.

4.7. *Small Business representation*

4.7.1. The mid term review does not recognise the importance of how SMEs are consulted and how their opinions are represented at the National and European level. Too often, trade Association representatives at government conferences are not business people who understand the 'toothache' or have practical knowledge of the subject.

4.7.2. Many departments within the Commission recognise this, but nothing appears to have been done to address the problem.

4.7.3. Consultation has to be kept both online and by paper in all EU official languages to ensure that it reaches a wider spectrum of businesses.

4.8. *Access to EU funds*

4.8.1. More funds are available for projects and grants but micro and SME are having problems accessing them:

- procedures are too bureaucratic,
- processes take too long,
- help on identifying and applying for funds are not user friendly,
- accountancy procedures constantly change and in many cases require expensive, third parties auditing that increases bureaucratic burdens and cost.

4.8.2. If micro and SMEs are to access European funds, then special procedures have to be implemented to take into consideration the working time constraints on micro and SMEs.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Pre-commercial Procurement: Driving innovation to ensure sustainable high quality public services in Europe

COM(2007) 799 *final*

(2009/C 100/02)

On 14 December 2007 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Pre-commercial Procurement: Driving innovation to ensure sustainable high quality public services in Europe

The Section for Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 1 October 2008. The rapporteur was Mr VAN IERSEL.

At its 448th plenary session, held on 21, 22 and 23 October 2008 (meeting of 22 October 2008), the European Economic and Social Committee adopted the following opinion by 70 votes with 1 abstention.

1. Conclusions and recommendations

1.1. The EESC fully endorses the Commission's objective to promote incentives for innovation in public procurement across Europe. If Europe wants to stay in the lead of providing top quality cost effective public services to its citizens, benefiting the economy, the social and the ecological environments, it must seek to make the best use of innovations and technological progress in its public services.

1.2. It agrees with the Commission's recommendations concerning the 'Intelligent Customer' as an essential precursor to a more pro-active attitude towards modern purchasing in public Authorities. As a rule the quality of contracts with private suppliers will benefit from a higher degree of 'intelligent' engagement of the public purchaser.

1.3. The EESC agrees with the Commission that fostering opportunities for innovation and applied technology in public procurement will bear fruit for Europe in two ways. Firstly by enhancing the quality of public services and value for money, thereby benefiting tax payers; and secondly by opening up new opportunities for innovation for business, thus contributing to Europe's overall innovation performance and competitiveness.

1.4. The EESC emphasises that, whatever the potential benefits of new or different approaches in public procurement,

the correct transposition and implementation of the 2004 Directives⁽¹⁾ (the 'Directives') remains a priority. Traditional and cultural attitudes are often deeply rooted. Practical evidence shows that correct implementation in Member States requires continual close monitoring along with exchanges of experience and best practice.

1.4.1. Public procurement these days covers very broad fields and new paradigms. The EESC stresses that a clear distinction must be made between procurement by public Authorities and that by public Utilities, especially in promoting innovation. Utilities, most of which have been involved in innovative projects for more than a hundred years, have more professional skills and experience with high-tech projects, enabling them to handle fresh innovation. The same goes for Defence, although Europe, as compared to the US, suffers from lacking the big budgets and corresponding continent-wide supply base. This is why this Opinion concentrates on Authorities, as Utilities already have the ability to manage R&D.

1.5. It looks as though the Commission is very confident as to transposing useful experience from the US, when it comes to linking technology, innovation and public procurement in Europe. The EESC fears that creating comparable opportunities will not be that easy. At present the Utilities and Defence markets, their procurement and associated innovation in Europe have been mainly developing on the basis of national conditions and expertise.

⁽¹⁾ The 2004 Directives: Utilities 2004/17/EC; Authorities 2004/18/EC.

1.6. In general, the differences from the US in public procurement are that Europe lacks:

- one big market and similar conditions for high tech SMEs across the continent,
- a common language,
- the special relationship between the Pentagon and technologically driven companies, and
- the spill-over between the military to civil products and applications.

1.7. The EESC wishes to make it clear that it shares the Commission's view that we must exploit every opportunity to stimulate innovation in order to develop better quality and better value public services. To that end, the Commission should also encourage public Authorities to seek to benefit from each others' best practices.

1.8. Public purchasers should be stimulated to be open to innovative and alternative ('variant') solutions, and not necessarily continue to buy the same as previously. They should seek value for money, not just the lowest price. Exchanges between knowledge centres in this field in some Member States can be helpful in setting examples across Europe. In this way purchasers can be encouraged to develop the skills necessary to be Intelligent Customers and then progressively to gain experience. These skills and experience are a *sine qua non*.

1.9. As to innovation, public purchasers need to start a transparent technical dialogue long before issuing calls for tender in order to understand the state of the art in the market and to give the market the opportunity to understand better the problem to be addressed and thereby to offer optimum solutions.

1.10. The EESC recommends caution regarding the involvement of the majority of public Authorities in innovative processes or as early adopters. Public Authorities have all too often lacked the opportunity to develop the skill and experience

to participate in a truly innovative project; the risks are substantial and require management of the highest quality, bearing in mind that the chances of failure are very real.

1.11. A network of experienced and professional people and organisations in Member States should be established which can be called upon to reinforce a purchaser's own resources for the more advanced innovative projects.

1.12. Although the Annex outlines procedures for Pre-commercial Procurement contracts which, whilst being outwith the scope of the Directives by virtue of the Exclusion ⁽²⁾, are nonetheless compliant with the existing legal framework, the possibility of a breach, even inadvertent, thereof still exists. The EESC recommends that purchasers study the Annex and follow its recommendations carefully. If there should be the slightest doubt, either in the mind of the procuring Authority or in that of any of the potential suppliers, the EESC recommends strongly that the Authority should seek advance clearance from the Commission on possible infringements of State aid or of the Exclusion from the Directives and should provide evidence thereof to all potential suppliers.

1.13. The Commission rightly emphasises the significance of rights to intellectual property. The EESC adds that great care needs to be exercised in their establishment, allocation and management. It is not a simple field of activity.

2. Background and context

2.1. In 2004 the Council adopted the present Directives on public procurement by public Utilities ⁽³⁾ and public Authorities ⁽⁴⁾ which together amount to about 16 % of European GDP.

⁽²⁾ The Exclusion clauses:

- Utilities, Article 24(e): Contracts relating to certain services excluded from the scope of this Directive. This Directive shall not apply to service contracts for: (e) research and development services other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity.
- Authorities, Article 16(f) — Specific exclusions. This Directive shall not apply to public service contracts for: (f) research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority.

⁽³⁾ 2004/17/EC.

⁽⁴⁾ 2004/18/EC.

2.2. The objective of the Directives was to define a coherent non-discriminatory and transparent set of rules that would guarantee the opening of hitherto completely or partially closed markets, fostering competition among suppliers as well as more profitable price/benefit ratios for governments and for citizens.

2.3. Long-lasting and wide discussions were held during the drafting of the final proposals in order to ensure that the Directives were practical and suited to achievement of the objective.

2.4. Meanwhile the Directives are being transposed into national legislation. Implementation in practice, however, on national and regional levels is proving far from easy. The procedures require skills, professionalism and experience which are as yet often underdeveloped among purchasing Authorities. In many cases the learning-curve is long.

2.5. As innovation is a central theme in the Lisbon Strategy, various initiatives are being taken by Member States and the Commission to examine and to work out how innovation can be fostered in public procurement practices on the basis of the Directives.

2.6. Amongst others, recent initiatives by the Commission are:

- ten recommendations of good practice, needed to deal successfully with public procurement ⁽⁵⁾ (the '10-Point Guide'),

- discussions between Commission officials and the National ICT ⁽⁶⁾ Research Directors in the Member States have led to concrete proposals on Pre-commercial Procurement ⁽⁷⁾ which are discussed further in Section 4 of this Opinion,

⁽⁵⁾ The 10-Point Guide: 'Guide on dealing with innovative solutions in public procurement, 10 elements of good practice', SEC(2007) 280.

⁽⁶⁾ ICT: Information and Communication Technology.

⁽⁷⁾ 'Pre-commercial Procurement: Driving innovation to ensure sustainable high quality public services in Europe', COM(2007) 799 final and its Annex, SEC(2007) 1668.

- in the framework of the Environmental Technology Action Plan ('ETAP') ⁽⁸⁾, the initiative of DG Environment regarding technology verification and corresponding certificates,

- an expert group on risk management in public procurement by DG Research has just started its work.

2.7. The Commission's initiatives are based on and inspired by pioneering reports such as the Aho-report 'Creating an Innovative Europe' ⁽⁹⁾, and the Communication 'A lead market initiative for Europe' ⁽¹⁰⁾. Both documents indicate explicitly that public procurement can and should be a valuable source of innovative works, goods and services ⁽¹¹⁾. In five of the six ⁽¹²⁾ sectors identified by the lead market initiative as particularly appropriate for innovative projects, there is much room for innovation in the public sphere.

2.8. Stakeholder consultations identified a set of criteria for the lead market, among which are the criteria 'demand driven instead of technology push' and 'strategic and economic interest', both of which are of special interest to public purchasers. All consultations highlight the broadly felt need that public procurement should, more than in the past, support innovative works, products and services in Europe.

2.9. The 10-Point Guide, published in March 2007, flows from the Aho-report and sets out good practice on dealing with innovative solutions in public procurement, enumerating ten important points on how to become a successful Intelligent Customer ⁽¹³⁾. The Intelligent Customer is discussed further in paragraph 3.14.

⁽⁸⁾ ETAP's priority actions are: promoting research and development; mobilising funds; helping to drive demand and improving market conditions.

⁽⁹⁾ 'Creating an Innovative Europe', Report of the Independent Expert Group on R&D and Innovation appointed following the Hampton Court Summit, January 2006.

⁽¹⁰⁾ 'A lead market initiative for Europe': COM(2007) 860 final.

⁽¹¹⁾ Other Commission documents are worthy of note, e.g. the Communication 'More Research and Innovation — Investing for Growth and Employment: A Common Approach'. Published 2005 ISBN 92-894-9417-4.

⁽¹²⁾ eHealth, protective textiles, sustainable construction, recycling, bio-based products, renewable energy.

⁽¹³⁾ Guide on dealing with innovative solutions in public procurement, 10 elements of good practice, SEC(2007) 280.

2.10. In the Communication on Pre-commercial Procurement ⁽¹⁴⁾ the Commission introduces a new instrument to activate innovation in public purchasing. Whilst respecting the rules of the 2004 Directives the Commission wants to promote R&D service contracts between public purchasers and potential suppliers that cover the R&D stages preceding the commercialisation phase; that is to say the design, prototyping, testing and pre-production phases, stopping short of commercial production and sale.

2.11. The EESC welcomes very much any endeavour to promote innovation in public procurement. In that sense the EESC welcomes all documents and subsequent consultations and discussions among policymakers and purchasers which help to prepare the ground for enhancing the innovative potential of industry in the EU to the benefit of society.

2.12. The subject of this Opinion, however, is to examine:

- the Pre-commercial Procurement concept as introduced in the Communication and its Annex,
- how Pre-commercial Procurement amongst other initiatives can contribute to improving the climate for desirable innovative works, products and services,
- to what extent and in what way public procurement has the right tools at its disposal to foster innovation in public services, and
- carefully where the limitations and risks lie.

3. Comments

3.1. The 10-Point Guide ⁽¹⁵⁾ sets out in clear terms ten good practices which can help public Authorities to deal effectively with innovative solutions in public procurement; it represents a firm building block on which to develop. But putting the Guide into practice requires much more to be done. In some areas more positive action is needed; in others, caution needs to be exercised.

⁽¹⁴⁾ 'Pre-commercial Procurement: Driving innovation to ensure sustainable high quality public services in Europe', COM(2007) 799 final and its Annex, SEC(2007) 1668.

⁽¹⁵⁾ Guide on dealing with innovative solutions in public procurement, 10 elements of good practice, SEC(2007) 280.

3.2. Successful public purchasing depends upon good practice consistent with the Directives. The Directives promote the Single Market, thereby helping Europe to compete with other trading areas with large home markets. Good practice and the Directives are inseparable.

3.3. Some Member States are still in the process of transposing the 2004 Directives (see paragraph 2.4) and in others there are inconsistencies with national law. Such deficiencies make it more difficult to use the full benefits of the Directives.

3.4. At a practical level, with the generally increasing complexity of public purchasing contracts, there is an obvious need to improve the skills and experience of all who are engaged in it. In particular, a culture suited to the successful implementation of complex projects needs to be fostered throughout the purchaser's organisation.

3.5. For innovation to flourish, a large accessible market is essential. Only then can the costs — money, time, effort — of innovation be recouped. Innovation is essential if the economy is to grow and strengthen.

3.6. Following the 2000 Lisbon Agenda, a decision was taken that public purchasing should play a part in encouraging and supporting innovation.

3.7. Whilst the main Commission documents on innovation referenced in Section 2 relate generally without distinction to the two public sectors, Authorities and Utilities, the EESC draws emphatic attention to the present differences in character between the organisations making up the two sectors.

3.8. Public Utilities have long been sponsors, users, buyers and developers of innovative projects, as have the military and parts of the health services, giving them the necessary skills and experience. Their management experience in dealing with the risks and complexity of innovation should not be lightly dismissed.

3.9. Public Authorities can learn from the Utilities, the military and other experienced sectors how to run a successful innovatory project. Not least, they can get a better understanding of the resources from throughout the organisation that needs to be devoted to it. It may be that, in the short term, recruiting from the relevant departments in those organisations people who have recently retired but still want a few years of active employment, could provide a valuable source of experience.

3.10. Innovation is the application of novel ways of doing things. It can be implemented in a Work, a Supply or a Service. Research and development are essential precursors to an innovative project. The distinction between pure and applied research should be borne clearly in mind: pure research is mainly carried out by universities and research establishments; it provides a theoretical and practical underpinning upon which applied research and development can be based. Applied research consists of theoretical and practical work aimed at establishing a basis for development of one or more projects. This Opinion is not concerned with pure research except to the extent that Pre-commercial Procurement as discussed in Section 4 may be so described.

3.11. There is in the principle no major difference between the public sector and the commercial sector in way in which an innovatory project should be handled. There are, of course, minor differences: the public sector is subject to a level of scrutiny from which the commercial sector is largely shielded. In any ground-breaking development there will be failures; that is the price of progress. Whilst proper discipline should seek to minimise failures and to learn from them, excessive agonising over them inhibits further development.

3.12. The 2004 version of the Directives already contemplates contracts involving innovation. No further legislation is needed, just an understanding of how to run an innovatory project within them.

3.13. In all projects involving innovation — as well, for that matter, as many others — the purchaser needs to have the attributes of an Intelligent Customer. The attributes have been extensively discussed in the 10-Point Guide and this Opinion emphasises their essential importance.

3.14. Briefly, the Intelligent Customer needs a mindset open to new ideas yet with the discipline to manage them. It needs people with experience and acquired skill in carrying out the management of innovative projects. But most of all, the organisation, right to the top, needs to be in harmony with the needs of innovatory projects. Without that culture, the people 'at the coal face' cannot succeed.

3.15. Innovative projects can be usefully divided into three categories, each with its own special characteristics, as well as some aspects common to all. In this Opinion, unless otherwise indicated, 'Product' includes works, supplies and services.

3.16. The three categories:

- (a) Acceptance of an innovatory product to fulfil an established need, but having little or no effect on the purchaser's method of operating. It offers benefits with little risk or disruption.
- (b) Adoption of an innovatory product which requires the purchaser to adapt its method of operating. It offers substantial potential benefit but with some risk and the need to develop new procedures and train personnel.
- (c) Involvement in an innovative project. The purchaser's involvement may be to a greater or a lesser extent, ranging from a truly joint project starting with the definition of the project, to becoming an early adopter participating in beta ⁽¹⁶⁾ stage trials, buying early pre-production units.

3.17. The most immediately important — and the most effective in promoting innovation — for the involvement of public purchasers in innovation, and the easiest to implement, is (a). It requires the purchaser to be open to variants ⁽¹⁷⁾ — alternative solutions — and to have people capable of assessing differing offers on a 'most economically advantageous' basis.

⁽¹⁶⁾ Alpha and Beta testing originate from the software industry.

— Alpha testing is simulated or actual operational testing by a potential user or an independent test team, usually at the developer's site.

— Beta testing comes after Alpha testing. Versions of the software, known as Beta versions, are released to a limited audience of users outside the programming team so that further independent testing can ensure that the product has few residual faults.

⁽¹⁷⁾ Authorities Directive 2004/18/EC, Article 24, Variants:

1. Where the criterion for award is that of the most economically advantageous tender, contracting authorities may authorise tenderers to submit variants.
2. Contracting authorities shall indicate in the contract notice whether or not they authorise variants: variants shall not be authorised without this indication.
3. Contracting authorities authorising variants shall state in the contract documents the minimum requirements to be met by the variants and any specific requirements for their presentation.
4. Only variants meeting the minimum requirements laid down by these contracting authorities shall be taken into consideration. In procedures for awarding public supply or service contracts, contracting authorities which have authorised variants may not reject a variant on the sole ground that it would, if successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

3.18. Category (b) is valuable for a purchaser which seeks improvements to its operations through the use of a novel product, which may often require some development work to integrate the novel product into its operations. It requires skill in setting out the requirement in clear terms which are not unduly restrictive and it involves the participation of people from the user and technical departments of the purchaser. The resources which the purchaser has to deploy are not trivial but, if the project is well managed, the integration risks are manageable and benefits will outweigh the effort involved.

3.19. Category (c) is the most difficult. Defining and developing totally new solutions from scratch inherently presents a higher technological risk than incremental changes to adapt or integrate new-to-the-market products into existing processes (b). Few organisations — apart from those mentioned in Section 3.8 (the military etc.) — have the skill and experience to participate fully in a truly innovative category (c) type project. The risks are substantial and require management of the highest quality. Whilst the rewards can be substantial — it would be pointless to undertake the project if they were not — the chances of failure are very real. The type of project contemplated by the Communication falls into category (c).

3.20. The Communication implies that a purchaser could carry out an innovative project as a procurement of R&D up to the point of original development of the first products. For any follow-up procurement of commercial volumes of end-products the requirement for competitive tendering has to be evaluated on a case by case basis in accordance with the Public Procurement Directives. Firms normally make the things they design, at least until the point where licensed manufacture becomes a practical possibility. The EESC takes the view that the allocation of any intellectual property rights ('IPR') arising out of the project, and arrangements for their management should be considered carefully on a practical and commercial basis before the project is started.

3.21. There is evidence that a procedure such as that contemplated in the Communication is used in the United States. Whilst there are examples in the general military field (the Air Tanker contract which may possibly be split between Boeing and Airbus), the main area where such examples may be found is in the electronics field. In that field, with exceptions such as the hardening of integrated circuits against electromagnetic pulse, the commercial and military fields are closer to one another than they are in most other fields.

3.22. In drawing comparisons with the United States the structural differences between it and Europe must be borne in

mind. The US has long been an homogenous country which grew on the basis of almost limitless physical resources — agriculture, gold, oil, people — and, with the exception of the post-1929 era, capital. That has led — except, until recently, in banking — to the development of a long-standing single market and the infrastructure to serve it. There is still some way to go before Europe enjoys the same advantages. That being said, and despite the evident strengths of the US, there are some areas in which it falls short of the current status in Europe, most notably in the almost universal availability of health care.

3.23. In addition to the risks of technical failure — inherent in any truly innovative project — the financial risks resulting from not complying with the rules on State aid, transparency, non-discrimination and the application of the Directives need care and are discussed further in Section 4.3: State aid.

4. **Annex — SEC(2007) 1668 — to Communication: 'Pre-commercial Procurement — Staff Working Document'**

4.1. *Proposed scheme (the 'Scheme')*

4.1.1. Underlying principle: When the purchaser applies risk-benefit sharing at market price R&D services can be procured under an Exclusion⁽¹⁸⁾ within the Directives⁽¹⁹⁾ and can be used to explore innovative solutions to requirements (as a precursor to a call for tenders for commercial volumes of end-products), thus also stimulating the creation of innovative ideas generally.

4.1.2. Essential precursor: The purchaser needs to become familiar with the activities and capabilities of potential suppliers, and to define its needs in output terms clearly but without being unnecessarily restrictive.

4.1.3. Conduct: Once the requirement is established and potential suppliers are identified, it is suggested that the purchaser should run a three-stage R&D project starting with a reasonable number of them (five is suggested) and reducing progressively to two which complete the pre-production and beta testing phase. Thereafter the production requirement should be put out to tender according to the provisions of the Directives.

⁽¹⁸⁾ The 10-Point Guide: 'Guide on dealing with innovative solutions in public procurement, 10 elements of good practice', SEC(2007) 280.

⁽¹⁹⁾ See footnote 2.

4.2. *Comments*

4.2.1. The Scheme is broadly based on practices used in Defence procurement in various countries; they are broadly similar throughout the world and are well understood.

4.2.2. The Defence industry is peculiar in that it has to look a long way into the future based on political and tactical assumptions which cannot by their nature be accurately stated. A lot of research and limited development — as contemplated in the Scheme — is done, out of which only a few production programmes arise. The R&D projects, and also the production contracts, are all too often subject to a continual flow of amendments as new tactical or political information becomes available over the long timescales involved; cost overruns are thus endemic. Developments undertaken by civil public Authorities should not, if properly managed, be subject to the same flow of amendments.

4.2.3. Whether such a Scheme is appropriate to parts of the public sector which have less experience with highly technical R&D projects must be open to question.

4.2.4. There are obvious concerns that the exemption provided in the Directives for R&D service contracts which are not for the exclusive use of the purchaser might be used in an anti-competitive manner to develop national champions, thereby defeating the objective of the Directives to aid the development of a pan-European single market.

4.2.5. Assuming that projects under the Scheme are undertaken, some detailed aspects merit further consideration.

4.3. *State aid*

4.3.1. At the start of any procurement under the Scheme the question of State aid must, as is remarked in the Annex, arise. Whether or not there is an element of State aid in any particular project and whether, if there is, it is justified is outwith the scope of this Opinion. But the effects of any uncertainty on a project under the Scheme most certainly are within its scope.

4.3.2. Pre-commercial Procurement is defined in the Communication as an approach to procuring R&D services in a way

that applies risk-benefit sharing between procurers and suppliers and does not constitute State aid. The EESC recommends that purchasers should analyse carefully the Annex which outlines an example of the implementation of Pre-commercial Procurement in line with the existing legal framework. In cases of doubt when embarking on the first Pre-commercial Procurement pilot projects it would be advisable to obtain advance clearance from the Commission on possible State aid or other infringement and to provide evidence thereof to potential suppliers. Determination of whether there has been State aid is, by all accounts, a complex matter.

4.3.3. If it turns out that there has been State aid and that it is illegal, the supplier may be required to repay it but has no recourse for compensation from the purchaser which entered into the R&D contract. The supplier is thus put at a material but probably uninsurable risk. The fact that a beneficiary of any illegal State aid (a supplier) has to repay the money received, but without recourse to the purchaser, is not, of course, peculiar to R&D contracts; the same rules applies to any procurement contract. The fact that a validated procurement procedure is used (e.g. a procedure of the Directives) does not provide an absolute guarantee that there is no State aid, as favouring suppliers can happen in many direct and indirect ways. The use of the Exclusion does not necessarily provide a greater or smaller risk of failing to buy in a transparent, non-discriminatory manner at market price.

4.3.4. It is most desirable to increase the level of experience in all public purchasing departments so that they may apply correctly the criteria for verifying the absence of State aid. These criteria involve buying in a transparent, non-discriminatory way at market price. This experience is universally important as these criteria are not unique to R&D contracts; they are the same criteria that apply to any type of procurement contract, even though the risks in a Pre-commercial Procurement contract may be greater.

4.3.5. The Annex outlines the criteria for reassuring those concerned that a Pre-commercial Procurement project does not constitute State aid. Therefore the EESC recommends that the Commission and Member States consider promoting training and knowledge sharing on setting up Pre-commercial Procurement projects in line with the legal framework to avoid the risk that public Authorities — and their suppliers — might run into State aid problems later.

4.3.6. Although not a question of State aid, if the Exclusion from the Directives provided for certain types of R&D services should turn out to be invalid, it would cause the contract to fall back within the Directives. Under the Remedies Directive the contract, which would presumably not have been properly advertised or subject to 'standstill', would be rendered 'ineffective' ⁽²⁰⁾. In those circumstances the supplier would be at a risk of not being paid for the work done. This risk, which is also probably uninsurable, is not peculiar to R&D contracts but is increased by the use of the R&D services Exclusion in the Directives. Caution should be exercised and advice sought.

4.4. Risk

4.4.1. In any R&D programme there are risks; not all innovative projects will achieve the hoped-for result. The Scheme sets out quite properly that the risks and benefits should be shared between the purchaser and the supplier. There is, however, an emphasis on considerations of State aid and Treaty principles which, whilst probably unavoidable, introduce a further layer of complexity in an already complex matter.

4.4.2. As with any risk management, the parties should agree to take responsibility for the risks which each is in the best position to manage, and to maintain a continual liaison to ensure that no risk arises or escalates without being identified and mitigated.

4.4.3. There is discussion in the Annex of fixed price contracts whereby the public Authority sets a maximum and invites tenderers to submit offers at or below that maximum with the intention that the supplier(s) should subsidise the project to a greater or lesser extent in exchange for exploitation rights. Such an arrangement may well be attractive to those suppliers which have ready access to a wider market for the fruits of the development, but it introduces an element of complexity in cases where the opportunity for wider exploitation is not obvious, but where the benefits to the purchaser are substantial. In such cases the purchaser should probably consider a different course of action.

4.5. Intellectual property

4.5.1. Rights to the intellectual property which arise form an important part of the Scheme. Who has rights and to what extent this affects the legal basis for the project as well as the practical outcome in gaining benefit from the R&D.

4.5.2. There are, essentially, three ways of protecting intellectual property:

— Patents — a statutory monopoly,

— Copyright — which subsists in all original work,

— Secrecy — where neither patent nor copyright affords effective protection.

4.5.3. Patents are the strongest and most commercially exploitable protection for truly fundamental inventions which are capable of being licensed to third parties. They are also the most expensive. Unless the invention meets these criteria or the project is in an industrial sector where patents are used as a competitive weapon, patenting is probably a waste of money. Patents are also extremely expensive to defend.

4.5.4. Copyright costs nothing; it simply exists. However, in contrast to a patent, a copyright owner has to prove that an infringer actually knew about the copyright material and copied it. Independent replication of copyright material where the replicator has had no sight thereof is not copying and cannot be successfully challenged.

4.5.5. Secrecy is widely used in the commercial sector to protect a competitive advantage. It is vital to keep secret an invention where there is an intention to patent it; disclosing it early can disqualify it from being patented. Where neither patents nor copyright offer effective protection for a commercially valuable invention, keeping it secret is the only resort. Coca-Cola guards jealously the formula for its eponymous drink.

4.5.6. Whilst secrecy is an effective way of protecting intellectual property and, in some circumstances, may be the only means available, it sits uneasily in the context of transparency.

4.5.7. Formulating tender specifications for follow-up procurements of commercial end-products in terms of functional instead of prescriptive product specifications can help to fulfil both the requirements of transparency to competing bidders without revealing technical implementation details of individual solutions developed in the pre-commercial phase.

⁽²⁰⁾ Directive 2007/66/EC ('Remedies'), Article 2d, Ineffectiveness (Member States shall ensure that a contract is considered ineffective by a review body independent of the contracting authority or that its ineffectiveness is the result of a decision of such a review body in any of the following cases: (a) if the contracting authority has awarded a contract without prior publication of a contract notice in the *Official Journal of the European Union* without this being permissible in accordance with (the) Directive).

4.5.8. Rights to intellectual property are obviously very important in R&D projects as contemplated in the Scheme. But great care and sense needs to be exercised in their establishment, allocation and management. It is not a simple field of activity.

4.5.9. In Pre-Commercial Procurement IPR are shared between purchasers and suppliers: suppliers retain IPR ownership, purchasers retain license free right of use as well as the right to require participating companies to license IPRs to third party suppliers under fair and reasonable market conditions. License free right of use enables the public purchaser to use the results of the R&D for internal use without having to pay costs for licenses to the participating companies. The right to require participating companies to license IPRs to third party suppliers at market price enables the public purchaser to ensure access to a sufficiently large and competitive supply chain while allowing the participating companies to gain revenues on IPRs they have obtained during the pre-commercial procurement project. In Europe public purchasers may lack experience in assessing the market value of IPR and therefore training and experience on risk — benefit sharing in relation to IPRs is recommended.

4.5.10. Public Authorities need to learn from the best practices in the buying and selling of IPR rights that exist in the private sector, as well as from typical standard government contract clauses for IPR sharing with suppliers in public procurement that are used around the world.

4.6. *Qualifications of the suppliers and the purchaser*

4.6.1. Potential suppliers obviously need to have the skills to manage innovative projects; their experience can relatively easily be established by an Intelligent Customer.

4.6.2. Potential purchasers also need the skills to manage such projects. Gaining knowledge of the state of the art in the relevant market, preparation of the requirement specification in output terms, negotiation with and selection of chosen suppliers, management of the project and of its attendant risks, all require skills and experience in depth within the purchaser's organisation. If the organisation does not have a culture — all the way from the top to the bottom — suited to the management of such projects, it risks expensive failure. These characteristics are, of course, those of the Intelligent Customer.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions Removing obstacles to cross-border investments by venture capital funds

COM(2007) 853 final

(2009/C 100/03)

On 21 December 2007 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions Removing obstacles to cross-border investments by venture capital funds

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 1 October 2008. The rapporteur was Mr MORGAN and the co-rapporteur was Mr DERRUINE.

At its 448th plenary session, held on 21, 22 and 23 October 2008 (meeting of 22 October), the European Economic and Social Committee adopted the following opinion unanimously.

1. Conclusions and recommendations

1.1. The Communication from the Commission brings together two important strands of the Lisbon Programme. One is the focus on the formation and growth of innovative small companies. The other is the integration of EU capital markets as a means of financing employment and productivity growth. The catalyst for the convergence of these two policies is the need to develop a pan EU venture capital industry.

1.2. This Communication represents work in progress. Close cooperation will be needed between Member States, the European Commission and the VC industry to implement the next steps detailed in paragraph 3.6. Following this work, the Commission will report again in 2009.

1.3. The availability of venture capital is not a universal panacea. VCs are interested in big deals because a small deal can be as time consuming as a big deal. Accordingly they tend to be more interested in providing funds for the expansion of growing companies rather than providing seed money for start ups. Insofar as VCs deal with seed, start up and expansion capital, they are an important element of the Lisbon strategy and the EESC supports this initiative from the Commission. It is important to improve access to venture capital in those Member States where it is less developed.

1.4. It is vital for the VCs that they be able to liquidate their investments. To do this they must find either a trade buyer, i.e. a larger company, or alternatively sell the company to investors

via a stock market listing. Looking at the EU as a whole, it is a problem that there is not enough appetite for investing in small young companies. The EESC recommends that Member States use the taxation system to create incentives for private individuals to invest in small companies. This will then encourage the development of stock markets in which small company shares can be traded. For the time being the only such markets in the EU are the Alternative Investment Market (AIM) in London and the Entry Standard of Deutsche Börse, although there is now an initiative from Euronext.

1.5. Because AIM provides the ideal transition from unquoted to quoted status, it makes venture capital investment in unquoted companies very attractive. AIM provides the VC firms in the UK with the exits they need. Something like AIM in other Member States would provide an exchange in which to raise capital for SMEs and make a market in their shares. It could be an important factor for the development of Venture Capital in hitherto undeveloped EU markets.

1.6. While Venture Capital is necessarily focussed on stock market exits, it should not be assumed that a stock market flotation is the best exit for every small company. Public companies have the benefit of equity capital and their shares provide an acquisition currency, but in exchange they lose a certain freedom of action, particularly in the long term perspective, because of the demands of the market. Accordingly, Venture Capital does not provide a sensible way forward for every small company. Where an SME which is already supported by a VC is not well adapted to an IPO, Replacement Capital can provide an alternative.

1.7. Venture capital will not meet all the demand for start-up capital because VC firms will only invest selectively in early stage businesses. To help fill this gap, publicly funded venture capital providers can play their part but this, in turn, will still leave a gap to be filled by families and friends of the entrepreneur and by business angels. The requirement to encourage the provision of start up capital is a second reason why the EESC commends to the Commission and to Member States the provision of tax incentives for private investment in start-up businesses.

1.8. As is explained in Section 2 (Definitions), venture capital is technically a subset of private equity. The EESC is insistent that the removal of obstacles to cross border activities of VCs should not facilitate without proper safeguards, other private equity activities such as leveraged buy outs.

1.9. In a previous opinion ⁽¹⁾ the EESC has already stated its concern about the potential threat posed to employment (quality of jobs included) by private equity transactions. It is essential that any such transactions are conducted within the negotiating framework agreed with social partners in each Member State. Accordingly the EESC asks the Commission, in the context of this venture capital initiative, to ensure that social dialogue continues to prevail and that the Directive on information and consultation of workers applies in those cases. Further, the EESC urges again the Commission to submit a proposal in order to update the 'Acquired Rights' Directive in the way that transfers of undertakings resulting from operations to transfer the shares are also covered ⁽²⁾.

1.10. This concern is of paramount importance since 'the most common exit route is trade sales to another corporation, accounting for 39 % of all exits. The second most common exit route is secondary buyouts (24 %), which have increased in importance over the last decade consistent with anecdotal evidence' ⁽³⁾.

2. Definitions

2.1. The Communication from the Commission is supported by a Working Document. The Document contains an extensive glossary. The following are some of the key terms in the language of Venture Capital.

2.2. There are six generally recognised investment formats used in the VC industry:

— *Seed capital* is financing provided to study, assess and develop an initial concept.

— *Start-up capital* is provided to companies for product development and initial marketing.

— *Expansion capital* provides the financing for the growth of a firm.

— *Replacement capital* involves the purchase of shares in an existing company from another private equity investor or shareholder.

— A *buy-out* involves the purchase of all or part of a firm from existing shareholders. This may involve taking a company from quoted to unquoted status, i.e. taking it private. In a *management buy-out* the current managers are the buyers, usually with the support of private equity or venture capital.

2.3. *Venture Capital* describes investment in unquoted companies (i.e. companies not listed on a stock exchange) by venture capital firms which, acting as principals, manage individual, institutional or in-house money. The main financing stages are early stage (covering seed capital and start-up), and expansion. Venture capital is thus professional equity co-invested with the entrepreneur to fund an early stage or expansion venture. Offsetting the high risk the investor takes is the expectation of higher than average returns on investment.

2.4. Strictly defined, venture capital is a subset of *Private Equity*. Private equity firms may engage in venture capital activities but their scope goes beyond the venture capital subset to include the provision of replacement capital and the financing of buy-outs. The EESC is concerned about the potential social impact of these private equity activities.

2.5. *Business angels* are wealthy private individuals who invest directly in new or growing unquoted businesses. Their capital can complement the venture capital industry by providing early stage finance.

2.6. *Institutional investors* are financial institutions such as insurance companies, pension funds, banks and investment companies which collect savings from (usually) private investors and then invest them in the financial markets. They have substantial assets and are experienced investors.

⁽¹⁾ OJ C 10, of 15.1.2008, p. 96.

⁽²⁾ Directive 2001/23/EC of the Council of 12 March 2001 relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.3.2001, pp. 16-20.

⁽³⁾ Globalisation of Alternative Investment: the global economic impact of private equity (p. viii), study published by the World Economic Forum, 2008.

2.7. *Private placement* is a sales method for financial investments allowing the buyer and seller to conclude a transaction subject to an exemption from many or all of the statutory requirements that would apply in the event of a public share offering. Private placement regimes generally specify criteria for entities which are eligible to conclude transactions under these conditions. This regime typically applies to investments made by institutional investors (which are, by definition, knowledgeable) into funds managed by venture capital firms.

2.8. *The prudent person rule* allows pension funds to include private equity/venture capital funds in their portfolio of investments, while respecting the risk profile of their clients. In other words, the pension manager is obliged to invest for his clients as he would do on his own behalf. This would involve sensible portfolio diversification when venture capital is included.

3. Gist of the Communication from the Commission

3.1. According to data of the European Venture Capital and Private Equity Association (EVCA), venture capital contributes significantly to job creation. Companies in the EU receiving private equity and venture capital created one million new jobs between 2000 and 2004. Over 60 % of these jobs were created by venture capital backed companies and employment in these companies grew by 30 % per annum. In addition, innovative and growth oriented firms backed by venture capital spend on average 45 % of their total expenses on R&D. (The EESC is concerned that the Commission has not been able to find independent data sources to verify this analysis. We comment further in paragraphs 4.10 and 4.11 below.)

3.2. The potential of EU venture capital markets is not fully exploited and markets do not provide sufficient capital to innovative SMEs at early growth stages. The lack of an equity investment culture, informational problems, fragmented market, high costs, untapped synergies between firms and the academic world are among the main reasons for this market failure. Divergent national policies create significant market fragmentation which affects adversely both fundraising and investing in the EU.

3.3. While public authorities can go some way to support the financing of innovation, the scale of the global challenge means that only increased investment by private investors can provide a long term solution. For this, the Commission and the Member States have to act to improve the framework conditions for venture capital and one of these conditions involves removing unjustified barriers to cross border operations.

3.4. The strategy for improving cross border conditions involves free movement of capital, improved conditions for fund raising, improving the regulatory framework, reducing tax discrepancies and progressing with mutual recognition.

3.5. The glossary and expert group report which accompanies the Communication contains an analysis of the problems and possible solutions (see Table I).

Table I

Problem	Possible solution
Fund raising and distribution (between investors and VC funds)	
Different national standards to determine qualified investors in private equity — VC (institutional versus private investors)	Common EU definition for a qualified investor (for institutional and private investors)
Different national regimes concerning where institutional investors can invest (country-specific restrictions)	Using a prudent person rule (implementation of the prudent person rule as defined by the pension fund Directive 2003/41/EC)

Problem	Possible solution
Difficulties in marketing private equity and VC funds in different Member States due to different national approaches to private placement/exemptions from public offer rules	<i>Common EU approach to 'private placements'</i>

Tax neutrality (between VC funds and the country of investment)

Complex fund structures depending on investors' home countries and investee company countries (aiming at avoiding double taxation)	<i>Taxation of capital gains in the home country of the investors; equal treatment of direct investors and PE investors; equal treatment of quoted and unquoted equity</i>
Different rules and requirements for private equity funds to benefit from tax treaties	<i>Tax transparency: list of mutually recognised PE fund structures (or common criteria for Member States to determine tax transparency); Tax neutrality: PE funds established as limited companies (not transparent) should benefit from double taxation treaties; common requirements for benefiting from these treaties</i>

Professional standards (for VC funds)

Different local rules for valuation and reporting (increased costs and a lack of comparability)	<i>Encouraging use of industry self-imposed professional standards (i.e. those of EVCA)</i>
Problems in applying IFRS (International financial reporting standards) to PE funds: in particular the consolidation requirement	

Permanent establishment (for the general partner or fund manager)

Risk of the general partner (VC management company) to have permanent establishment in the investee company country (resulting in adverse tax consequences)	<ul style="list-style-type: none"> — <i>Mutual recognition of management companies; or passport for management companies;</i> — <i>in the long term, a 'passport' for a management company</i>
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3.6. In response the Commission has put forward the following next steps and recommendations:

lishing a European private placement regime will be issued in the first half of 2008 (now delayed to Q3 2008);

3.6.1. To improve fundraising and investing across borders, the Commission will:

(a) analyse national approaches and barriers to cross border private placement. A report on the possibilities for estab-

(b) identify, together with experts from Member States, cases of double taxation and other direct tax obstacles to cross-border venture capital investments; the expert group will report by the end of 2008;

(c) analyse, based on these reports, the possibilities of defining common features in order to move towards an EU-wide framework for venture capital;

(d) study possible ways of assisting Member States in the process of Mutual recognition.

3.6.2. To reduce market fragmentation and improve conditions for venture capital fundraising and investing, the Commission invites Member States to:

(a) extend, where it is not yet the case, the 'prudent person rule' to other types of institutional investors, including pension funds;

(b) create a common understanding of the features of venture capital funds and qualified investors and consider a mutual recognition of the national frameworks;

(c) overcome regulatory and tax obstacles by reviewing existing legislation or by adopting new laws;

(d) enable cooperation and mutually acceptable levels of supervision and transparency;

(e) encourage development of competitive clusters (along the lines of science parks);

(f) promote liquid exit markets.

4. General remarks

4.1. Outside observers of the venture capital industry tend to focus is on VCs as providers of investment capital whereas the VCs themselves are as much concerned about raising funds as they are about investing them. Accordingly the integration of venture capital financing across the EU must facilitate investments into VC funds as well as disbursements from them.

4.2. Because the venture capital industry depends on delivering good returns to its investors, the *modus operandi* is to raise a fund, invest the fund and then in due course liquidate the investments of the fund to deliver the expected return to the fund's investors. The life of each fund would typically be seven years.

4.3. It is vital for the VCs that they be able to liquidate their investments. To do this they must find either a trade buyer, i.e. a larger company, or alternatively sell the company to investors via a stock market listing. Looking at the EU as a whole, it is a problem that there is not enough appetite for investing in small young companies. The EESC recommends that Member States use the taxation system to create incentives for private individuals to invest in small companies. This will then encourage the development of stock markets in which small company shares could be traded. For the time being the only such markets in the EU are the Alternative Investment Market (AIM) in London and the Entry Standard of Deutsche Börse, although there is now an initiative from Euronext.

4.4. The availability of venture capital is not a universal panacea. VCs are interested in big deals because a small deal can be as time consuming as a big deal. Accordingly they tend to be more interested in providing funds for the expansion of growing companies rather than providing seed money for startups. A case in point is 3I, the long established UK venture capital firm. It announced at the end of March 2008 that it was pulling out of early stage investments — its worst performing sector since the collapse of the dotcom bubble in 2000. Its exposure to venture capital assets had already reduced significantly with start-up investments representing only a tenth of its portfolio — down from half in 2000. 3I stated that there was more value in later-stage financing and that the group will focus on buy-outs, growth capital and infrastructure.

4.5. Venture capital will not meet all the need for start-up capital because VC firms will only invest selectively in early stage businesses. To help fill this gap, publicly funded venture capital providers can play their part but this in turn will still leave a gap to be filled by families and friends of the entrepreneur and by business angels. The requirement to encourage the provision of start-up capital is a second reason why the EESC commends to the Commission and to Member States the provision of tax incentives for private investment in start-up businesses such as those provided by the UK Enterprise Investment Scheme. In this scheme, capital invested attracts income tax relief while capital gains from the venture are free of tax. These tax incentives make the risk reward ratio rather favourable for private individuals who invest in early stage companies.

4.6. In the UK scheme, similar incentives apply to investments by private individuals into collective investment funds which take stakes in small new companies quoted on the AIM market. These funds are known as Venture Capital Trusts. Investments attract income tax relief and the capital invested is free of both gains tax and inheritance tax.

4.7. Similar incentives apply to private individuals who make direct investments into any companies listed on the AIM market. The existence of the AIM market and the tax reliefs associated with it have provided a significant impetus to company formation in the UK.

4.8. AIM specialises in initial public offerings (IPOs) of shares in small new companies. This makes venture capital investment in unquoted companies very attractive in the UK because by such IPOs AIM provides the VC firms with the exits they need. Development of facilities like AIM in other Member States, serving either single or multi-country markets, would provide exchanges in which to raise capital for SMEs and make a market in their shares. It could be an important factor for the development of Venture Capital in hitherto undeveloped EU markets.

4.9. The EESC is very aware that demand for venture capital needs to be created to provide the opportunity for the VC industry to flourish. This, in turn means that company formation must increase across the EU, with a commensurate increase in enterprise and innovation. The EESC simply registers this concern. It is not the purpose of this opinion to discuss aspects of enterprise and innovation except to repeat the point that if tax incentives are made available, there will be an upsurge in small company formation.

4.10. While the EESC is supportive of the proposals to facilitate VC activities across borders, it regrets that there is no reliable and impartial data available as the basis for its assessment. Indeed, independent studies suggest caution in this context given the 'failure to distinguish cleanly between employment changes at firms backed by venture capital and firms backed by other forms of private equity' ⁽¹⁾.

4.11. In a previous opinion ⁽²⁾ the EESC has already stated its concern about the potential threat posed to employment (quality of jobs included) by private equity transactions. Private-equity backed companies create about 10 % less jobs than similar companies in the wake of the buy out (5 years) ⁽³⁾. Further, it is essential that any such transactions are conducted within the negotiating framework agreed with social

partners in each Member State. Accordingly the EESC asks the Commission, in the context of this venture capital initiative, to ensure that social dialogue continues to prevail and that the Directive on information and consultation of workers applies in those cases. Further, the EESC urges again the Commission to submit a proposal in order to update the 'Acquired Rights' Directive in the way that transfers of undertakings resulting from operations to transfer the shares are also covered ⁽⁴⁾.

5. Specific comments on the proposals of the Commission

5.1. It is important to develop statistical instruments that will give a better picture of the hedge fund and private equity industries and to develop indicators for corporate governance, all of which are subject to harmonisation, at least at European level ⁽⁵⁾.

Commission proposals to improve fund raising and investing across borders

5.2. The establishment of a European Private Placement regime is fully supported by the EESC. It is a fundamental requirement of cross border venture capital.

5.3. The barrier of double taxation must be removed. Otherwise, cross border venture capital will not be sufficiently profitable for VC firms to get involved. The EESC awaits with interest the report from the working party set up by the Commission to consider the taxation issues.

5.4. The concept of a European wide framework for venture capital is attractive if it results in Member States accepting VC firms regulated by other states. This will help mutual recognition and facilitate cross border activities by VCs without excessive bureaucracy. However, recalling the importance of coordinating fiscal policy more closely, the Committee deems it necessary to set minimum requirements concerning the taxation of the funds' managers in order to avoid fiscal dumping and economic inefficiency.

Proposals for Member State actions to reduce market fragmentation and improve conditions for venture capital fundraising and investment

⁽¹⁾ WEF, p. 43.

⁽²⁾ OJ C 10, of 15.1.2008, p. 96.

⁽³⁾ WEF, p. 54.

⁽⁴⁾ Directive 2001/23/EC of the Council of 12 March 2001 relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 8, 22.3.2001, pp. 16-20.

⁽⁵⁾ OJ C 10 of 15.1.2008, p. 96.

5.5. Extending the Prudent Person rule is a fundamental requirement for fund raising because the investing institutions are the primary source of funds. It is important that Member States create regulatory frameworks which will facilitate prudent participation in venture capital funds by investing institutions, especially pension funds.

5.6. Member State cooperation in work on regulation and mutual recognition is needed for the Commission's initiatives to proceed.

5.7. The idea of competitive clusters relates to policies in support of enterprise and innovation. The idea is that clusters of innovative firms would be spun out of and co-located with universities. Such developments are very attractive to VCs.

5.8. The issues relating to liquid exit markets are discussed in Section 4 above.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on Combating fraud and counterfeiting of non-cash means of payment

(2009/C 100/04)

On 17 January 2008 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Combating fraud and counterfeiting of non-cash means of payment.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 1 October 2008. The rapporteur was Mr IOZIA.

At its 448th plenary session, held on 22 and 23 October 2008 (meeting of 23 October), the European Economic and Social Committee adopted the following opinion unanimously.

1. Conclusions and recommendations

1.1. The European Economic and Social Committee regrets that the initiatives taken to date to prevent and combat fraud and the counterfeiting of non-cash means of payment have proven to be insufficient to halt the spread of this phenomenon. As already highlighted by the Commission in its 2004-2007 action plan, though the Community legal framework has been enhanced and strengthened, the exchange of information between public and private entities remains to be fully developed, as does effective cooperation among the relevant authorities of the Member States.

1.2. The main barrier to the effective implementation of a fraud prevention system has been identified by the Commission as the difficulty in exchanging data within the EU on both fraudsters and those deemed at risk. To ensure effective preventative action, it seems necessary to increase the means of information exchange on fraudsters, by enhancing the channels of cooperation between the relevant national authorities.

1.3. A further obstacle to effectively curbing fraud lies in the inconsistency of legislation across the Member States with regard to powers of inquiry, as well as the varying degrees of deterrence. Harmonising national legislation seems therefore the best way to effectively curb this typically trans-national form of crime.

1.4. The EU must therefore step up its strategy to combat fraud and the counterfeiting of non-cash means of payment by deploying a range of measures. To this end, there is a need to:

— foster the exchange of information between public and private entities;

— step up cooperation among the relevant authorities of the Member States;

— pro-actively harmonise national legislation with particular regard to data protection provisions within the EU so as to enable cross-border data exchange and curb fraud;

— ensure that each competent national authority establishes a digital data base containing information that may indicate levels of fraud risk;

— task Europol with monitoring the drive to prevent and counter fraud, and with coordinating the available data bases; and

— launch targeted information campaigns involving consumer associations, with a view to alerting users to the potential risks involved in using non-cash payment instruments, and thus to bring on board an informed public in a more effective, timely fight against fraud.

2. The rise of non-cash means of payment and related fraud

2.1. One feature of the current global economy is the notable increase in non-cash means of payment, such as credit and debit cards and online payments. Transactions made by electronic payment instruments account for an increasing proportion of the volume and value of domestic and cross-border payments and this trend is set to accelerate further as markets and e-payment technologies continue to develop.

2.2. The need to secure the development of alternative payment means to cash in the European Union is related to the liberalisation of capital movements and the implementation of Economic and Monetary Union. The modern technology-based economy cannot do without an effective payment system, because such a system gives a direct boost to the competitiveness of the financial sector and thus enhances overall economic efficiency. Indeed, it is a confirmed fact that electronic payment systems stimulate consumer spending and economic growth, as they facilitate the purchase of goods and services. It is estimated that 231 billion (cash and non-cash) transactions, worth a total of EUR 52 000 billion, are carried out in the European Union each year.

2.2.1. Recent years have seen rising levels of non-cash payments across the world. Specifically, in 2004 the number of non-cash transactions per capita amounted to 142 (including 32.3 using payment cards) in the EU-25, 150 (28.3 with payment cards) in the euro-area Member States and 298 (47.5 with payment cards) in the USA. In 2006, the equivalent numbers were 158 (including 55.2 using payment cards) in the EU-25, 166 (50.5 with payment cards) in the euro-area Member States and 300 (145.1 with payment cards) in the USA. Within the EU, the countries that recorded the highest number of non-cash transactions per capita in 2006 were Finland, with 294 transactions, including 153.9 via payment cards, followed by the Netherlands with 257 transactions, including 103.2 via payment cards and the UK with 239, including 111.4 by card ⁽¹⁾.

2.2.2. Spain was found to have the highest number of POS terminals in 2006, at 1 291 000; it recorded 1 276 transactions per terminal for an average amount of EUR 52. It was followed by France, with 1 142 000 terminals, 4 938 transactions per terminal, averaging EUR 51 each, and Italy with 1 117 000 terminals, 690 transactions per terminal, averaging EUR 93 each. The EU country with the highest number of transactions per terminal was Finland, with 7 799 transactions, averaging EUR 35 each, although with 105 000 terminals. Conversely, Ireland was the country with the highest average amount for individual credit and debit card transactions (EUR 94), although this was with 53 000 POS terminals ⁽²⁾.

2.2.3. An EU-wide harmonised legal framework will enable service providers to rationalise payment infrastructures and services, and users to enjoy increased choice and a high level of protection.

2.3. If it is to be possible to use these payment means in any part of the world, they must be efficient, easy to use, widely accepted, reliable and available at relatively low cost. Since efficiency is dependent on security, the highest economically-viable level of technical security needs to be ensured, while improvements in security levels should be measured by monitoring fraud statistics and by setting specific security benchmarks.

2.3.1. Increasingly widespread fraud can reduce consumers' confidence in these payment systems and is seen as one of the main barriers to expanding e-commerce. A further consequence is the damage to the merchant's reputation and to the perception of consumers regarding the level of security of such systems.

2.4. Trans-national fraud is more frequent than that within individual countries, particularly where it is connected with remote payment transactions, especially via the Internet. According to Commission data ⁽³⁾, payment card fraud for the year 2000 amounted to EUR 600 million, or about 0.07 % of that year's turnover in the payment card sector, with a bigger increase reported in remote payments (by telephone, post or Internet). More recent studies have shown that 500 000 businesses were involved in non-cash payment fraud in the EU in 2006, in respect of 10 million fraudulent transactions, leading to the loss of around EUR 1 billion – almost twice the 2005 figure. The countries most affected by this fraud were found to be the UK, France, Italy, Spain and Germany.

2.5. As this fraud is a growing, cross-border problem, a pan-European, coherent, preventative strategy is needed; while the individual measures taken by the Member States may be effective, they are not sufficient to tackle the threat posed by payment fraud.

2.6. To meet the needs of the market and build confidence in the use of new technologies, there is also a need to step up efforts to establish a secure electronic signature, in the context of the initiatives launched under Directive 99/93/EC of the European Parliament and of the Council of 13 December 1999. The electronic signature is also crucial if the e-government project is to take off. The STORK project, co-funded by the EU, is seeking to resolve problems related to system interoperability.

⁽¹⁾ Source of data: European Commission, COM(2005) 603 final, *Proposal for a Directive of the European Parliament and of the Council on payment services in the internal market*, SEC(2005) 1535.

⁽²⁾ Source of data: appendix to the 2007 annual report of Banca d'Italia. The figures derive from data provided by the ECB, BIS, Poste Italiane S.p.A. and Banca d'Italia.

⁽³⁾ Source of data: European Commission, COM(2004) 679 final of 20.10.2004, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee, the European Central Bank and Europol *A new EU Action Plan 2004-2007 to prevent fraud on non-cash means of payment*, SEC(2004) 1264.

2.7. The Commission has pointed out that fraud using stolen or counterfeit non-cash payment instruments is primarily carried out by criminal organisations, which often have a complex structure in terms of personnel, equipment and logistical support and operate on a cross-border basis. These organisations use sophisticated techniques to commit payment fraud on the Internet and to counterfeit payment cards. They are able to rapidly change their *modus operandi* to circumvent counter measures taken against them.

2.7.1. Investigations have found that in the case of the more complex types of fraud criminal organisations usually follow certain standard, tried and tested procedures, which take the following form:

- identification of target business, which a gang member breaks into at night or stays hidden in after closing time, with the aim of installing a sophisticated electronic device into the POS system connected to the till, in order to capture codes from the magnetic strip of payment cards as well as the relevant PIN numbers;
- the data stored on these electronic devices is then retrieved either physically or electronically – using GSM or Bluetooth technology – to be then used to produce encoded plastic clones of payment cards, complete with PIN number;
- the illegally reproduced credit and debit cards are then used to purchase goods or make cash withdrawals, also in countries other than those in which the codes were cloned.

3. Community legal framework

3.1. Given that one of the main objectives of the EU is to ensure a fully functioning internal market, of which payment systems are an essential part, specific measures have been introduced over a number of years aimed at shaping a common strategy against payment card fraud, and these are centred on two main strands:

- measures to harmonise the terms of contract governing the relationship between cardholder and card issuer, as well as those governing payment procedures; and
- measures by all Member States to make payment card fraud a criminal offence and provide for effective and dissuasive penalties.

3.2. The first strand includes:

- Commission Recommendation 87/598/EEC of 8 December 1987 on *Relations between financial institutions, traders and service establishments, and consumers*, leading to a European code of conduct for e-payments, aimed at ensuring the introduction of consumer protection systems;
- Commission Recommendation 88/590/EEC of 17 November 1988 *concerning the relationship between cardholder and card issuer*, which calls on payment card issuers to adopt common terms of contract on the security of the payment device and of related data, and on the cardholder's own obligations in the case of lost, stolen or illegally copied payment devices;
- Commission Recommendation 97/489/EC of 30 July 1997, aimed at ensuring a high level of consumer protection in the field of electronic payment instruments. This recommendation specifies the minimum information that must be contained in the terms and conditions governing the issuing and use of an electronic payment instrument;
- Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 *on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing*, which later gave rise to the anti-money laundering system, through provisions limiting the use of cash;
- Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 *on payment services in the internal market*, aimed at ensuring the coordination of national provisions on prudential requirements, the access of new payment service providers to the market, information requirements, and the respective rights and obligations of payment services users and providers.

3.3. As regards the second strand, given the increase in fraud and the fact that preventative action had generally been taken at national level, the following measures have emerged:

- Commission Communication COM(1998)395 on *A framework for action on combating fraud and counterfeiting of non-cash means of payment*, in which the Commission proposed a package of measures to promote an adequate security environment for payment instruments and the underlying systems;

- Council Decision 2000/642/JHA of 17 October 2000, concerning *arrangements for cooperation between financial intelligence units (FIUs) of the Member States in respect of exchanging information*, which set minimum levels of cooperation between Member State FIUs;
- Commission Communication COM(2001) 11 of 9 February 2001 on *Preventing fraud and counterfeiting of non-cash means of payment*, in which the Commission launched its 2001-2003 fraud prevention action plan for the EU. The plan states that prevention hinges on cooperation between the relevant public authorities and the payment systems industry. It pointed out that the most important improvements to be made were technical enhancements that increased payment security, e.g. the introduction of chip cards, mechanisms for prompt notification of loss or theft of payment instruments, and devices (such as a PIN or other code) to prevent or minimise as far as possible the possibility of committing fraud;
- according to the plan, an essential element in any effective fraud prevention strategy was the exchange of information, specifically between banks and public authorities, within and between Member States. To this end, the plan called for the introduction of a mechanism to establish permanent dialogue between all stakeholders in the fight against fraud (credit card issuers, banking associations, network operators, Europol, national police forces, etc.). The Commission also proposed holding international conferences involving senior police officers and magistrates, to raise awareness of the problem of payment fraud and its impact on financial systems;
- Council Framework Decision 2001/413/JHA of 28 May 2001, on *combating fraud and counterfeiting of non-cash means of payment*. This framework decision called on all Member States to provide for effective, proportionate and dissuasive criminal penalties, including penalties involving deprivation of liberty which could give rise to extradition, in the case of payment card fraud – carried out using IT or electronic equipment or other specifically adapted devices – involving:
 - theft or other unlawful appropriation of a payment instrument,
 - counterfeiting or falsification of a payment instrument in order for it to be used fraudulently,
 - receiving, obtaining, transporting, sale or transfer to another person, possession and fraudulent use of an unlawfully appropriated, counterfeited or falsified payment instrument,
- unauthorised input, altering or suppression of computer data or unauthorised interference with the functioning of a computer programme or system,
- fraudulent making, receiving, sale or design of instruments, computer programmes or any other means specifically adapted for the commission of such fraud;
- The Decision also provided a specific framework for international cooperation, under which Member States must provide mutual investigative assistance in respect of proceedings relating to the offences provided for under this Decision. To this end, it stipulates that Member States shall designate operational contact points or may use existing operational structures for the exchange of information and for other contacts between Member States;
- Commission Communication COM(2004)679 of 20 October 2004 on *A new EU Action Plan 2004-2007 to prevent fraud on non-cash means of payment*. With this action plan, the Commission intended to further strengthen the existing initiatives to prevent fraud so as to help maintain and increase confidence in payments, given the increasing incidence of data hacking and identity theft. The Commission's priorities were the security of payment products and systems and increased cooperation between public authorities and the private sector, to be achieved by:
 - strengthening and restructuring the work of the EU Fraud Prevention Expert Group,
 - the implementation of a coordinated approach by manufacturers of payment products, payment service providers and the relevant authorities to ensure users the highest economically-viable level of security for electronic payments,
 - information exchanges among stakeholders, aimed at early detection and notification of fraud attempts,
 - increasing cooperation among EU administrative authorities to prevent payment fraud and by boosting the fraud investigation abilities of national law enforcement bodies; and by
 - introducing new means of notification for lost and stolen cards in the EU.

4. Comments and proposals

4.1. Although the Community legal framework has been enhanced and strengthened, the exchange of information between public and private entities remains to be fully developed, as does effective cooperation among the relevant authorities of the Member States. To this end, and partly in view of the recent accession to the EU of new Member States, the provisions of the framework decision and the recommendations need to be transposed into the national laws of all EU countries.

4.1.1. The main barrier to the effective implementation of a fraud prevention system has been identified by the Commission as the difficulty in exchanging data within the EU on both fraudsters and those deemed at risk. The 2004-2007 action plan thus stressed the need to harmonise data protection provisions within the EU so as to enable cross-border data exchange, partly by aligning existing EU data protection rules.

4.2. To ensure effective preventative action, the Committee would propose considering the case for each competent national authority to establish a digital data base into which payment card companies would channel the following data: information on points of sale and on transactions susceptible to fraud; identification details of the points of sale and of the legal representatives of businesses whose contracts to accept payment card transactions have been terminated for security reasons or for fraudulent conduct reported to the police; identification details of transactions not recognised by the cardholder or reported to the police; and information on ATMs that have been tampered with for the purposes of fraud. With due respect for national legislation, this archive could be used, inter alia, to analyse criminal activity and to aid police cooperation, including at international level, aimed at preventing and prosecuting crimes committed via credit cards and other payment means.

4.3. Besides the exchange of information on fraudsters, cooperation needs to be stepped up between the relevant authorities in the Member States, by means of new initiatives to extend the collection and exchange of data among stakeholders in fraud prevention, with particular regard to police forces and payment card companies.

4.3.1. To this end, the existing cooperation structures for combating euro counterfeiting could be streamlined, so that the relevant national authorities would also be directly involved in the prevention of non-cash payment fraud.

4.3.2. In this regard, consideration could be given to the possibility of tasking Europol – whose remit, since the Council Decision of 29 April 1999, covers the fight against the counterfeiting of cash and other payment means – with monitoring the

drive to prevent and counter non-cash payment fraud with the following objectives:

- to coordinate the administration of the data bases of all Member States containing information on payment card counterfeiting cases, allowing access to the competent authorities of other Member States for genuine investigative purposes;
- to provide real-time notification, to payment card companies and issuers, of fraud cases detected in other Member States;
- to facilitate exchanges of the information specified under Framework Decision 2001/413/JHA of 28 May 2001 among the Member States' police forces and judicial authorities.

4.4. In this context, the Committee would propose considering the case for creating a network for Member State police forces and investigative bodies involved in the fight against fraud and the counterfeiting of non-cash means of payment. This could facilitate direct information exchange by means of a certified electronic mail system, enabling access to data bases to be opened up.

4.4.1. Such an initiative would require prior agreement on the specific data to be included in these archives and would have to be compatible with national legislation on privacy, in line with the provisions of Article 79 of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007. However, it would be a real step forward in the fight against non-cash payment fraud, as it would provide investigative bodies with the information they need directly, in real time and without excessive bureaucracy. At all events, minimum standards should be set at EU level on the type of information that can be exchanged, so as to ensure a common platform of data that can be used to combat fraud, with due respect for the provisions of Directive 1995/46/EC on personal data protection.

4.5. The greatest obstacle to curbing fraud within the EU lies in the inconsistency of legislation across the Member States with regard to powers of inquiry, as well as the varying degrees of deterrence. This means that fraud is particularly prevalent in countries where investigators' powers of inquiry are less pervasive or where penalties are insufficient to act as a deterrent. Harmonising national legislation seems therefore the only way to effectively curb this kind of fraud, given that, as already highlighted in the 2004-2007 action plan, previous initiatives have proved insufficient to combat the threat posed by payment card fraud.

4.5.1. In this regard⁽¹⁾, there is a need to verify that the Member States have effectively transposed into their national criminal laws the offences referred to in Articles 2, 3 and 4 of Council Framework Decision 2001/413/JHA of 28 May 2001, concerning criminal offences related to payment instruments, computers and specifically adapted devices. While respecting Member States' sovereignty, it should be checked that the penalties imposed for such offences are actually dissuasive, partly in terms of the extent of the statutory penalty provided for. At the same time, the penalties for fraud cases of comparable gravity should be harmonised at EU level, as already envisaged, for example, in the fight against money laundering.

4.6. Adopting the proposed initiatives would enable an effective fight against fraud and facilitate the establishment of a SEPA (Single Euro Payment Area) in which non-cash payments can be made throughout the euro area, from a single account and under the same basic conditions, regardless of place of residence, removing any distinction between national and cross-border payments.

4.7. The EU needs to step up its strategy to counter payment fraud and counterfeiting, through an array of different measures. Informing the public must be a key element, aimed at increasing awareness among credit and debit card users of the risks attached to non-cash payment instruments. Consumers who have not been warned could fall prey to the phenomenon of phishing, for example. The EU institutions should help to

inform the public through European campaigns, coordinated by the Commission.

4.8. Consumer and business associations have a key role to play in this: close cooperation between them could help establish an early warning system, increase awareness, and provide information on the most common and recently-discovered practices. To achieve this, targeted consumer information campaigns are needed, including practical, easily-accessible advice aimed at increasing knowledge of the workings of payment cards and of the immediate precautions to take where a cardholder suspects that they have been a victim of fraud.

4.9. The commitment of Member States should also be reflected in tougher penalties for fraud, which need to be duly enforced. In the case of crimes committed in other EU countries and – for certain particularly serious offences – also in third countries, the relevant criminal law should be made universally applicable, extending the European judicial area. This practice is becoming more widespread, as are proposals to prosecute such offences and impose penalties. Given that payment fraud is generally carried out by organised gangs working across several countries, an effective instrument to combat such fraud would be the *United Nations Convention against transnational organised crime and the protocols thereto*, adopted by the General Assembly on 15 November 2000 and 31 May 2001, which provides for stringent measures in the case of such transnational crime.

Brussels, 23 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

⁽¹⁾ The Commission staff working document (SEC(2008) 511 of 22.4.2008) *Report on fraud regarding non cash means of payments in the EU: the implementation of the 2004-2007 EU Action Plan* stresses the need for effective sanctions, given that the penalties applied in certain Member States are too low to be dissuasive, as has emerged from two reports presented by the Commission in April 2004 [COM(2004) 356] and February 2006 [COM(2006) 65] on the measures taken by the Member States to implement Council Framework Decision 2001/413/JHA of 28.5.2001.

Opinion of the European Economic and Social Committee on the Consultation on the draft Commission impact assessment guidelines

(2009/C 100/05)

On 29 May 2008, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, as part of the

Consultation on the draft Commission impact assessment guidelines.

On 8 July 2008, the Bureau of the European Economic and Social Committee instructed the Section for the Single Market, Production and Consumption to undertake the preparatory work.

In view of the urgency of the matter, the European Economic and Social Committee, at its 448th plenary session held on 21, 22 and 23 October 2008 (meeting of 22 October 2008), appointed Mr RETUREAU as rapporteur-general and adopted the following opinion by 83 votes to none, with four abstentions:

1. Introduction

1.1. In its Annual Policy Strategy for 2008 ⁽¹⁾ the Commission stresses that 'simplifying and improving the regulatory environment for EU business and citizens has been a major priority ... (and that) 2007 will see improvements to the system of impact assessment, the launch of an Action Programme to eliminate unnecessary administrative burdens arising from legislation at EU and Member State levels, and implementation of the updated simplification programme.' Steps were also to be taken to monitor the application of Community law ⁽²⁾. 'Realisation of these actions will be the core goal for 2008.'

1.2. This strategy is reflected in the work programme, where each measure or proposal is subject to a road map that sets out a range of very specific questions, together with generally brief answers. These reflect the initial findings of the impact assessment (IA) or preliminary impact assessment and indicate the estimated budget impact of each individual measure or proposal.

1.3. Following the 2007 external evaluation of the impact assessment system put in place in 2002 and upgraded in 2005, and taking due account of the experience and lessons to be drawn from the work of the Impact Assessment Board, the Commission has now produced a draft setting out a range of internal impact assessment guidelines ⁽³⁾. These are now the subject of the present opinion. The Commission is seeking to improve the overall methodology, so that it is well-defined, predictable and quantifiable in its impact on the Community budget. (Depending on the complexity of the issues involved, an impact assessment can take between five and thirteen months to complete. The Commission intends to make available to the appropriate departments the resources and facilities required for

this purpose in a bid to meet the objectives of the Better Lawmaking programme as they relate to impact assessments).

1.4. The revised guidelines are designed to give overall pointers for conducting impact assessments – from the preliminary IA right through to the final options for submission to Commission by the directorate-general conducting the assessment. In this way, the Commission can exercise its right of legislative initiative with proper awareness of the facts or can even propose alternative legislation or decide, at the preliminary IA stage, either to take no action at all or to issue a communication which is, by definition, non-regulatory.

1.5. Each impact assessment is unique, specific to the individual case and reflective of the objectives to be met under the annual Commission work programme. The guidelines thus set out procedures and working methods that (i) are flexible enough to adapt to the diverse range of circumstances and issues that arise, (ii) are consistent with the Community's remit and policy objectives under the treaties, and (iii) also comply with the proportionality and subsidiarity principles.

1.6. Impact assessments may be drawn up in one of three official Community languages: English, French or German. In practice, they are almost always drafted in English for ease of communication both internally, within and between the various DGs, and externally, not least during the stakeholder consultation stage. Annexes containing the full impact assessment and an executive summary are, as a matter of course, attached, in English, to each piece of draft legislation under the annual work programme. These are referenced as [SEC(year), number]. Any proposed legislation is thus underpinned by an impact assessment and by reasoned explanations of the Commission's choice of approach.

⁽¹⁾ COM(2007) 65 final, February 2007.

⁽²⁾ See Committee opinion CESE, OJ C 204, 9.8.2008, p. 9.

⁽³⁾ COM, May 2008, as-yet unnumbered working document (http://ec.europa.eu/governance/impact/consultation/ia_consultation_en.htm).

2. General comments

2.1. Any piece of proposed legislation involves a preliminary assessment procedure that may consider, at certain points and stages of the process and from various different vantage points, whether the legislation is actually necessary and what its potential internal and external impact will be.

2.2. Formal legislative process – the (applied) science of lawmaking that seeks to determine the best way to draft, word, enact and apply the relevant provisions⁽¹⁾ – does not place national legislators under the same constraints as the Community legislator. The Community legislator operates at a greater distance from the public and sometimes appears further removed from their immediate concerns. The European legislator needs to clearly set out the reasons underpinning all proposals and to encourage various forms of public information and involvement in order to strengthen the participatory dimension of European citizenship which is indelibly linked to national citizenship. Against this quite specific political backdrop, it is clear that impact assessments are becoming an integral part and a key component both of the Commission's regulatory work and of its other activities.

2.3. Any detailed consideration of the wide range of theoretical and practical issues involved in EU lawmaking are outside the scope of this opinion, which is focused on legislative practice within the EU. That said, it should at least be pointed out that legislators are inescapably bound by certain 'constraints', i.e. the founding treaties and the overall legal principles underpinning the economically developed democratic societies that make up the Union (or are seeking to join), including their constitutional principles and the case-law interpretations of primary and secondary legislation⁽²⁾.

2.4. All the peoples of the Union aspire to democracy, the peaceful resolution of conflicts, greater cooperation and solidarity, the promotion of individual and collective rights, and realistic, high-quality legislation that is clearly in line with the treaties and the overall principles of law applicable in all the Member States. Political decisions – and legislation – are part and parcel of this overall framework, which can only be described as 'constitutional', given that it lays down the democratic nature of the political institutions and establishes the limits placed on the powers of the political, legislative, admin-

istrative and judicial bodies. This 'constitutional framework' makes a distinction between Community policies in areas of exclusive competence and areas in which competence is shared with the Member States. It lays down procedures to be followed as part of law-based governance, thereby securing the production of legislation and regulatory provisions. Its purpose is to assess compliance with legislation, to check its effectiveness, and to determine whether proper use has been made of financial and other available resources. The framework also makes it possible to reassess legislation from time to time and to make any adjustments or changes that are deemed necessary, or to confirm that the declared objectives have in fact been met.

2.5. Without going into all the details, this simple outline makes clear the complex nature of the competences, responsibilities and remits incumbent on the various players in the EU.

2.6. From their very inception, the purpose of impact assessments was to improve the quality and coherence of lawmaking in a bid to help secure an efficient and effective regulatory environment. They are also designed to ensure that sustainable development policy is consistently applied. Impact assessments are an aid to, not a substitute for, responsible policy making. They seek to identify the probable pros and cons of a specific piece of legislation and to reconcile competing objectives. In practice, impact assessments were initially carried out on the most important pieces of draft legislation and subsequently on all those set out in the Commission's annual political strategy and work programme. The Annexes to the June 2002 communication set out the main *modus operandi* of impact assessments. The technical details were issued separately in the autumn of that year⁽³⁾. The guidelines were revised in 2005 and again from the end of 2007 onwards, culminating in the current draft, which dates from May 2008.

2.7. From the very start, the European Economic and Social Committee (hereinafter referred to as the Committee) has supported the Commission's proposals for better legislation. It also broadly backs the proposals to improve the way in which the impact assessments are drawn up and presented. These assessments have become increasingly important in the preparatory work for draft legislation and in other areas such as the codification, simplification (as far as possible), drafting and above all quality and clarity of the legal concepts used. The Committee also notes that the sound translation of the texts and the monitoring of application of Community law are vital, in order to improve harmonisation and boost compliance with the legal provisions in place.

⁽¹⁾ Chevallier, J. (1995), *L'évaluation législative: un enjeu politique*, in Delcamp A. & al., *Contrôle parlementaire et évaluation*, Paris, 1995, p. 15.

⁽²⁾ Account must also be taken of the different and tragic historical background involved, where notions of law in general and personal rights in particular were trampled underfoot, in some cases with unimaginable savagery.

⁽³⁾ COM(2002) 276 final, 5.6.2002.

2.8. Three main impacts are covered:

- social impacts,
- economic impacts, and
- environmental impacts.

The Committee notes that the 'social impacts' category covers such a vast range of issues that it would be better to split into two subcategories: (i) social impacts *per se* and (ii) impacts that have a bearing on society (such as anti-terrorism measures, security, justice, etc.). Social impacts *per se* have to do with economic issues and relate to the social partners, collective bargaining and working and employment conditions. Society-related impacts cover other areas (justice, police, etc.). They particularly engage the political players and are of importance for society as a whole.

2.9. Economic impact assessments make it possible to take greater account of cost-benefit analyses and of competition. However, given the need for sustainable development, the Committee feels that a long-term approach is required in any consideration of qualitative and economic impacts. The Committee notes that competition is a means, not an end. Attention must also be paid to the imperatives of industrial policy and the need for economic and financial players of an international calibre who are able to withstand global competition. Economic and financial impact assessments must be seen in the overall context of the global economic situation and in the light of economic cooperation with non-EU countries.

2.10. Environmental impact assessments also need to be underpinned by a series of indicators based on regular observations and information gathered under comparable technical conditions and against a similar backdrop (urban air quality, global warming etc.) The specific aim is to combine qualitative analyses with an analysis of the particular costs and benefits associated with this type of impact. The Committee feels that it is not essential to place any greater emphasis on cost-benefit analyses than on other qualitative findings. Scope must be provided to submit two types of findings and to establish priority criteria, for instance as regards the health impact of certain types of pollution. It is practically impossible to put a monetary figure on the number of years that the proposed measures might add to a human life, but such data do enable comparisons to be made over time, albeit, in reality, many factors have an impact on health, and time-based comparisons always involve significant margins of error, not least because of

the health impact of factors other than air quality (lifestyles, nutrition, prevention etc).

2.11. It is extremely important to consult the stakeholders and their representative European organisations, not least the Committee of the Regions and the European Economic and Social Committee, which represent organised civil society and the political expression thereof at local level. The short time-frames involved and the fact that impact assessments are usually drawn up in one language only are problematic for many organisations, not least those operating at national level. Hence the European consultative bodies have a particular responsibility for ensuring high standards of impact assessment and for securing consultation that is in line with the interinstitutional cooperation agreements. It is important that initial consultation of this kind does not hinder the more political consultation on drafts actually submitted to the legislator at a later stage.

2.12. The Committee endorses the multifaceted nature of the impact assessments and welcomes the fact that their approach is both horizontal (i.e. they involve a number of different DGs) and time-dependent (i.e. they cover short, medium and long-term impacts). An appraisal of *ex post* impact assessments was carried out in 2007, as a result of which the Impact Assessment Board may well introduce *ex post* evaluations into the procedures for drawing up IAs in a bid to ensure that greater consideration is given to indicators and their relevance and the validity of the assessments, be they cost-benefit analyses or qualitative appraisals. In particular, the Committee feels that the impact assessment guidelines⁽¹⁾ should pay more attention to indicators developed using statistical Eurostat data or on the basis of specific surveys conducted by the Commission. The same goes for indicators drawn up by other organisations, not least UN agencies such as the United Nations Development Programme (UNDP), and indicators based on research conducted in ministries or universities in the Member States.

2.13. Broad and cross-cutting issues are duly looked at in the second part of the draft guidelines. Assessments are to be 'time-dependent' and administrative burdens kept to a minimum. Care is to be taken not to underestimate impacts that do not appear immediately relevant to cost-benefit analyses or the fact that different factors influencing impacts interact with one another. It is important to take account of the impact of other legislative proposals, whether already adopted or currently undergoing impact assessment, not least in the case of a legislative package or where overarching Community goals are involved (the Lisbon strategy, respect for fundamental rights, the European energy strategy and the goal of sustainable development). External impacts must also be borne in mind too.

⁽¹⁾ IAG.

2.14. Particular consideration must be given to the impact on SMEs and SMIs since, because of their size, the potentially higher costs and administrative burdens involved in any regulatory provisions weigh more heavily on small companies than on large ones. The Committee welcomes the specific account that is taken of impacts on SMEs and SMIs and endorses the Commission recommendation that steps be put in place to reduce these impacts where the impact assessment shows that they would be disproportionate or excessive.

2.15. Any solutions outlined in impact assessments must not appear artificial or forced, but must be genuine, credible and operational alternatives that may be selected should they prove to be the most appropriate political choice.

3. Critical considerations

3.1. The Commission sets out in detail the procedures and timeframes involved in all kinds of impact assessments but these are nonetheless flexible enough to cover the many specific situations that are encountered.

3.2. Each impact assessment is a one-off *ad hoc* exercise, albeit a certain number of rules and restrictions are unavoidable. This applies to both preliminary and full-blown impact assessments. Examples include inter-departmental consultation, the timeframe involved in outsourcing a study to an external consultant, budget planning and the European Commission work programme.

3.3. The body most frequently involved in drawing up impact assessments is the Joint Research Centre (JRC), whose researchers often work in collaboration with a university or with experts and who base their findings on Eurostat data. However, in certain cases, these researchers also collect available data themselves in order to identify a specific problem or make use of mathematical or budget methodology and common indicators. They may also conduct polls or surveys to supplement the standard consultation procedures.

3.4. One notable feature of the impact assessments is that they increasingly also give an indication of the financial impact of the various available options, which then, in turn, becomes a criterion for decision-making. This ties in with the methodological requirements set out in the annex. (What we have here, in fact, is a new manual or guide for drawing up impact assessments).

3.5. However, although environmental impacts⁽¹⁾, for instance, can be measured in terms of costs or savings, other qualitative factors of a higher order should also be brought to bear, in spite of the costs involved. These include impact on climate change, respect for fundamental rights, ethical issues and long and short-term impact on health.

3.6. Often, qualitative criteria should prevail as they tie in with EU objectives and policies. These criteria do ultimately involve financial costs (compensation to asbestos victims, for instance) but prevention is an ethical absolute. Indeed, in this specific case, even although asbestos was in its time an effective and cheap way of insulating buildings, machines and pipes, any short-term financial gain is now wholly undone by the cost of asbestos removal. The balance sheet thus reads negative and, decades on, the polluter is not necessarily the one who pays. The impact assessments should place strong emphasis on the precautionary principle, without, however, that being used as a pretext for doing nothing.

3.7. From a distance, it appears that the main problems have to do with stakeholder consultation. Sometimes, the points made, for instance, by small businesspeople or the self-employed may well be deemed personal viewpoints, but this valuable experience should not be pushed to one side in favour of well-established, active lobbies, which are able to provide reports or data that sometimes display a certain bias⁽²⁾.

3.8. Impact assessments may prove particularly difficult in very complex cases (with regard to the REACH initiative, for instance). Priority was given here to protecting workers and product users, albeit industry did succeed in securing rather powerful political allies to restrict the scope of the legislation.

3.9. Such scenarios are not, however, out of the ordinary. The groups concerned are simply defending their own interests, but it is up to the legislator to ensure that the general interest prevails over short-term individual concerns. Certain short-term 'constraints' may, in the medium term, generate comparative advantages, in cases, for instance, where technological advances mean that European standards go on to gain universal currency (for instance, vehicle engine emission limits and the promotion of cleaner, more sustainable energies).

⁽¹⁾ Point 9.3.4 of the Annex (*Environmental Impact Assessment Models*).

⁽²⁾ An example of this is the consultation on the patentability of computer-implemented inventions (consultation document drawn up by the Internal Market Directorate-General, 19 October 2000).

3.10. Green and white papers used in the preparation of legislation are very useful tools in helping promote public debate designed to secure the viewpoints of the relevant stakeholders and, more generally, organised civil society represented either within the EESC or by specialist European NGOs. An internal debate also gives the legislator time to seek dynamic compromises.

3.11. However, the EESC would note that excessive haste or ideological considerations may affect plans that end up being rejected or heavily modified when a less brutal approach could have achieved results acceptable to all concerned. (That was the case for the draft directive on port services which was rushed out by an outgoing European Commission that had not taken the time to consult or to seek compromise).

3.12. The current crisis should encourage greater prudence in dealing with certain 'accepted ideas' and other authority-based principles. Ideas need to be confirmed by practice – and that is a vital component in building up collective experience for impact assessments underpinned by a combination of prudence and creativity. Such an approach runs counter to supposedly scientific concepts – such as the idea that (i) an unregulated market is somehow deemed to be more efficient than a market tailored to secure transparency and prevent malpractice and fraud and that (ii) all state aid is inherently bad. A realistic, balanced vision should prevail over excessively simplistic approaches to the economy and finance.

4. Conclusions

4.1. The Committee feels that impact assessments genuinely help improve legislation and reiterates its willingness to play a

part in the process, as far as it is able under its remit and its material and staffing resources. A key political challenge is to ensure that Community legislation is given the best possible reception in national law. The aim is to ensure that the legislative or regulatory process under hard or soft law can as far as possible be readily understood by grassroots citizens. Moreover, representative non-governmental organisations must be involved in the Community process through the traditional method of questionnaires.

4.2. The Committee feels that the directorates-general involved in the process must give due attention to these consultations, as, in the past, reservations expressed about certain legislative proposals have not been adequately taken on board. This has sometimes resulted in the proposals in question having to be heavily amended or being rejected by the Council or the Parliament which, as legislators, are mindful of the reactions of, and signals from, civil society. Such situations, which are ultimately costly in both political and financial terms, can be avoided through participatory democracy.

4.3. The role of the Community legislator can only be enhanced by modern and effective procedures to devise the relevant provisions.

4.4. Lastly, the Committee hails the efforts made and the resources deployed over the past number of years to secure better legislation – a key issue for a law-based Union – and urges the Commission to continue along that path.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on Policy guidelines for services of general interest and globalisation

(2009/C 100/06)

On 17 January 2008, the European Economic and Social Committee decided to draw up an own-initiative opinion, under Rule 29(2) of its Rules of Procedure, on

Policy guidelines for services of general interest and globalisation.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 September 2008. The rapporteur was Mr Hernández BATALLER.

At its 448th plenary session, held on 21, 22 and 23 October 2008 (meeting of 23 October), the European Economic and Social Committee adopted the following opinion by 50 votes to 2, with 1 abstention.

1. Conclusions and recommendations

(A) The EESC calls on the other Community institutions to prepare a Community initiative for an in-depth debate on the need to establish policy guidelines for services of general interest and globalisation.

(B) The Committee urges the Commission, in its assessment reports on services of general interest (SGI), periodically to dedicate a chapter to globalisation and its potential effects on services of general interest.

(C) With regard to public procurement, and without prejudice to the need to innovate through the provision of information society services ⁽¹⁾, developments should attempt to retain the basic features of these services and establish a framework enabling them to be set up properly (e.g. as regards telemedicine, professional ethics and data confidentiality).

(D) A boost should be given to the future establishment of global governance, which can be based on the balanced involvement of international organisations, the Member States and other interested parties.

(E) The ILO and the WHO, which work in the fields of labour and health respectively, should also be given observer status within the WTO, to enable them to play a role in world governance.

(F) A consultative forum tasked with setting out and revising the measures to be adopted for SGI could contribute to this

governance and to following up compliance with the principles and values that underpin SGI.

(G) As to Global Public Asset Management, a debate should take place on key aspects for the future with a view to global governance of such assets. At the Community level, a European action programme should be established, setting out the arrangements for funding these assets.

This global governance should be concerned with managing these Global Public Assets, further building on the approach started by the Heiligendamm G8 summit on biodiversity and energy resources.

2. Introduction

2.1. Services of general interest undeniably play such a major role in the daily lives of Europe's citizens that their contribution to social, economic and territorial cohesion and to the EU's sustainable development forms an integral part of the European social model ⁽²⁾. They also complement and move beyond the internal market, forming a pre-requisite for the economic and social wellbeing of both individuals and businesses ⁽³⁾.

2.1.1. Globalisation has highlighted the phenomenon of economies and borders opening up, as the result of increased trade, the movement of capital, people and ideas, the distribution of information, knowledge and skills and a process of deregulation. This process, which is taking place in every part of the world and in every industry, is not new, but has certainly gained momentum in recent years.

⁽¹⁾ EESC opinion on 'Promoting broad public access to the European digital library', OJ C 162, 25.6.2008, p. 46, point 1.3.

⁽²⁾ EESC Opinion on 'Social cohesion: fleshing out a European social model', OJ C 309, 16.12.2006, p. 119.

⁽³⁾ EESC Opinion on 'The future of Services of General Interest', OJ C 309, 16.12.2006, p. 135, point 2.1.

2.1.2. Globalisation generates myriad opportunities, although it still represents one of the greatest challenges facing the European Union today. In order to fully exploit this phenomenon's potential for growth and ensure that its benefits are equitably distributed, the European Union is attempting to establish a model of sustainable development through multi-lateral governance, in order to reconcile economic growth, social cohesion and environmental protection.

2.2. Nevertheless, economic globalisation is shaping a new landscape in which the decisions taken by a number of international bodies, such as the WTO, take on considerable importance and could jeopardise the very survival of SGI as an identifying feature of this model.

2.3. Against this backdrop, there is a need to link the relevant international legal mechanisms, to ensure that the EU and its Member States guarantee the viability of SGI without resorting to strategies that hamper the implementation of the principles of international free trade or undermine the competitiveness of the European economy.

2.3.1. The EU institutions should also pay particular attention to the workings of the self-regulating bodies that attempt, at the global level, to set common implementation guidelines for public authorities in areas relating to SGI (see, for example, the International Telecommunication Union/ITU).

2.3.2. Article 36 of the EU Charter of Fundamental Rights ⁽¹⁾ states that the Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the treaties, in order to promote social and territorial cohesion, for the first time establishing a link between these services and fundamental rights ⁽²⁾.

2.3.3. The Lisbon Treaty significantly strengthens the European Union's role in the economic and trade spheres. This EU activity at international level is particularly needed in the current climate, in which economic globalisation can be seen to be increasing, and when the multilateral trade system is going from strength to strength, following the major boost it received through the creation of the World Trade Organization in 1995.

2.3.4. The Lisbon Treaty contains a number of provisions that apply to all of the EU's external activities under Chapter I of Title V of the Treaty on European Union (TEU). In turn, the regulations that form Community policy are currently set out in Title IX of the TEC, Part Three, Articles 131 to 134, which refer to the 'common commercial policy'. The treaty uses this expression to designate a set of institutional mechanisms for taking decisions in specific areas in order to achieve certain goals, thus enabling the Community to act as one on such matters ⁽³⁾.

2.3.5. The aims deemed in Article 131 TEC to be inherent to Community policy are to contribute to (a) the harmonious development of world trade, (b) the progressive abolition of restrictions on international trade and (c) the lowering of customs barriers.

2.3.6. Furthermore, account should be taken of the effects that the aims of the Community's different cross-sectoral policies, such as culture, public health ⁽⁴⁾, consumer protection and industry, could have on the shape of Community commercial policy. Industry, together with services, is perhaps the area most likely to have a considerable and problematic influence on the implementation of the common commercial policy.

2.3.7. The EESC has already pointed out that the reform of the Treaties breaks new ground on services of general interest by including in the provisions on the functioning of the Union a clause of general application on services of general economic interest (SGEI) (Article 14) which is to be applied to all EU policies, including on the internal market and competition, and a protocol appended to the two treaties on all services of general interest, including services of non-economic general interest ⁽⁵⁾.

2.4. In this field, the signing of the Lisbon Treaty opens up new horizons for European integration, with new provisions providing for the possibility of establishing a new supranational legal framework that is more appropriate to defining and regulating access to and operation of such services in all the EU Member States. Specifically, this would cover:

⁽¹⁾ OJ C 303, 14.12.2007. (In the formal declaration made by the European Parliament, Council and Commission in 2007).

⁽²⁾ EESC Opinion on 'The future of Services of General Interest', OJ C 309, 16.12.2006, point 3.9.

⁽³⁾ See *Los objetivos de la Política Comercial Común ala luz del Tratado de Lisboa* (The aims of the common commercial policy in light of the Lisbon Treaty) by Miguel Angel Cepillo Galván, in the collection entitled *El Tratado de Lisboa: salida de la crisis constitucional*. (The Lisbon Treaty: a way out of the constitutional crisis), edited by José Martín y Pérez Nanclares, published by Iustel, 2008.

⁽⁴⁾ EESC Opinion on 'Improving quality and productivity at work', OJ C 224, 30.8.2008, p. 87.

⁽⁵⁾ EESC Opinion on 'Evaluation of Services of general interest', OJ C 162, 25.6.2008, p. 42.

- the key role and broad discretionary power of national, regional and local authorities to provide, commission and organise SGEI so as to meet users' needs as effectively as possible,
- the diversity of SGEI and the disparity in users' needs and preferences that can arise from their different geographical, social and cultural situations,
- a high level of quality, security and economic accessibility, equal treatment and the promotion of universal access and users' rights.

2.4.1. Certain measures in relation to managing globalisation promoted by multilateral international bodies such as the WTO could consolidate this position, especially through its arbitration panels, which could play a particularly important role.

2.5. This supranational approach would make it easier to exert significant influence within the international community and thus to carry out the measures needed to eradicate the threats to our social model, which should convey the idea of a prosperous, democratic, green, competitive, solidarity-based and socially inclusive area for all of Europe's citizens ⁽¹⁾.

2.6. A number of dimensions or levels can thus be identified in the current international context that require the EU to adopt a differentiated strategic approach. These include:

2.6.1. managing global public assets (air, water, forests, etc.); according to the vague declarations of solidarity, such as those as set out in the Declaration on the Establishment of a New International Economic Order (UN General Assembly Resolution 3201 of 25.1974), the EU should promote the creation of a supranational framework that is consistent with any relevant international agreements and decisions that might be adopted;

2.6.1.1. Global public assets are goods or services that are crucial to individuals' wellbeing and to the balance between societies in the world's northern and southern hemispheres. The provision of these global public assets cannot be left solely to national authorities and the markets: international co-operation is needed to preserve and produce them.

⁽¹⁾ EESC Opinion on 'Social cohesion: fleshing out a European social model', OJ C 309, 16.12.2006.

2.6.2. maintaining and developing a number of services provided jointly in the general interest of the EU public, such as Galileo, and which require considerable public investment;

2.6.3. allocating powers between the EU and its Member States with regard to regulating access to certain universal electronic communication services, such as the Internet;

2.6.4. defining the tasks of subnational bodies (federal, regional and local) that currently maintain, manage and regulate the provision of social services, against the background of the future implementation of international agreements that open up trade in services in sectors where liberalisation has not yet taken place or where it is not an option;

2.6.5. and defining a differentiated legal and political strategy on the future situation of network-provided SGI, as well as other services;

2.6.6. Unfortunately, no process for dealing with SGI exists in the current international fora, to uphold and disseminate their principles and values.

2.6.7. Nevertheless, since January 2003, six international organisations (the World Bank, UNCTAD-the United Nations Conference on Trade and Development, the FAO, the IMF, the OECD and the UN) have had observer status in the WTO, in keeping with the principle of a nascent system of world governance – for future development – setting the rules of international law (multilateral agreements on the environment, international labour agreements, human rights and the economic and social spheres). Two organisations, however, – the ILO and the WHO – have not been given this status, which means that the issues of employment and health do not form part of this budding system of world governance – a shortcoming the European Union should strive to rectify.

3. The legal *acquis* on services of general interest, which the EU should retain under the GATS-WTO Agreement

3.1. In the last ten years, the EU's institutions have made steady progress on drawing up a blueprint and a legal framework for SGI, but have failed to establish a comprehensive legal framework for this area ⁽²⁾.

⁽²⁾ See the European Parliament Resolution A.6-0275/European Commission White Paper, COM(2004) 374 of 12.5.2004; European Commission Communication, COM(2007) 725, 20.11.2007, etc.

3.2. Nevertheless, it is worth noting the coherent position of the European Economic and Social Committee which, in successive opinions ⁽¹⁾, has maintained a consensual and steadfast position on the key legal aspects of services of general interest, with regard to ⁽²⁾:

- observing the principles of equality, universality, affordability, accessibility, reliability, continuity, quality and effectiveness, while guaranteeing users' rights and achieving economic and social viability,
- taking account of the specific needs of certain groups of users such as disabled, dependent or disadvantaged persons, etc.

3.3. The EESC therefore agrees that it would be inappropriate to produce an exhaustive list of SGI; instead, the focus should be on their specific purpose, although SGEI typically have to try to achieve a series of trade-offs:

- between markets and the general interest,
- between economic, social and environmental objectives,
- between users (individual users, including disadvantaged groups, businesses, local authorities, etc.), not all of which have the same needs and interests,
- between Member State competences and Community integration ⁽³⁾.

3.3.1. In turn, the purpose of social services of general interest ⁽⁴⁾ is to address all social disadvantages resulting from: sickness, old age, inability to work, disability, lack of job security, poverty, social exclusion, substance addiction, family and housing problems, and problems linked to the integration of foreigners.

⁽¹⁾ See the EESC exploratory opinion on SGI, OJ C 241, 7.10.2002, p. 119; the EESC opinion on the White Paper on SGI, OJ C 221, 8.9.2005, p. 17; the EESC own-initiative opinion on *The future of services of general interest*, OJ C 309, 16.12.2006, p. 135.

⁽²⁾ EESC Opinion on 'Evaluation of Services of general interest', OJ C 162, 25.6.2008, point 3.2.

⁽³⁾ EESC Opinion on 'Evaluation of Services of general interest', OJ C 162, 25.6.2008, point 3.7.

⁽⁴⁾ See EESC on the *Communication from the Commission - Implementing the Community Lisbon programme: Social services of general interest in the European Union*, OJ C 161, 13.7.2007, p. 80.

3.3.2. Without prejudice to national authorities' freedom of choice, the EESC considers that these services of national, regional or local interest should, by way of information, include, but not be limited to, services relating to compulsory education, health and social protection, cultural, charitable, social or solidarity-based activities, audiovisual services, and water distribution and sanitation ⁽⁵⁾.

3.4. The EESC considers that what is important here is to focus on the specific purpose of SGI and on the requirements (public service obligations) imposed on them when carrying out their work and which should be clearly defined.

3.5. The Protocol on SGI appended to the Lisbon Treaty provides an interpretation of the concept of SGI that broadly reflects the EESC's own position on the matter. This is the first time that EU primary law has covered this specific issue and, given its binding nature, it will result in a solid guideline for EU institutional action, both within the territory of its Member States and beyond.

3.6. Specifically, Article 2 of the protocol states that *The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest*.

3.6.1. Although the protocol implicitly distinguishes between economic and non-economic SGI, given the absence of any institutional act classifying such services, and in light of the provisions of the Declaration in relation to the delimitation of competences (appended to the Final Act of the 2007 IGC) and of the Protocol on the exercise of shared competence (appended to the TEU and the TFEU), the position of the Member States on this matter remains the most appropriate legal guideline.

It would therefore be extremely useful to monitor the European Commission's evaluations of the Member States' implementation of the Services Directive, given their future impact on how the EU negotiates and concludes agreements on opening up trade in the services that it regulates.

⁽⁵⁾ EESC Opinion on *The future of Services of General Interest*, OJ C 309, 16.12.2006, point 10.3.

3.6.2. EU action in this area consequently remains dependent on two factors:

- (a) when drawing up and adopting future acts of secondary legislation, account should be taken of Members States' legal traditions concerning the concept, categories and *modus operandi* of SGI;
- (b) international agreements, including those signed by organisations in which the EU and its Member States are represented, and common positions in any negotiating round or international conference, should be established on the basis of joint consultation between the Member States and the EU and should always reflect the key aspects contained in the Lisbon Treaty and in Member States' legal systems regulating SGI.

4. The specific case of GATS/WTO

4.1. The World Trade Organization (WTO) is the international body responsible for the worldwide rules governing trade between countries and operates on the basis of a multilateral system. The pillars on which the WTO is founded are the agreements that have been negotiated and signed with the WTO by most of the countries involved in world trade ⁽¹⁾.

4.2. The organisation's main task is to ensure that trade flows are as fluid, predictable and free as possible. Almost all decisions are adopted by consensus amongst all member countries and are then ratified by their respective parliaments. Trade disputes are resolved through the WTO dispute settlement mechanism.

4.3. The General Agreement on Trade in Services is the first set of principles and rules agreed on multilaterally to govern the international trade in services. It sets out the range of services that WTO members are prepared to open up to external competition and specifies the degree of openness permitted for these markets, which include some SGEL, such as financial services, electronic communications, postal services, transport and energy, amongst others.

4.4. The EESC has already urged the other Community institutions ⁽²⁾ to ensure that the guiding principles for SGI

inform the EU's stance in trade negotiations, in particular at the WTO and in the General Agreement on Trade (GATS). The Committee considered it unacceptable for the European Union to give commitments in international trade negotiations to liberalise sectors or activities that have not been agreed beforehand in line with the Treaty rules specifically governing SGI. The Member States must retain the power to regulate services of general interest in order to achieve the social and development aims that the Union has set itself means that unregulated SGI must be excluded from the scope of such negotiations.

4.5. Article 1.3 (b) of the General Agreement on Trade in Services (GATS), excludes from its scope *'services supplied in the exercise of governmental authority'* and letter c) of the same article considers these to be *'any service (in any sector) supplied neither on a commercial basis nor in competition with other suppliers'*.

4.5.1. Since the GATS does not refer to 'services of general interest' in the strict sense of the term, except within the meaning of Article XXVIII letter c) ii ⁽³⁾, it gives rise to considerable uncertainty when it comes to establishing an agreed definition and an appropriate international framework for regulating the operation of SGI within the WTO, which could result in some provisions of Community law being called into question.

4.5.2. Also, given the large number of governmental (or public) measures, to which the GATS would apply in line with Article 1.1 of this agreement ⁽⁴⁾, and the position of the appeal body, which is clearly in favour of applying the agreement to any measure that is not sufficiently justified and which distorts trade in services ⁽⁵⁾, the EU must adopt a unified and firm stance in the WTO, upholding the common principles and values that form part of the Community acquis.

4.5.3. The only exception to this rule is set out in Article 2 (a) and (b) to the Annex to the GATS on air transport services, which excludes *'traffic rights, however granted, or services directly related to the exercise of traffic rights'* from the scope of the agreement and from its dispute settlement procedures.

⁽¹⁾ By means of Council Decision 94/800/EC of 22 December 1994, (OJ L 336, 23.12.1994) the Council has adopted the legal texts arising from the multilateral trade negotiations at the Uruguay Round, which concluded with the signing of the Marrakech Final Act and the creation of the World Trade Organisation.

⁽²⁾ EESC Opinion on *'The future of Services of General Interest'*, OJ C 309, 16.12.2006.

⁽³⁾ This provision, which is concerned with 'definitions', considers 'measures by Members affecting trade in services' to include 'the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally'.

⁽⁴⁾ Which states: 'This Agreement applies to measures by Members affecting trade in services'.

⁽⁵⁾ Cf. United States - Measures Affecting the Cross-Border Supply of Gambling and Betting Services, case WT/DS/AB/R(AB-2005-1). An analysis appears in Moreira González, C. J. 'Las cláusulas de Seguridad Nacional', (National Security Clauses) Madrid 2007, p 229, ff. Also European Communities - Regime for the Importation, Sale and Distribution of Bananas, case WT/DS27/AB/R/197.

4.6. This situation gives rise to various options on which the WTO will have to take a position, including the following:

4.6.1. It would in any event make sense to promote an agreement with the other contracting parties to define the concept of 'a service supplied in the exercise of governmental authority' contained in Article I:3 of the GATS. For this purpose, the provision set out in letter b) of that article, which broadly covers the liberalisation of any service in any sector of economic activity, does not prevent countries from adopting derogations that exclude the liberalisation of social services and services of general interest. Such derogations would not be in breach of the obligations imposed by the GATS to ensure that trade in services is not hindered.

4.6.2. The different perspectives from which the delivery of a service can be evaluated and, where appropriate, classified as an SGI for the purpose of applying the GATS, depending on whether the focus is on the service's consumers or on the entity providing the service. SGI could be excluded from the

scope of the GATS only on grounds of upholding the general interest, either at Community or Member State level, and in order to protect the service consumer, given that it is irrelevant here whether the service is provided by an entity that is public or private, national or foreign.

4.6.3. The need to bring the Community concept of public credit institutions and financial services in the public interest (e.g. retirement plans and public pensions) into line with the concept set out in Article 1 (b) 3rd sub-paragraph of the GATS Annex on financial services, which considers '*other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government*' to be '*services supplied in the exercise of governmental authority*'.

4.6.4. The finance G-20 ⁽¹⁾ could act as a catalyst for the decisions to be taken by the specialist international organisations (such as the WHO, FAO, the World Bank, IMF, etc. ...) in the field of financial services and for safeguarding the principles and values that underpin services of general interest.

Brussels, 23 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

⁽¹⁾ The finance G20 gathers together, in addition to the G8 countries, 11 finance ministers and central bank governors, representing 85 % of the world's GDP, plus the European Union (in the form of the country holding the Council presidency and the President of the European Central Bank).

Opinion of the European Economic and Social Committee on Aviation security for passengers

(2009/C 100/07)

On 17 January 2008 the European Economic and Social Committee decided to draw up an own-initiative opinion, in accordance with Rule 29(2) of its Rules of Procedure, on

Aviation security for passengers.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 September 2008. The rapporteur was Mr McDONOGH.

At its 448th plenary session, held on 21, 22 and 23 October (meeting of 23 October), the European Economic and Social Committee adopted the following opinion by 94 votes in favour with two abstentions.

1. Recommendations

1.1. The EESC recommends to create specific standards for aviation security services, unified at the highest possible level in addition to the existing common legal standards governing the Community approach to civil aviation security.

1.2. In the Committee opinion service providers should be excluded from aviation security activities amongst others if: they are bankrupt or being wound up, subject to proceedings for a declaration of bankruptcy, convicted for an offence concerning their professional conduct, guilty of grave professional misconduct, guilty of failure to fulfil obligations relating to the payment of social security contributions, guilty of failure to fulfil obligations relating to the payment of taxes, guilty of serious misrepresentation in supplying or failing to supply tender relevant information and no entry on professional register if required by national legislation. Also, aviation security providers should have an internal recruitment mechanism, provide for sufficient training of staff and proof of insurance for potential liabilities following the execution of the contract.

1.3. The introduction of one legally binding common set of training hours as well as a compulsory training package for security staff in all 27 Member States of the European Union, is recommended by the EESC.

1.4. The Committee believes that measures should be clear and concise.

1.5. The EESC deems it necessary to inform explicitly airlines, airports and security providers on the application of legislation containing security measures and provide, subject to strict conditions, direct access to these rules to airlines, airports and security providers.

1.6. The Committee believes that the publication of non-sensitive parts of the implementing legislation containing

security measures which impose obligations on or limit the rights of passengers in the Official Journal of the European Union and a review of these security measures every six months is a necessary requirement in the Community legal order.

1.7. The EESC requests the European Commission to take initiative with regards to the compensation of victims of criminal acts, such as terrorist attacks, in the field of aviation.

1.8. Measures should promote the recognition and professional development of careers in security.

1.9. Measures should avoid redundant security checks by implementing the concept of One-Stop Security across the EU. Promote the recognition of third countries' security measures.

1.10. Measures should develop customised innovative approach allowing differentiation of security measures for crew and passengers, without compromising security.

1.11. According to the Committee Aviation Security should be a priority in the allocation of Security research funds.

1.12. The independent assessment of technologies and requirements for technologies by the European Commission is indispensable. Standards for technologies, used in the field of aviation security, and a central register of approved suppliers should be created on the basis of this independent assessment according to the EESC.

1.13. The EESC believes that a more co-ordinated approach between member states in the fight against terrorism and organised crime is needed. Moreover more stringent measures taken at member state level, creating obligations and, or limiting rights of passengers should be based on risk assessment and take into account human dignity, be reviewed every six months and should be explicitly communicated to the travelling public.

2. Introduction

2.1. Following the tragic events of 11 September 2001 a Framework Regulation of the European Parliament and the Council, establishing common rules in the field of civil aviation security ⁽¹⁾, was adopted. This Regulation specifies the main provisions and common standards governing the Community approach to civil aviation security. Whilst Community legislation lays down common basic standards, it also allows Member States (or individual airports) to set higher standards, due to the variable level of risk of a terrorist attack depending on the member state, airport or airline.

2.2. In 2005 a process of revision of this Framework Regulation in the field of aviation security was initiated by the European Commission ⁽²⁾, leading to a final consensus between members of the European Parliament and the Council of the European Union on 11 January 2008 and resulting in the adoption of a new Framework Regulation No 300/2008 ⁽³⁾ on 11 March 2008. The aim of the revision was to clarify, simplify and harmonise further the legal requirements with the aim of enhancing the overall security in civil aviation.

2.3. The momentum created by the revision of the Framework Regulation should be seized, as this is a fundamental change to the rules governing aviation security. A common transport policy was one of the earliest European Community common policies. In this context air transport is of vital importance for the free movement of persons and goods: two of the objectives of the European Community. The freedom for a citizen of one member state to travel freely to another member state implies the protection of that person from harm. Moreover, the disruption (by for example a terrorist attack) of the air transport system would have negative impacts on the European economy as a whole. Therefore it is clear that security should remain a key element for the air transport success.

2.4. Despite the many initiatives in the field of aviation security, the current regulatory framework in the field of aviation security does not address some of the basic concerns of passengers, airlines, airports and private security providers. The air transport sector needs clearer, comprehensive and harmonised measures. The overall aim of the aviation security policy should therefore be to create a clear, efficient and transparent regulatory framework and to have security with a human face.

⁽¹⁾ Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security, OJ L 355, 30.12.2002, p. 1.

⁽²⁾ COM(2003) 566, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 2320/2002 of the European Parliament and of the Council establishing common rules in the field of civil aviation security, OJ C/2004/96.

⁽³⁾ Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002, OJ L 97, 9.4.2008, p. 72.

3. Certification of private security providers is a necessity

3.1. Because aviation security is crucial for the functioning of the air transport system, the creation of specific standards for aviation security services in addition to the existing common legal standards governing the Community approach to civil aviation security is necessary. In practice private security providers are often selected merely on the basis of the lowest price, in spite of the sensitive nature of their business. New binding legislation incorporating such specific standards should give some guidance for the selection and attribution of aviation security providers on the basis of quality criteria.

3.2. Selection and attribution of criteria for security providers should, amongst others include the financial and economic capacity of the security provider, financial transparency, ability and technical capacity, this all improving the quality of services.

3.3. The European Aviation Security Association has recently launched an initiative of self-regulation through a Quality Charter and an Annex on Training of private security staff. Principles put forward in this document could serve as a basis for the certification of all private aviation security companies and illustrate the commitment of the industry to provide high quality solutions.

3.4. The European Economic and Social Committee recommends the creation of legally binding quality criteria for private aviation security providers. Service providers could be excluded from aviation security activities amongst others if: they are bankrupt or being wound up, subject to proceedings for a declaration of bankruptcy, convicted for an offence concerning professional conduct, guilty of grave professional misconduct, guilty of failure to fulfil obligations relating to the payment of social security contributions, guilty of failure to fulfil obligations relating to the payment of taxes, guilty of serious misrepresentation in supplying or failing to supply tender relevant information and no entry on professional register if required by national legislation. Besides this, aviation security providers should have an internal recruitment mechanism, provide for sufficient training and proof of insurance for potential liabilities following the execution of the contract.

3.5. In addition the European Economic and Social Committee proposes to introduce one legally binding common set of training hours as well as a compulsory training package for all 27 Member States of the European Union.

4. Recognition of background checks for security staff

4.1. Prior to their appointment, security staff should, according to the current and future Framework Regulation on aviation security, undergo both a specific training and a background check. It is crucial that a future security agent has no records or links to potential terrorist groups or criminal groups and no criminal record, since their work is a key element in the aviation security system.

4.2. Currently, background checks are performed by national authorities, normally by the Ministry of Justice or Interior, only in their jurisdiction. As a result, there is no mutual recognition of this prerequisite by the majority of Member States. This topic is particularly important if the mobility of workers is taken into account, a fundamental freedom established by the Treaty of Rome.

4.3. The European Economic and Social Committee urges the Council of the European Union and the European Commission within the remit of its competence in the field of Judicial and Police cooperation within the EU to reflect upon this issue.

5. One Stop Security

5.1. The main objective for giving competencies to the European Union in the field of aviation security was to achieve a common European framework of rules which would be applied consistently across the EU Member States. As all rules developed at the EU level are to be applied by all Member States, the logical consequence would be the mutual recognition among Member States of EU security standards – this is what is meant by the concept of One-Stop Security. The passenger, luggage and cargo which travels from one EU Member State to another should be considered as secure, and thus should not have to undergo additional security screening in the EU transfer point before the destination.

5.2. The principle of One-Stop Security has been recognised at EU level, and is further strengthened with the new Framework Regulation on aviation security. However, mutual recognition of EU Member States security standards is still not completed within the EU. Based on the fact that threat levels were not equal among all Member States, some Member States have imposed more stringent security measures to mitigate the specific threat they are exposed to.

5.3. This non-recognition of security standards across the EU implies the multiplication of redundant checks, which are not only linked to additional delays and costs for airlines, but are also using resources which would be better used for protecting more vulnerable parts.

5.4. This principle of One-Stop Security, which should be implemented across the EU, should also be considered with regards to other countries. There is no reason why aircraft coming from countries with advanced aviation security regime, like the United States or Israel, should be considered as 'unsecured'. Mutual recognition of standards should also be possible with 'like-minded' countries and this would again contribute to a balanced global security regime where all efforts are targeted at the real threat.

5.5. The European Economic and Social Committee therefore urges the European Commission to ensure that the principle of One-Stop Security is thoroughly applied in the EU, and that any aircraft arriving from an EU Member States in another EU Member States is considered as 'secure'. The European Commission is also strongly invited to make rapid progress on recognition of third countries security standards, where these standards can be considered as equivalent, with a special focus on the United States.

6. Differentiation

6.1. Considering the significant increase in passengers travelling by air forecast for the upcoming years, the current security screening of passengers and luggage does not propose a sustainable model. For the moment, all passengers are screened in a similar way and they all have to undergo the same process of security check. This burdensome process is the main target for complaints from passengers when asked to evaluate their travel experience. The dissatisfaction from passengers is reinforced by the knowledge that the vast majority of travellers are not posing any threat to either the airport or the aircraft.

6.2. Again, resources available to ensure aviation security are extremely scarce. Distinction should first be made between what is probable and what is possible. The credibility of the whole system needs to rely on the capacity to address probable threats and not trying to cover 100 % of the possible risk. The identification of a probable threat should be based on the assessment of this threat and an evaluation of the risk taken in the application of adequate measures.

6.3. The European Economic and Social Committee invites the European Commission to reflect upon an approach where the systematisation of security checks on passengers could be replaced by a pro-active differentiation of passengers combining information gathering with deterrence of random measures.

7. Allocation of Research and Development Funds in the field of Security

7.1. The European Economic and Social Committee welcomes the allocation of EUR 1.2 billion to security research in the 7th Research Framework Programme. Aviation security should be considered a priority in the allocation of funds due to the increasing costs for the aviation sector and its impact on society at large. Furthermore, it is crucial that the selected projects are in line with the policy that is being developed and that funds are made available for necessary research in this regard such as for example research on technologies used to detect liquid explosives or other detection technologies such as the use of biometrics.

7.2. As a result, the European Economic and Social Committee requests the European Commission to coordinate internally its work in order to optimise the utilisation of financial resources provided by tax payer money.

7.3. Moreover the European Economic and Social Committee recommends to allocate funds for the independent assessment of technologies and requirements for technologies by the European Commission. Standards for technologies, used in the field of aviation security, and a central registrar of approved suppliers should be created on the basis of this independent assessment.

8. Difficulties in recruiting and retaining Security Staff

8.1. In some Member States, airports or security providers have been facing important difficulties in recruitment of security staff. It is natural that the selection criteria have been increased due to the importance of the role of these agents. Thus, besides the need of 'clean' background check, the necessity to speak one or more foreign languages, a certain level of education to understand the procedures and to deal with conflicting passengers leads to more a restricted pool of candidates.

8.2. An additional problem that occurs is that once the staff has been recruited and properly trained, the retention of this staff becomes extremely difficult. The necessary flexible working hours combined with a constant pressure and the relatively low salary, render the profession of a security agent undesirable in the eyes of many. Moreover it is clear that the lack of social recognition and career prospects results in a loss of expertise in the sector.

8.3. The European Economic and Social Committee believes that the European Commission can play an important role in this social field by promoting the benefits of a career as a security agent throughout the European Union and this more concretely by revalorising these important jobs.

9. Accountability

9.1. The aviation industry invests in the delivery of high quality of services, but is confronted with obstacles precluding a clear view on the legal requirements, and thus hampering a qualitative implementation.

9.2. The European Economic and Social Committee believes that measures should be clear and formulated as simple as practicably possible. Current rules are often a series of rules, spread over different legal texts, with many exceptions with exceptions. The result is a complex set of requirements, which do not contribute to efficiency and increase stress for staff, delays and inconvenience for travellers.

9.3. Moreover, end-users of security measures, namely airlines, airports and security providers who are actually applying the measures, have no direct access to these rules. Crucial service providers, such as airlines, airports and security providers are expected to follow rules correctly, but are not directly informed on those rules while article 254 of the European Community Treaty provides that regulations shall be published in the Official Journal of the European Union and it is absurd to expect service providers to apply rules which they are not supposed to know. In the pending case C-345/06, better known as the 'Heinrich-case', Advocate General Sharpston has issued an opinion suggesting to declare implementing regulation on aviation security non-existent. According to the Advocate General the persistent and deliberate non-publication of the Annex to Regulation EC No 2320/2002, which contained, inter alia, the list of items prohibited in cabin luggage, is a failing of such gravity that it can not be tolerated in the Community legal order ⁽¹⁾.

9.4. Consequently the European Economic and Social Committee recommends clear and direct information to airlines, airports and security providers having to apply security measures about these measures and thus to provide for a direct access to the rules, subject to strict conditions, for airlines, airports and aviation security providers. It does not contribute to high quality of services that private security providers should apply security measures and are to a certain extent accountable for the application, but do not have the capacity to be informed directly. Nevertheless, given the need for high confidentiality of these rules, specific conditions regarding the guarantee of their confidentiality, must be defined and endorsed. Moreover the European Economic and Social Committee recommends the publication of non-sensitive parts of the implementing legislation to Regulation No 2320/2002, which imposes obligations or limit rights of passengers, in the Official Journal of the European Union as required by article 254 of the European Community Treaty and a review of security measures imposing obligations or limiting the rights of passengers every six months. The European Economic and Social Committee recognises the necessity of the competence of Member States to take more stringent measures, due to the variable level of risk. Nevertheless the European Economic and Social Committee believes that a more coordinated approach between Member States in the fight against terrorism and organised crime is needed. Moreover more stringent measures taken at member state level, creating obligations and, or limiting rights of passengers should be based on risk assessment and take into account human dignity, be reviewed every six months and should be communicated to the travelling public.

10. Consequences of a terrorist attack

10.1. One of the objectives of the European Community is the free movement of persons and goods. Moreover the European Community has committed itself to create a common transport policy and to protect human rights such as the right to life and property.

⁽¹⁾ Opinion Advocate General Eleanor Sharpston in case C-345/06, 10 April 2008, www.curia.europa.eu

10.2. In the Cowan ⁽¹⁾ case, the European Court of Justice held that, when Community law guarantees to a natural person the freedom to go to another Member State, the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement. The Council of the European Union added to this, in its Council Directive 2004/80/EC that measures to facilitate compensation to victims of crimes should form part of the realisation of this objective. These principles should be applied in the case of victims of a terrorist attack in the field of civil aviation.

10.3. At its meeting in Tampere on 15 and 16 October 1999, the European Council called for the establishment of minimum standards that would protect the victims of crime, in particular on crime victims' access to justice and their rights to compensation for damages, including legal costs.

10.4. Given the fact that airlines, airports and the security industry are investing in high quality services, through research, and is contributing to the security of society, but do not have the overall ultimate competence to prevent terrorist attacks, it is necessary for the European Union to take initiative to provide assistance of victims after a terrorist attack.

10.5. Currently no European rule exists on the compensation of victims following a terrorist attack. Victims are left dependent on the outcome of judicial proceedings and *ex gratia* solutions offered by Member States. A consequence of the lack of common European rules is that national liability regimes would apply, which is unsatisfactory and does not secure citizens from the far-reaching consequences of a terrorist attack. An example of this would be that victims who desire compensation would be required to initiate lengthy judicial proceedings against terrorists who may not easily be found or who may lack the necessary financial means to compensate the victim. Furthermore, different actors such as airlines, airports

and private security providers could face legal actions, with a potential unlimited liability as a result on the basis of national liability regimes. The existing insurance solutions are not sufficient, as airlines, airports and private security providers are saddled with high insurance premiums and limited coverage. Clearly, these private actors are not in the position to provide the necessary compensation to victims, nor is it desirable to have private actors pay for actions directed against state policies.

10.6. The European Economic and Social Committee wishes to draw the attention to Article 308 of the Treaty of the European Community, which empowers the Community to take action where two conditions are fulfilled. First, the action must be necessary in order to achieve one of the objectives of the Community; and secondly, the European Community Treaty must have failed to provide the necessary powers in another article.

10.7. With this in mind the European Economic and Social Committee recommends as a possible solution, taking an initiative on the basis of article 308 of the Treaty of the European Community with regard to the compensation of victims of terrorist attacks. As European Community action is necessary in order to achieve the objective of free movement of persons and goods, to protect the functioning of the air transport system and to protect the right to life and property of citizens.

10.8. In this opinion the European Economic and Social Committee proposes to the European Commission and the Council of the European Union to apply principles used for other industries (e.g.: nuclear, maritime, ...). More specifically: a strict liability that is capped, and exclusively channelled towards one actor and whose viability remains protected by a three tier liability regime, respectively covered by an insurance, a fund financed by all interested parties, a state intervention.

Brussels, 23 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

⁽¹⁾ ECJ, Ian William Cowan vs. Trésor public, case 186/87, www.curia.europa.eu

Opinion of the European Economic and Social Committee on the European Union and the global food challenge

(2009/C 100/08)

On 25 October 2007 the French presidency of the Council wrote to the president of the European Economic and Social Committee, Mr Dimitris DIMITRIADIS, under Article 262 of the Treaty establishing the European Community, to request an exploratory opinion on

The European Union and the global food challenge.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 October 2008. The rapporteur was Mr KALLIO.

At its 448th plenary session, held on 21, 22 and 23 October 2008 (meeting of 22 October), the European Economic and Social Committee adopted the following opinion by 73 votes to 11 with 27 abstentions.

1. Conclusions and recommendations

1.1. The EESC feels that the EU should evaluate the long-term objectives of agricultural and trade policy and examine whether food supply is secure in the changed conditions which now exist in the EU and the world at large.

1.2. The EU must put the availability of food at the heart of agricultural policy which guarantees viable production in all the regions of the EU. This must be done in the context of the CAP Health Check.

1.3. Food production should be given preference over energy production. Plant-based energy production should be limited to plants and biomass which are not naturally suited to food production.

1.4. A reasonable level of producer prices provides a stable basis for the production of adequate food supplies (primary production and processing), both in the EU and globally.

1.5. Efforts should be made to establish rules for agricultural trade which guarantee food supplies in all countries and in all circumstances. Developing countries should be accorded trade advantages that support the strengthening of national production.

1.6. The EU should increase cooperation and support efforts to modernise food chains in the developing countries and make them more effective.

1.7. The EESC emphasises that the EU must make efforts to strengthen the activities of producer associations and market

organisations in the developing countries and in this way support the basic conditions for food supply. The EU must stick by the proposal to provide support totalling one billion euros to farmers in the developing countries.

1.8. The EU should step up investment in new technologies, including biotechnology, so that applications can be developed for production.

1.9. The future strategy must be to improve the quality of food products, and the safety of food products must be increased through transparent country-of-origin labelling and consumer education.

1.10. Consumer prices should not be lowered artificially; rather, price compensation should take place via social policy.

1.11. The UN and other international organisations should make food production a first priority as the basis for eradicating poverty.

1.12. To ensure the availability of food, a worldwide stock-holding obligation programme should be created, along the lines of the scheme established for storing oil in the EU.

1.13. In order to establish security of supply in the EU, a better basic storage system needs to be put in place for key products and production inputs (protein, fertilisers, seeds, pesticides) and active measures need to be taken to strengthen cooperation between Member States, the EU and commercial players.

1.14. In order to ensure food supply, training in this field needs to be increased to meet the new challenges posed by the food crisis, both in the EU and especially in the developing countries.

1.15. The EESC thinks that the EU should set up joint ventures in the agriculture and fisheries sector in the developing countries in order to improve economic conditions in these countries.

1.16. The EESC suggests that the Commission submit proposals aimed at getting the Member States to invest more in RDI in the fisheries sector, and especially in the construction and maintenance of oceanographic research vessels. Their studies and work will contribute both to the maintenance and development of a sustainable fishing sector and to improving the food situation and socio-economic conditions in the less advanced countries.

2. Introduction

2.1. The health of European citizens and their concern about the future, the recent sharp rise in the prices of agricultural and food products and the burning issue of world hunger in general have placed the global food challenge at the heart of public debate. Raw material prices in the agricultural and food products sector had been falling since the 1970s. The upward adjustment during the past three years is a welcome development in the right direction which has, however, brought about difficulties for consumers, the weakest link in the chain. In some cases, the price that consumers are having to pay for basic foodstuffs is a mark-up substantially higher than the price originally received by the farmer. Although some parts of the European agricultural sector have been able to benefit from the rise in prices, it is important to remember that European livestock farmers are in a critical situation because they cannot afford the rise in the price of animal feed, or pass on the cost to consumers either. This draft opinion examines food challenges from the EU perspective and considers the social effects of EU action more widely⁽¹⁾.

2.2. The key issue is food supply and security of supply. The aim is to identify the global challenges and suggest ways of responding to them. The dramatic market changes have prompted some radical comments: several sources have even suggested the decoupling of agricultural and food issues from the WTO negotiations and a return to support tied to production at EU level. Finally, we examine the implications of these challenges and possible responses for the most important social questions: what do they mean for the European consumer? What do they mean for developing countries' long-term food supply? And how do they contribute to the dynamism of the countryside?

2.3. We start with a brief review of the development of EU agricultural and food production and policy and outline the framework within which agriculture and food production currently operate in the EU. We then consider the significant external forces for change, which create pressure to develop the existing framework. On the basis of this analysis we produce a summary highlighting the most important future challenges to EU agriculture and food supplies and setting out available alternative approaches for action. Finally, we assess these approaches and the role of the EU in global food supply, as both producer and consumer.

3. EU agricultural and food policy and trends in the sector

3.1. EEC/EU food and agriculture objectives and sector and market trends

3.1.1. Agricultural and food production in the EU has developed over the decades in line with developments in the rest of society. In the early years the focus was on increasing output, with the result that there were significant surpluses for export in the 1980s. This was a decade which saw the emergence of environmental problems in agriculture, such as the issue of spreading manure in areas of intensive farming and water supply problems.

3.1.2. Organic farming emerged as a response to intensive cultivation and environmental problems and is one example of product differentiation: some consumer groups are prepared to pay more for food produced using methods deemed to be environmentally friendly. The 1990s will be remembered as the decade of animal diseases and zoonoses, when the EU cattle farming sector and food industry was hit by mad cow disease and swine fever. Food safety emerged as an important factor in food supply, and many countries started to devote more resources to matters such as tackling and preventing salmonella.

3.1.3. These problems and the measures taken to address them have helped to shape agricultural and food policy in the European Union. Topical issues that have arisen in recent years include the production of bioenergy from agricultural raw materials, i.e. agriculture as a source of bioenergy raw materials.

3.1.4. Another aspect that has come to the fore is the nutritional quality of food and its importance for public health, with the focus of discussion on food composition and the extent to which the food industry is to blame for the growing problem of obesity in the West. This is a matter which the food sector needs to take into account in, for example, planning and marketing products and which consumers have to consider in their consumption decisions. Responsible consumption must be supported through consumer education.

⁽¹⁾ In connection with the drawing up of the opinion, a hearing was held at the EESC on 22 September 2008 entitled *What are the real prospects for agricultural and food prices?*

3.1.5. The burning issue at the moment is the sharp rise in the price of foodstuffs and agricultural inputs and finished products: whether this is a lasting increase and the effects on worldwide food supplies and the living conditions of the poor. Decision-makers should also consider the change in market conditions: are policy measures geared to markets where food prices are low and continually falling still valid in the new circumstances?

3.2. *Changes in EU agricultural policy and fisheries*

3.2.1. EU agricultural policy has been based on a strong internal market and market regulation via subsidy schemes, the aim being to ensure stable food supply in all countries and in all circumstances. The EU has based its policy on a European agricultural model which protects agricultural diversity and ensures that farming is profitable even in the EU's disadvantaged regions. The aim has been to produce high-quality, safe food at reasonable prices for EU consumers.

3.2.2. The internationalisation of agricultural policy as part of globalisation has brought new challenges to the reform of the common agricultural policy. These include growing competition and the problem of managing policy on farmers' incomes. For years, the problems of the agricultural markets have been caused by the low prices of products, which EU agricultural reforms have tried to address.

3.2.3. The agricultural reforms of 1999 and 2003 saw a move towards a more market-oriented system, with the abolition of the intervention systems, a reduction in administrative costs and an end to the link between direct subsidies and the volume of output. Reforms of the market organisations in many products followed, which caused difficulties for some EU farmers. These changes laid the basis for the EU's targets in the ongoing WTO round of trade talks.

3.2.4. The EU is currently preparing a 'health check' for the common agricultural policy, which should be an opportunity for some fine-tuning. The main objectives of this review are to assess the implementation of the 2003 CAP reform and to incorporate into the reform those adjustments needed to simplify the policy, to allow it to grasp new market opportunities and to prepare it for new challenges in the market and in society. It comes at a time of great turbulence on the world markets for agricultural products when food supplies have been seriously jeopardised.

3.2.5. Along with agriculture, fisheries are an important part of our food supply. In 2005, total world fisheries production reached nearly 142 million tonnes, providing a per capita fish supply of 16.6 kg and more than 15 % of world production of animal meal. Fishery products play an important role in food supply. In addition, activities related to fisheries and aquaculture are an important source of nutrition, jobs and income in both Europe and the developing countries. The European Union should seek to ensure that the developing countries are also able to manage and utilise their fish reserves in the most effective way possible.

3.2.6. The EU action in this field should be focused on a comprehensive approach combining sustainable use of fish resources and poverty reduction and guaranteeing a balance between the developed and developing countries based on the following considerations:

1. The EU should develop local fishing methods and support the expansion of sustainable and responsible fisheries and aquaculture.
2. The EU should continue to import fishery products and to strengthen food safety and consumer protection practices.
3. The EU should support fishing by European fishing communities in third country waters provided that it is indisputably in the interests of these countries and their citizens.
4. The oceans and seas are part of the Earth's natural resources and our global heritage. The EU must see to it that it does not over-fish its waters or the waters of non-EU countries.

3.3. *The need for change: external factors influencing EU agricultural and food policy*

3.3.1. The framework of EU agriculture and food policy has evolved over the past 50 years as described above, and is the product of both its own objectives and possibilities and external factors. External factors which have helped to change and shape policy include, in particular, EU trade policy – the current Doha Round of WTO trade talks – technological development and environmental challenges and trends in food markets.

3.3.2. The multilateral WTO trade talks in the Doha Round have already lasted for nearly seven years. Some partial solutions have been achieved in the negotiations but overall progress has been very slow. The EU has been very active in the process across the broad range of issues covered by the negotiations. Some countries did not want to see progress that would lead to a successful outcome. The EU has made significant concessions, for example in agriculture, industry and questions relating to the developing countries. Finding a negotiated solution would be important for the functioning of the international trade system.

3.3.3. Agriculture has traditionally been a sticking point in the negotiations because most countries defend their own production on the grounds of basic security. Other parties to the negotiations are very big exporters, but do not want to free up their imports. The EU is a major exporter of certain products, but also the world's largest importer of food. In 2007 the EU food industry exported food products worth EUR 54.6 billion while EU imports of processed foods amounted to EUR 52.6 billion.

3.3.4. If the Doha Round talks do reach a conclusion in the near future it will mean a new situation for the EU's agricultural markets. On the basis of the offers currently on the table, export subsidies will be abolished by 2014 and protective tariffs will be cut by more than 50 %. This could mean an economic loss of over EUR 20 billion for the EU agricultural sector. The recent rise in agricultural prices will affect the structure of trade and the impact of the final outcome.

3.3.5. The EU has raised a number of important factors associated with agricultural trade, such as environmental and social standards and animal welfare (i.e. non-commercial factors). Unfortunately, these proposals have not made any headway. Production regulations and standards should be harmonised in order to create a level playing field for world trade.

3.3.6. In the negotiations the EU has made significant concessions to the poorest developing countries by lifting import tariffs, which is expected to improve their opportunities for agricultural trade. It is also important that developing countries' own agricultural production benefit from more resources, preferential treatment and technical aid. The EU should also back initiatives which support production for the home market in developing countries and promote the organising of rural players. The developing countries differ widely in terms of their trade conditions, and this should be taken into account in the new trade rules.

3.3.7. The recent radical change in the state of world markets for agricultural products will affect the trade in food and the way it is structured. If the price rises are permanent this will

indirectly affect the new trade policy agreements and terms. Indeed, the EU has started to extend the bilateral trade agreements it has with many trading partners, partly because of the difficulties with the multilateral talks, but also because of the rapid changes, for example in food and energy markets. The aim must be to achieve an agreement and an intervention mechanism which could be used to reduce fluctuations in product prices and balance markets.

3.4. *Environmental change and technological development*

3.4.1. Environmental issues

3.4.1.1. The most important environmental factor is the changes caused by climate change and, in particular, the policy measures it gives rise to. Climate change *per se* leads to changes in global climatic conditions and production has to adapt to these new conditions, which reduces agricultural productivity. Another, indirect effect operates through policy measures: action taken to slow climate change requires changes in production structures and techniques, which themselves reduce productivity. In addition to agriculture, climate change also has a major impact on the options available to the food industry and its profitability.

3.4.1.2. Special mention can also be made of bioenergy production based on agricultural raw materials. Food markets are now closely interlinked with energy markets, as bioenergy production and food production compete for the same raw materials and also because agricultural production today relies heavily on the use of fossil fuels. As a result of this competition, price developments in energy markets and policy measures affecting them have a direct impact on food markets.

3.4.1.3. The use of raw materials that are suitable for food as raw materials in the production of bioenergy has the effect of boosting demand for agricultural products and pushing up their prices.

3.4.1.4. The greenhouse effect is an all-pervasive environmental issue which overshadows many other environmental questions, of which, however, biodiversity is important as it is a global issue. In the EU, the protection of a diverse genetic base is taking on increasing importance in the preservation of protected areas and original plant and animal species as a part of or in addition to production and as a gene bank activity. Outside Europe the needs are essentially the same but the range of species may be many times more diverse and the economic opportunities fewer.

3.4.1.5. Besides biodiversity, contagious animal diseases and zoonoses and alien species are problems which are coming increasingly to the fore because of international trade, transport and cooperation. In the EU swine fever, BSE, FMD and salmonella are probably among the most familiar of such biosecurity problems whilst at global level bird flu is an epidemic which is giving cause for concern. Diseases and pests each spread in their own individual way – what they share in common is the fact that they affect food production directly or indirectly and are a source of uncertainty when it comes to consumers' buying decisions. Moreover, they have an important long-term effect as a factor undermining security of supply.

3.4.2. New technologies

3.4.2.1. Demand for agricultural products as a raw material for bioenergy production has increased primarily as a consequence of policy measures taken to address the threat to the environment, but also as result of technological development. Biotechnology offers a wealth of new opportunities for more effective production and processing of products in food and non-food markets. In the energy field, cellulose-based bioenergy is emerging alongside starch-based energy as a marketable product.

3.4.2.2. Biotechnological innovations have brought with them a whole range of new production methods. The advances in biotechnology are seen as major step forward in improving the efficiency of production. This process should be supported through R&D efforts. The advantages aside, there is also a need to take into account the potential risks to health and the environment. The problem is that, in many cases, the potential side effects of biotechnology applications on the health of animals, plants and ecosystems are still not clear.

3.4.2.3. The lack of sufficient data and studies proving the secondary effects of modern biotechnologies on health and the environment have shaped consumer perceptions with regard to the introduction of biotechnology applications. Serious attention must be paid to consumer opinions and concerns in development efforts and market products labelled appropriately.

3.5. Price developments in food markets

3.5.1. Over the past two years the prices of agricultural commodities and several important basic foodstuffs have risen sharply. This is due to a number of reasons, including increased

demand resulting from population growth, higher energy prices, a worldwide reduction in stocks and the investment and speculative interest this has generated in agricultural commodities, and climatic conditions, both local weather shocks and the threat of more permanent change.

3.5.2. It is difficult on the basis of forecasts to say how markets will develop in the future. The fall in prices in recent months offers no indication as to what level prices will ultimately settle at. In any case, the price movements are having a marked impact in the developing countries and the effects are also being felt in the developed world, including EU countries.

3.5.3. In the EU higher world market prices have created the perception that there is slightly larger margin for manoeuvre in agricultural and food policy than before. To food buyers the rise in food prices appears to be fast and indeed it has already had an impact on overall inflation in EU countries. A similar pattern, albeit more dramatic, is clearly evident in the developing countries – in many countries there have recently even been reports of riots related to food availability and prices. At the same time it has become apparent that the price rise has had a positive impact on some production sectors – in many cases local producers are now, for the first time in years, able to compete with food imported at world-market prices. In the long term this could boost food production and also provide production opportunities for the local population. To succeed, this requires economic growth such that provides consumers with enough money to buy food.

3.5.4. The rise in world-market food prices is, as such, likely to increase the volume of food production. However, higher prices could exacerbate world hunger as the poor find it increasingly difficult to buy essential food items and especially if a larger proportion of crops is used for non-food products. In any event, the new situation is clearly impacting on income distribution within countries and is therefore a politically sensitive issue. The attitude of world organisations with regard to future developments is still unclear.

3.5.5. Clearly, this is not simply a question about markets for final products – as the prices of final products rise there is a tendency for production inputs to become more expensive, and vice versa. The same is true now – energy and fertiliser prices have risen and so farmers are not necessarily any better off than before. If the food industry is unable to keep its relative share of the price of final products unchanged, it too will suffer from the effects of higher raw material prices.

3.5.6. The price rise reflects the new market equilibrium, which is due to many different factors. In practice, it depicts the ability of the world food industry – global security of supply – to feed people according to their needs. In the past it has often been contended that world hunger is not the result of lack of production opportunities but rather the result of national and international policy. This conclusion will be subject to review in the near future: are continuing population growth, climate change and non-food products (against a background of depleting fossil energy sources) changing the situation in such a way that in the future food shortages will no longer be simply due to policy but also increasingly to limitations to the overall scope for production?

3.5.7. Tackling the issue of price trends for basic foodstuffs ultimately requires examining it painstakingly in all its complexity, as it is essential to bring transparency to bear on price formation at each stage of the agrifood value chain. In this regard, it is the responsibility of governments to act to improve price traceability, by introducing appropriate checks that can disclose specific unfair practices on the part of some operators, and by themselves playing a strongly educational role in order to provide consumers with accurate and full information.

3.6. *Food quality, food safety and nutritional properties*

3.6.1. In addition to food quantity, food quality, food safety, nutritional properties and consumer preferences are important factors on food markets. Food safety is governed by standards which are overseen by the EU Food Safety Agency (EFSA).

3.6.2. Nutrition is a complex concept, where consumer choices are guided not only by health factors but also by culturally related behaviour. The health effects of food products and who is responsible for them are the subject of ongoing debate and market players have not reached consensus on this matter.

3.6.3. Consumer preferences are based on personal values and opinions (e.g. organic food) and cultural factors which are not commensurable. Nevertheless, their importance as a factor influencing food markets should not be underestimated.

3.7. *Position and role of consumers*

3.7.1. Responsible consuming and sustainable consumption, including recycling, must become general practice. This applies to both the supply chain and consumers. This objective can be achieved with the aid of a wide-ranging societal debate.

3.7.2. European consumers take it for granted that food must be of good quality and reasonably priced. In addition to price, freedom and range of choice are important considerations for consumers. As a rule, people are not prepared to compromise over food safety.

3.7.3. In practice, however, many consumers make compromises when it comes to the safety of food products and their cultural significance. Moreover, the specific characteristics of food product are important to many consumers – e.g. organic production and GMO raw materials affect the selling price of products.

3.7.4. Quality issues underline the importance of information guidance: consumers must be told about the significance of the risks and advantages attached to different production methods and inputs in a way which clarifies the risk thinking associated with products. We have to get away from 'black-white' thinking so that consumers can weigh up the pros and cons of a particular product themselves.

3.7.5. It is of vital importance for the consumer to know what the quality on which he/she bases his/her choice is founded on. Easy consumer access to information on the quality of products is a prerequisite for building confidence. There have been many demands from consumers for, among other things, a return to country-of-origin labelling, also for European food products. European products fare well on European markets thanks to good consumer education and transparency. Paying due attention to consumer policy is a key factor for the future development of food production.

3.8. *Development policy and food production*

3.8.1. Numerous political decisions concerning the eradication of the problem of global hunger have been taken in international forums, most recently in connection with the Millennium Development Goals. To date, the practical results have been rather modest. The number of hungry people has continued to rise and there are still about a billion people in the world who suffer from hunger. Higher agricultural production has not been enough to match population growth and it has not been possible to deal effectively at global level with the new situation in food production. The EU has been involved in these efforts both in international organisations and bilaterally with developing countries. It has sought to play an active role in both development cooperation and trade policy with a view to improving the position of food production in developing countries.

3.8.2. Food security must be put at the top of the agenda in international development policy so that poverty can be reduced. The development of food production should be the cornerstone of national policy in the developing countries. Each developing country should have its own national agricultural policy, which would lay the ground for organising the supply of basic foodstuffs for its citizens.

3.8.3. The achievement of this goal requires the creation of adequate training, advisory and research resources in the developing countries. The international community and the EU should make more determined efforts to take these goals on board in development policy programmes.

3.8.4. Farmers in the developing countries should be helped by supporting producer organisations in their efforts to develop domestic production, marketing and processing and to strengthen their market position. Management of risks should be enhanced as part of efforts to improve production conditions in the developing countries. In addition to production, attention also needs to be paid to social issues. Similarly, the UN system needs to take more effective action to improve food supplies.

3.8.5. As regards trade policy, it must be possible to guarantee the developing countries a genuine opportunity to have their own 'green support' scheme. Achieving this goal calls for major know-how inputs in administration in the developing countries in establishing trade rules and systems. The EU could further step up its role in developing skills in the developing countries. A clearer grouping of the developing countries into LDCs v major exporting countries would improve the position of the very poorest countries. The EU has been promoting these goals as part of the WTO negotiations.

4. Possible courses of action for the EU and limiting factors

4.1. The last few decades have seen a shift in EU concerns and the food debate away from overproduction towards environmental issues, animal welfare and, subsequently, animal and human health problems and public health. In the future – not necessarily even a distant future – we are likely to see a 'return to roots': in Europe the debate is shifting back to the availability and price of food, a trend which has already been discernible for some years now.

4.2. At the same time, it is clear that the EU is not an island: poverty and the difficulties it gives rise to will continue to be the main problem in the developing countries – global poverty will not disappear in the short run. The EU still bears a responsibility in efforts to eliminate poverty.

4.3. The fundamental concern in the EU – and also in the food sector – is the availability of energy. The food sector in its present form is based on heavy energy use, and as such this requires the securing of energy supplies. Another limiting factor is water, especially at global level. Efforts must be made to ensure their availability.

4.4. There are several possible courses of action open to the EU. For example, it could boost the efficiency of EU agriculture and fishing, but in so doing it would have to take into account environmental considerations, animal welfare and public health. As part of its efforts to make production more efficient, the EU could increase the size of farms and production units but again this would have to be done in accordance with environmental and animal welfare requirements – not forgetting also producers' well-being and the need to keep the countryside populated.

4.5. The EU could strengthen its security of supply by building up stocks and, inter alia, diversifying its energy sources. The production of bioenergy must be increased but not at the expense of food supply.

4.6. The EU must also continue to be guided by humanistic principles and shoulder responsibility for emigration issues and the problems of the developing countries, whilst also minimising the possibility of conflicts in neighbouring regions by seeking to ensure that people have a chance to make a living in their home localities, both within and outside the EU.

The EU should support producers in the developing countries and their efforts to organise so that, by working together and learning from each other, producers can better meet food supply needs in their regions. European producers should take part in farmer-to-farmer cooperation. In July 2008 the EU made a decision in principle to make available one billion euros under the agricultural budget for improving farming conditions for farmers in the developing countries.

4.7. It is also important to develop globally responsible consumption and healthy eating habits: a diet rich in vegetable products would enable mankind to meet its food needs with substantially lower energy inputs than a diet rich in animal protein. On the production side, it is important to continue the development of production and strengthen scientific know-how. The EU must be pro-active in all these areas, both in its own activities and in international arenas.

5. Security of supply – the foundation for food supply in the EU

5.1. Security of supply is a key mechanism for combating risk and ensuring food and medical supplies in exceptional circumstances. National security of supply arrangements vary considerably between EU Member States. EU membership usually means a decrease in national security of supply as the EU believes it is capable of bearing overall responsibility for security of supply in managing crises. The EU's internal market provides a good basis for achieving this goal. The crises that have occurred in recent years have been qualitative by nature and have not involved shortages of basic commodities.

5.2. One of the main objectives in managing security of supply is to safeguard the production of raw materials for food. In the event of a crisis, food distribution can be regulated and controlled. Here cooperation between farmers, trade, industry, authorities and other bodies is crucial.

5.3. As a crisis continues over time, access to basic agricultural production inputs becomes essential. These include fertilisers, energy sources such as oil, plant protection products, seeds, animal medicines, water, etc. Under legislation, the authorities are required to ensure the supply of production inputs under exceptional circumstances. This calls for a clear division of labour and plans between different players. National schemes and the level of preparedness of security of supply vary. The EU is in the process of establishing new schemes, especially as the range of international risks is broadening.

5.4. The security of supply of the EU food sector needs to be bolstered by putting in place stronger machinery and arrangements than at present so that the Union can prepare for new potential risks. Stockholding schemes that are sufficiently large and cover the entire EU are the essence of security of supply. Stable and well-functioning markets for agricultural products in Member States and the EU's internal market form the basis for security of supply. In the event of a crisis, the reliability and speed of response of the various parties involved are crucial for ensuring security of supply.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

APPENDIX

to the Committee Opinion

The following amendments which were supported by more than a quarter of the votes cast, were rejected:

Point 3.4.2.2

Amend as follows:

'Biotechnological innovations have brought with them a whole range of new production methods. The advances in biotechnology are seen by some seed and chemical producers as major step forward in improving the efficiency of production. ~~This process should be supported through R&D efforts. The advantages aside, there is also a need to take into account the potential risks to health and the environment which must be taken seriously, with funds allocated for research. The problem is that, in many cases, we do not completely understand the potential side effects of biotechnology applications on the health of animals, plants and ecosystems are still not clear.~~

Voting

For: 41, Against: 49, Abstentions: 18

Point 1.8

Amend as follows:

'The EU should step up investment in new technologies consonant with sustainability criteria, ~~including biotechnology,~~ so that applications can be developed for production. On the issue of biotechnology, the Committee shares the view of the International Assessment of Agricultural Science and Technology for Development (IAASTD), an initiative set up by the World Bank, the FAO and other public bodies, which noted in April 2008 that world food problems, which, after all, are emerging outside the EU, must be resolved not by genetic engineering, biotechnologies and a further chemicals-based approach to agriculture, but above all by traditional farming practices and organic farming.'

Voting

For: 39, Against: 47, Abstentions: 19

Point 3.4.2.1 and 3.4.2.2 (*)

Amend as follows:

'3.4.2.1 Demand for agricultural products as a raw material for bioenergy production has increased primarily as a consequence of policy measures taken to address the threat to the environment, ~~but also as result of technological development an increasing world population and changed eating habits (such as higher meat consumption). Biotechnology offers a wealth of new opportunities for more effective production and processing of products in food and non food markets. In the energy field, cellulose-based bioenergy is emerging alongside starch-based energy as a marketable product.~~

3.4.2.2 ~~Biotechnological~~ Innovations in the development of environmentally and socially sound breeding methods (such as smart breeding) and crop growing have brought with them a whole range of new production methods. The advances in biotechnology are seen as major step forward in improving the efficiency of production. This process should continue to be promoted and supported through R&D efforts. The advantages aside, there is also a need to take into account the potential risks to health and the environment. The Committee shares the view of the International Assessment of Agricultural Science and Technology for Development (IAASTD), that food problems, which have become more acute across the world, albeit outside the EU, can only be resolved by methods adapted to local conditions, i.e. with traditional farming practices, organic farming etc., and explicitly not by genetic technology.'

Voting

For: 34, Against: 53, Abstentions: 21

(*) Translator's note: There is a discrepancy in the numbering of these sections in the English and German versions. In the original English-language version, the two points are separately numbered. In German, they are grouped together as point 3.4.2.1, while the sentence: 'The problem is that, in many cases, the potential side effects of biotechnology applications on the health of animals, plants and ecosystems are still not clear.' sits on its own as point 3.4.2.2.

Opinion of the European Economic and Social Committee on Beyond GDP — measurements for sustainable development

(2009/C 100/09)

On 16-17 January 2008, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on:

Beyond GDP — measurements for sustainable development.

The Section for Agriculture, Rural Development and the Environment (Sustainable Development Observatory), which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 October 2008. The rapporteur was Martin SIECKER.

At its 448th plenary session, held on 22-23 October 2008 (meeting of 22 October), the European Economic and Social Committee adopted the following opinion by 114 votes to 2 with 8 abstentions.

1. Conclusions and recommendations

1.1. GDP is an important indicator of economic growth, but as an instrument for guiding policy it is inadequate to meet the challenges of the 21st century. Doing this requires other, complementary indicators. This was the conclusion both of the conference 'Beyond GDP' held by the European Commission on 19 and 20 November 2007 in Brussels and the conference 'A Convenient Truth' held on 10 January 2008 in Tilburg.

1.2. GDP is good for measuring the pace of the economy, showing how quickly we are earning money, regardless of whether this delivers useful products and services or whether it causes damage to people and the environment. What is needed above all is an instrument that will show how far we still are from achieving a sustainable and socially inclusive economy.

1.3. Since two different issues are concerned here — sustainability and welfare — two indicators are actually needed. Sustainability relates to a healthy planet today and in the future and to solidarity between the generations and is a prerequisite, whereas welfare is about social development and is a target variable. In the case of sustainability, it is enough to guarantee that a way of life can continue globally in the long term. If this criterion is met, there is no need to seek even greater sustainability. Welfare is different: more welfare is always better than less welfare, and it therefore makes sense to keep seeking more welfare.

1.4. There is an indicator for measuring sustainability and sustainability trends: namely the ecological footprint which despite its short-comings is the best available overall indicator on sustainable environmental development.

1.5. The footprint is an excellent communication tool and is one of the few — if not the only one — that takes into account

the environmental impacts of our consumption and production patterns (imports and exports) on other countries. By using it it can be refined and it can be replaced if and when a better measure comes up in the future.

1.6. The challenge is to develop an indicator for social development that can measure the various dimensions of quality of life in a way that provides a realistic picture. The present opinion considers only this type of quality-of-life indicator because there is (as yet) no such policy instrument that is effective.

1.7. A practicable and scientifically reliable quality-of-life indicator must cover spheres that are generally considered crucial to quality of life and should:

- consist of objective factors that determine people's capabilities,
- be sensitive to policy impact,
- provide timely data,
- allow comparisons between countries,
- allow chronological comparisons,
- be comprehensible to a wide audience.

1.8. The following six spheres are generally regarded as crucial for quality of life:

- physical integrity and health,
- material wealth,

- access to public services,
- social participation and incomer integration,
- leisure time,
- quality of the surrounding environment.

The basic data needed to measure development in these areas are available within the EU Member States, though they probably need to be enhanced (e.g. with respect to frequency, collection, processing).

1.9. The indicator described here is not perfect. Nor is it intended to be a blueprint, but rather a contribution to the ongoing discussion on the subject. Measurement is a dynamic process, capturing changes in a society. Changes can in their turn create the need for alternative or more sophisticated indicators. Defining an indicator is also a dynamic process that must be based on debate and discussion, as is appropriate in a democratic society.

1.10. Switching to a policy that is not exclusively based on economic growth but is also determined by social and environmental factors can lead to a more sustainable and socially inclusive economy. This is too comprehensive a project to be short term. With an eye to feasibility, it is clear that the scope should be limited to the EU Member States, possibly with extension to the candidate countries Croatia and Turkey and countries with comparable economic development profiles such as the United States, Canada, Australia, New Zealand and Japan. The huge differences in economic development make it impossible to create a single instrument that measures and explains developments in both developed and developing countries using the same scale.

2. Limitations of GDP

2.1. Happiness is the ultimate aim of all human beings. The government's primary task is to create conditions in which each citizen is in an optimum position to seek his or her happiness. This means that the government must always keep its finger on the nation's pulse to collect information about how society is doing. Measurement is the key to knowledge; only once you know what people are unhappy about and why, can you try to do something about it.

2.2. At present, Gross Domestic Product (GDP) is most widely used by governments as a measure of how society is doing. It was introduced as a measurement last century, after the Great Depression and the Second World War that followed. It is the most important, if not the only tool for policy-makers to measure, in particular, economic performance and activity. This is based on an internationally accepted system of national accounts which are drawn up using the same uniform method. Moreover, everything is converted into a single unit of measurement: money. For these reasons, it is easy to make international comparisons of GDP.

2.3. Nevertheless, it tells us nothing about people's well-being (happiness) or the sustainability of social development. Per capita GDP in the United States is among the highest in the world, but it does not make Americans happier than inhabitants of other countries and there is plenty that could be said about the sustainability of American society. Per capita GDP may be considerably higher than it was 60 years ago all over the world, but this has not led to a significant increase in happiness, since despite the universal nostalgia for 'the good old days' a record 900 million people suffered from hunger in 2008. And hunger certainly does not make a person happy.

2.4. Social developments and economic relations today are fundamentally different from what they were in the middle of the last century. In the developed countries in particular there is a growing need to measure factors that are not the outcome of market transactions or formal economic processes. Many of these aspects and needs are not, or not adequately, included in GDP.

2.5. Rising levels of GDP can mask a considerable loss of welfare and well-being. For example, if a country chopped down all its forests, sold the wood and put its children to work instead of sending them to school, it would be very good for its GDP because the economic growth figures would show increasing material prosperity. However, it would be anything but sustainable and it would not make the population — particularly the children — happy or happier.

2.6. Natural and political disasters can be good for GDP. Hurricane Katrina was a boon to Louisiana's GDP because of the enormous efforts and economic activity that had to be invested in reconstruction. The same applies to the GDP of a number of Asian and African countries after the tsunami, and to the GDP of virtually all European economies after the Second World War. Quite apart from the fact that by no means everyone shared equally in the increased prosperity, these disasters can hardly be said to have contributed to human happiness or greater sustainability.

2.7. But less extreme examples also show that GDP is an inadequate measurement. Greater material prosperity leads to higher car sales and new roads being built. It leads to more accidents, higher costs (replacing/repairing the cars, costs of caring for those injured or disabled, higher insurance premiums). It can also lead to social evils such as higher levels of gun ownership and sales of anti-depressants to young people. All of which contributes to higher GDP, but not the ultimate goal of human happiness, except possibly for those who make their money out of such activities.

2.8. The dominance of GDP is particularly evident when it is falling; then panic breaks out. That should not necessarily happen. GDP may fall as a result of a positive development. If everybody replaces their traditional light bulbs by the latest LED lights tomorrow, this will result in a one-off high expenditure on new lamps but will also at the same time lead to a substantial structural decrease in the use of energy — and therefore in GDP — because these bulbs only use a fraction of the electricity which traditional light bulbs require.

2.9. To sum up, GDP is a good measure of economic performance, but there is no direct link between economic growth and progress in other areas of society. To get a complete picture you need indicators that measure what progress is being made in the social and environmental dimensions, for example.

3. Other factors of well-being

3.1. The discussion about the need for other measurements in addition to GDP is taking place in various places simultaneously. The European Commission, for example, organised a conference in Brussels on 19 and 20 November 2007 entitled 'Beyond GDP' ⁽¹⁾, and on 10 January 2008 a conference was held at the University of Tilburg under the title 'A convenient truth' ⁽²⁾. There are clear parallels between the findings of the two conferences, both of which stress the need for indicators other than economic growth alone. GDP is a good speedometer for the economy, showing how fast we are earning money, regardless of whether this produces useful goods and services or damages mankind and the environment. What is really needed are measures to show how far we still have to go to achieve a sustainable, socially inclusive economy. Shortly after the introduction of GDP, distinguished economists such as Samuelson ⁽³⁾ already argued in favour of broadening the

concept of gross domestic product with non-material aspects such as the environment and natural values, in order to remove the restriction of GDP to purely economic aspects. However, these attempts have not resulted in an accepted adjusted version of GDP and the traditional concept of GDP remains dominant. A number of experts have studied this issue, and their views are summarised below.

3.2. In his book 'Happiness' ⁽⁴⁾, the British professor of labour economics **Richard Layard** concludes that over the past 50 years Western man has failed to find greater happiness despite a sharp increase in material prosperity. This he attributes to the high levels of competition between people, with everyone wanting above all to earn more than everyone else. This single-minded obsession has led to a deterioration in things that are more important for human happiness: stable families, job satisfaction and good relations with friends and the community. All of which is apparent from the statistics on the growing numbers of divorces, increased work-related stress and high crime rates. In order to restore the balance, more emphasis must be placed on equality of opportunity to earn income than on income equality.

3.3. In his theory of welfare economics the Indian economist **Amartya Sen** ⁽⁵⁾ stresses that welfare is not about goods but about the activities for which these goods are acquired. Income creates opportunities for individuals to engage in activities and so improve themselves. These opportunities — which Sen calls 'capabilities' — also depend on factors such as health and life expectancy. In developing countries, in particular, information about the mortality rate is important because it is a good indicator of factors such as social inequality and the quality of life.

3.4. In her latest book 'Frontiers of Justice' the American philosopher **Martha Nussbaum** ⁽⁶⁾ suggests ten minimum social rights that are essential for a life of dignity. A society that cannot guarantee its citizens a certain threshold level of these rights and freedoms is, in her view, failing in its duty and is not truly just. The specific 'capabilities' she lists are the ability to live a human life of normal duration, to enjoy good health, to travel freely, to use one's intelligence, to form attachments to things and other people, to form a concept of good, to live with and for other people without any form of discrimination, to live with due care for and in relation to animals and nature, to laugh and play, to participate in political choices and to acquire property. The list is not absolute and can be extended.

⁽¹⁾ www.beyond-gdp.eu

⁽²⁾ www.economischegroei.net

⁽³⁾ Paul A. Samuelson, *Evaluation of Real National Income*, *Oxford Economic Papers*, 1950; 2: pp. 1-29.

⁽⁴⁾ Richard Layard, *Happiness: Lessons from a New Science*, Penguin Books, 2005.

⁽⁵⁾ Amartya Sen, *Commodities and Capabilities*, Amsterdam, North-Holland, 1985.

⁽⁶⁾ Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, Harvard University Press, 2006.

4. Other indicators

4.1. Various initiatives exist to measure variables other than GDP that are of importance for understanding the state of society. Below is a short indicative overview and concise description of four such indicators. There are more, such as the initiative of the Federal Council for Sustainable Development in Belgium⁽¹⁾, the Canadian Index of Wellbeing (CIW)⁽²⁾, the Gross National Happiness Index of Bhutan⁽³⁾, the QUARS initiative in Italy⁽⁴⁾, the Stiglitz Commission in France⁽⁵⁾, and the worldwide OECD project⁽⁶⁾ for measuring development. Relevant information can also be obtained from Eurofound⁽⁷⁾. There is not enough space here to mention them all.

4.2. The **Human Development Index**⁽⁸⁾ is a measure of the progress of society and of groups in society. It has been used by the United Nations Development Programme (UNDP) since 1993 to produce an annual report on the situation in each country. In addition to income, it takes into account life expectancy, literacy rate and educational attainment. A Human Poverty Index⁽⁹⁾ has also been published since 1977 which includes access to education, access to safe food and water and access to healthcare. The HDI is partly based on Sen's theories. The HDI works well in developing countries, but has the disadvantage of being less effective for measuring progress in the developed world.

4.3. The **Ecological Footprint**⁽¹⁰⁾ is based on the idea that consumption can be converted into the surface area that is needed to produce it. It is then possible to compare the environmental impact of different consumer behaviour (lifestyles) and different population groups (countries). There are 1,8 hectares of productive land available for each person in the world to satisfy their individual consumption. We are currently using 2,2 hectares per person worldwide, which means that humanity is rapidly depleting the earth's resources. However, enormous differences exist within this global figure: the average ecological footprint in the United States is 9,6 hectares per capita, compared with 0,5 hectares in Bangladesh. Without a change in policy these problems will only increase. Erosion and desertification are constantly reducing the amount of productive land available, and an increasing world population means that ever more people have to share the smaller number of hectares. At the same time, demand is growing as increased prosperity leads to higher consumption. The Ecological

Footprint is a good indicator of sustainable development, but has the disadvantage of not showing anything about people's well-being.

4.4. The **Leefsituatie Index** (Quality of life index)⁽¹¹⁾ provides a systematic description and analysis of the living conditions of the Dutch population. It is also known as the *Sociale Staat van Nederland* or SSN (Social State of the Netherlands). It describes the changes in living conditions over a period of roughly ten years, looking at subjects such as income, employment, education, health, leisure activities, mobility, crime, housing and the residential environment. In addition to chapters on the different social issues, the SSN contains a quality of life index integrating the social indicators. It also gives information on how the public views politics and the government. The research is published every two years by the *Sociaal Cultureel Planbureau* (Dutch Social and Cultural Planning Office). The Leefsituatie Index has never acquired much authority in the Netherlands because it is essentially a hotchpotch of disparate elements and therefore does not provide a good, consistent picture of social well-being.

4.5. Professor Ruut Veenhoven of the Erasmus University in Rotterdam has been studying happiness all over the world for thirty years. In his **World Database of Happiness**⁽¹²⁾ he concludes that the correlation between money and happiness is extremely weak. People who receive more money experience a short-lived increase in happiness, but this disappears after one year. Freedom to organise one's time and make choices usually produces a deeper feeling of happiness. Just like Layard, he sees a clear difference in this respect between developed and developing countries. In the latter an increase in income leads to a greater and more lasting feeling of happiness than in developed countries. This difference disappears when per capita GDP exceeds a level of between 20 000 and 25 000 dollars. The disadvantage of the World Database of Happiness is that differences in individual preferences can be a factor when measuring experiences of happiness. Moreover, experiences of happiness are not easily influenced by public policy.

5. Possible applications

5.1. There are broadly two ways of subverting the dominant position of GDP in socio-economic policy. The first is to create a series of other indicators that complement GDP for (aspects of) sustainability and well-being, and which should have equal weight to GDP in policy-making. The second is to replace GDP with a new, overarching indicator that includes all the relevant aspects of sustainability and well-being. This new indicator should then be a guiding principle of socio-economic policy.

⁽¹⁾ www.duurzameontwikkeling.be

⁽²⁾ www.statcan.ca

⁽³⁾ www.bhutanstudies.org.bt

⁽⁴⁾ www.sbilanciamoci.org

⁽⁵⁾ <http://www.stiglitz-sen-fitoussi.fr/en/index.htm>

⁽⁶⁾ <http://www.oecd.org/statsportal/>

⁽⁷⁾ <http://www.eurofound.europa.eu/>

⁽⁸⁾ www.eurofound.europa.eu/

⁽⁹⁾ <http://hdr.undp.org/en/statistics/>

⁽¹⁰⁾ www.footprintnetwork.org

⁽¹¹⁾ <http://hdr.undp.org/en/statistics/indices/hpi/>

⁽¹²⁾ <http://worlddatabaseofhappiness.eur.nl/>

5.2. The first possibility — to have a series of indicators complementing GDP — actually already exists but does not work. There are already many indicators that measure various aspects of sustainability and well-being: indicators of democracy, happiness and life satisfaction, of health, educational level, literacy, freedom of opinion, criminality, quality of the environment, CO₂ emissions, ecological footprint, etc. But less importance is attached to these indicators than to GDP, which is still seen as the most comprehensive and least controversial indicator of our welfare.

5.3. The second possibility — one overarching indicator replacing GDP — is problematic because there are two quite different factors involved: sustainability and welfare. Sustainability is a prerequisite, whereas welfare is a target variable. In the case of sustainability, it is enough to guarantee that a way of life can continue globally in the long term. If this criterion is met, there is no need to seek even greater sustainability. Welfare is different: more welfare is always better than less welfare, so it makes sense to keep seeking more welfare.

5.4. Since it is difficult to combine these two quite different things, a third possibility can be considered: two indicators in addition to GDP, namely a sustainability indicator and a quality-of-life indicator. There is an indicator for measuring sustainability and sustainability trends: namely the ecological footprint which despite its short-comings is the best available overall indicator on sustainable environmental development. The footprint is an excellent communication tool and is one of the few — if not the only one — that takes into account the environmental impacts of our consumption and production patterns (imports and exports) on other countries. By using it it can be refined and it can be replaced if and when a better measure comes up in the future. No effective indicator exists yet for social development that can measure the various aspects of quality of life in a way that provides a realistic overall picture. This opinion is concerned only with such a quality-of-life indicator.

6. Quality-of-life indicator

6.1. A practicable and scientifically reliable quality-of-life indicator must cover spheres that are generally considered crucial to quality of life and should:

- consist of objective factors that determine people's capabilities,
- be sensitive to policy impact,

- provide timely data,
- allow comparisons between countries,
- allow chronological comparisons,
- be comprehensible to a wide audience.

6.2. Spheres generally regarded within the EU as crucial for quality of life that meet these criteria include:

- **Physical integrity and health.** This indicator measures the percentage of the population that is not physically prevented either by 'internal' factors (sickness, handicap) or 'external' factors (crime, imprisonment) from functioning as it wishes.
- **Material wealth.** This is understood as the mean standardised disposable income in purchasing power parities, which is the best general measure of the effective purchasing power of the average person. Purchasing power in different countries is made comparable by correcting for disparities in local price levels.
- **Access to public services.** Percentage of GDP allocated to healthcare, education, public transport, housing and culture.
- **Social participation.** Percentage of the population between the ages of 20 and 65 in paid work plus the percentage of the population over the age of 20 involved in voluntary work. Having paid work is generally regarded as one of the most important forms of social participation and integration. In addition to paid work, voluntary work is important for maintaining all sorts of social structures, challenging the domination of the economic sphere. With the increased mobility of people, it is important to welcome incomers and support their cultural and social integration into existing communities.
- **Leisure time.** Average number of hours of leisure time for the population between the ages of 20 and 65 that is not devoted to education and paid or unpaid work (including commuting time, housework and care). Leisure time which is the result of involuntary unemployment should be deducted from this figure. Sufficient leisure time is — in addition to paid work — essential to enable people to structure their life in their own way.

— **Quality of the living environment.** Nature as a percentage of total land area plus the percentage of the population that is not exposed to atmospheric pollution. This is not about the contribution of nature and the environment to the sustainability of socio-economic development (for which a separate indicator exists, the ecological footprint), but about peoples' quality of life. The indicator is therefore limited to the two aspects of nature and environment that they can experience directly as positive or negative.

6.3. These six spheres are measured in different units. To merge them into a single overarching indicator, they must first be made comparable. The easiest way of doing this, which is also effective, is to calculate a standardised score (Z-score) from each individual indicator using an internationally accepted and frequently used statistical method. The Z-score is a variable with a mean of 0 and standard deviation of 1. This means that roughly one third of countries score between 0 and + 1, one third between 0 and - 1, one sixth above + 1 and one sixth below - 1. The overarching indicator can thus be calculated as the mean of the Z-scores for the six spheres.

6.4. To measure changes over time, Z-scores cannot be recalculated each year on the basis of the mean and standard deviation for that year, as the mean quality of life would then by definition be the same each year. The mean and standard deviations of the first year during which the indicator is used are therefore also adapted to the calculation of Z-scores in the following years. If the mean is higher one year than it was the year before this therefore indicates that mean quality of life has effectively improved. Conversely, if the mean is lower one year than it was the year before, this indicates that mean quality of life has effectively deteriorated.

6.5. The result of this calculation means little to the wider public who are not familiar with the technical concepts underlying statistics. For the sixth criterion (comprehensibility to a wide audience) to be met, it is preferable to draw up a league table each year based on the statistical data from which anybody can see directly how well — or poorly — their own country scores compared with other countries, as well as how well — or poorly — their country scores compared with the previous year. Such tables are generally very appealing to people and could promote the popularity of the tool, which could provide further strong incentives to achieve an improvement in quality of life.

7. Towards a more balanced policy

7.1. The data needed to identify progress in these six spheres are generally available in the EU countries, though the frequency or quality may vary. Financial and economic reporting is an established practice; relevant information is available daily in the form of stock exchange indices. Environmental or quality-

of-life reporting is relatively new, and the information available is therefore more limited. Social and environmental statistics are often two to three years old. Making these data cohesive in terms of quality and availability is one of the most important prerequisites for an adequate and high-quality indicator. But the basis is there: in principle it should be possible to start using this indicator relatively soon if political agreement is reached on the matter. One politically attractive feature of such an indicator could be that it has more growth potential than GDP, certainly in the near future in the EU.

7.2. Measurement alone is not enough; the results must be taken into account in policy-making. The 21st century is facing us with numerous problems to which we have no tried-and-tested solutions because they have arisen quite recently. Speed is called for because the planet is being exhausted by the absence of structural solutions. By switching to policies that are not based exclusively on economic growth, but also take account of sustainable development in the economic sphere (durability of economic activity), social sphere (making it possible for people to lead a healthy life and generate an income, and for those who cannot to provide an adequate level of social security), and environmental sphere (maintaining biodiversity, switching to sustainable production and consumption), it is possible to address a number of pressing issues (employment, inequality, education, poverty, migration, happiness, climate change, depletion of the earth's resources) in a manageable way.

7.3. The indicator described here is not perfect. Nor is it intended as a blueprint, but rather a contribution to the ongoing debate on the subject. The number of spheres might have to be expanded, and the criteria that they are required to meet should perhaps be tightened up. And such an indicator is never complete. Measurement is a dynamic process, since the object of measurement is social change. Changes in their turn can create a need for alternative or more sophisticated indicators. Defining an indicator is also a dynamic process and must be the outcome of debate and discussion, as is appropriate in a democratic society.

7.4. This is not a short-term project, it is too comprehensive for that. With an eye to feasibility, it is clear that the scope should be limited to the EU Member States. The process could be extended to the candidate countries Croatia and Turkey and countries with comparable political and economic systems such as the United States, Canada, Australia, New Zealand and Japan. The huge differences in economic development make it impossible to create a single instrument that measures and explains developments in both developed and developing countries using the same scale. Because of the similarities between the political systems in these countries, the individual indicator of democratic freedoms has not been included as one of the spheres which is regarded as crucial for the quality of life because its attainment within this group of countries is considered to be self-evident.

7.5. A policy that is not exclusively based on economic growth but is also determined by social and environmental factors can lead to better and more balanced political choices and contribute to a more sustainable and socially inclusive economy. The EESC expects the European Commission to make its views on the subject clear in the progress report on EU sustainable development strategy that the Commission intends to publish in June 2009. The European social model as defined in a previous Committee opinion can be chosen as the goal⁽¹⁾. The premise of this model is that it paves the way for a democratic, environment-friendly, competitive, socially inclusive welfare space based on the social integration of all EU citizens.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

⁽¹⁾ OJ C 309, 16.12.2006, p. 119.

Opinion of the European Economic and Social Committee on Health security of agricultural and food imports

(2009/C 100/10)

By letter of 3 July 2008, the French presidency decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on

Health security of agricultural and food imports (exploratory opinion).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 October 2008. The rapporteur was Mr BROS.

At its 448th plenary session, held on 21, 22 and 23 October 2008 (meeting of 22 October), the European Economic and Social Committee adopted the following opinion by 92 votes to 1, with 4 abstentions.

1. Conclusions and recommendations

1.1. Following a number of serious food crises, the European Union has adopted a sophisticated safety mechanism, aimed at ensuring a high level of consumer health protection and of animal and plant health. Against a background of increasing global trade in farm and food produce, however, threats to health are on the rise and health crises linked to imports remain common in the EU. These crises jeopardise human, animal and plant health and entail substantial costs for society as a whole.

1.2. The EESC welcomes the memorandum endorsed by 15 Member States at the Agriculture Council of June 2008, entitled 'Food, feed, animal and plant imports: safety and compliance with Community rules' ⁽¹⁾. Through this opinion, the Committee would like to contribute to the debate on the scope for improving the European safety mechanism. The WTO provides a legal framework that is essential to preventing unjustified barriers to trade. The EESC is committed to complying with these rules but also wishes to propose a number of adjustments.

1.3. The Committee considers the differences in Member States' import inspection practices to be highly damaging and recommends that these practices be harmonised as swiftly as possible.

1.4. Noting that a large number of effective health management measures for imports apply only to animal products, the EESC considers that some of these measures should be extended to cover plant products too. This would help to improve monitoring of the risk of pesticide residues, contamination by toxic agents or plant diseases. In particular, the EESC recommends

that the number of inspections for plant products be increased, and that a list of approved establishments be drawn up for imports and that they undergo systematic checks at the point of entry.

1.5. In the Committee's view, decisions on import measures should be based as far as possible on objective data. The Committee would, therefore, like to see the principles of risk analysis systematically applied and the appropriate levels of protection more clearly defined. These levels are provided for in the Agreement on the Application of Sanitary and Phytosanitary Measures.

1.6. Socio-economic factors, such as the economic impact of a decision or its social acceptability, should be assessed independently and as rigorously as the health risk. A number of countries, such as Canada and the United Kingdom, already have expert socio-economic units within their food safety agencies. The EESC proposes that the Commission consider whether it would be useful to create an independent socio-economic assessment agency.

1.7. The Committee considers that the system of traceability, which underpins the European food safety model and which provides information on foodstuffs 'from farm to table', should also apply to products from third countries. This issue should be a priority in bilateral negotiations and in technical assistance programmes in the least developed countries.

1.8. The EESC wishes to draw attention to the difficulties faced by producers from the least developed countries in applying European health standards. It would like to see the provision of technical assistance for trade, technology transfers and support for setting up traceability and early-warning systems in those countries.

⁽¹⁾ Council Doc. 10698/08.

1.9. Requirements for imported farm and food products are less stringent than those imposed on products from within the European Union, with regard to traceability, animal welfare and, more broadly, environmental standards. Given that current international trade rules do not provide sufficient opportunity to raise these issues that are priorities for the EU, the EESC very much hopes that the Commission will put forward a strategy to protect these European collective preferences. The Committee considers that the EU should take the lead in calling for other legitimate factors to be taken into account in international trade. To achieve this, the EU should defend its collective preferences, argue the case of 'other legitimate factors' in international bodies and revive the debate on the link between the WTO and the other international agreements.

2. General comments

2.1. Following the health crises that have beset the EU, the European Commission carried out a major overhaul of food legislation. A new, highly elaborate institutional and legislative framework was established, representing genuine progress.

2.2. Regulation (EC) No 178/2002 states that 'The Community has chosen a high level of health protection' and adds that this legislation is applied 'in a non-discriminatory manner whether food or feed is traded on the internal market or internationally' ⁽¹⁾.

2.3. The European model is based on a number of sound principles:

- traceability 'from farm to table', which means the ability to trace a food, through all stages of production, processing and distribution ⁽²⁾,
- a distinction between risk assessment and risk management,
- the legal responsibility of all stakeholders in the food-production chain,
- an effective early-warning system.

2.4. Health crises linked to imported products are, however, still a common occurrence. In recent years, the EU has seen pesticide residues in imported fruit, aflatoxins in nuts and maize, residues of veterinary medicines in animal products, foot-and-mouth disease, etc. In 2007, 314 of the warnings issued by the Rapid Alert System for Food and Feed (RASFF), that is, 32 % of all warnings, concerned products from third countries ⁽³⁾. These recurring crises highlight a number of problems that need to be addressed.

2.5. Health crises linked to imports represent a threat to the safety of European consumers and are also costly to society as a whole. When an alert is issued, the task of warning the public or withdrawing a food product from the market imposes a considerable burden on the businesses concerned. Similarly, safety measures aimed at eradicating an animal or plant disease from a given area, e.g. the obligation to vaccinate herds or to use insecticides in an entire region, have major impacts that can be long-lasting.

3. Better anticipation of health risks

3.1. To ensure that these health crises occur less frequently, health risks can be anticipated more effectively.

3.2. The process of harmonising import inspection practices at the Community level is under way and should be a priority. The differences in Member States' import inspection practices are highly damaging. Commercial operators should not be able to decide to bring their goods onto the single market through a country whose inspections are known to be less stringent. It has been reported, for example, that citrus fruit importers tend to avoid Spanish ports, because these have the laboratories that are most highly specialised in the field of diseases or residues affecting plants of this type.

3.3. Today, many import safety measures apply only to livestock and to animal products. Some risks, such as pesticide residues, physical or chemical contamination by carcinogenic or toxic agents (such as heavy metals, biotoxins, dyes, etc.) or plant diseases, should be more closely monitored. Effective measures should thus be extended to cover plant products.

3.4. First of all, inspections could be stepped up for certain categories of plant product. Indeed, of the Food and Veterinary Office's planned inspections for 2008, only one in three concerns plant products.

3.5. Furthermore, a list of approved countries and establishments should be drawn up for imports of plant products, as applies to some fifteen categories of animal products.

3.6. Plant product imports should also be subject to systematic inspections from the initial point of entry onwards, which is not the current situation. Where animal products are concerned, the BIPs (Border Inspection Posts) have proven their effectiveness. Furthermore, cooperation between state monitoring bodies and private inspectors of importers should be improved. Increasingly, importers are allowing analysis to be carried out even at production sites. The food supervisory authority should have access to these results.

⁽¹⁾ Regulation (EC) No 178/2002, recital 8.

⁽²⁾ Regulation (EC) No 178/2002, Article 3.

⁽³⁾ RASFF Annual Report 2007.

3.7. Lastly the TRACES (TRAdE Control and Expert System) database, which enables information on trade and imports in livestock and animal products to be recorded and exchanged, could be extended to cover the field of plant health, operating in conjunction with the EUROPHYT system.

4. Better application of the principles of risk analysis

4.1. The international organisations recognised by the WTO define the principles of risk analysis as a three-stage process; risk assessment, risk management and risk communication. The reform of European food legislation was an initial step towards applying risk analysis. The creation of the EFSA helps to make a distinction between risk assessment and risk management, which is crucial. Based on the available scientific evidence and 'undertaken in an independent, objective and transparent manner' ⁽¹⁾, the risk assessment carried out by the EFSA enables the risk manager, in other words the Commission or the Member States, to decide on the measures that are needed.

4.2. Nevertheless, the import measures decided on by the Commission, whether these are to suspend an import flow or to allow it to continue, are sometimes misunderstood both within the EU and in the third countries concerned. The spirited discussions on the subject of imported American chlorinated chicken or Brazilian beef are recent examples of this development. In some cases, the Commission is accused of prioritising commercial interests, at the expense of consumers. In the Committee's view, decisions on import measures should be more clearly based on objective data.

4.3. Frequently, however, there are conflicts over objectives, which have to be weighed up. Any deliberations about different objectives must be made transparent for the consumer.

4.4. The EESC calls on the Commission to be more systematic in implementing the principles of risk analysis and to provide the EFSA with the resources it needs to establish a methodology for this purpose.

4.5. Article 5.7 of the SPS Agreement authorises the use of provisional measures in cases where scientific evidence as to the innocuousness of a product or procedure is insufficient. International rules, therefore, recognise the precautionary principle as defined in Community law. The SPS agreement also allows for the application of standards more stringent than those existing at international level, provided that these establish an 'appropriate level of protection'. The EU should

strive to provide a better definition of its own appropriate levels of protection, to ensure that it can refer to these when carrying out a risk analysis.

4.6. Furthermore, as the regulation states, 'scientific risk assessment alone cannot, in some cases, provide all the information on which a risk management decision should be based, and (...) other factors relevant to the matter under consideration should legitimately be taken into account (...)'. ⁽²⁾ These factors, which are also acknowledged by the SPS agreement, could involve a decision's economic impact, social acceptability or cost-benefit ratio. They are today evaluated in Commission impact studies or in consultations.

4.7. Socio-economic factors should, however, also be assessed in an objective and independent manner, with the same scientific rigour as an assessment of the health risk, and should call on the assistance of experts in fields such as economics, sociology and law. Different countries, such as Canada and the United Kingdom, already have expert socio-economic units within their food safety agencies ⁽³⁾. The EESC would like the Commission to consider whether it would be useful to create an independent agency providing socio-economic expertise.

5. The problem of different requirements for imported products

5.1. The requirements for imported farm and food products are, in a number of areas, less strict than for products from within the EU. This does not apply to the private standards that the industry imposes on all of its suppliers, but it is true of certain regulatory requirements. The obligation to trace animals from birth or to meet conditions guaranteeing animal welfare or the ban on using certain pesticides, for example, do not apply to products from third countries.

5.2. A European regulation, such as the regulation on food safety, whether or not one considers it to be justified, reflects the collective preference of the EU. The institutional process that led to this regulation, involving debates in the European Parliament, in the Council and with civil society, is supposed to be the legitimate expression of the European people's choice. The measures imposed on producers are the outcome of this collective choice and apply to everyone in the EU. Because these measures are not imposed on producers from third countries, however, both products that have met these requirements and those that have not find their way onto the single market.

⁽²⁾ Regulation (EC) No 178/2002, recital 19.

⁽³⁾ OECD 2003, 'Taking account of the socio-economic aspects of food safety: a study of the innovative measures adopted by certain countries'.

⁽¹⁾ Regulation (EC) No 178/2002, Article 6.

5.3. This problem, which also arises in other areas, such as environmental standards, social rights, etc., is unacceptable to consumers. Consumers might, unawares, buy products that do not reflect the choices made by the European public. For example, consumers can today legally buy third-country oranges that have been treated with Lebaicid — a powerful insecticide, the active agent in which is Fention. Use of this product, however, has been banned in the EU for several years for environmental reasons. The collective preferences of the European public are thus being abused to some extent and consumers deceived.

5.4. European standards that do not apply to imported products are also a source of distorted competition affecting European consumers. The French Livestock-breeders' Institute has attempted to calculate some of these extra costs. With regard to traceability, for example, considerable efforts have been made in Europe to implement animal identification. This investment accounts, in cattle breeding, for EUR 0,4 per 100 kg of carcass, or EUR 32 million for the EU-25. Where animal welfare is concerned, the obligation to maintain shared stalls for calves intended for slaughter represents a cost of EUR 0,4 per 100 kg of carcass, or EUR 31 million for the EU-25.

6. The impact of European standards on developing countries

6.1. The EU is the main importer of food products from developing countries, due in particular to the substantial trade concessions that have been granted in the past. UNCTAD (the United Nations Conference on Trade and Development) regularly warns about the effects of European health standards on producers and businesses in the least developed countries.

6.2. The EU must not compromise on health security. Nevertheless, the EESC, which is fully aware of the importance of the issue, wishes to encourage technical support, dialogue and co-operation with the EU's most vulnerable trading partners. The Committee also urges the Commission to build on its initiative to support the establishment of traceability and early warning systems in the developing countries.

7. The principle of equivalence and traceability

7.1. The SPS and TBTs (Technical Barriers to Trade agreements) provide WTO members with a legal framework that is crucial to prevent unjustified import restrictions and to ensure greater transparency in market access conditions.

7.2. Community law states that imported food must comply with European food legislation, 'or conditions recognised by the

Community to be at least equivalent thereto' ⁽¹⁾. The EESC wishes to draw attention to the danger of the EU giving too broad an interpretation to the principle of equivalence, which is recognised in international regulations.

7.3. In Europe, food traceability underpins the health security model. This process is implemented 'from (...) the primary production of a food, up to (...) sale or supply to the final consumer' (from farm to table), because 'each element may have a potential impact on food safety' ⁽²⁾. For most imported products, however, traceability is required only from the exporter onwards. Despite the role that the private sector could play here, the EESC doubts that the practices in certain third countries could be considered to be 'equivalent' in terms of safety. The Committee calls for a proactive approach in the field of traceability, making the issue a priority in bilateral negotiations and in technical assistance to the least developed countries.

8. Other legitimate factors and developments in international law

8.1. The texts that make up GATT (General Agreement on Tariffs and Trade) and the different WTO agreements provide for account to be taken of 'other legitimate factors', in addition to safety factors, when regulating international trade. International law has nevertheless been slow to catch up in this area. The EU's decisions are not always justifiable, however, from the strictly health-related point of view. In the case of chlorinated chicken, for example, the Commission has struggled to prove that the US practice of putting poultry through a decontamination bath containing chlorinated water could damage the health of European consumers. It has to be accepted that perception of food quality differs between the two continents. In another field, the decision to ban the import of seal pelts is not based on grounds of health either, but of animal welfare. A heated international debate is currently taking place on whether these measures are compatible with WTO rules.

8.2. The case-law of the Dispute Settlement Body is showing some positive signs, however. In the turtle/shrimp case, for example, which pitted the United States against Malaysia, the Panel's experts found in favour of the former, taking the view that the ban on shrimp imports was justified in light of the International Convention on the Protection of Biodiversity. Malaysian fishermen were obliged to change fishing techniques to ensure they would no longer catch the turtles protected by the convention referred to above. Clarifying the links between WTO rules and other international agreements is another issue of great interest at the current time.

⁽¹⁾ Regulation (EC) No 178/2002, Article 11.

⁽²⁾ Regulation (EC) No 178/2002, Article 3.16 and recital 12.

8.3. The EU should play a leading role in discussions of these matters. To achieve this, it should defend its collective preferences, argue the case of 'other legitimate factors' in international bodies and revive discussions on the link between the WTO and other international agreements. Furthermore, research into methods for ensuring that collective preferences and legitimate factors are objective should be promoted, to help ensure that they are recognised internationally.

9. Consumer information

9.1. European consumers increasingly want to be better informed about the conditions in which their food is produced. The private sector has launched a number of initiatives to meet this desire. Further, different ideas are currently being discussed, such as an EU label or an animal

welfare label. It might be useful to propose that an international organisation provide consumers with independent information concerning production methods in the different countries. The task of this independent information centre should also be to provide information within the framework of a global early warning system, which is still to be created.

9.2. Consumer information cannot be the only response, however, to the issues raised in this report. For processed products, of which food makes increasing use, labels detailing the origin are becoming too complex, for businesses and consumers alike. The public authorities, therefore, have a duty to ensure that all products on the internal market reflect the choice of the European public. Consumers do not expect these choices to be sacrificed in political processes (e.g. transatlantic dialogue), which merely serve the goal of raising a profile or creating a favourable climate with individual trading partners.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the structural and conceptual change as a prerequisite for a globally competitive knowledge and research-based European industrial construct (Europe: Catching up or taking the lead?)

(2009/C 100/11)

On 17 January 2008, the European Economic and Social Committee, acting under Article 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Structural and conceptual change as a prerequisite for a globally competitive knowledge and research-based European industrial construct (Europe: Catching up or taking the lead?).

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 September 2008. The rapporteur was Mr TÓTH and the co-rapporteur was Mr LEO.

At its 448th plenary session, held on 22 and 23 October (meeting of 22 October), the European Economic and Social Committee adopted the following opinion by 98 votes to none, with one abstention.

1. Conclusions and recommendations

1.1. Climate change, demographic changes, globalisation, and commodity and energy scarcity will lead to far-reaching economic and social changes in Europe. The impact on living standards and competitiveness in Europe depends largely on whether the right measures are taken in good time. The need to find innovative responses to new challenges stems from the success of the European catch-up process in many areas. Although arriving at the 'technological frontier' makes independent innovation the most important driver of growth, there is a need for changes in areas which for a long time were viewed as factors underpinning this success (e.g. in education and training). Promoting cohesion within the community is an equally valid goal. The need to adapt will put the European social model to the test and the outcome will determine the living standards of current and future generations. Social dialogue and civil society dialogue with all relevant stakeholders will take on an important, influential role in overcoming these challenges.

1.2. In any case, the scope for adjustment should be increased and the pace of change stepped up if the challenges ahead are to be overcome and Europe's additional growth potential is to be developed. The Lisbon Strategy⁽¹⁾ has set goals which broadly chime with this point of view and are important to Europe. At the same time, the scope of the changes needed has often been unclear and the translation of legislation into economic policy strategies too hesitant. The impact of this approach is well-known and there is now a need for fresh efforts in order to pursue these goals with renewed vigour. A sustained increase in resources for the implementation of the Lisbon Strategy is therefore proposed.

1.3. At the same time, it is clear that there can be no one-size-fits-all strategy and that in some policy areas each Member State

must implement European guidelines using a specific package of measures adapted to national circumstances if policy is to be effective. However, measures at European level and those in Member States must complement each other and it goes without saying that the same requirements also apply to measures taken at European level. As regards horizontal policy areas — i.e. matters that come under the remit of different directorates-general — any strategy must also be implemented using a coordinated approach. In both cases, this complementarity will result from clear cooperation and coordination of policy strategies and measures drawn up and implemented jointly.

1.4. At present, cooperation and coordination are frequently promised but in practice are implemented only half-heartedly. There must be changes here if the positive effects of coordinated implementation are to be maximised⁽²⁾. Increased cooperation among Member States in devising and implementing measures can also increase effectiveness. In order to support this process, a share of the additional resources should be put aside specifically for the development of cooperation programmes between the European Union and Member States. Access to these resources should only be possible when measures taken are clearly in keeping with one another and serve to achieve common goals.

1.5. Europe is thus faced with a challenge primarily because only a few Member States have laid the foundations for cutting-edge work. Many Member States have still not managed the transition from catch-up phase to cutting-edge production. The transition to a knowledge-based economy leads to increased demand for highly qualified workers. In order to deal with this situation, there is a need for medium to long-term forecasts of the skills required of workers. This will

⁽¹⁾ Of course, the Lisbon Strategy is much broader than the issues raised here. For more details see: http://ec.europa.eu/growthandjobs/index_en.htm

⁽²⁾ Policy coordination will stimulate production of public goods (e.g. information and knowledge, environmental and climate protection) and creation of positive external effects. Increasing economic integration in Europe creates externalities and only through policy coordination can positive externality be increased and negative externality decreased.

form the basis for the restructuring of the education and training sector.

1.6. In order to solve outstanding problems and boost economic efficiency, structures in science and research should be put in place to promote excellence. Sustained efforts are also required here in order both to improve research output and teaching and to catch up with the international frontrunners across the board. Following the relaunch of the Lisbon Strategy, certain conditions were put in place at European level to make it possible to pursue this approach. The European Research Council and the European Institute of Innovation and Technology will accelerate this process of change. Investment in these structures must be further stepped up in future as an incentive for Member States to pursue complementary strategies. Furthermore, it is necessary to further encourage close cooperation between businesses on the one hand and academic, university and research communities on the other, and to support the auxiliary service infrastructure, such as science, innovation, technology and industry parks.

1.7. Alongside investment in workers and scientific systems, there is a need for Member States, in their efforts to promote research, to offer much stronger support to risky innovation projects, better protection of property rights (e.g. European patent and measures against product piracy), innovation-friendly regulation of the product and labour markets, risk-appropriate funding possibilities, measures to boost demand for innovation (e.g. internal market, public procurement, lead markets), more mobility at all levels and an appropriate competition and macro-policy. Successful implementation of these policy measures will increase innovation significantly and thus lead to higher R&D spending.

1.8. Finally, there is a question of creating a system that offers a flexible and swift response to the challenges ahead. This approach is underpinned by the conviction that the future costs of inaction today are considerably higher than those of the measures to be taken. This actually applies to a large extent — but not exclusively — to environmental measures. It is in this area that Europe has in the past played a leading role which should be expanded through consistent development of the adopted strategy. This will safeguard industrial policy (first-mover-advantage), social and environmental dividends which can stem from measures to protect the environment involving harmonised environmental regulation, standardisation, promotion of innovation in environmental technology and support for social innovation.

1.9. However, this kind of forward-looking strategy must also have public support if it is to be implemented successfully. If the need for change is not clear and the benefits not obvious or shared out unequally, then there will be little appetite to make changes in society and to individual lives. Civil society institutions are key to the design and communication of this strategy. It goes without saying that if the public is to accept

this strategy and the measures adopted it must have a say over their design. Widespread involvement and discussions at the preliminary stage increase the likelihood of a joint initiative. Although this is almost too late for the discussions on the next stage of the Lisbon Strategy, there should still be an attempt to involve a broad spectrum of stakeholders.

2. Background

2.1. Over the past 50 years, Europe's economic output has steadily improved, thus closing the gap of the 19th and first half of the 20th centuries ⁽¹⁾. Europe has almost caught up with the USA in terms of hourly productivity, although output per head has stalled at almost 70 % of the US rate (see Gordon 2007). However, the catch-up process was unexpectedly interrupted in 1995 and there followed a period in which the USA grew more strongly than Europe. The main reason for the acceleration of US output is seen as its ability to integrate new technologies — in this case information and communication technologies — more rapidly. The USA reacted more quickly than most European countries, both in terms of developing and disseminating these technologies.

2.2. The varying speeds with which new technologies have been developed and integrated are not specific to information and communication technologies, but are the consequence of the established economic policy system. The USA is a leader in many new technologies and benefits from a strongly market-oriented system with some of the world's top universities and research institutes, highly skilled workers from all over the world, a high level of risk-taking, rapid growth of newly established businesses, and a homogeneous internal market.

2.3. European countries, on the other hand, have created structures and put in place economic policy measures to support the catch-up process and enable technologies to be adopted rapidly. High investment rates have been and still are an obvious sign of this approach, as are education systems more strongly geared towards jobs, but these factors have to be set against risk-averse structures for financing innovation, low investment in tertiary education and often insufficiently aggressive development of products and technologies.

2.4. The weak European growth (see, for example, Breuss, 2008) of recent years suggests that in many areas the growth potential of the catch-up strategy has been largely exhausted. However, the transition from catch-up strategy to frontrunner

⁽¹⁾ Overall, the EU has successfully maintained its leading position in world trade, both in the goods and services sector. The European economy is the market leader in a broad section of industries with an average level of technology and in capital-intensive goods. A cause for concern is the growing trade deficit with Asia and, compared with the USA, the EU's rather weak performance in the area of ICT (see CCMI 043).

status requires far-reaching changes, which in Europe are still in the early stages and in many respects have been implemented only half-heartedly. With increasing proximity to the technological cutting-edge, independent and radical innovation measures (i.e. market innovations) are becoming the main source of growth. In order to support this trend, sectors previously classified as factors in the success of the catch-up process (e.g. education and training, product and labour market regulation, macro-economic management) must be restructured. However, the need for change in Europe stems from the present-day challenges of climate change, globalisation, demographic change and scarcity of energy and raw materials. It is important to develop structures which can react quickly to these new challenges and produce publicly acceptable, environmentally-friendly and competitive solutions.

2.5. Finally, there is a question of creating a system that offers a flexible and swift response to the challenges ahead. This approach is underpinned by the conviction that the future costs of inaction today are considerably higher than those of the measures to be taken. This actually applies to a large extent — but not exclusively — to environmental measures. It is in this area that Europe has in the past played a leading role which should be expanded through consistent development of the adopted strategy. This will safeguard the industrial policy (first-mover-advantage), social and environmental dividends which can stem from measures to protect the environment involving harmonised environmental regulation, standardisation, promotion of innovation in environmental technology and support for social innovation.

2.6. The following observations focus on those areas of the Lisbon Strategy concerned with innovation. The possibilities

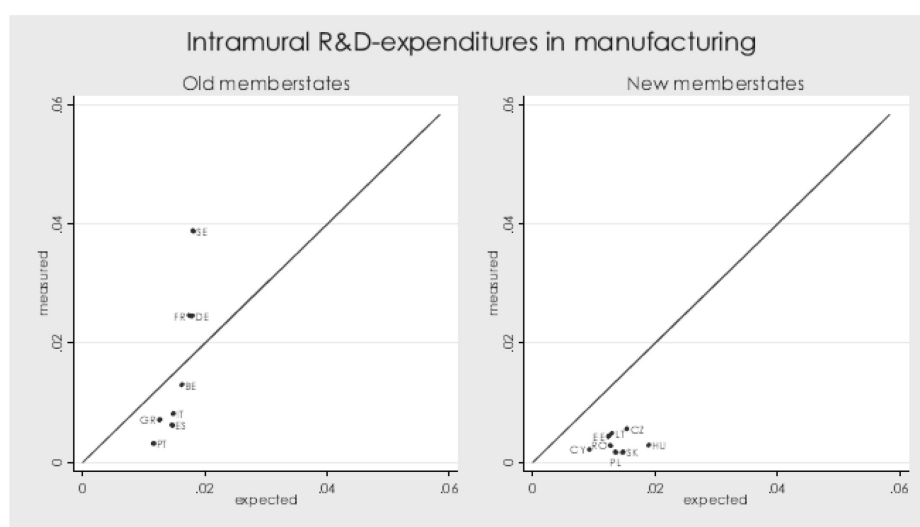
of formulating effective policy against a heterogeneous European backdrop will be discussed.

3. Europe's response to the weak growth of the 1990s: the Lisbon Strategy

3.1. Europe's response to the growing gap between itself and the USA in terms of productivity and economic growth was the Lisbon Strategy, which since its relaunch in 2005 has sought among other things to raise R&D spending to 3 % of GDP and to increase the employment rate to 70 % of people of working age.

3.2. The desired increase in R&D spending is based on many economic studies which show a clear and positive correlation between economic growth and R&D spending. When setting this goal too little consideration was given to the fact that the level of R&D spending depends fundamentally on sectoral structure and can be assessed only with reference to the way in which an industry is organised. Recent studies (Leo — Reinster — Unterlass, 2007, Van Pottelsberghe, 2008) show that the R&D spending of most 'old' Member States is near to what would be expected given their sectoral structure, whereas the R&D spending of most 'new' Member States is lower than expected (i.e. below the 45° line, see Figure 1). Sweden and Finland (and the USA too) spend considerably more on R&D than would be expected given their sectoral structure. On the one hand, this stems from the fact that these countries are working at the technological cutting-edge in some areas, place a stronger emphasis on innovation than their competitors and — in the case of the USA — produce for a large internal market. On the other hand, a research-intensive higher education sector may also boost R&D spending (see Van Pottelsberghe, 2008).

Figure 1: Structurally adjusted R&D spending



Source: New-Cronos; Fourth Community Innovation Survey (CIS-4); Countries included: Belgium (BE), Bulgaria (BG), Cyprus (CY), Czech Republic (CZ), Estonia (EE), Finland (FI), France (FR), Germany (DE), Greece (GR), Hungary (HU), Iceland (IC), Italy (IT), Latvia (LV), Lithuania (LT), Norway (NO), Poland (PL), Portugal (PT), Romania (RO), Slovakia (SK), Slovenia (SL), Spain (ES), Sweden (SE). Where available we have included the data for Iceland and Norway. New member states are the countries that have joined the EU since 2004; old memberstates are the countries that were members of the EU prior to 2004.

3.3. If R&D spending by the European business sector (at least in the old Member States) is broadly in line with sectoral structure, there is no compelling reason for a significant change in R&D spending because this must be seen as a cost factor and yields diminishing returns. Higher investment in R&D spending makes sense when drawing close to the 'technological frontier' or when there is structural change ⁽¹⁾ to develop research-intensive industries ⁽²⁾. Both changes are essential if Europe is to remain competitive and the 'European model' is to be preserved.

3.4. However, this will not be achieved so much through a one-off increase in R&D funding as through increased support for risky innovation strategies, investment in research infrastructure and improvements to education and training. Other necessary changes include creating a market environment that is conducive to innovation and more mobility at all levels (see Aho et al. 2006). Complementary measures concerning regulation of the labour market and the financing system, and competition and macro-policy are also essential. Successful implementation of these policy measures will increase innovation significantly and thus lead to higher R&D spending.

3.5. The shift in the focus of economic policy away from R&D to innovation also reduces the implicit preference for high-tech industries, which stems from the attempt to increase R&D spending. This involves the upgrading of sectors which, although high-tech in terms of use of technologies, do not invest heavily in R&D because their innovation measures are based on the intelligent use of technology and human creativity. The creative industries, the steel industry and the textile and clothing industry, for example, come up with numerous technologically ambitious innovations without or with little R&D spending of their own. It has also become apparent that in virtually all sectors there is potential for fast-growing small and medium-sized enterprises (so-called gazelles) (see Hölzl — Friesenbichler, 2008), which suggests that innovation should be broadly promoted. The focus on high-tech sectors (this ensures that they will remain highly relevant in future too) is based on demand for them growing strongly. Should there be success in bringing about innovation through R&D measures, then the benefits — in terms of economic growth and job creation — may be disproportionately high as a result of the strong growth in demand (Falk — Unterlass, 2006).

3.6. The new and old challenges require excellence both in research and implementation. Only through excellence in

basic and applied research can Europe remain competitive in light of the global challenges it faces. The area of human capital currently poses some major obstacles to the pursuit of this strategy and these obstacles will become far more pronounced in future. A larger number of better educated workers with secondary and tertiary education is the key to structural change and closing the technological gap. The failings to date can only be made good over a long period and in many ways are still not being pursued with sufficient vigour. At the same time, there must be an effort to ensure that, in terms of educational structures, the supply of training places matches demand ⁽³⁾ and that continuing education (keyword: lifelong learning) receives just as much attention so that workers at all stages maintain their productivity and employability.

3.7. The revamped Lisbon Strategy brought about some major changes at European level to hasten structural change and the development of research-intensive economic structures and excellence. These changes include measures to improve availability of risk capital and mobility of researchers, the European Institute of Innovation and Technology, the European Research Council and the lead market initiative. Furthermore, there has been an increase in funding for the framework programmes and an expansion of lead projects at European level.

4. Europe: effective policy in spite of diversity?

4.1. Even if the European objectives are largely clear and shared by all, this raises the question of whether Europe is at all capable of formulating a policy in this area given its diversity. European diversity is reflected not least in the varying levels of productivity in Member States, mixed successes and the technology front (e.g. GSM standard vs. ICT-use), and major differences at sectoral level both between sectors and within sectors (see Falk, 2007, Leo — Reinstaller — Unterlass, 2007, see Appendix 3).

4.2. This diversity poses a major challenge for economic policy because economic policy measures yield different results depending on the level of economic development. Successful countries adapt their economic policy strategies explicitly or implicitly to their respective levels of economic growth, thus

⁽¹⁾ Structural change is based on start-ups, diversification of existing businesses or establishment of new ones.

⁽²⁾ 'Research-intensive' sectors are specifically mentioned here because categorisation into high, medium, and low-tech sectors on the basis of R&D spending underestimates the use of technology in many economic areas. If the incorporation into products and manufacturing processes of technologies developed elsewhere is included, then many industries that are traditionally classified as low-tech would instead be placed in the medium or high-tech sectors (see Peneder, 2007).

⁽³⁾ Cedefop believes that 'Total employment in Europe is projected to grow by more than 13 million jobs between 2006 and 2015. This comprises increases of almost 12,5 million jobs at the highest qualification level (roughly ISCED levels 5 and 6) and almost 9,5 million jobs at medium level (ISCED level 3 and 4). On the other hand, there is a decline of over 8,5 million jobs for those with no or few formal qualifications (ISCED levels 0-2). Source: Cedefop, Future skill needs in Europe, Medium-term forecast, 2008.'

attempting either to support a catch-up process or to gear themselves towards production at the technological cutting edge. The rationality of adapting economic policy to levels of development has been underlined by a number of academic studies. These show that the same measures produce different results depending on a country's level of development. For example, a measure which can yield rich rewards in a country producing cutting-edge technology may have a smaller or even a negative impact on economic growth in a country playing catch-up.

4.3. This point is well illustrated using the example of the education system⁽¹⁾. In order to maximise the return on investment in the education system, attention needs to be paid to causal relationships, which vary depending on a country's level of development: tertiary education becomes more important the closer a country is to the technological cutting edge. Vocationally-orientated education systems, on the other hand, help countries playing catch-up. Aghion et al. (2005) estimate that increasing spending on higher education by USD 1 000 per person in a country at the technological cutting edge boosts the annual growth rate by some 0,27 percentage points, whereas investing this amount in a country that is lagging behind in this area increases the growth rate by only 0,1 percentage points. Employing people with higher education in countries close to the technological cutting edge can yield a higher return, because these countries are also seeking more radical innovation, which can only be achieved through scientific research.

4.4. At the same time, a higher level of education leads to more flexibility in the choice of technology. Some 60 % of the difference in growth between European countries and the USA can be attributed to the fact that European education systems are strongly geared towards vocational or secondary education (Krueger — Kumar, 2004). Knowledge-based societies need general key skills and higher education, which promotes the adaptation of new technologies and the creation of new sectors with new businesses. The historic — and, as far as the catch-up process is concerned, correct — European focus on secondary education is therefore becoming an obstacle to growth given Europe's arrival at the 'technological frontier'.

4.5. It goes without saying that when drawing up and implementing economic policy the European Union is faced with a heterogeneous association of countries. If there are many differences then implementation is usually delegated to Member States so that they can find solutions adapted to local circumstances⁽²⁾. However, it is essential that implementation of common policies between the various levels is synchronised and coordinated so that a chosen strategy can be implemented in full. This point is underlined by the

existence of interdependencies within the European Union. The progress of some Member States also benefits others and copycat strategies are not acceptable behaviour.

4.6. It is clear that there can be no 'one size fits all' strategy; only a package of measures tailored to each country can be successful. However, it is important to note that when a country reaches the 'technological frontier' it must change its economic policy structures and strategies, because at that point existing tools — often developed over a number of years — cease to have a positive impact on growth (if they do, this impact is only very limited) and thus become at least partially ineffective. The same is true — although under different circumstances — for countries playing catch-up. Employing the same strategies as countries at the technological cutting edge would also be an ineffective solution. Any European strategy must therefore offer solutions on how to:

- increase both cohesion and excellence and thus take account of the level of economic development,
- draw up goals and measures which take account of the cross-cutting nature of many policy areas (e.g. environment, innovation) and which can be implemented effectively despite the need for coordination across these areas,
- establish a division of work between the European Union and Member States that takes account of the actual circumstances, and
- make adopted measures binding and impose sanctions for any deviations from these measures.

4.7. The structures and mechanisms for a policy of this kind are widely available in Europe and must 'only' be used in the appropriate form and with the appropriate content. With regard to the latter, the key parameters are well-known and have long been the subject of discussion. What is lacking is the political clout to make an impact on the real economy and European companies.

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⁽²⁾ Although a review of the division of skills should take place regularly, any discussion here would go beyond the scope of this opinion (see Falk — Hölzl — Leo, 2007).

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Brussels, 22 October 2008.

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Opinion of the European Economic and Social Committee on the restructuring and evolution of the household appliance industry (white goods in Europe) and its impact on employment, climate change and consumers

(2009/C 100/12)

On 17 January 2008, the European Economic and Social Committee, acting under Article 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

The restructuring and evolution of the household appliance industry (white goods in Europe) and its impact on employment, climate change and consumers.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 September 2008. The rapporteur was Ms DARMANIN and the co-rapporteur was Mr GIBELLIERI.

At its 448th plenary session, held on 22 and 23 October 2008 (meeting of 22 October), the European Economic and Social Committee adopted the following opinion by 86 votes with 2 abstentions.

1. Conclusions and recommendations

1.1. The EESC believes that the strength of the European household appliances⁽¹⁾ industry lies in its ability to make high-quality and sustainable products; this strength has to be underpinned and expanded by an adequate European policy based on continuous effort and improvement in technology innovation and continuous training activity to increase the skill of the employees. Such policy should foster the development of energy-efficient household appliances, with enhanced recycling capacity. The overall environmental impact, based on lifecycle analysis, should be minimised.

1.2. The EESC firmly believes that the European Union legislation could have a direct influence on the competitiveness of the sector, mainly through the proposal for the extension of the Ecodesign Directive and the proposal for the revision of the Ecolabel Regulation, resulting in increased energy efficiency and reduced CO₂ emissions. So as to reduce the threat and trend of relocation of industry outside Europe, the loss of jobs and the risk of curbing consumers' interest.

1.3. Market surveillance is of paramount importance so as to safeguard the European industry, the workers in this industry, the consumers' interest and the environment. Market surveillance should be implemented through the use of the following measures:

— devolving of more resources by the Member States and the EU⁽²⁾ for a stricter verification of product compliance with

European single market standards and legislation, particularly on imported products,

— eradicating unfair competition and dumping. Anti-dumping measures should be carefully studied so as not to be counterproductive to the European industry encouraging the relocation of the industry outside Europe or the increase of imports; they should be raised not only on the whole appliance but also on the components,

— revising the labelling system so as to reflect the advances in the innovation of the technology without giving false perceptions of value changes,

— tighter control so as to reduce the counterfeiting and pass off, slavish/copies phenomena,

— controls that labels, particularly those on imported goods, are truly what they claim to be and not misleading.

1.4. The EESC believes that the adjustments to the labelling system are of utmost importance. The label should always be updated when more technically-efficient appliances raise the standard. The system should be a dynamic one whereby new products on the market with better specifications would fall under a new label rather than lower the ranking of previously graded appliances. This revision should be linked to technology innovation but should be pegged to a deadline of 5 years as stated in Energy Efficiency Action Plan. It is crucial that the stakeholders are all involved in this revision process. Furthermore the Commission should promote enforcement of legislation turning the label into a more compelling tool for manufacturers, importers and retailers.

⁽¹⁾ Household appliances refer to refrigerators, washing machines, dishwashers, boilers, heaters, and all electronic devices used in the house.

⁽²⁾ The New Legislative Framework (NLF), also known as 'Ayrat Package', is the last package of the 'Better Regulation package' dealing with market surveillance, marking of products and homologation; and has been adopted by the European Parliament and the Council on 23 June 2008. http://ec.europa.eu/enterprise/regulation/internal_market_package/index_en.htm

1.4.1. It would be beneficial in terms of sustainability for the EU to also influence other countries in adopting the high standards that the EU itself is undertaking to adopt for the internal market, since this would result in potential global energy saving.

1.5. The European household industry could be tremendously boosted with the introduction of incentive schemes within the Member States to encourage the substitution of appliances to more modern and energy efficient ones, which the industry already produces but which have not yet been sufficiently popular in the market. This support should be thought out in a way to facilitate the lesser rich people with the appropriate financial instruments and not be discriminatory. Lessons should be learnt from success stories in Europe and outside Europe.

1.6. It is also sensible to reinforce the assistance to consumers in terms of maintenance and spare parts of household appliances; ensuring that there is continuous upgrading and updating of the workers' skills so as to provide an efficient and reliable service. This could result in increased and/or retained employment.

1.7. The EESC believes that EU policy should facilitate the transition of industry to more innovative products and related services, which are strategically relevant due to their impact on the CO₂ emissions and energy consumption, such as solar panels, photovoltaic units, heat pumps, hydrogen cells, micro-generation units and high performance air conditioning devices. This would be conducive to employment creation and greater choice for the consumer.

1.8. The EESC reaffirms that the success in achieving the recommendations being made to effectively restructure the household industry in Europe, so as to become more sustainable, can be achieved and maximised only when there is thorough and effective sectorial social dialogue at a European level.

2. Background

2.1. The migration of the household appliances industry not only to Central and Eastern European countries, but also to Russia, Turkey and China is the most pressing problem of the sector at this time. Relocation is therefore taking place not only within EU Member States, but entire segments of household appliances are moving almost entirely from Europe to China.

2.2. Companies are now discovering Russia, where new washing machine and refrigerator plants are being created and existing companies from the white goods sector have been

taken over. Between fifteen and twenty white goods plants are now being built on Russian territory. This is essential for guaranteeing the penetration of European manufacturers in this new high potential market. However attention should be paid that in the future, these plants may not just service their national market but also export their production to Europe, if we fail to address the key issues of the European market.

2.2.1. There is also potential for exportation for European manufacturers in regions such as Asia, Northern Africa and the Middle East whereby there is already a growing trend of EU exports for household appliances. European manufacturers can exploit the current conditions, such as the increase of the middle class in these regions, good reputation of the European product, etc. to further penetrate these potential markets.

2.3. The increasing penetration of cheap and doubtful products is worsening the crisis in the European white goods industry. Scanty quality adds on to different tax systems, labour-cost advantages and the relatively low transports costs to attack established manufacturers in Europe.

2.4. It is obvious that Europe cannot compete with the monthly wages paid in e.g. China. A fridge or freezer produced in China is unbeatably cheap, and the same applies for simple components such as motors or compressors. Competitive advantages cannot be attained if European products are sold only on the price and not on a qualitative advantage. The strength of the European household appliances industry lies in its ability to make high-quality products. Other competitive advantages regard the design, product guarantees, service, compatibility of spare parts and repairs. This strength can be underpinned and expanded by an articulated European policy.

2.5. European factories produce refrigerators and freezers that fall into the A++, A+, A and B energy classes. The majority of goods currently produced fall into the A+ and A classes. A++ goods represent less than 4 %.

2.6. The uptake of energy-efficient refrigerators among consumers remains low. According to the CECED (*European Domestic Equipment Manufacturers Committee*), there are still approximately 188 million refrigerators and freezers that are over 10 years old in European households. Old appliances (from 1990) consume approximately 600 kWh/year, A+ appliances approximately 255 kWh/year and A++ appliances approximately 182 kWh/year. At current prices and current conditions ⁽¹⁾, an A++ appliance must run for approximately 12 years for the purchase to pay off for consumers.

⁽¹⁾ Including energy price and fuel costs.

2.7. In addition to older appliances, European manufacturers are even more concerned about potentially unsafe, energy inefficient and unreliable imports. This concern applies particularly to spot imports that are quickly sold out through the EU market.

2.7.1. As a consequence, household energy needs account for 25 % of the total energy demand in the EU with consumption for energy using products in households showing the sharpest increase in recent years, due to the introduction of new applications and products.

2.8. The use of better quality material for the magnetic core, together with an optimisation of the design on the new material characteristics, could increase the efficiency (up to 15 %) of electric motors in household appliances giving a significative contribution to the saving of electric energy domestic consumption.

2.9. Another development to be supported by the EC is that of developing household appliances suitable for maintenance and recycling. It must be pointed out that European manufacturers have made a major effort on this front and have sharply reduced the power and water consumption of large appliances. However, an increasing range of raw materials has since then become critical in terms not only of the environment but also of costs. This applies to steel, plastic, nickel, chromium, copper, etc. The prices for these raw materials and for oil by-products are going up. Those who can reduce the materials content in a product gain a major competitive edge. The possibilities offered to the household appliances industry by nanotechnology and by Life Cycle Analysis (LCA) methodologies to improve and evaluate the correct choice of materials are being far from sufficiently explored to obtain such an edge.

2.9.1. A current concern is the fact that not all material for recycling, under the current WEEE regulations, are effectively being returned to the manufacturers consequently having manufacturers pay for the cost of recycling but not actually receive the goods.

2.10. Promoting such research, pushing ahead with the miniaturisation of components such as motors, radiators, compressors, etc. should be the aim of a Commission-funded research policy. From this perspective, developing household appliances involving minimum use of materials means developing appliances more suitable for recycling. The eco-design, the EU Framework Directive of May 2005, with its

requirement for the ecological design of energy-driven appliances is an important starting point here. The European Commission does not need to reinvent its policy instruments, but rather must hone the ones that are currently available. This applies also for the existing energy and consumption label. Against the background of a worsening energy crisis and the cutting back of raw materials, the Commission should complement this label with a compulsory regulation for placing products on the market. Only those who make high level quality products should be allowed to sell household appliances on the European internal market in future: that would be the rationale of legislation requiring companies to make high-quality and durable household appliances.

2.11. It is also sensible to require manufacturers and retailers, by directive, to produce and sell reparable household appliances keeping spare parts ready for repairs and to offer a customer service. European consumers expect such a service and, by providing it, European manufacturers and retailers can set themselves apart from low-cost manufacturers whose products cannot be repaired but are merely thrown away and replaced by new ones. This cannot be in line with a sustainable development strategy.

2.11.1. In this respect the EESC is looking forward to further discussion on the implementation of the Commission's 'Action Plan ⁽¹⁾ for sustainable consumption, production and industry'.

2.12. The household appliances sector in Europe still employs around 200 000 workers. The sector has been in decline for many years. Around 57 000 jobs have disappeared in Western Europe over the past two decades. The household appliance industry collapsed in Central and Eastern Europe following the end of the old political system and only around 20 000 new jobs have been created since then.

2.13. The household appliances sectors hardest hit by relocations to countries outside Europe (Russia, China, Turkey) are the air conditioners and small appliances sectors. European refrigerator/freezer factories still employ around 23 000 people.

2.14. Restructuring in the European household appliance sector will continue in the coming years. Its scope will not only depend on market and technological developments but also on political decisions and legislative measures.

3. Specific comments

3.1. *European policy must find an answer to four problems:*

⁽¹⁾ COM(2008) 397 final (16 July 2008).

3.1.1. How to ensure that industry is not lost to countries outside the European Union. The trend is clear that the industry is shifting location hence we should counter the envisaged and real treat of losing this industry to non-EU countries.

3.1.2. How to shape the structural change in Europe to ensure that Western European countries will not lose their scientific and technical production, know-how and the jobs that go with it whilst enabling Central and Eastern European countries to stabilise their emerging household appliances industry for the future.

3.1.3. How to find an economically sensible answer to the onslaught of Asian imports that is lower in value to its European equivalent and lower in quality or not compliant to internal market standards.

3.1.4. How to ensure that the achievements in having sustainable appliances reap such fruit within the internal market increasing the demand for such goods and keep investing in research and development of appliances which have lesser impact on climate change and sustainability.

3.2. *The case for industry*

3.2.1. This sector is an advanced industrial sector in terms of the accomplishments in the energy efficiency research and development. The voluntary agreements have been effective and have been honoured by the industry.

3.2.2. Unfortunately the disheartening factor is that industry necessitates European policy to be tightened so as to ensure that the efforts made in the industry actually bear the fruit. Last year the industry decided not to renew the voluntary agreements which in the past have been so successful.

3.2.3. Market surveillance at this point in time is of paramount importance. Tighter controls should be thought of in order to ensure that whatever is on the market is truly of the level and quality that it is promising specifically in terms of its effect on climate change.

3.2.4. More support from Member States is required in order to ensure that super efficient products being made available on the market are truly being taken up by consumers. The A++ is still seen as a product which is too expensive and which the

return on investment is not viable, this leave us with a market which primarily still opts for the A+ appliances. Incentives may vary and there are already some cases in Member States and outside Europe which can be identified as good practices ⁽¹⁾.

3.2.5. The support from the Member States and fair competition should be in tandem with the speed of technological innovation within this sector at a Member State level and also at a European Union level.

3.2.6. As important link in the supply chain is the retailer. The European retailer needs to be more aware of the various implications of the importation of the products that are being imported and sold in the internal market. Furthermore the scope and efforts of industry would be futile if the retailing sector will keep on importing products and selling products which are substandard, unsafe and not sustainable. In this respect the EESC believes that there still is a lot of scope in the education of the retail sector towards the sensitisation of the issues related to the household appliances industry in the internal market and the sustainable issues of such appliances.

3.3. *The social aspect*

3.3.1. The reality is that jobs are being lost as the industry reallocates. Hence this leaves a number of people with skills which cannot be used unless the worker relocates too. The restructuring of the industry is paramount for ensuring that jobs are not lost and that this industry still remains an attractive industry for top workers.

3.3.2. A sector which should be given due consideration is servicing with particular attention is the repair sector of appliances. The repair sector needs to be kept thriving by ensuring that appliances of high quality are truly repairable and also that the availability of parts is a reality making repair feasible.

3.3.3. In the same time, a joint European and Member States policy should foster the transition of the sector to the production of innovative products creating new opportunity for employment. This process ought to be supported by a well structured social dialogue between social partners at European, national and company level. Industrial relation of European quality must be ensured also in the new production sites located in the new EU Member States.

⁽¹⁾ **Italy:** 20 % A+ and A++ class refrigerators/freezers cost, with a ceiling of EUR 200, is deducted from the personal income tax.

Spain: Rebate scheme — In 2008, customers who buy energy efficient products will be eligible for EUR 50-125 subsidies depending on the appliance type purchased.

Brazil: Brazil's federal planned to launch a programme to subsidise purchases of 10 million refrigerators for low-income citizens. Consumers have to give their old fridge, which usually consumes more energy, to get the credits to purchase a new and more economical one.

3.3.4. An effective and continue sectoral social dialogue at European level together with the market surveillance and enforcement of standards across Europe are one of the keys to ensuring that lesser jobs are lost.

3.4. *The case for the consumer*

3.4.1. The consumer needs to be assured of good quality performance products which are also energy efficient and hence qualitative information needs to be made available to the consumer in a simple, truthful and effective manner.

3.4.2. The labelling scheme needs to be a more dynamic scheme with a system that evolves and is updated with the innovation within the sector. Furthermore labels should report accurately the standards for the appliances and hence testing should be stricter and more accurate.

3.4.3. Market surveillance is very important across the Member States so as to ensure that the appliances truly deliver what they promise and that consumers get the deal for what they would have bargained for.

3.4.4. Worth noting is the possible negative effect the purchasing of new household appliances can have on the environment if consumers retain the old appliances in parallel with the new ones thus creating the 'rebound effect'.

3.4.5. Independent Consumer's Tests are the best promotion of efficient and effective household appliances. Such tests would ensure the all round quality and standard of an appliance, fulfilling the basic function of the product appropriately.

3.5. *The case for the Environment*

3.5.1. The EESC recognises that also this sector can give particular contribution to the preservation of the environment, reduction of CO₂ emissions and reduction of climate change. In this respect the EESC reiterates its position taken in the Own Initiative Opinion Eco Friendly⁽¹⁾ production, whereby it emphasises that there is an opportunity for the growth of a green market in the internal market and also the specificities related to labelling and product life cycle amongst others.

3.5.2. A deadline of around 5 years should be applied to all goods that fall below the 'good standard' in order to reach the standard desired. Refrigerators, for example, that do not reach a specific threshold after this deadline should, in our opinion, no longer appear on the European market. This is in line with the action plan presented by the European Commission for energy efficiency on 24 October 2006 ('Products that do not meet the agreed minimum requirements may not be put on the market'). These proposals are also in line with the Ecodesign Directive and the Ecolabel Regulation.

3.5.3. Furthermore, it is important that Eco-Design legislation is applied as soon as possible to all relevant large appliances and that the Energy Label legislation is reviewed allowing to speedily develop super-efficient products: that would be the legislative scenario requiring companies to make high-quality and durable household appliances.

3.5.4. With regard to the existing EU energy policy, and taking into account that the labelling mechanism is not sufficient in itself to fulfil the energy objectives set by the EU, the EESC encourages the Commission to consider new legal instruments in order to attain these objectives.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

⁽¹⁾ Opinion EESC (OJ) C 224, 30.8.2008, p. 1) rapporteur Ms DARMANIN.

Opinion of the European Economic and Social Committee on how can social experimentation be used in Europe to develop public active inclusion policies

(2009/C 100/13)

In a letter dated 5 March 2008, in the context of the forthcoming presidency of the European Union, the French Minister for Foreign and European Affairs asked the European Economic and Social Committee to draft an exploratory opinion on the following subject:

How can social experimentation be used in Europe to develop public active inclusion policies.

The initial framework for this task was set out by the High Commissioner for Active Solidarity against Poverty, who initiated the request.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 September. The rapporteur was Mr BLOCH-LAINÉ and the co-rapporteur was Mr EHNMARK.

At its 448th plenary session, held on 22 and 23 October 2008 (meeting of 23 October 2008), the European Economic and Social Committee adopted the following opinion by 66 votes to none, with 1 abstention.

1. Introduction

1.1. This referral is linked to a decision by the French government to host a conference on social experimentation in Europe, in November, in Grenoble. The aim is to promote the shared benefits and use of experimentation as a public policy tool at Community level and among the Member States, in the social field and, in this instance, in the area *inter alia* of 'active inclusion' as a means of combating poverty. The conference is to be used as an opportunity to help develop a culture of experimentation and to prepare, if and when appropriate, new programmes that could be supported by the Commission. The Czech and Swedish presidencies could, if they see fit, take up the baton afterwards.

1.2. For the French presidency this means, first, gaining a better knowledge of and better publicising the current practices of the 27 Member States in the field concerned and, second, gauging their relevance, methods of improvement and the possibilities for joint development, a higher profile and dissemination. No limits have been set as to the scale of experiments planned, begun or completed. The idea is to highlight the variety of players, cooperation methods, legal frameworks and practical measures. The final objective is to lay the foundations for a European network of excellence which is both demanding and realistic, as quickly as possible, keeping up-to-date information on tried and tested experimental innovations.

1.3. This opinion aims to compile comments and observations and then state convictions and make recommendations.

2. Comments and observations

2.1. This referral has not sprung randomly or unexpectedly from nowhere. Social experimentation is developing apace in Europe (and also in the United States and Canada).

2.1.1. Over the last decade, some excellent studies, surveys and research projects have been conducted on the subject in a number of EU countries. Many useful meetings, workshops, seminars and international conferences have been held, are being held or are planned.

2.1.2. Nevertheless, 'social experimentation' remains in many respects a vast and vague concept. It is not easy to define its immense and rich scope. Its content is infinitely diverse and constantly changing. Its terminology is sometimes rather esoteric. Evaluations of its results are often overly vague (if not non-existent) or controversial as they are ambiguous and debatable.

2.1.3. It is certainly the case that catalogues, reports, case studies and notes can be found on the subject, which are often highly interesting. However, to the best of the Committee's knowledge, there are currently no ministries, local or regional authorities, national economic and social councils, Community consultative bodies, social partner umbrella organisations⁽¹⁾, etc., which keep properly indexed files under this heading.

⁽¹⁾ Central, federal, confederal or other.

2.1.4. In the time available, it would clearly be impossible to attempt a broad survey of experiments that could be used straight off as templates for public policy development. Common sense points to a short opinion of a literally exploratory nature (preparatory and preliminary), in order to pick out reliable and informative European sources, some institutional, others held by NGOs.

2.2. The notion of social experimentation has not always been written into the principles guiding EU policy. Some experimentation, in the form of mini-projects, was certainly present in the first anti-poverty programme (1975-1980). The second and the third programmes (1985-1989 and 1989-1994) were underpinned by a desire to take stock of experience gathered, although the term 'experimentation' was not stressed as such. Lastly, whereas essential new elements in the Treaty of Amsterdam and considerable advances made by the Lisbon Council share a common willingness to examine examples of good practice jointly, national programmes, action plans and joint reports on social protection have given little attention to experimentation. The open method of coordination meanwhile hardly grants it any space at all.

2.2.1. Nevertheless, there have been major advances in this area of EU social policy in recent years, and the European Commission deserves most of the credit. The EESC was grateful for two working meetings with the DG for employment, social affairs and equal opportunities, which highlighted the impressive results of the EQUAL programme, the PROGRESS programme and the peer review system. There is not enough room in this opinion to give a detailed description of this system; equally, its nature does not allow for this either.

2.2.2. A file will be drawn up in good time for use at the above-mentioned meeting in Grenoble in November. It will include information on examples of successful innovative experiments, and will include the addresses of potentially useful sites.

2.2.3. To provide but a few details: the EQUAL programme, which ran for six years (2002-2008), invested EUR 3 billion from the European Social Fund in social innovations relating to the labour market and active social inclusion in a number of Member States. It set up 3 480 partnerships with over 2 000 players. It involved over 200 000 underprivileged people. It is probably the best thought-out and largest social innovation programme to be completed in Europe.

2.2.4. Going beyond pure numbers, it is worth noting that EQUAL and the peer review system have, on behalf of the EU, established the first body of methodological knowledge of its kind. This is possibly the most important aspect in terms of the future. A number of the lessons learned are clearly set out in guides. The EESC therefore believes that it is important to continue assessing the results of these programmes and their contribution in terms of social inclusion.

2.2.5 It should also be noted, with regard to the measures surveyed at this exploratory stage, that the EESC has given particular attention to the field of innovative experiments designed to promote inclusion through economic activity using a holistic approach. To this end, it organised a hearing⁽¹⁾ of NGO networks and bodies⁽²⁾ able to provide well analysed and evaluated case-studies of successful measures carried out by European social enterprises in the area of integration through work. The Committee is fully aware that the scope of 'active inclusion' extends far beyond this sector alone. However, this sector brings together key stakeholders operating within well-organised networks; it was thus important to meet with them at the beginning and without delay.

2.2.6. The information gathered at the time of the above hearing (16 June 2008) and the minutes thereof will also be included in a file which will be made available within the above-mentioned deadlines. The present opinion will draw attention to the following points:

2.2.6.1. Numerous experiments have produced very positive results based on highly innovative and diverse ideas, and a variety of often very different legal systems.

2.2.6.2. All the cases mentioned involved effective cooperation between a highly diverse and actively involved group of stakeholders.

2.2.6.3. In many countries, laws have recognised and given a framework to the actions carried out. However, this often occurred late in the day.

⁽¹⁾ A hearing was held on 16 June 2008 following a preparatory meeting on 22 April 2008.

⁽²⁾ CNIAE, the [French] National Council for Integration through Economic Activity, EAPN, European Anti Poverty Network; ENSIE, European Network for Social Integration Enterprises, FEANTSA, European Federation of National Organisations Working with the Homeless.

2.2.6.4. The 'time factor' is key in this respect. In many areas, significant concerns exist concerning the long-term nature of the experimentation (the end of the EQUAL programme in particular gives much cause for concern). The issue of how to get stakeholders — particularly local authorities — more involved is also important.

2.2.6.5. With regard to assessment, all the parties involved stress the need for overall measures and evaluations regarding the benefits and costs of experiments.

2.2.6.6. All parties agree that EU action is essential both for the transfer of know-how and for ensuring the lasting nature of all projects begun.

3. Convictions

3.1. The Committee is convinced of the potentially fundamental usefulness of innovative experimentation as a national and transnational policy-making tool in the EU. The reasons for this can be summed up as follows:

3.1.1. No one would disagree that contemporary forms of poverty and exclusion are so complex that they have long defied analysis and predictions. Diagnoses, particularly those carried out by means of European Union funded studies, have thankfully come on a long way in recent years. However, there are still many unknown factors and uncertainties when it comes to the solutions, to say the least. In many countries, the blanket policies implemented have not achieved their objectives. General measures stemming from predefined theories have rapidly shown themselves to be ill-suited, inefficient or even outdated or counter-productive, owing either to practical ignorance of the primary causes, specific details and links between the problems being addressed, or to a failure to foresee or detect negative effects in good time. Experimentation by its very nature should, by means of close observation, facilitate fine-tuning and corrections and help to avoid the widespread implementation of ill-advised good ideas.

3.1.2. Use of the method which philosophers call the 'inductive' method ('reality is based on that which I observe') is fundamental for scientists. Its opposite, the 'deductive' method (reality can only be in accordance with what I think)

has, in the past, led to miscalculations and errors⁽¹⁾ in the field of social policy. Let us be clear: the idea here is not to promote the abandonment of general policies and simply replace them with case-by-case experiments. That would be absurd. The objective is to recommend — where possible — more use of innovative experiments to highlight and support the formulation of general public policies. It is a question of developing and optimising a mechanism which can play the role of innovative experimentation with regard to state government and EU institutions.

3.1.3. Experimentation is often better than immediate general adoption for working out how to win the support and enthusiasm of the various local players involved, as close as possible to people's real needs.

3.1.4. It offers the right to make a mistake without causing damage, and without generating systematic scepticism.

3.1.5. 'Social experimentation' must be firmly rooted in existing systems of social solidarity and be supported by well-developed concepts and by the responsibility of the stakeholders involved. Equally, the use of experimentation should help to extend the scope of the open method of coordination.

3.2. While most would agree with these arguments, it should be borne in mind that there are also those with doubts and objections that must be taken into account and discussed in order to ensure that useful measures are not discredited or hindered.

3.2.1. The most commonly expressed objections are the following:

3.2.1.1. The term experimentation is in itself shocking, as humans are not guinea pigs; it would be better to refer to trials or even better, simply to innovation.

3.2.1.2. Trials in the social field are often no more than laboratory tests — how can this be avoided? How can one distinguish phenomena such as mockery, imitation, misrepresentation, window-dressing, distortion, or ghettos?

⁽¹⁾ Let us remember that, much more dramatically and on another scale completely, ideologies and dogmas of all kinds have been and remain capable of generating severe catastrophes.

3.2.1.3. The fact that they are specific to limited areas on a limited scale means that in general they are impossible to replicate.

3.2.1.4. Experiments can be used as an excuse for decision-makers reluctant to carry through general reforms. They can lead to a reduction in or even the abolition of existing social protection measures.

3.2.1.5. Experiments can generate unfair advantages for a few, or, when experiments are abandoned, leave people bitterly disappointed having enjoyed amenities for just a brief period.

3.2.1.6. Are the evaluation protocols reliable?

3.3. In order to defuse this opposition, the EESC believes it is essential to provide a strict definition of experiments that could be set up with the support and under the responsibility of public authorities of any kind.

3.3.1. Point 2.1.2 above states that social experimentation remains a 'vast and vague concept'. This is no flippant remark on the part of the Committee. If it were, it would certainly not be amusing, useful or dignified; clearly, this is not the case. On the contrary, the Committee is driven by the will to contribute to a wider debate aimed at removing this sense of vagueness.

3.3.2. The first step that needs to be taken is to agree on a definition. This task is somewhat complicated by the existence of deep-rooted ambiguities which surface again and again. The key is to identify whether the sole purpose of social experimentation is to validate existing methods or whether its objective should rather be to foster the development of genuine innovations.

3.3.3. The Committee wanted to avoid being burdened with examining a doctrinal and semantic list of definitions. Instead, it focused its attention on two definitions:

3.3.3.1. The first comes from a key American institute in the field ⁽¹⁾. It comprises four stages:

- random assignment,
- policy intervention,
- follow-up data collection,
- evaluation.

3.3.3.2. The second definition was drawn up by the French body behind the original request for this opinion, which covers the following:

- social policy innovation, initially launched on a small scale due to uncertainties regarding its effectiveness,
- implementation under that make evaluation possible,
- the prospect of their subsequent widespread adoption.

It is this second definition which has the clear and unconditional support and backing of the European Economic and Social Committee.

3.3.4. Let us not forget, once again, that innovative experimental ideas abound. There is no lack of vague good intentions; the road to hell is paved with them. The worst that could be done for the concept of social experimentation and its future would be to open the floodgates to a stream of public initiatives that were doomed from the start to fail or never to be replicated.

3.3.5. The EQUAL programme in particular served to draw up rules and methods making it possible to test factors for success or failure. The Committee would highlight this useful work, which was carried out principally for European Social Fund managers but which could be useful to any local or national decision-makers wishing to launch innovative experimental projects.

3.3.6. Attention should only really be given to experiments that include:

3.3.6.1. clear details of figures and dates;

⁽¹⁾ URBAN Institute.

3.3.6.2. precise programming of the means implemented;

3.3.6.3. a definite and real commitment and on-going cooperation from various players: public authorities, researchers, social partners, and other civil society players (foundations, cooperatives, mutual and other associations, etc.);

3.3.6.4. arrangements ensuring the active and genuine participation of the experiment's 'target group' from the project design stage to implementation and evaluation, thus securing a joint experimentation and policy-making process. In European culture, human beings are not 'recipients,' 'users,' 'subjects,' 'constituents,' 'customers,' 'voters' etc. They are people;

3.3.6.5. a monitoring and, above all, evaluation system defined in a truly methodological way and announced clearly before the launch of the project; including proper impact studies, involving reliable experts and designed to allow for a proper assessment of the results' durability;

3.3.6.6. an appropriate assessment of the possibility of replicating the experiments (in the knowledge that a non-transferable project might nevertheless include elements and components that are instructive in themselves).

3.3.7. This already lengthy list of conditions will not guarantee the success of an experiment in all cases; but the risk of failure must be accepted in advance, or else experimentation must be precluded by virtue of its very nature.

4. Recommendations

4.1. General guidelines

4.1.1. Experimentation and innovation are still not really part of European social strategy or, therefore, the open method of coordination. However, a certain amount of common ground has emerged in recent years regarding the approach that needs to be taken: the importance of ideas for the modernisation of social policy; the role of assessment as a key for good governance; mutual learning and the transfer of good

practices. On 2 July 2008, the Commission adopted the renewed Social Agenda, which contains an important communication on strengthening the open method of social coordination. The text emphasises that PROGRESS will support 'social experimentation.' The objective is to persevere and progress down this path; it is important to ensure that the principles governing the EQUAL programme are effectively taken into account in the future management and operation of the European Social Fund. In addition to the action already taken, there is no reason why we should not conceive of or recommend the inclusion of the European Social Fund or Structural Funds within the framework of the programmes for innovation and active inclusion.

4.1.2. The EESC recommends that consideration be given to an approach or concept that is more integrated into the various and numerous European programmes so as to promote more innovative social experimentation in the field of cohesion and social inclusion. The programmes being targeted here include the Seventh Research and Development Programme, certain regional development programmes (Jeremie, Jaspers, Micro-loans); certain rural development programmes (such as the 'Leader') programme and, where possible, sustainable development programmes.

4.2. While the social experimentation projects to combat exclusion are primarily the preserve of local and national players, the EU institutions and, in particular, the European Commission can step up their action and exert a crucial leverage effect. The time is ripe for such measures.

4.3. To this end, it is essential to promote a better understanding of the reality of the situation in the EU's 27 Member States. This is, moreover, one of the major concerns and motivations behind the present opinion which, given its limited timeframe and scope, should only be seen as an initial step preparing the ground for subsequent developments, something which is the sincerest wish of the Committee.

4.3.1. The Committee does not recommend the creation of yet another observatory based on the traditional institutional model. It considers that such a complex and costly solution would be counter-productive. It does, however, strongly recommend creating a structure in the form of an observant

European network, whose aim will be to develop and share knowledge about the existence, nature, content, arrangements, lessons learned, and results of the experiments conducted in the EU's Member States. This structure should bring together a diverse range of stakeholders: research organisations, joint project partners (political, economic and social partners...). It is important for the EU to be the driving force behind the implementation, coordination and sustained development of such a network. This role should be placed under the auspices of the Commission. If so invited, the EESC would be more than happy to participate in this project, given its role as a 'bridge' to 'organised civil society', within the limits of its capabilities.

4.3.2. The Committee recommends that effective use be made of already existing sources: the EQUAL report, peer review, tried and tested NGO methods ⁽¹⁾.

4.3.3. The Committee suggests that active measures be taken to ensure that plans for national programmes and joint reports include information on developments in innovative social experimentation projects.

4.3.4. The European Parliament and the Council could together set up regular meetings on social experimentation, to be held at least once a year, focusing on a different area of interest each time. The programme of the European Year for Combating Poverty and Social Exclusion could also include a number of events for working together on these issues.

4.3.5. It would be advisable to increase the number of local European meetings such as 'peer review meetings'.

4.3.6. The aim of these recommendations is to help gradually establish a map of local active inclusion projects which could be eligible for EU support and help pave the way for transnational social experiments. Regularly taking stock of success stories and good practice could contribute to the valuable process of sharing and passing on experience at EU level.

⁽¹⁾ The liaison group between NGOs and the EESC could help contribute to this process.

4.4. The Committee firmly hopes that, in the future, funding will be available at a level similar to that allocated to the EQUAL programme.

4.5. It is worth noting — and to their credit — that those responsible for and most familiar with the EQUAL instrument themselves emphasise the work and planning which still needs to be done regarding social experimentation and the best way for the European Union to step up action and build on its knowledge, particularly in the areas of feasibility, replication and codes of ethics. The Committee proposes that, in order to help move this dossier forward, the Commission suggest to the Council that a report be drafted to fully investigate the added value which it is hoped that social experimentation will bring in Europe by highlighting, in particular, responses to questions such as the ones outlined below:

4.5.1. We are far from having a clear picture about the gap that so often exists between social experimentation and the extent to which it is recognised or promoted. This barrier has not appeared as a result of chance, accident or insignificant events. It represents a real divide. This issue must be given much consideration.

4.5.2. Is it necessary to establish precise size thresholds or criteria in order to identify which cases of social experimentation and innovation are worthy of being taken into consideration.

4.5.3. Should one specify the conceptual limits separating that which merits the name of innovation from that which does not? If so, then how?

4.5.4. Inclusion-related experimentation essentially focuses on remedying ills that have already arisen; in other words, it concentrates on cures. How, whilst continuing to progress down this path, can we increase the role of prevention by trying to anticipate more effectively future challenges (demographic, economic, social issues) which have yet to become significant?

4.5.5. How can we broaden the partnerships between stakeholders affected by active inclusion? How can we develop synergies between associations, start-up firms and common-law firms in order to develop and perfect veritable inclusion strategies? How can we strengthen and increase the number of pathways between exclusion and inclusion through the development of corporate social responsibility? Should we promote ideas such as, for example, cooperation with works councils? Or instead encourage approaches such as asking companies employing more than a certain number of workers to publish an annual report on such issues?

5. Conclusion

5.1. Social experimentation is one of the principal challenges currently facing public governance within local and regional authorities, at centralised, decentralised or Member State level, as well as at EU level. It is a complex, demanding and perfectible methodology which could prove useful over the long-term.

5.1.1. The EESC stresses that individual experiments cannot be a substitute for general public policies. The EESC believes that the greater use of innovative experimentation can help clarify and strengthen the formulation of such policies.

5.2. The European Union has the authority to define a framework for national and local policies; indeed, this is one of its key tasks. In this particular case — the fight against poverty and the drive for social inclusion — it has already launched and completed a bold, groundbreaking and well thought-out measure. But it could go a lot further, in the interest of serving the public, for the future of Europe and in view of the importance that the public attaches to this issue.

5.3. The EESC recommends that the Union make a firm commitment to promote and support innovative social experimentation more actively in numerous, subtle and essential areas of inclusion policy and that it take the necessary time and resources to do this so as not to raise any false hopes.

Brussels, 23 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Ethical and social dimension of European financial institutions

(2009/C 100/14)

On 25 September 2007 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on the:

Ethical and social dimension of European financial institution (own-initiative opinion).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 October 2008. The rapporteur was Mr IOZIA.

At its 448th plenary session, held on 22 and 23 October 2008 (meeting of 23 October), the European Economic and Social Committee adopted the following opinion by 122 votes to 23 with 45 abstentions.

1. Summary and recommendations

1.1. Very recent developments in the financial crisis that were both unforeseeable and unexpected in terms of the scale of losses and of the manifest incapacity of the regulatory instruments set up to govern the market, and hence protect savers, businesses and investors, have made it necessary to hold a specific and extended debate on the content of this opinion. A succession of bankruptcies around the world and the rescue of apparently rock-solid banks and insurance companies have left millions of European citizens in a state of anxiety and concern.

1.1.1. The European Council of 15 and 16 October 2008 focused mainly on the financial crisis and expressed its resolution to act in a concerted manner to protect the European financial system and depositors. Following the Eurogroup meeting, the Council as a whole approved the principles defined during the meeting held in Paris on 12 October, which aim to preserve the system's stability, strengthen the supervision of the European financial sector, especially cross-border groups, improve the coordination of supervision at EU level, preserve the stability of the financial system, support the major financial institutions, avoid bankruptcies and protect savers' deposits.

1.1.2. In addition, the European Council called for a speedy examination of the rules on rating agencies and their supervision at European level, rules on the security of deposits, and urged Member States to ensure that earnings from stock options or the system of remuneration, especially in the financial sector, did not lead to excessive risk-taking or extreme concentration on short-term objectives.

1.1.3. The European Council underlined the need to take the necessary steps to support growth and employment and an all-encompassing reform of the international financial system based on the principles of transparency, sound banking, responsibility, integrity and world governance in order to avoid conflicts of interest.

1.1.4. The EESC has long been calling, unheeded, for steps to be taken to strengthen regulatory instruments, cooperation between supervisory authorities and the coordination and harmonisation of supervisory measures. The Committee had condemned the excessive risks being taken by the European and international banking systems, which were being bolstered by abnormal remuneration systems based on very short-term results. This had forced operators in the sector to embark on indiscriminate sales campaigns for very high-risk products.

1.1.5. Despite financial scandals, which also occurred in Europe, nothing concrete was done and it is only now that the extent of the crisis could have dramatic consequences for the entire economy, that it is realised that the promises of unrestrained and irresponsible capitalism and unbridled and limitless growth were hollow and heralded a deep crisis.

1.1.6. The model is now irrevocably in its final stages. The EESC hopes that the political institutions will at last shoulder their responsibility by:

- strengthening the scope and remit of the regulatory authorities,
- prohibiting the holding of extra-budgetary funds, loans and securities,
- increasing and standardising the activities of national regulators,

- setting more appropriate and transparent standards for the activities of hedge funds, investment banks, structured off-shore financial vehicles, sovereign funds, and equity funds; placing them under the supervision of the authorities and establishing the nature and their status as ‘businesses’ subject to the legislation in force, as requested by the European Parliament,
- changing the fiscal system, avoiding incentives or rebates for major risks or excessive debt,
- setting up a European Rating Agency,
- regulating the remuneration of top managers, financial product sales incentives that are unsuitable for operators, as now advocated by the European Council itself,
- controlling unregulated markets,
- adapting capital obligations for complex financial products and derivative financial products.

1.1.7. The EESC is convinced that the grave financial crisis and the welcome defeat of casino capitalism could provide an opportunity to adopt more appropriate measures for safeguarding the financial system in the future while simultaneously relaunching the economy. A broad-based effort is required, commensurate with the danger that the virus detected in the financial sector might spread to the real economy as a whole. Investment in infrastructure, in ‘green investment’ such as energy efficiency, renewable resources, and innovation and research could help bolster demand. A new European Fund, to be managed by the EIB, and guaranteed by the Member States, could solve the problems created by the freeze on financing for the economy, especially for the part of the economy which most requires medium and long-term investment.

1.1.8. The EESC welcomes the actions taken thus far by the Member States, the European Central Bank, and the Council and calls on all the European institutions to show unity and efficiency in tackling such a serious situation for citizens, workers and businesses in order to ensure that the European and international financial system is operating properly as soon as possible.

1.1.9. The EESC also hopes that in addition to the necessary financial measures made available for this priority objective, every effort will be made to contain the ensuing economic crisis.

1.1.10. Hundreds of billions of euros have been mobilised to rescue banks; the EESC hopes that the same energy and promptness will be directed towards saving the business sector, especially for small and medium enterprises, by supporting demand, not least by raising salaries and pensions to avoid a recession that could soon turn into depression.

1.2. The wealth of diversity in the supply of financial services can be compared to diversity in the natural world. Protection of biodiversity is now a permanent feature of public awareness. Protecting the biodiversity of suppliers of financial services is also an element in Europe’s cultural and social heritage that must not be frittered away; on the contrary it should be sustained, given the enormous social value that it represents. The ethical and social dimension of the European financial system should be strengthened and safeguarded.

1.3. Article 2(3) of the Lisbon Treaty stipulates that ‘(The Union) shall work for the sustainable development of Europe based on balanced economic development and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhance’.

1.4. The European institutions and the Member States will have to commit themselves to fostering and sustaining the ethical and social dimension of the financial market, as well as its capacity for competition. ‘A social market economy also means a socially just economy’⁽¹⁾; or ‘The social market economy allows the economic to attain its ultimate aim, which is the prosperity and well-being of all the people, protecting them from need’⁽²⁾.

1.5. In launching his proposal to set up a high-level European committee to respond to the crisis on the financial markets, identify new rules, and combat the instance finance ‘that cannot govern us’, Jacques Delors has argued that the current crisis is ‘a failure of poorly, or unregulated markets, and shows us, once more, that the financial market is not capable of self-regulation’.

1.6. The recent crisis shows that, as well as being part of Europe’s cultural and historic heritage, pluralism and biodiversity in the financial system are necessary to the existence of initiatives of ethical/social content, and are also major factors for increasing competitiveness and reducing the risk of systemic crisis in financial systems.

⁽¹⁾ A.F. Utz, *Etica economica* (‘Economic ethics’), San Paolo, Cinisello Balsamo, 1999.

⁽²⁾ Konrad Adenauer, *Memorie 1945-1953*, Mondadori, Milan, 1966; English edition *Memoirs*, Weidenfeld & Nicolson, London, 1966.

1.7. Economic growth beyond certain limits, and without the possibility of meeting other needs, does not increase human happiness. The dominant role of speculative finance in the real economy must be cut back and redirected towards a more reasonable conduct that is socially sustainable and ethically acceptable.

1.8. The role of ethical and socially responsible finance must therefore be promoted. The Economic and Social Committee's starting point is that in this field, an interventionist, top-down approach is out of place, since experience shows that it is right for socially- and ethically-driven initiatives to spring spontaneously from below.

1.9. An ethical dimension is not the sole preserve of any specific type of business. The documented and important role of the savings banks and various cooperative movements in promoting ethical/social initiatives and fostering the development of local systems merits particular attention. In spite of the recognition granted by the European treaty, some Member States still do not specifically acknowledge or uphold it. Efforts should be made to secure more systematic and widespread recognition of this type of social governance. The recent appeals against the cooperative movement to the European Commission promoted in Italy, Spain, France and Norway serve to highlight this need, in the absence of proper European legislation.

1.10. The EESC considers that the legislative framework is never neutral with regard to the conduct of organisations or individuals. On the basis of this observation, the EESC considers that, in a system that already encourages certain types of conduct, putting the principle that a compensation system should apply to all ethical/social initiatives on a systematic, widespread footing meets the criteria of fairness and rationality applicable to the public role in the economy and society.

1.11. Each time that a specific organisation can be shown to have given up, at least in part but on a structural and permanent basis, the principle of maximising profit in order to promote initiatives of an ethical or social nature, it should be entitled to come under tax and regulatory rules that are different from the general ones, except in the case of prudential rules, at least in part. In some Member States, ethical investors already enjoy a derogation from the banking directive: efforts should be made to extend this principle to all the Member States.

1.12. The EESC wonders if initiatives with ethical/social connotations on the part of typically profit-oriented organisations should enjoy tax or regulatory benefits. A for-profit organisation launches an initiative which is structurally separate from its typical business: there should be little doubt

about the appropriateness of granting compensation compared to the usual treatment. If, on the other hand, the initiatives cannot be structurally separated from its typical business, there needs to be more debate to assess whether it is appropriate to introduce a compensation system.

1.13. Scant attention is paid to the social dimension in many market segments. CSR upholds constant and compatible growth that respects human and environmental dignity. In contrast, bonus systems tied exclusively to quantities of product sold, rather than to quality of service, are stirring up huge discontent among customers and among stressed-out workers suffering 'budgetitis' as a result of the unrelenting commercial pressure.

1.14. The EESC considers that the 'proportionality principle' should be applied in a systematic and targeted way, according to which a small intermediary carrying out simple transactions cannot be subjected to the same regulatory burden as a complex, multinational organisation, although the same market guarantees must be maintained. Rules are imposed to safeguard the market.

1.15. By ensuring that Member States do not adopt measures that would distort competition, the European Commission can help protect diversity in the supply of financial, banking and insurance services. The rules on State aid should take account of this aspect.

1.16. Casino capitalism and turbo-capitalism have targeted major industrial and financial companies that have been reduced, fragmented by a flurry of sales, to mere shadows of their former selves, and thousands of workers and their families, shareholders and the economy in general have been caught up in the 'destruction' of intrinsic value caused by these operations, which leave behind them only wreckage.

1.17. In the present opinion, the EESC restates the need to make the economy serve mankind, as argued by a great economist ⁽¹⁾: *The greater danger is in the subordination of belief to the needs of the modern industrial system. [...] These are that technology is always good; that economic growth is always good; that firms must always expand; that consumption of goods is the principal source of happiness; that idleness is wicked; and that nothing should interfere with the priority we accord to technology, growth, and increased consumption*.

⁽¹⁾ John Kenneth Galbraith, *Liberty, Happiness ... and the Economy*, The Atlantic Monthly, June 1967.

2. Introduction

2.1. Ethics and the social impulse

2.1.1. Greek thought has laid down a solid foundation for western civilisation, and we can draw on this thought in order to define, firstly, the 'ethical' and 'social' concepts.

2.1.2. According to Aristotle, the purpose of ethics is man's good, to be understood not in an abstract sense, but as the maximum of goods that can be acquired and achieved through action. The greatest good towards which individuals strive is happiness, the greatest form of happiness is to be found in acting virtuously.

2.1.3. Happiness is at the same time the best, the most beautiful and the most pleasing of things, and these qualities are not to be separated as in the inscription at Delos:

'(a) Of all things, the most beautiful is justice;

(b) the most useful is health;

(c) but the most agreeable is the possession of the beloved object;

(d) For all these properties belong to the best activities: and these, or one – the best – of these, we identify with happiness' (Aristotle, Nicomachean Ethics, book I).

2.1.4. Philosophy can help us to understand how, alongside an absolute reality of ethics, relative realities can exist that satisfy those social groups, small or large, who share the same idea of happiness and join together to pursue it.

2.1.5. A plurality of ethics and values coexist and represent humanity's rich history in all its different manifestations, including those that have recently come to be known as 'the economics of happiness'. This, from an empirical starting-point, systematically examines the nature of happiness and possible ways of attaining it.

2.1.6. It has been demonstrated that economic growth without concomitant growth of other factors of satisfaction does not increase personal happiness. On the contrary, *'Beyond a certain limit, economic growth does not bring greater happiness.*

Ever-increasing consumption entails ever-increasing work to pay for it, and ever more time spent at work. This is at the expense of human relations – and it is exactly these relations which generate most happiness' ⁽¹⁾.

2.1.7. A number of Eurostat surveys have indeed shown that while per capita income in Europe has risen without interruption over the last 25 years, levels of happiness have remained basically unchanged. Very similar results have been obtained in the United States.

2.2. The 2007–2008 financial crisis: what next?

2.2.1. The continuing turbulence that has swept the financial markets since February 2007, affecting leading financial and banking institutions, is rising to the top of the agenda for international political debate.

2.2.2. The impact of the crisis among US mortgage providers has been expanded and amplified by the fact that many debts classified as 'subprime' – i.e. unlikely to be paid back – have been bundled, through a securitisation process, into larger debt 'packages' with a total lack of transparency regarding the scale or extent of the problem. The result is that operators are left holding insecure and devalued bonds.

2.2.3. This uncertainty has triggered a further loss of confidence in the financial system, and this has had damaging consequences for businesses that rely on a constant flow of cheap credit.

2.2.4. Speculative hedge funds have been the primary victims of the financial crisis, even those operated by major trading banks. Many European banks have ended up with a large part of the US subprime debt on their books. Some famously prudent German banks have been hit particularly hard, but the infection has also spread to immune financial institutions, for whom the cost of money has rocketed. This was the cause of the Northern Rock near-crash.

2.2.5. The SOCGEN case is in part linked to the financial upheavals that began last summer, in part to a certain tendency to encourage financial market operators to take unreasonable risks which are as likely to result in high profits as in astronomical losses when there is imprudence. This has revealed the striking inadequacy of this institution's internal control procedures and has cast doubt on the entire banking system's practices in this area.

⁽¹⁾ Luca De Biase, *Economia della felicità* ('Happiness Economics'), Feltrinelli, 2007.

2.2.6. This is 'casino capitalism', where unfortunately the 'broken bank' is in reality represented by savers, especially the weakest, who in one way or another have to pay a bill for which they are not responsible, workers (more than 100 000 job losses in the financial sector so far, with more to come ⁽¹⁾), and citizens, whose security is undermined and are left wondering if the financial system still retains any credibility.

2.2.7. Recorded losses amount to 400 billion dollars, and according to reliable estimates are set to rise to the 1 200 billion dollar mark ⁽²⁾. This is of course being felt by large institutional investors, such as pension funds, but the entire economic system is experiencing serious repercussions, with the rising cost and shrinking availability of money, the ensuing upward pressure on prices and inflation, and the impact in terms of slowing down the economy. This vicious circle is affecting economic activity as a whole. Recession is seen as a real threat in some Member States.

2.2.8. It is true that the European financial system has been more of a victim than a perpetrator, with a few isolated and limited exceptions. It is also true, however, that the increasing domination of the economy by finance, the pursuit of ever-more sophisticated means to multiply profit opportunities, the increasingly aggressive role of speculative funds and the arrival on the scene of sovereign funds with enormous resources, have pushed the real economy into an increasingly marginal role. It has also highlighted the weakness of national supervisory systems, the inefficiency of cooperation machinery between different authorities and the worrying role of rating agencies, including those engaged in so-called ethical rating (which have given favourable assessments of companies such as Parmalat, with its apparently exemplary code of conduct).

2.2.9. This crisis has impacted upon all market players, regardless of whether their speculative profile is high, low or non-existent. Market integration has reached such a point that no-one can say they are immune from negative repercussions. The problem is that only the downside is shared with others, while profits remain securely in the hands of speculators.

3. The European financial system

3.1. Banks

3.1.1. Banks represent the central element linking financial intermediaries. In some countries, they have a strong hold

over the real economy, exerting power that is not purely economic, influencing territorial and business development, and multiplying their profit opportunities.

3.1.2. Although banking companies operate in a market context, and basically all offer the same services, ranging from the thoroughly standardised to the highly specialist, they are of very different origins that continue to shape them to this day.

3.1.3. Alongside trading banks and investment banks, occupying a predominant market position, are the savings banks of popular inspiration, that were devised to offer urban communities – and particularly their poorer members – a helping hand in times of difficulty. The first savings banks of this kind were set up in the German Empire in the early 19th century, but many were simply existing pawn brokers, created in the 15th century, operating under a new name. Today they account for approximately one third of the retail market, with 160 million customers and 980 thousand employees. Examples of socially inclusive initiatives by savings banks include 'Die Zweite Sparkassen' in Austria and 'Parcours confiance' in France.

3.1.4. A rural and artisans' savings movement took root in some remote regions and in rural areas, based on the ideas of Friedrich Wilhelm Raiffeisen, in opposition to usury. He founded the first *Darlehnskassenverein* (popular bank) in 1864. The popular banks, also based on cooperative principles, sprang from the thinking of Franz Hermann Schulze-Delitzsch, who set up the first *Vorschussverein* (popular bank) in 1850. These experiments gave rise to the broad credit cooperative and popular bank movement, which today has a market share in the EU of more than 20 %, with more than 140 million clients, 47 million members and 730 000 employees.

3.1.5. This historical note shows that civil society has always attributed a place in the economic system to banks that is at least in part different to that of other businesses. They have always been expected to pursue ethical/social ends too, not only profit.

3.1.6. A significant aspect that the financial industry must take on board is the broader access that has opened up to financial services. While in developing countries, only 20 % of the population has access to credit, this figure rises to a reassuring 90 % in Europe. This is still not enough, however, as the 10 % left out may experience what is in fact very serious discrimination.

⁽¹⁾ Source: UNI, United Network International – Geneva, 2008.

⁽²⁾ Bulletin of the Bank of Italy No 52, April 2008.

3.2. Insurance

3.2.1. While the first modern banks date back to the early 15th century in Italy, with the Bank of Saint George in 1406, and some of which – such as the Monte dei Paschi established in Siena in 1472 – still operate today, the origins of insurance go much further back. The first types of insurance date from between the 2nd and 3rd millennia BC, in China and Babylon. The Greeks and Romans were first to introduce the concepts of life and health insurance, with their 'benevolent societies' that paid for medical treatment, family support allowances, and even funerals. The guilds of the Middle Ages had the same purpose. The insurance contract, separate from investment, was invented in Genoa in the 14th century (1347). This was to make the fortune of Edward Lloyd who, in 1688, opened a café in Tower Street, London, frequented by shipowners, merchants and sea captains – the ideal meeting place for parties seeking to insure a vessel and its cargo and those wanting to have a financial share in the venture. The first fire insurance was introduced with Nicholas Barbon's 'Fire Office' during the same period, following the disastrous Fire of London in 1666, which destroyed 13 200 houses.

3.2.2. In the wake of Lloyd's experience (which was not technically an insurance company), the insurance model spread throughout Europe, and insurance companies began to operate. The growth of modern insurance is linked to modern probability theory, whose pioneers were Pascal, de Fermat and even Galileo. Mutual bodies began to operate in insurance circles, owned by policy underwriters rather than shareholders – in other words, by their direct clients. Cooperative insurance entities were born in the last century: in some countries they have assumed an important position on account of their ability to offer high-quality products to the market as a whole. Like cooperative banks, mutual insurers are strongly tied to local economic systems, and make a substantial contribution to their development, not least by reinvesting a significant part of their added value.

3.3. Ethical banking and insurance

3.3.1. In recent years, ethical banks and insurance companies have begun operating, focusing on maintaining business relations and providing financial support only for those businesses that meet strict value-based requirements, in accordance with the community from which these banks and insurance concerns have sprung. Examples of such 'values', which constitute a benchmark in this area, are the requirements concerning environmental sustainability, the uncompromising stance towards the arms market and a standing commitment to non-discrimination of any kind.

3.3.2. 'Ethical' finance and microfinance

3.3.2.1. *Ethical finance* means financial activity promoting human, social and environmental initiatives in the light of an ethical and economic assessment of their impact on the environment and society, carried out with the primary objective of

providing financial support for the activities concerned or even, through the microcredit instrument, for individual people.

3.3.2.2. Microfinance is made up of specialist banks for poorer population segments and dealing with small sums, which would be excluded from the conventional banking system, and is best known for its presence in the third world. It should not, however, be forgotten that western countries also have an important tradition of microsaving (while microcredit has been more marginal, with the pawn shops of old, for example); low-cost multiannual deposits are an example of microsaving.

3.3.2.3. Ethical financial business is conducted according to the following principles ⁽¹⁾:

- (a) no discrimination between recipients of investment on the grounds of sex, ethnic origin or religion, or on the grounds of wealth, considering credit in all its forms to be a human right;
- (b) access to the weakest, based on the validity of forms of personal, category or community guarantees on an equal footing with wealth-based guarantees;
- (c) efficiency, which in ethical financing is not defined in terms of profits, but of economically vital and socially useful activity;
- (d) savers' involvement in the choices made by the concern collecting the funds, either by indicating preferences on where funds are to be channelled to, or by democratic machinery for participation in decision-making;
- (e) complete transparency and access to all information, for which reason it is necessary for savings to be nominative, and clients are entitled to be informed on how the financial institution works and of its credit and investment decisions;
- (f) rejection of enrichment based purely on the possession and trading of money, so that interest rates are kept at the fairest possible rate on the basis of ethical and social, as well as economic, assessments;

⁽¹⁾ Participatory democracy: definitions from a study commissioned by the Lazio Region (IT) budget department.

(g) no financial relations with economic actors or activities that stand in the way of human development and contribute to the violation of basic human rights, such as the production and trading of arms, manufacturing that is seriously damaging to health and the environment, or activities based on the exploitation of children or the repression of civic freedoms.

3.3.2.4. *Ethical insurance* means insurance business based on the following principles ⁽¹⁾:

(a) mutuality, understood as a return to the original meaning of insurance as a tool for solidarity between those not suffering losses and those who incur loss and need to be compensated;

(b) insurability, understood as a guarantee to all of insurance protection against possible mishaps, free of discrimination on the grounds of age, possible disability or other social difficulties;

(c) transparency, understood as contractual clarity and verifiability of the criteria used in determining premiums;

(d) generation of a benefit for the local area;

(e) equality of dignity between those entering into a contract.

3.3.3. Ethical investment

3.3.3.1. Ethical investment sets out to fund initiatives operating in the fields of the environment, sustainable development, social services, culture and international cooperation. Securities are not chosen exclusively on the basis of conventional financial criteria, but also of social responsibility criteria, such as the quality of employment relationships, respect for the environment and transparency.

4. Corporate social responsibility

4.1. The Commission's Enterprise and Social Affairs directorates are cooperating with employers' associations on some thematic areas. One of these is proper information for savers, to help them better understand the mechanisms governing the financial markets and available products. Financial education initiatives indeed represent a socially responsible way of enabling savers to avoid investing in products not suited to their expectations and risk profiles.

4.2. Stakeholder participation in CSR initiatives is as yet restricted to a very small number of businesses and, in part, to activities directed towards stakeholders as a whole. Although there is still a long way to go, entire sectors such as popular and cooperative banks, savings banks, insurance cooperatives and mutual societies intend to do even more and better.

4.3. Incentives for top managers and investment bankers are an emerging problem. They should be reviewed and brought down to a reasonable level, properly linked to company profits and results. Workers and consumers adversely affected by the financial crisis are critical of the excessive income of high-level managers, which contributes to their difficulties. These incomes often remain extremely high regardless of whether results are successful or otherwise.

4.4. The new management models for financial companies, which geared to maximising very short-term profits partly due to quarterly performance assessments, are spurring sometimes irresponsible conduct, as seen in recent cases of financial scandal in several Member States. In contrast, corporate social responsibility seeks to make profits stable and sustainable over time, by drawing on companies' tangible and intangible assets, which in financial companies are often represented by their employees and their trust-based relationships with clients.

4.5. The EESC advocates widespread adoption of CSR—based codes of conduct. It is crucial that these codes can be and are verified in order to prevent the repetition of cases whereby excellent codes of conduct are subscribed to and publicised by managers who go on to swindle hundreds of thousands of savers, as has occurred in the most serious financial scandals of recent years ⁽²⁾.

5. Local banks and the development of local economies and SMEs

5.1. Different types of banks are competing on the same market to offer substantially the same type of services. Economic efficiency is a requirement for all, whether public limited liability companies, private banks geared principally to shareholder premiums, or other companies geared more to the economic and social development of their catchment areas, with a special focus on the issue of access to credit, to a less affluent clientele, to boosting SMEs, and to promoting the more vulnerable social groups and remote regions.

⁽²⁾ Such individuals have been awarded honorary degrees on account of their local, national and international commitment to developing business with courage, tenacity, inventiveness, outstanding professional preparation and a clear vision of things, combined with an ethical approach refuting those few who argue that ethics and economics are a contradiction in terms.

⁽¹⁾ Idem.

5.2. It would appear that the local economy's growth rate rises significantly in those areas where the local banking system is most developed. It should also be stressed that in many countries, local banks mostly take the form of savings banks and cooperative societies, which reinvest a significant part of their profits in their local area.

5.3. 'The banking system has a dual responsibility: at company level, to enhance the business efficiency of credit enterprises, measured in terms not only of profitability, but also of innovative capacity, of the quality of the human capital used; and at territorial level, the responsibility to contribute to local development, to be measured in terms not only of the volume of credit granted, but also the capacity to invest in project selection and in assessing the potential of entrepreneurs and enterprises. This may be defined as territorial efficiency. Business efficiency should be put at the service of territorial efficiency: there is no point in having efficient banks if they make no contribution to local development' ⁽¹⁾.

5.4. SMEs have found a useful tool for facilitating access to credit on the part of their associates, through guarantee and surety societies, which also exist at European level. They facilitate investment credit for small and medium sized enterprises that cannot provide the personal guarantees required by financiers in order to build up a stable banking relationship.

6. The role of policy makers

6.1. The EESC's starting point is that in this field, an interventionist, top-down approach is out of place, since experience shows that it is right for socially- and ethically-driven initiatives to spring spontaneously from below. Any 'active' intervention could stifle divert the spontaneous spirit that is the primary safeguard of biodiversity in the economic and financial system. At the same time, however, the EESC considers that policy makers must avoid acting in such a way as to hamper existing initiatives or the spontaneous emergence of new ones.

6.2. The EESC wonders if initiatives with ethical/social connotations on the part of typically profit-oriented organisations should enjoy tax or regulatory benefits. Two quite distinct situations must be distinguished here.

6.2.1. A for-profit organisation launches an initiative which is structurally separate from its typical business (e.g. the 'Point Passerelle' operation by the Crédit Agricole). In this case, there should be little doubt about the appropriateness of granting compensation compared to the usual treatment.

6.2.2. A for-profit organisation launches initiatives that cannot be structurally separated from its typical business. There has been much debate about whether it is appropriate to introduce a compensation system under these circumstances. The advocates of tax, financial or regulatory compensation argue that the positive spin-off of the initiative justifies special treatment. Others, however, oppose this view, on the basis of two main considerations: only initiatives carried out under an autonomous economic balance (i.e. in which sufficient profit can be ensured) can continue over time. Moreover, genuine ethical/social action should be on a disinterested basis, not prompted by regulatory, financial or tax advantages. Ethical/social action is in fact 'self-rewarding': the simple fact of doing good ought to satisfy its author.

6.2.3. In the EESC's view compensation for ethical/social initiatives is already recognised practice in all systems. Tax law permits the deduction of expenses only where they are necessarily incurred in generating the income. This principle (within certain limits and conditions, of course) does not apply when expenses consist of donations to charitably or socially useful bodies. In this case, deduction from taxable income is allowed, even though the expenditure is not necessary to production.

6.2.4. The Committee also considers that the legislative framework is never neutral with regard to the conduct of organisations and individuals. On the basis of this observation, the EESC considers that, in a system that already encourages certain types of conduct, putting the principle that a compensation system should apply to all ethical/social initiatives on a systematic, widespread footing meets the criteria of fairness and rationality applicable to the public role in the economy and society.

6.2.5. The principle proposed by the EESC entails the benefit of compensation being attached not directly to the institutions, but rather to their ethical/social initiatives. The EESC does not think that this is, in itself, improper: ethics and economics cannot be forced apart, requiring that only initiatives that do not provide any economic benefit to their authors may be deemed to be genuinely ethical. This would ultimately lead to ethical initiatives being identified only with charitable donations.

7. Financial compensation and taxation

7.1. The EESC welcomes initiatives in this direction. This approach can also be justified on economic grounds. For a number of reasons, arising from political choices, public financial constraints or economy drives, the 'social' state has been eroded over the last 10-20 years. Economic growth cannot be relied upon as the sole means of preventing an excessive fall in people's well-being; room must be provided for bottom-up initiatives.

⁽¹⁾ P. Alessandrini, *Le banche tra efficienza gestionale ed efficienza territoriale: alcune riflessioni* ('Banks between business efficiency and territorial efficiency: some thoughts'), 2003.

7.2. An example of regulation that favours public-private integration in order to continue ensuring high welfare state levels is provided by the way the Netherlands has structured the health insurance sector. While on the one hand insurers are obliged to insure all citizens, on the other they have access to a public compensation system for the greater risks they have to take on. The Dutch market has also taken some exemplary initiatives to facilitate access to life insurance for people who are HIV positive.

7.3. Belgium offers an interesting example of financial compensation to facilitate access to basic financial services. An inter-bank fund compensates intermediaries who provide easier access to services: in practice this means that the more restrictive intermediaries are net contributors to the fund, while their more open counterparts are net beneficiaries.

7.4. Turning to tax concessions, a widespread system of favouring cooperatives that pursue mutual-based ends is already in existence.

7.5. One example of legislation according tax benefits to organisations that have explicitly social purposes is that in Italy concerning non-profit organisations of social value.

8. Regulation

8.1. Rules impose costs and constraints that are a burden on the work of businesses and intermediaries. Interventions over the last 20 years have been geared to providing a level playing field. By putting all comparable actors (e.g. banks, insurance

companies, etc.) on the same footing, rules have served as a tool to boost competition and economic efficiency. If this principle is applied too rigidly and without the necessary corrections, it becomes an insurmountable obstacle to the conception and survival of ethical and social initiatives. This risk can be minimised through the systematic and targeted application of the 'proportionality principle', according to which a small intermediary carrying out simple transactions cannot be subjected to the same regulatory burden as a complex, multi-national organisation.

8.2. Each time that a specific organisation can be shown to have given up, at least in part but on a structural and permanent basis, the principle of maximising profit in order to promote initiatives of an ethical or social nature, it should be entitled to come under tax and regulatory rules that are different from the general ones, at least in part. In some Member States, ethical investors already enjoy a derogation from the banking directive: efforts should be made to extend this principle to all the Member States.

8.3. In spite of the recognition granted by the European treaty, some Member States still do not specifically acknowledge or uphold it. Efforts should be made to secure more systematic and widespread recognition of this method of societal governance.

8.4. By ensuring that Member States do not adopt measures that would distort competition, the European Commission can help protect diversity in the supply of financial, banking and insurance services. The rules on State aid should take account of this aspect.

Brussels, 23 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on EU-Brazil relations

(2009/C 100/15)

At its plenary session of 16 January 2008 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

EU-Brazil relations.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 30 September 2008. The rapporteur was Mr BARROS VALE and the co-rapporteur was Mr IULIANO.

At its 448th plenary session, held on 22 and 23 October 2008 (meeting of 22 October), the European Economic and Social Committee adopted the following opinion by 116 votes to none, with 1 abstention.

1. Summary

1.1. This opinion takes a look at developments in EU-Brazil relations and at Brazil's new-found political and economic role, which is becoming increasingly prominent on the international stage.

1.2. In 2007 the new EU-Brazil Strategic Partnership ⁽¹⁾ was adopted, and led to the First EU-Brazil Summit of Heads of State and Government on 4 July 2007. In this opinion, the EESC puts forward its recommendations concerning the proposals set out in the Joint Action Plan, which builds on the content of the Strategic Partnership, including: participation and economic and social cohesion, economic and trade cooperation, education, research and development, social dialogue, the environment, climate change, biofuels and immigration.

1.3. With regard to the EESC's role, the opinion proposes establishing an EU-Brazil civil society round table, along the lines of those it already holds with India and China. Its counterpart in this new body would be Brazil's Council for Economic and Social Development, an equivalent Brazilian institution set up by Lula da Silva in 2003. The opinion puts forward proposals on the future membership and workings of the round table and details the issues which, in its view, should feature on its agenda and which cover economic, social and environmental issues, multilateral relations, tripartite EU-Brazil relations with third countries and Brazil's role in Mercosur integration and in EU-Mercosur relations.

2. Purpose of the opinion

2.1. The purpose of the present opinion is to prepare for the establishment of an EU-Brazil civil society round table, as previously done for China and India, setting out the EESC's position regarding the round table itself.

2.2. It should be noted that the round table under consideration forms part of a broader EU strategy that has produced the EU-Brazil Strategic Partnership, clearly featuring in the conclusions of the EU Brazil summit held in Lisbon, which encouraged cooperation between the European Economic and Social Committee and Brazil's Council for Economic and Social Development (CDES), as part of the institutional framework for relations between the two parties ⁽²⁾.

2.3. The opinion looks at the current state of EU-Brazil relations, together with the historical background and future prospects, highlighting Brazil's stance vis-à-vis Mercosur and the international community and focusing on issues that directly or indirectly affect or shape the full range of its relations with the EU.

2.4. This EESC initiative is designed to outline the way the round table will operate and the main issues affecting it and its activities; the initiative will serve as European civil society's contribution to the EU-Brazil summit in December 2008. It is hoped there will be political support at the summit for the creation of this round table.

⁽¹⁾ Commission Communication to the European Parliament and the Council entitled 'Towards an EU-Brazil Strategic Partnership', COM(2007) 281 final, 30.5.2007.

⁽²⁾ EU-Brazil Summit, Lisbon, 4 July 2007 — Point 16 of the Joint Statement — PR 11531/07 (Press 162).

3. Framework for action

3.1. Background

3.1.1. Since the end of the colonial period, Brazil has to this day retained a heritage of good relations with all European countries. The only novel element in the idea of structuring EU-Brazil relations is therefore the EU itself, which embodies, values and wishes to further develop the systematic and ongoing organisation of long-standing cooperation between the two areas.

3.1.2. Several initiatives have sought to formalise these close links at all levels, as shown, with regard to organised civil society, by the Interinstitutional Agreement signed in July 2003 between the EESC and the CDES, preceded by the Framework Agreement for Cooperation between the European Economic Community and the Federative Republic of Brazil in 1992. The CDES, with which the EESC enjoys close links, was set up in May 2003, and is currently chaired by the President of the Republic. It has 102 members ⁽¹⁾.

3.1.3. In spite of the commitment shown by both sides, the relationship — particularly in economic and social terms — has not developed as had been hoped, although all the signs are that relations were reinvigorated in 2007, particularly in non-trade-related areas. A range of initiatives ⁽²⁾ was launched, and work will be further stepped up in 2008 as part of the building of a strategic partnership between the EU and Brazil, as urged by the Communication from the Commission of May 2007. There is however a disparity between the intensity with which Member States are pursuing bilateral integration with Brazil in the economic and business fields, and the slow pace of cooperation, both broadly and in specific areas, between the EU and Brazil. Investment from European countries in Brazil, trade and industrial cooperation, development aid and the dialogue between social actors are all positive forerunners that justify a clearer and stronger role for civil society in providing a social dimension to the economic and social relations that are to be stepped up.

3.1.4. The Lisbon Summit of 4 July 2007 finally laid down a solid foundation for an official bilateral relationship at the highest political level, introducing mechanisms for dialogue

that will be sustainable over time and raising hopes of a new and productive phase in the relationship. This new phase is taking shape in more robust sectoral policy dialogues, a response to the various global challenges, present and future, the broadening and deepening of trade and economic relations, and closer links between the peoples of Europe and Brazil.

3.1.5. As stated in the Commission communication, the EU-Brazil Strategic Partnership could provide Brazil with considerable support in the process of exercising positive leadership, both globally and regionally. In this sense, the strategic partnership is intended to complement and boost the processes of regional integration, especially as regards Mercosur and its negotiations with the European Union to secure a bi-regional partnership agreement and in relation to the movement promoted by the Union of South American Nations (UNASUR).

3.2. Context

3.2.1. Brazil's size (it has borders with nearly every country in South America), population and economy make it one of the leading actors on the international scene. It has a key role to play in developing Mercosur, as well as more broadly in Latin America and, increasingly, in the negotiations on world trade rules. At the beginning of a new century, it can be seen as one of the emerging major world players (BRICs' ⁽³⁾). Brazil, which has developed its model with a close eye on the experience of European economic and social development, has also played a leading role in promoting the political and social dimension in Mercosur strategies, which are in fact very similar to those adopted by the Community integration model.

3.2.2. Given the ambitious nature of the aims of EU-Brazil relations, particularly concerning economic and social integration, there is a need to strengthen the Brazilian institutional structure acting as an interface between the two sides, in order to maximise the efficiency and results of the strategic partnership both sides seek.

3.2.3. Brazil's relations with the EU currently hinge upon trade and economic aspects, as in the case of biofuels, tripartite cooperation (EU-Brazil-developing countries), its stance and action 'alongside' the EU on climate change, and in the sphere of science and technology.

⁽¹⁾ The social partners make up approximately one half of the CDES. Members also come from the ranks of private foundations, NGOs, both secular and religious, associations representing people with disabilities, workers' and cooperative movements, student organisations and university rectors, in addition to study and research centres specialising in social studies, economics, statistics, etc.

⁽²⁾ Where civil society is concerned, the following in particular merit attention: a joint (CDES-CESE) seminar in July in Brasilia, on *The EU and Mercosur: how can civil society institutions contribute to national and regional development?* and the signing by the EESC and the CDES of a Joint Declaration stating the parties' intention to intensify EU-Brazil relations.

⁽³⁾ Brazil, Russia, India, China.

3.2.4. As a result of Brazil's prominent position in the world, its bilateral relations with the EU Member States extend far beyond economic and trade relations, and are closely linked to the presence in Brazil of enormous communities of various European origins and to the significant Brazilian migrant communities in many European countries. A two-way flow of people has been in existence for centuries, forging close links between Brazil and many EU Member States.

3.2.5. The next EU-Brazil summit will be held in Rio de Janeiro in December 2008, and will mark a new phase, regardless of what progress may have been made on the agreement between the EU and Mercosur. The EU has proposed a series of objectives which are intended to underpin a joint action plan that can be framed and adopted at the latest at this year's summit: preparation of a joint agenda, with reinforced multilateralism, enhanced human rights, democratic and governance standards, promotion of social and human development, environmental protection, energy security, stability and prosperity in Latin America, stronger economic and trade ties (focusing on financial market issues), the information society, air and sea transport, scientific and technological cooperation, promoting peace and educational, cultural and civil society exchanges between the two sides.

3.2.6. While it is important to put in place a clear framework for EU-Brazil relations, it is clear that day-to-day relations are forged primarily not by the so-called 'political representatives', but rather through the myriad aspects of civil society. The real driving force behind this relationship is provided by businesses, non-profit institutions in all their forms, and citizens both individually and collectively. The trade unions and employers' associations, for example, have been and remain crucial to reform in the country: in its general report on the Americas (2006) the ILO singled out Brazil for having improved healthcare and job security and because the unions and businesses in that country have understood the importance of prioritising workers' integrity, which is not just about making wage demands. NGOs have also played a role in the national effort to redistribute resources, starting with social policies and in the poorest areas. This has not only involved work to combat poverty; another factor has been the promotion of social and economic cohesion, which has benefited from the involvement of the social partners, cooperatives and NGO networks from the entire region. This is a highly successful development model, involving much of civil society and recognised by the UNDP, which managed to conduct its human development index monitoring in all of the 5 000 Brazilian municipalities, with the

active collaboration of society at large. Further, the European Commission states that in 2005, the EU carried out 37 projects, at a total cost of EUR 24 million, with the support of local NGOs. The Commission ⁽¹⁾ points out that the partners involved in these projects are responsible, competent and capable of meeting the challenges they face and of adapting to change.

3.2.7. Relations between the EU and Brazil at a number of levels have not been helped by the lack of a clear policy to promote the Portuguese language and the absence of mechanisms to disseminate the language.

3.2.8. Given the size of each party's markets and their specific characteristics, the EU's tourism potential is still not adequately promoted in Brazil and the same applies to the promotion of Brazil's tourism potential in the EU.

3.3. *Future prospects*

3.3.1. The participatory dimension and economic and social cohesion. For Brazil's political scene, development and democratic consolidation are priorities. The political aspect of this process essentially revolves around strengthening participatory democracy. The latter is based on the Brazilian constitution, and various mechanisms for participation have been put in place. Organised civil society and the CDES in particular attach considerable importance to these channels which allow the public to express its views.

Brazil is carrying out a participatory experiment organised at different levels, in order to implement the main programmes for redistributing resources and improving social conditions. For its part, the EU has for several decades been operating a similar system putting into practice its economic and social cohesion policy. These experiences may profitably be compared, especially given that regional disparities in Brazil remain significant, in spite of an improvement in the Gini index ⁽²⁾. It should be stressed that these forms of participation bring together the social partners' organisations (trade unions and employers), NGOs, and national, regional and local authorities, thus building up stakeholder networks that are jointly responsible for development and fairness policies.

⁽¹⁾ Brazil — Country Strategy Paper, 2007-2013.

⁽²⁾ This is a measure commonly used to calculate inequality in income distribution, giving a graphical representation of population numbers on the vertical axis and income on the horizontal axis.

3.3.2. Economic and trade cooperation and the issue of land. Strategies and instruments must be put in place to support the development of increasingly extensive economic and trade integration, starting in the sectors of strategic importance in which Brazil and the EU are key players at the global level; there is also a need to set up bodies, involving organised civil society, to monitor investment trends and the results of cooperation. Brazil is already one of the world's largest exporters of food products, and believes that it can match the increased global demand in this domain if it receives the necessary investment from abroad to do so. The increase in Brazilian agricultural output has been achieved more by boosting productivity than by expanding the surface area of cultivated land, which could be a major factor in reducing deforestation in the Amazon. The difficulties that have arisen at the WTO (Doha negotiations and progress at the G20 meeting) concerning the debate on subsidies for farmers and customs tariffs on products reflect the differences in the EU and Brazil's interests. The CAP reform should be geared to greater justice and a better balance in agricultural trade. It is also important to make the market more transparent and improve food safety and animal health, in order to strengthen consumer confidence.

3.3.3. Cooperation in the education sector. This question should be a priority for the round table, and is one of the priorities selected by the Commission. The EESC recommends that this priority be maintained, with a special focus on the European experience of lifelong learning, supported by the European social players as part of the social dialogue and Luxembourg strategy to promote employment. This could be presented as European good practice, also useful for Brazil. It is right to support the Country Strategy Paper's focus on higher education, but the challenges faced by Brazil at the primary and secondary levels of education are crucial. Brazil and the EU could be brought closer together considerably through exchanges between educational establishments at different levels, and particularly with the involvement of students and teachers. The EU's own experience of student exchanges should offer a starting point for similar schemes covering the EU and Brazil, in addition to the Erasmus Mundus scheme (which is inevitably of limited scale) already planned in the Country Strategy Paper 2007-2013, forging even closer links and greater mutual knowledge for the future.

3.3.4. Cooperation in the research and development sector. Major areas of complementarity and synergy could result from the different specific approaches taken by the respective science and technology communities, and the priorities linked to the choices made by the two economies and cultures. The EU should, in particular, study the possibility of adopting a fast track procedure for Brazilian researchers under the EU's Seventh Framework Programme for research and technology development.

3.3.5. Social dialogue in European multinationals operating in Brazil. The experience of the European trade union committees, an instrument for informing and consulting with workers in European multinationals, is another example of European good practice that could be extended – either voluntarily, or under the corporate social responsibility banner – to European multinationals operating in Brazil.

3.3.6. The environment, climate change and bio-fuels. Now that steps to counter climate change and the search for sustainable energy sources are top priorities on the international agenda, Brazil can be a key partner for Europe and the world as a whole, also for supplying bio-fuels, especially bio-ethanol; major progress has recently been made in this sector. Moreover, Europe and Brazil can work together to set up co-operation with Africa with a view to exporting Brazilian technology and know-how for establishing bio-ethanol production there, thus promoting development there through a new generation of tripartite political cooperation.

One area important for European and world interests is the preservation of the Amazonian forest⁽¹⁾. To protect it, international partnerships should be set up, involving public and/or private bodies in this major undertaking, constantly bearing in mind the limits imposed by the sovereignty of Brazil's legislation and State regarding this world heritage. Public opinion and the Brazilian authorities are extremely sensitive about this subject, but the current state of the world and its foreseeable development make this an absolutely essential priority for co-operation between Brazil and Europe.

It is important to point out that formal dialogue was in fact launched three years ago, entitled 'EU-Brazil dialogue for sustainable development and climate change', although its activities have to date been confined to meetings for establishing an agenda with a view to both parties adopting a stance on the topics up for discussion.

⁽¹⁾ The Brazilian government is now implementing a 'Sustainable Amazon Plan' (PAS) which covers strategies, expectations and measures for the Amazon, and is designed to set up public measures for, amongst other things, combating deforestation, not as an exclusively environmental question but as an integrated issue for government. There is also a fund, to which everyone can contribute, for supporting the reduction of emissions in Amazonia; it is designed to provide support for tried and tested measures, rather than experimental or pilot projects.

3.3.7. Poverty and social problems. In 2007, Brazil ranked 70th on the United Nations' Human Development Index: a rather modest position when compared with countries that have similar levels of economic and technological development. According to the UN data, between 2003 and 2005 the number of Brazilians living below the poverty line fell by 19,3 %; today, they account for 22,8 % of the population (or 43 million people). The social programmes implemented by the Lula government have managed to achieve a number of small but useful steps towards combating poverty and inequality⁽¹⁾. Brazil remains, however, one of the countries with the greatest internal inequalities: the poorest 20 % receives 4,2 % of national resources, mainly in the North-east region of the country. Access to education has improved in recent years, but inequalities still exist at the regional level, in particular in higher education. The literacy rate is quite high (93,6 %) amongst young people (15-24 year-olds), whilst adult illiteracy remains high (12 %). Health indicators have also improved, and Brazil spends 7,9 % of its GDP on health (the OECD average is 8,72 %). Social policies have had an impact on reducing the infant mortality rate (36 per 1 000), but much more work still needs to be done in this field, especially in the North and North-east regions of the country. According to UNAIDS, some 650 000 Brazilians live with the HIV virus: through national legislation, Brazil guarantees universal access to medical treatment, including anti-retrovirals. Unemployment fell from 12,3 % to 8,4 % in the 2004-2006 period. Youth unemployment (affecting 18-24 year-olds) also fell but remains high. Job creation is therefore a priority for the government, as is combating child and forced labour⁽²⁾. Access to land ownership is a highly sensitive issue: it is estimated that 1 % of landowners control half of all fertile land. Land reform is on the government's agenda, and it aims to redistribute land to 430 000 peasant families. This process should have taken place by 2007, but is a long way behind schedule⁽³⁾. Much also remains to be done about the serious housing problem, as a consequence of which millions of Brazilians still live in shanty towns.

3.3.8. Migratory flows. Migratory flows between Europe and Brazil have for a number of years been a constant and two-way phenomenon. (Note: throughout the 20th century, migratory flows from Europe to Brazil involved mainly people from Italy and Germany, followed, in numerical order of numbers, by Portugal, Spain and Poland. This explains why Brazil today has more than 30 million people of Italian descent and 8 million with a German background.) Migration-related issues should today be included amongst the EU's initiatives and proposals on immigration from third countries, taking account of the need to combat illegal immigration, but espe-

cially to encourage forms of migration that benefit both parties concerned⁽⁴⁾. EU governments should acknowledge the fact that Europe is clearly in demographic decline, whilst some parts of Brazil show prospects for growth⁽⁵⁾. Because the prospect of a strategic partnership between the EU and Brazil is so important, issues concerning migratory flows from and to Brazil should be addressed in line with specific criteria: the two parties concerned should focus on simplifying visa and residence procedures, providing more and better information on opportunities for legal migration and prioritising student and research exchanges, without encouraging a brain-drain. Arrangements must also be established jointly for the mutual recognition of qualifications, skills and experience and for the portability of pensions.

3.3.9. 'Bringing Our People Together'. The importance of this issue for the governments of the two blocs was reflected in the Lisbon summit, warranting a mention in point 16 of the summit's conclusions⁽⁶⁾. Separated by the Atlantic but united by a common history, Brazil and Europe can and must foster exchanges and learn about each other's societies, nature and environment, art, culture and sciences. Civil society provides an excellent vehicle for such activities, promoting cultural and sporting events, and other events that enable the peoples of Brazil and Europe to get to know each other better, developing regular joint events.

3.3.10. Economic relations. Trade between Brazil and the EU is clearly on the increase, as demonstrated by the data from the Brazilian government covering the period January-May 2008: Brazilian exports to the EU increased by 19 % over the same period in the previous year. The EU is the main destination for Brazilian exports, after LAIA (the Latin American Integration Association), Asia and the USA. The EU is Brazil's second largest trading partner, after Asia. If this trend in bilateral trade continues in 2008, it could equal the record of USD 84 billion (a 25 % increase over 2007)⁽⁷⁾. Trade between the EU and Brazil could potentially aim even higher, but for this to happen, procedures must be simplified, red tape cut and respect ensured for standards and for intellectual property rules. The Brazilian government must also review the duties it imposes on the import of certain products, as this is a factor hampering the entry of European products into Brazil.

⁽¹⁾ See in particular the innovative 'Bolsa Familia' programme (BRL 2,38 billion), from which 8,7 million families have benefited (data from end 2007).

⁽²⁾ Children are particularly affected: according to the ILO, in 2002 some 450 000 minors were forced into domestic work, farm labour or work in the sex industry.

⁽³⁾ The peasants' movement 'Movimento dos Sem Terra' (1,5 million members) calls for radical land reform. It is not yet part of the CDES.

⁽⁴⁾ With regard to the EU's immigration package, the EESC's analyses and suggestions have been fully documented in a series of opinions on the proposed measures and in own-initiative and exploratory opinions.

⁽⁵⁾ In 2006, Brazil's average fertility rate was 2 births per woman, according to research carried out by Brazil's PNAD (National Household Survey), 2006.

⁽⁶⁾ http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/er/95167.pdf

⁽⁷⁾ For more information on this subject, see the financial appendices.

4. The EU-Brazil round table

4.1. Organisation and workings

4.1.1. Setting up an EU-Brazil round table will in itself send a clear signal of the importance both sides attach to their future relations.

4.1.2. The EESC believes that the round table should meet twice a year, once in Brazil and once in Europe, in order to broaden and develop the role of civil society in the EU-Brazil partnership.

4.1.3. Participation in the round table should be balanced, with equal numbers of representatives from the EESC and the CDES. Each delegation could reasonably comprise 12 members.

4.1.4. The round table itself should discuss and determine its own working arrangements, in order to ensure balance and consistent working rules.

4.1.5. The EESC feels that it would be most suitable and useful to create a page on the EESC's website dedicated to the EU-Brazil Round Table, the purpose of which would be to encourage input from civil society.

4.2. Proposed topics for a future dialogue agenda

The added value that the round table could bring to the developing strategic partnership clearly depends largely on the importance of the priority issues it discusses. In consequence, the EESC considers that the following thematic areas should be priorities for discussion ⁽¹⁾:

4.2.1. Economic and social issues

- economic cooperation, bilateral trade and investment,
- the effects of globalisation, reducing its negative impact and maximising the benefits,

- assessing social models, swapping experiences and drafting policy proposals in this area, with a view to the role of civil society and promoting effective and efficient action on its part,

- monitoring the progress of WTO proposals, models and measures,

- analysis of migration movements and cooperation on the rights of European emigrants in Brazil and Brazilian immigrants in Europe, with the aim of fully integrating them as citizens in their countries of destination,

- pooling experiences in the field of social and labour relations and more specifically the role of the social partners in balanced national development, employer-employee relations, the organisation and membership of trade union bodies, labour legislation, and collective bargaining,

- discussion of issues of food and plant health, and concerning the operation of agricultural markets and trade between them, promoting sharing of experiences and best practices, with a view to sustained development in this sector,

- debating information society questions and the role of ITC in the present context of sustained national development,

⁽¹⁾ The list of proposed topics takes account of the stipulations of the Lisbon Strategy, because this is a strategic instrument of enormous importance to the EU. Consequently, when drawing up these proposals, the EESC cannot stray too far from the guidelines, concepts and aims contained in that document.

- promoting debate on corporate social responsibility, and conducting awareness-raising campaigns among the various stakeholders, so that the business community can rapidly and effectively adopt appropriate systems,

- debating and promoting initiatives in favour of mainstreaming concepts regarding gender equality, equal opportunities and the rights of ethnic and social minorities,
- infrastructure and services – discussion of this issue, focusing on subjects such as developing road networks and setting up energy consortia,
- exchanging experiences in the field of Core Labour Standards,
- discussing public-private partnerships' potential for achieving public objectives and also the possible constraints inherent in such partnerships.

4.2.2. Political and diplomatic issues and development support

- tripartite cooperation between the EU, Brazil and third countries, analysing the current situation and existing initiatives, and also consulting on future initiatives and actions,
- monitoring the progress of the EU and Mercosur integration process,
- using the strategic partnership between the EU and Brazil as a means of facilitating regional integration and the development of Mercosur and its relations with Europe.

4.2.3. The environment and energy

- evaluation and action on environmental protection and sustainable development, as a foundation for national growth and global development,

- assessment of energy challenges, alternative sources of energy and cooperation in this area, as urgent and decisive issues for the future of individuals, countries, and the planet. This issue should place particular emphasis on biofuels and the need to establish rules and standards for marketing them.

4.2.4. Research and development and intellectual property

- reciprocal protection of intellectual property rights,
- development of scientific and technological cooperation arrangements, in order to promote research that boosts mutual advances.

4.2.5. Education

- promoting school and university exchanges by setting up student and teacher exchange schemes, training periods and other ways of furthering knowledge and development in the academic sector,
- discussing and analysing education and training issues as a lifelong process that is key to individual and collective development.

4.2.6. Cultural exchange and tourism

- promoting cultural exchanges and awareness of history and the current situation, thereby contributing to better mutual knowledge and understanding, and
- analysing and verifying the role of tourism in bringing the EU and Brazil closer together, and devising strategies to boost tourism in a balanced, sustainable manner.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on The role of the EU in the Northern Ireland peace process (Own-initiative opinion)

(2009/C 100/16)

At its plenary session of 12 and 13 December 2007, in application of article 19(1) of the Rules, the EESC set up a subcommittee with the task of drawing up an own-initiative opinion on

The role of the EU in the Northern Ireland Peace process.

The Subcommittee on The role of the EU in the Northern Ireland peace process, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 September 2008. The rapporteur was Ms Jane MORRICE.

At its 448th plenary session held on 22 and 23 October 2008, the European Economic and Social Committee adopted the following opinion by 151 votes to one with two abstentions.

1. Conclusions

1.1 Much can be learnt from the EU involvement in the Northern Ireland (NI) peace process. The progress made since the darkest days of the region's troubled past, in social, economic and particularly political terms, has been exceptional. The security situation is improved, reorganisation of public administration is well underway, the arrival of newcomers from abroad, both migrants and tourists, not only boosts the economy but also helps challenge traditional sectarian thinking, cross-border cooperation is exceeding expectations and power sharing between former adversaries is becoming accepted as 'politically correct'.

1.2 Complacency however would be totally inappropriate at this juncture. The shocking sight of 'peace walls' dividing Catholic and Protestant communities in Belfast is a sad but realistic reminder of the serious difficulties still facing the peace process, particularly in terms of cross-community reconciliation, and of how much remains to be done. Decades of violence, hatred, suspicion, ignorance and intolerance have led to an unprecedented separation of the communities in Northern Ireland. While people may live in an 'acceptable level' of peace behind their walls, in their homes, villages, churches, schools or sports stadiums, these 'parallel lives' can only represent a transitional stage in a process towards mutual respect, understanding and harmony which may take generations to realise.

1.3 The role played by the EU in the Northern Ireland peace process was, and remains, without precedent in its history. The fact that the story of EU support for this process is relatively 'unsung' is a measure of the appropriateness of its approach. This was no vain attempt to interfere in a situation beyond its grasp or to paper over cracks. The EU peace-building method in Northern Ireland has been a unique, long-term commitment of substantial resources, strategically planned and executed, based on the principles of social partnership and subsidiarity and guided every step of the way by inclusive local consultation.

1.4 Through a combination of indirect and direct intervention, the EU has helped the peace process create the environment for a successful settlement, once the political conditions prevailed, and acted as a catalyst for a genuine peace building impact, the full extent of which is still to be realised.

1.5 The EU has made no obvious attempt to stake a claim for the success of the peace process. Yet it would be a failing if history did not place on record the value and the importance of the EU role. This is not only because EU support for reconciliation in particular should continue for years to come but also because the lessons learned from the EU PEACE Programmes could contribute to efforts to promote peace and reconciliation in other parts of the world. The EU will never have all the answers but, as proved in Northern Ireland, it does have the means and a track record to help others find them.

1.6 As the world's greatest 'role model' for peace-building, the EU, together with its Member States, have the expertise, the experience, the diversity, the resources and the reputation to support conflict resolution and peace-building wherever it is required in the world. But it has more than this. It has a duty to do so and an obligation to place peace-building at the very core of its future strategic direction.

2. Recommendations

2.1 The recommendations are divided into two distinct sections. The first covers those areas of work within Northern Ireland and the border counties on which EU support should be focussed in order to further the reconciliation process. The second covers the wider context of EU support for peace-building and reconciliation in other areas of conflict using the lessons learned from Northern Ireland outlined in the conflict resolution tool kit below.

2.2 *The Northern Ireland context*

2.2.1 The lessons learned from the Northern Ireland experience demonstrate that peace-building is a strategic and long term process. It begins with an end to violent conflict and moves through stages towards political stability, peaceful coexistence, reconciliation and ultimately social harmony, economic prosperity and a 'shared society'. EU support for this process must therefore be long-term in recognition of the fragile nature of the initial stages and of the time it takes to achieve genuine reconciliation. While the volume of EU financial assistance may diminish and become more focussed as the region emerges from conflict, the significance of the EU role as a partner in the process and its ability to develop its relations with the region in other creative ways should continue to grow.

2.3 **Recommendation 1:** The EU should retain its **long term support** for peace-building in Northern Ireland, in doing so it should place greater focus on:

- **cross-community reconciliation** in areas such as culture, the arts, sport, leisure, housing and education and the creation of employment and delivery of public services;
- **marginalised groups** working in a cross-community capacity as the main beneficiaries, providing support for **single identity work** only in exceptional circumstances where it is an essential prerequisite for building cross-community capacity;
- **victims** of the 'Troubles' to help re-build their lives, cope with trauma and share their experience with similar groups from other communities and in other conflict zones;
- supporting initiatives leading to a '**shared society**' to help reduce the need to duplicate services in housing, health, education, leisure and sporting facilities;
- the inclusion of **voluntary and community organisations, trade unions and business** at all levels of decision-making regarding EU PEACE funds;
- the restoration of those **local partnership structures** which served to bring social partners and politicians together in the initial stages of the PEACE programme;

- reducing **bureaucracy**, particularly for small-scale projects in rural and urban communities with project evaluation measured in social as well as economic terms;

2.4 **Recommendation 2:** The **European Commission Task force on Northern Ireland** should continue to focus on guiding, facilitating and supporting creative and innovative ways for the region to develop outside of those which depend on PEACE funding, such as research, knowledge transfer, education and the facilitation of international networking on conflict resolution.

2.5 *The wider global context*

2.6 The EU has a duty not only to learn the lessons from its experience in Northern Ireland but to pass on this learning to others experiencing different levels of conflict whether they are within its borders, on its borders or in the wider world. This will serve to maximise the positive role the EU can play in global conflict resolution.

2.7 **Recommendation 3:** there should be **sharing of key lessons** among EU institutions, Member State authorities and in the international arena. This should be facilitated by:

- a comprehensive data-base of best practice in conflict resolution (EP proposal);
- a compendium of PEACE programme evaluations and successful projects;
- further research into the EU role in a range of areas (internal, cross-border, and external conflict situations).

2.8 **Recommendation 4:** this could be facilitated by the establishment of a European **institutional facility for Conflict Resolution** in Northern Ireland, drawing on existing work in the area of conflict resolution both locally and internationally. The detail of this should be the subject of an EU-wide debate with social partners initiated by the EESC exploring how best to develop a conflict resolution facility with a European dimension.

2.9 **Recommendation 5:** the **toolkit** below should be adopted and further developed to help analyse conflict situations and inform the required EU intervention if, and as, appropriate. The toolkit draws together an array of instruments used by the EU that could serve as a reference point and a

resource for work involving minority protection, equality, capacity building, cross-community and cross-border cooperation and socio-economic development in other areas within the EU, on its borders and in conflict zones beyond its territorial boundary.

EU Conflict Resolution toolkit

Diagnostic kit: Socio-economic and political analysis	Reference Manuals: Experience from elsewhere (e.g. from conflict resolution facilities) Compendium/database of programmes/projects Consideration of conflict settlement theories	Strategic visioning: Objective (supra-national) long-term view lenses combined with risk-taking approach Lessons learned applied Knowledge gained and developed Assessment of stage of conflict Determination of intervention path, depending on the stage of the conflict and the location (within EU, on its borders or beyond)
	FINANCIAL TOOLS	NON-FINANCIAL TOOLS
Big tools (macro level)	EU financed networks focussing on conflict transformation EU institutions, policies, opportunities EU ethos, methodology, example	Europeanisation (at national level) EU norms, values, institutions, procedures (including social partner involvement) Neutral Space to facilitate dialogue/build consensus. Even-handed approach to generate trust. EU peace-making model - leading by example Close partnership with major donors
Levers and spanners (meso level)	Bespoke EU PEACE Programmes Structural funds Skewed to target conflict resolution (defined with appropriate 'distinctiveness' criteria) Bi-lateral/cross-border cooperation Agreements and initiatives Social partnership model Programme level evaluation	Task Force (gathering local information, identifying opportunities and areas for co-operation, encouraging participation in EU-wide programmes) Partnership approach working with local political and social partners Local consultation leading to local ownership of programme design and development. Engagement of local institutions Removal of barriers using EU policies
Fine tuning devices (micro level)	Local delivery agents to get to grass roots Global grants to ensure local sensitivity and reach to right target Conditional funding to promote best practice Monitoring for continual learning Support for capacity building and collaboration/cooperation 'Bottom up' , cross-border cooperation – economic, social and cultural Self evaluation	Europeanisation (at local level) Social partner involvement, Citizens engagement, Community participation, Deployment of European Commission Officials Celebration of success Awareness raising using press and publicity

3. Introduction

3.1 This Opinion seeks to tell the relatively 'unsung' story of the success of EU support for the Northern Ireland peace process, to increase understanding of the Northern Ireland experience among European civil society, and to draw up a 'tool-kit' of the methods used by the EU to promote peace and reconciliation for use in other areas of conflict, as appropriate.

3.2 The Opinion focuses mainly on EU support through the EU PEACE Programmes, the International Fund for Ireland (IFI)

and INTERREG. It examines how the funds were designed and the impact they had on the social, economic and political life of the region, focussing on support for civil society (business, trade unions, voluntary sector).

3.3 It also examines the wider opportunities provided by the EU for British-Irish political, diplomatic, and administrative cooperation and how far the 'European peace-making model' was used as a beacon for positive movement in Northern Ireland.

4. Method

4.1 Four working meetings were held, one of which was a Consultation Conference in April 2008 in Northern Ireland. The Conference gathered information from stakeholders and experts, through questionnaires and an e-consultation, enabling conclusions to be drawn based on direct experience of EU programmes and policies. In addition the Subcommittee members conducted a study tour and visited EU funded projects in Belfast.

4.2 The Conference coincided with events marking significant political progress in Northern Ireland and was attended by the First and Deputy First Minister, the Irish Minister of State and senior EU representatives involved in setting up the PEACE Programme.

4.3 A key element of this Opinion has been valuable co-operation involving the three EESC Groups, their experts and the members of the Sub-Committee from France, Spain, Italy, Ireland and the UK, the European Parliament (de Brún report) and the European Commission.

5. Background

5.1 Geography/economy

5.1.1 Northern Ireland is situated on the North Eastern corner of the island of Ireland. Covering an area of 5 500 square miles, its population, according to the last census (2001) stands at 1 685 000 of whom 53,1 % are Protestant, 43,8 % Catholic, 0,4 % 'Other' and 2,7 % no religion. This population is among the youngest in Europe with over 40 % under 29 years old. Static until recently due to net outward migration, the population is forecast to exceed 1,8 million by 2011.

5.1.2 The economy is evolving from traditional manufacturing (shipbuilding and textiles) to being more service-led and outward-looking. From 2004/05, Gross Value Added (GVA) grew by 3,5 % in real terms, just below the UK average but well below the Irish GDP growth of up to 10 % per year during its 'Celtic Tiger' years. GVA per capita is around 80 % of the UK average and unemployment has fallen to 3,6 %, down from a peak of 17,2 % in 1986. However, these statistics mask a number of serious challenges, such as the high level of economic inactivity, standing at 26,9 %, highest of all UK regions and a high dependency on public funds to support both public and private sectors, which has stymied entrepreneurial spirit (public funds represent 62 % of GVA).

5.2 Recent historical/political background

5.2.1 As a region of the United Kingdom, Northern Ireland emerged following the 'Government of Ireland Act' which brought about the partition of Ireland North and South in 1921. This created a border region on the island and marked the beginning of a process of 'back to back' living in social, economic and political terms. This division has been a source of contention between Northern Ireland nationalists (mainly Catholic) and unionists (mainly Protestant) ever since. In general, the former aspire to a united Ireland, while the latter want Northern Ireland to remain part of the UK.

5.2.2 In 1921, 60 % of the population was Protestant and 40 % Catholic. The majority Unionist community held power for almost half a century. In the late 1960s, civil rights marchers took to the streets demanding an end to discrimination. Violent confrontations and riots followed which many see as the start of Northern Ireland's recent 'Troubles'. At the height of the 'Troubles' in 1972, the Northern Ireland Parliament was dissolved and 'Direct Rule' was established from London.

5.2.3 The following decades saw numerous attempts to stabilise the situation, including reconciliation initiatives prompted mainly by civil society organisations, including trade unions. But the same period witnessed terrible violence which, after 35 years, had claimed the lives of more than 3 500 people and left many thousands more physically and mentally maimed for life.

5.2.4 The paramilitary ceasefires of 1994 paved the way for talks between the political parties. In 1998, the Good Friday/Belfast Agreement was concluded and endorsed by an overwhelming majority in separate referenda North and South of the border. The following year a Northern Ireland Executive and Assembly were set up, together with a number of North/South Bodies and devolution was restored in the closing weeks of the millennium.

5.2.5 In 2002, the Assembly was suspended and it was not until May 2007, that a devolved power-sharing Executive was restored, led by the DUP (Unionist) and Sinn Féin (Republican). The region is now experiencing its longest period of political stability for almost four decades.

5.3 EU involvement in the peace process

5.3.1 The UK and Ireland joined the European Union in 1973 at the height of the 'Troubles' and Northern Ireland was given '**special status**' by being granted '**Objective One**' status although not always 'fitting the bill' in economic terms. This meant extra funding for economic and social development. This was intended as additional to UK Government funding though many claimed it was used to offset public funding requirements.

5.3.2 In the first direct elections to the **European Parliament (1979)**, three MEPs were elected from Northern Ireland (Ian Paisley, John Hume and John Taylor). In 1984, the EP published the '**Haagerup Report**' on Northern Ireland and EC Vice-President, Lorenzo Natali, promised to '*examine sympathetically the suggestion of an integrated plan for Northern Ireland and the border areas*'. He stressed, however, that he needed the go-ahead from the UK and Irish Governments.

5.3.3 In 1986, the UK and Irish Governments set up the **International Fund for Ireland** to '*promote social and economic advance and to encourage reconciliation between nationalists and unionists on the island of Ireland*'. The EU is one of the main donors, alongside the US, Canada, Australia and New Zealand, of the EUR 849 million that has supported over 5 700 projects in Northern Ireland and the border counties of Ireland for over 20 years. By 2013, EU funding to the IFI will have totalled EUR 349 million.

5.3.4 The visit of the **European Commission President Jacques Delors** to Northern Ireland in 1992 for consultations with local representatives strengthened his engagement with the cause of peace in the region. That year, the economic barriers to North-South trade on the island came down with the completion of the Single Market which, in time, opened up valuable opportunities for cross-border commerce and business.

5.3.5 In 1994, just after the paramilitary ceasefires, Delors met the three Northern Ireland MEPs (then Ian Paisley, John Hume and Jim Nicholson) and agreed plans for a major new EU package. He set up a Task Force and, following extensive local consultation, the proposal of a EUR 300 million three year PEACE Programme was agreed by the EU Summit in 1994, just weeks before the end of Delors' Presidential term. This was extended for a further two years with additional EU funding of EUR 204 million.

5.3.6 This became the first **Special Support Programme for Peace and Reconciliation in Northern Ireland and the Border Counties of Ireland**, or **PEACE I**. The wide-ranging consultation on the Programme included an Opinion drawn up by the **European Economic and Social Committee** ⁽¹⁾ in 1995 which welcomed the Initiative and stressed the need for a long-term approach as well as flexibility in funding allocation.

5.3.7 In 2000, **PEACE I** was followed by **PEACE II**, negotiated by the parties to the new Northern Ireland Executive with EU funding of EUR 531 million. This was extended in 2005/06 with EU funding of EUR 78 million. The EESC drew up a second Opinion (Rapporteur Mr Simpson) calling for PEACE II funding to be more focussed on projects promoting reconciliation and on the problems facing migrant workers. In 2007, **PEACE III** came into operation for the period 2007-2013 with EU funding of EUR 225 million. In total the EU has contributed EUR 1,338 billion to these Programmes.

5.3.8 Following devolution in 2007, **European Commission President Jose Manuel Barroso** set up a new **Task Force** led by **Regional Affairs Commissioner Danuta Hübner** to look into future EU/Northern Ireland cooperation. Published in April 2008, the Report proposes numerous ways for the region to become more involved in EU policies and notes the interest expressed by the Northern Ireland authorities in promoting the development of a **European institutional facility for conflict resolution** to provide research, advice and sharing of experience.

6. The impact of EU involvement

6.1 EU involvement in the peace process has taken many different forms, ranging from high level political support to grass-roots financial intervention. This activity was at its most intense in the 1990s in support of the political progress made as a result of the ceasefires and the conclusion of Good Friday/Belfast Agreement and continues today with the European Commission Task Force focussing on new areas of cooperation, PEACE III, the IFI and INTERREG.

6.2 **EU funding** for peace-building has been an essential element of EU support for the peace process. However, **non-financial** factors, which are inherited automatically with EU membership, have had a profound effect on the promotion of positive change. The EU 'sphere of influence' can therefore be divided into two distinct, yet overlapping **financial** and **non-financial** factors.

⁽¹⁾ Opinions of the EESC on the Draft Notice to Member States laying down guidelines for an Initiative in the framework at the special support programme for peace and reconciliation in Northern Ireland and the border counties of Ireland, COM(1995) 279 final; OJ C 155 du 21.6.1995 and OJ C 236 du 11.9.1995.

6.3 Non-Financial Factors

6.3.1 The EU provided a **'neutral space' for the facilitation of dialogue** between British and Irish politicians after accession, offering new opportunities for regular meetings on neutral ground. This was also valuable for Northern Ireland MEPs, the best example of which was the meeting between **Paisley, Hume, Nicholson and Delors** in 1994 which brought about the first PEACE Programme which Paisley described as one of the most productive meetings of his career. Also, **cross-border cooperation** between UK and Irish officials on everyday issues brought a 'coming together' of administrations that undoubtedly had a positive impact on the peace process.

6.3.2 This **'neutral space'** was even more valuable when it came to EU support for the peace process on the ground. Engagement, involvement, and empowerment of civil society was facilitated by the institutions and the deployment of personnel who worked to ensure an **'even-handed'** and inclusive approach.

6.3.3 Another important **non-financial** element was the opportunity provided for UK and Irish decision makers to experience the **consensus-building style** of EU law-making. In Council negotiations, Member States used a new style of multi-lateral dialogue, trade off and compromise which was a valuable tool in local political talks.

6.3.4 The arrival of the **Single European Market** in 1992 had a significant **non-financial** impact on the peace process. The removal of administrative barriers to cross-border trade encouraged greater cooperation between business organisations on either side of the border and boosted the long standing activities of the trade union movement on cross-border cooperation. However, cross-border security controls continued to inhibit major advances in economic and social cooperation.

6.3.5 A **non-financial factor** of limited impact in the early days was the **European peace making model** as an example for the region to follow. When Northern Ireland joined the EU, many hoped the stabilising effect of accession would be almost immediate. However, because community divisions were so entrenched it took time for the European model to have impact on the process.

6.3.6 Even today, after 35 years of EU membership, so called 'peace walls' separating Catholic and Protestant communities

still exist in Belfast. The majority of children attend 'separate' schools and 90 % of people live in 'separate' communities.

6.4 Financial impact

6.4.1 The financial impact of PEACE I on the peace process was significant because it was **unique and innovative** - nothing like it had ever been tried by the EU before. With EUR 500 million (1995-1999) to support peace and reconciliation, it was also the largest injection of aid to be earmarked for this specific purpose. This represented 73 % of the total investment, the remainder being met by the authorities in both countries and the non-governmental sector.

6.4.2 A key factor contributing to the positive impact of PEACE I was the **wide-ranging consultation process** which went into its formulation. Organised civil society, including NGOs, trade unions and business, felt an ownership because their input was recognised. The NI MEPs were also directly involved in the detail. PEACE I was widely publicised and therefore well-known throughout its target area. This 'recognition' remains valid today. Statistics show almost half the population have benefited from the PEACE Programmes.

6.4.3 The originality of the PEACE **funding mechanisms** was also crucial to its success. **Intermediary Funding Bodies** were an ingenious means of devolving responsibility to the grass roots and building capacity at the same time. **District Partnerships**, made up of representatives of business, farming, voluntary and community sectors as well as trade unions and elected members of local government, were a 'first' for Northern Ireland. This **partnership approach** to decision-making was as much a part of the peace-building process as the funding itself.

6.4.4 It is widely recognised that this **'bottom-up'** approach meant funding was more accessible to *'those in the margins of local economic and social life'*. In particular, it targeted groups which had hitherto received little or no support, such as **victims and ex-prisoners** and stepped up funding for others, including **cross-community** and **cross-border organisations, women's and youth groups**.

6.4.5 The financial impact of these programmes was greater than previous EU funding because it was guaranteed as **'additional'**. This made it more valuable and more visible because it was **'over and above'** Government funding for the region. It is often argued that this was not the case for other EU structural fund programmes.

6.4.6 The shift in focus between the Programmes has also had an impact. '**Social inclusion**' had the largest share of PEACE I and '**economic renewal**', received most under PEACE II. Under PEACE III, the focus has changed to "**reconciliation**" which is recognised as the best means to tackle the problems of sectarian division which remain.

6.4.7 Also, responsibility for PEACE II/III shifted to the newly created cross-border **Special EU Programmes Body (SEUPB)**. Aspects of its work are supported by Monitoring Committees comprising public, trade union and private sector interests from Northern Ireland and the Border counties. While some argue that the impact of this change has been to reduce the level of grass-roots involvement, others see it as a valuable 'one-stop-shop' for all aspects of EU PEACE and cross-border funding.

6.4.8 The impact of the **IFI** on the peace process has also been highly significant, both in terms of its projects and in its make-up. The IFI brings together representatives from its donor countries and this unique form of cooperation, particularly between the EU and the US, could be a valuable example of good practice in other conflict zones.

6.4.9 While **INTERREG** operates throughout the EU, its specific impact on the island of Ireland has also been extremely valuable in terms of the peace process. Working alongside the cross-border elements of the PEACE Programmes, INTERREG, has invested in cross-border infrastructure and socio-economic programmes, helping encourage communities living back-to-back to work together.

6.4.10 Other EU Initiatives, such as **URBAN**, **EQUAL** and **LEADER** have had a less direct, but nonetheless important influence on the Northern Ireland peace process and continue to do so.

6.5 *Impact on cross-border cooperation*

6.5.1 Following the partition of the island in 1921, both jurisdictions evolved separately and apart. The impact of this 'back to back' stance was evident before the 'Troubles' and was exacerbated by 35 years of violence. Cross-border interaction was limited because of the dangers and difficulties and cross-border trade was the lowest of any EU internal frontier.

6.5.2 EU policies stimulated and facilitated a paradigm shift in cross-border cooperation. This was accelerated by the fact that both Ireland and the UK were members of the European Community. In the economic sphere, the 'top down' impact of the **Single Market** was particularly valuable, while in the social and cultural sphere the 'bottom up' impact of the PEACE Programmes incorporating the six Southern border counties was a catalyst for previously unimagined cross-border interaction.

6.5.3 The mutual goals included increased business, social interaction and closer cooperation between the respective governments. A cornerstone of the Good Friday/Belfast Agreement was the creation of a **North/South Ministerial Council** and **Cross-Border Bodies**. These jointly funded institutions are unprecedented in the EU. Also, the idea of an 'island economy' has moved from being a radical concept to being accepted by most as mainstream, useful and beneficial.

6.5.4 This increase in cross-border cooperation was often led by the **Social Partners**. Their pioneering work ensured that decision-makers North and South cooperated to improve cross-border understanding, appreciation and trust. The resulting 'shoulder to shoulder' cooperation works in many arenas but is most evident in the economic sphere and in health and education.

6.5.5 The many positive results of this work include a seven-year Trade and Business Development Programme between two business groupings North and South (**CBI-IBEC**) funded by IFI, PEACE and INTERREG and involving over 300 buyer/supplier meetings. Trade doubled over the period (1991-1997) to over £ 2 billion.

6.5.6 The work of the trade union movement to encourage cross-border and cross-community links is also extremely valuable. The **Irish Congress of Trade Unions (ICTU)** is an all-Ireland body, which during the 'Troubles' worked tirelessly to promote better community relations. Congress did not seek funding for its work, but some bodies associated with the trade unions did receive EU support.

6.5.7 In terms of the cross-border reach of the PEACE Programme, the fact that only the six border counties of the South could directly benefit from PEACE funds meant the reach was limited, especially for business development at a time when the most potential lay beyond the Southern qualifying area.

6.5.8 Cross-border cooperation was lifted onto an entirely new and significantly broader and deeper level. With most physical, fiscal, technical and security barriers removed, enabling and encouraging unprecedented volumes of cross-border trade, interaction and co-operation, the challenge was to continue to address the long-standing cultural and social barriers that remained.

6.5.9 Crucially, the methods used by the EU to support peace and reconciliation at the economic and social level and across the communities provides a unique, well developed and increasingly proven regional model for implementing the EU's own distinctive philosophy, expertise and methodology.

6.6 *Impact on Economic Development*

6.6.1 By assisting in the process of peace-building, the EU has contributed to the acceleration of economic development in Northern Ireland and the Border counties. The direct impact of PEACE I and II on economic development has been acknowledged in a number of ex post evaluations as being significant. The main indirect effect has been that the role of the EU in supporting political progress and peace-building enabled much more rapid social and economic development to take place.

6.6.2 The PEACE Programmes, IFI and INTERREG collectively have created sustainable employment, environmental and infrastructural improvements, particularly in areas affected by conflict; they have brought development and entrepreneurial capacity within marginalised groups and communities and contributed significantly to the rapid growth in cross-border trade over the past decade.

6.6.3 In terms of quality of impact, the consensus view is that the programmes have made a substantial contribution to the building of a peaceful and stable society. To a large extent this has been achieved by building the capacity within the community and voluntary sectors to sustain the process of reconciliation.

6.6.4 'Social Partnership' is a core pillar of how the EU does business and these distinctive elements in the EU approach to peace and reconciliation help stimulate and encourage new ways for economic and political interests to interact with each other for the mutual benefit of the whole society.

6.6.5 EU input has helped to develop a strategic vision for the economy in a post conflict environment. Going forward,

there are many new and exciting opportunities for the region, including through closer cooperation within the EU in those areas such as research, innovation and knowledge transfer recommended by the new European Commission Task Force, and further developing its business relationships with the Euro Zone.

6.7 *Impact on Social Inclusion*

6.7.1 Social inclusion remains a fundamental and overarching ethos of the EU approach to peace-building and research confirms that the PEACE Programme assisted groups either not previously considered, or only receiving minimal support. It has supported the integration of minority ethnic groups, confidence and capacity-building, local empowerment among civil society and engaged those previously excluded.

6.7.2 Touching more than half of the population as project participants, the PEACE Programme brought the EU to the level of the citizen in what is described as 'unprecedented grass-roots involvement'. Those working in a voluntary capacity within their communities for change were targeted, empowered and supported. This recognition was a valuable confidence-building mechanism.

6.7.3 It used innovative funding methods, such as Intermediary Funding Bodies and District Partnerships which became Local Strategy Partnerships (LSPs) to target the grass roots and reach places many other initiatives did not. Devolving financial decision-making to these local organisations helped to build capacity and ensured grass roots involvement in both the design and the delivery of the Programmes.

6.7.4 The distinctiveness of the EU approach was also in its use of the European Social Partnership Model in the PEACE Programmes. Representatives from business, the trade unions and the voluntary sector, and 'other interests' were consulted and included. While this principle remains central, many of the original partnership structures have not been sustained. This is a cause for concern, because bringing the social partners together with politicians to make decisions was an integral part of the peace process.

6.7.5 It is recognised that many people in the most divided and deprived areas have benefited from EU PEACE, INTERREG and IFI funding and consultations show a high degree of appreciation for the role played by the EU in this regard.

6.8 *Impact on peace and reconciliation*

6.8.1 In terms of **peace building**, EU intervention has helped to keep the peace process alive and sustain the momentum towards political stability. It also gave communities a sense of local ownership during times of political uncertainty. The evidence gathered in the EESC consultations with stakeholders overwhelmingly supports the conclusion that the EU and its funding programmes has helped to create that peace which now prevails.

6.8.2 In terms of the longer process of **community reconciliation**, there are many examples of the positive impact “bottom up” contact and cooperation has at local level on a cross-community and cross-border basis. The PEACE Programmes and IFI made significant inroads into facilitating various sections of the community to reach out to each-other. While these contacts have led to growing mutual understanding and trust in certain areas, the impact is not yet enough to prevent suspicion and mistrust continuing to exist in others.

6.8.3 There is general support therefore for the decision to adjust EU funding programmes to increase the focus on community reconciliation. This should help bring communities to a level where those living behind walls are sufficiently confident within themselves, comfortable in their relations with others and, above all, secure in their situation to live

without the walls that separate them. But this must be their decision. Support for confidence-building in ‘single identity’ areas has been seen as a means to this end. However, this can have disadvantages in that it may contribute to separation by helping groups to look after their ‘own’. Because some are better prepared than others to make use of funding, this can also lead to a sense of unequal treatment between different sections of society.

6.8.4 Progress towards a ‘shared society’ has however also been limited. A recent report highlights the high cost of segregation which is due mainly to the duplication services to accommodate Catholic and Protestant communities living separately. Segregation of public services solely to accommodate community fears and insecurity adds to the drain on public funds in areas including housing, health, leisure and sport facilities. In education, only 6 % of children attend schools with a genuinely integrated Catholic/Protestant ethos.

6.8.5 Stability and prosperity are mutually reinforcing and EU funding programmes helped to address the social and economic conditions which were a consequence of, but also fuelled, the conflict. But the EU was never in a position to address the deep-seated political or constitutional causes of the conflict. It could only act as a facilitator for that purpose and an example to follow.

Brussels, 23 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

448TH PLENARY SESSION HELD ON 21, 22 AND 23 OCTOBER 2008

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on simplifying terms and conditions of transfers of defence-related products within the Community

COM(2007) 765 final — 2007/0279 (COD)

(2009/C 100/17)

On 29 January 2008 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council on simplifying terms and conditions of transfers of defence-related products within the Community.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 1 October 2008. The rapporteur was Mr OPRAN.

At its 448th plenary session, held on 21, 22 and 23 October 2008 (meeting of 23 October), the European Economic and Social Committee adopted the following opinion by 39 votes to 1 with 16 abstentions.

1. Conclusions and recommendations

1.1. Ensuring security is one of the main obligations of any government. For the European space one can conclude that no individual Member State can be secure on its own and a concerted and common effort has to be made in order to ensure an appropriate control on the flow of war material or, more generally, defence equipment.

1.2. Therefore the solution considered by the Committee is a common European Security Framework, and not the keeping in place of intra-Community barriers with all its damageable consequences. Of course, we should take into consideration that the current Common Foreign and Security Policy (CFSP) and European Security and Defence Policy (ESDP — title V of the TEU) have an intergovernmental nature, whereas the Commission initiative to alleviate intra-Community transfers (ICT) is conducted under the Community first pillar (as a part of Internal Market legislation).

1.3. Perception of transfer burden

1.3.1. Industry considers the current legislative framework as ill-suited as well as inadequate, while producing a heavy administrative burden;

1.3.2. When arguing against transfer barriers, industry has an even more global vision than just the intra-Community transfer perspective. Globalisation is a reality in defence manufacturing, because few complex systems are still 100 % European, and all include at least some non-EU components;

1.3.3. However, even with the more global vision, the industry considers the initiative taken by the Commission as an important step forward and in general supports it.

1.4. The cost impact

1.4.1. Calculating intra-Community transfer barrier costs with precision is a very difficult process, because few of these costs are published and because most of them are the costs of 'not doing things properly' or 'not doing things at all' ⁽¹⁾. For 2003

⁽¹⁾ In his study 'A single European market for defence equipment: organisation and collaboration' Professor Keith Hartley presents four 'liberalisation scenarios' ensuring much more important annual savings, ranging from EUR 3,8 bn to EUR 7,8 bn per annum.

the total yearly cost of intra-Community transfer barriers was estimated to be in excess of EUR 3,16 bn, structured as follows (*source: UNISYS study*):

— Indirect costs: EUR 2,73 bn

— Direct costs: EUR 0,43 bn

1.4.2. The costs are generally classified as follows:

(a) direct costs — structural and procedural costs generated by the execution of the licensing processes itself;

(b) indirect costs ⁽¹⁾ — These indirect costs are due in particular to the sub-optimal organisation of the industry (e.g. obstacles to subcontracting) and the Member States' sub-optimal purchasing practices (e.g. excessive stock building to allow for lengthy authorisation procedures in the supplier Member State).

1.5. The Committee considers as a priority the adoption by Member States of a common set of tools to manage their intra-EU transfers. As regards the scope of application of the proposed Directive, the EU's Common Military List, which should be regularly updated, already provides a common language.

1.6. The Committee endorses the Commission proposal requesting Member States to introduce the option of issuing global and general licences and to publish at least two general licences:

1.6.1. A general license covering military equipment (and spare parts and related services pertaining to maintenance) for all the armed forces of the Member States.

1.6.2. A general license covering transfers of components to certified companies ⁽²⁾.

1.7. While maintaining the full discretion of Member States for the exports done outside the EU by companies located on their territories, complemented by coordination in the framework of the Council COARM forum, the Committee

⁽¹⁾ One crucial element explaining the indirect cost is the lack of any serious security of supply for Member States sourcing from a supplier located in another Member States.

⁽²⁾ According to the Commission proposal, the Certification is linked to the reception of products under general licensing and not to global licensing. Of course, certified companies can also source some specific defence components under global licences (the components not eligible to the national general licences).

considers that the Directive should provide sufficient guarantees to increase mutual confidence between Member States regarding the effectiveness of export control.

1.8. The proposed Directive emphasises that a recipient company must not subsequently export the defence-related product to a third country in violation of possible export limitations attached by the originating Member State to the transfer licence.

1.9. However, after integration of components into a product in a way that guarantees that such an integrated component cannot be transferred as such at a later stage, Member States should refrain from maintaining separate export limitations.

1.10. The Committee considers that the Impact Assessment accompanying the actual proposal covers all 27 Member States and therefore usefully complements the UNISYS study of 2005.

1.11. The Committee considers that the proposal for a Directive will have substantial beneficial effects on industrial cooperation in Europe and the development of competitiveness of European defence industries and recommends its adoption subject to the remarks contained in this opinion.

2. Recommendations and proposals

2.1. The Committee strongly believes that the principles proposed by the Commission to simplify the transfer of defence-related products within the Community through common licensing tools, and to ensure mutual confidence between Member States regarding the effectiveness of their export control, will bring significant benefits and a major simplification to this complex sector.

2.2. The Committee strongly supports the exclusion from the Directive of export policy, which should remain the competence of Member States, and continues to be the subject of international cooperation, e.g. in the context of the Council Code of Conduct on Exports.

2.3. The Committee stresses that the proposed Directive will retain the company's responsibility to respect possible export limitations issued in a transfer licence. In the case of export restrictions enacted in another Member State providing components, the responsibility to respect such restrictions lies with the company applying for the export licence. It is up to that company to guarantee its respect of the relevant export limitations, thus ensuring that export files are presented in compliance with any restriction to the national authority delivering the final export licence.

2.4. As an official position regarding the sensitive transfers from EU to third countries ⁽¹⁾, the Committee considers that:

2.4.1. When a transfer licence concerns non-sensitive sub-systems or components to be integrated into larger systems in such a way that prevents them from being transferred or even exported to a third country at a later stage as such, it should be sufficient that Member States request declarations of incorporation from the recipient instead of issuing separate export limitations.

2.4.2. Re-export to a third country must not take place in cases where the originating Member State does not give its consent.

2.4.3. A recipient company must not subsequently export the defence-related product to a third country in violation of possible export limitations attached by the originating Member State in the transfer licence.

2.4.4. The Member States should not only prescribe but also regularly check whether the suppliers within Member States keep detailed records of their transfers.

2.4.5. Suppliers should accept responsibility for informing the respective Member State of the end-use destination where such end-use is known prior to the transfer.

2.4.6. The time that the certification period takes should be reduced, in order to reach a better accountability of the certification processes.

2.4.7. At the same time, the access to suppliers' records by Member States' authorities should be expanded to a longer period of time, providing for more transparency of the process, as well as more time for investigation of possible breaches of the transposed national law or regulation.

2.5. The Committee proposes in this context to use already existing resources at national level. National administrations in charge of the issuing and management of the certificates already monitor defence companies located on their territories and are thus able to conduct investigations and audits.

2.6. In order to derive the maximum benefits from industrial cooperation and the creation of the Internal Market, the Committee considers that a high level of harmonization should be achieved.

2.7. The Committee stresses in this context that the proposed Directive should establish a preference for general and global

licensing and restrict individual licensing to the defined cases where it is still necessary.

2.8. For the moment the Committee considers the present EU Common Military List (EU-CML) to be the 'common language' which should still form the basis for the management of intra-EU transfers of defence-related products during the next period.

2.9. In order to avoid problems of interpretation and implementation, the Committee considers that the EU-CML should be used and continue to be regularly updated on an annual basis, using general definitions regarding the type of equipment to which the new rules will apply and in such a way recognise the EU-CML as a state-of-the-art list on arms, munitions and war materiel, as well as related services and works, including specific IT hardware and dedicated software applications.

2.10. At the same time the Committee underlines the fact that the Commission has proposed its initiatives while taking into consideration the effects of globalization on Europe, in particular on the defence industry, with the main purpose of strengthening Europe's defence capabilities.

2.11. The Committee strongly recommends the Commission to follow-up infringements according to the Treaty in the specific area covered by the proposed Directive, using the professional capabilities of a multi-national Board of Experts, to be formed *inter alia* for this purpose.

2.12. Regarding the Unisys — study's proposal to set up a central database of intra-Community transfers, the Committee considers that this idea is not in line with current practice and should be discarded.

2.13. The Committee considers that transparency among EU Member States should include also the exchange of information between the competent authorities on the sales of products or transferred technologies within the EU destinations, in order to eliminate any possible misconducts, discriminations and/or corruption.

3. Specific comments

3.1. National regulations and processes:

3.1.1. Member States legislation defines two types of goods: 'military' and 'dual-use', most often licensed by two different authorities; dual-use goods and military goods should not be considered together.

⁽¹⁾ 'Third country' means any country that is not a Member State of the European Union.

3.1.2. Dual-use goods have a civil end-use but are controlled insofar as they could also be used in some military applications, or in particular by sensitive non-military applications (i.e. security). Their control is governed by a commercial policy Community Regulation (1334/2000) which provides for exports to third countries to be subject to individual, global or general licences. Conversely, in accordance with the Internal Market principle of the free circulation of goods, intra-EU transfers of dual-use items are free of licensing except for the most sensitive ones, such as nuclear items.

3.1.3. Defence items have a military end-use. There is currently no Community framework for their circulation within the Internal Market and their transfers within the EU are impeded by heterogeneous national legislations and disproportionate licensing requirements. Only a few Member States have implemented global licensing and only one uses general licences as a matter of course. Most intra-EU transfers are still curtailed by individual licensing and companies with supply chains covering several Member States cannot optimise those supply chains because of the licensing heterogeneity in the supplier Member States.

3.1.4. All Member States share a common view operating the 'dual-use' Regulation which is legally binding and part of the EU's first pillar ⁽¹⁾.

3.1.5. The Member States have adopted and refer to different ammunition lists for military goods as well as the Council's Common Military List used in the framework of the EU Code of Conduct on Arms Export. Many Member States refer to those lists in their national legislations, while others use their own lists. ⁽²⁾

3.1.6. Through the creation of the Framework Agreement (also known as Letter of Intent, LoI), Europe's six largest arms producing countries ⁽³⁾ have established cooperation rules on transfers and exports for co-operative programmes, which are not part of the EU framework.

3.1.7. The Commission initiative is therefore limited to intra-Community transfers while exports to third countries will continue to be covered by existing export license systems.

⁽¹⁾ Council Regulation (EC) No 1334/2000, of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology.

⁽²⁾ European Union 1998, 'EU Code of Conduct on Arms Exports,' 25 May - <http://ue.eu.int/Newsroom/>

⁽³⁾ FR, UK, DE, ES, IT, SE.

4. Threats and obstacles

4.1. From the point of view of the applicable law, the following aspects will need to be addressed:

4.1.1. The variety of legislation;

4.1.2. Differences between laws at national level.

4.2. From the point of view of the authority in charge, the following elements require attention:

4.2.1. The large variety of authorities in charge of processing license requests in the case of intra-Community transfers (11 different types of administrations, depending on the country);

4.2.2. In some countries (HU, PL, IE, FR, CH, CZ, PT), the exporter is required to have additional licenses/permits in order to be able to apply for an export/import/transit license;

4.2.3. Regarding the frequently practised *juste retour* (or compensation) principle, the Member States are often pursuing this for industrial and employment reasons, but also because — partially as a consequence of the current intra-community transfer practices — they have no true security of supply from their EU partners (hence the preference for domestic products that are not conditional upon another Member State's transfer licences).

5. Actions to remove obstacles to intra-Community transfers

5.1. Regarding transfers, any improvement of the EU defence market must be organized according to a number of fundamental priorities:

5.1.1. Security: simplification of transfers and mutual confidence go hand in hand. The fact is that, in the current European situation, this confidence is unequal. The simplification of transfers needs to be accompanied by confidence-building measures. The fight against terrorism and the non-proliferation of Weapons of Mass Destruction (WMD) is a priority for all EU States. This includes strengthening the control of dissemination of weapons to third countries by ensuring respect for the export restrictions issued by Member States in accordance with such policies.

5.1.2. Simplified licensing: licences give tangible expression to the Member States' responsibility in the arms trade. In addition, the licences also help to establish possible restrictions on the end-use and final destination of the products. As responsibility should continue to be borne by the Member States, national licences should remain. The simplification could therefore come from their simplification and harmonisation, bringing predictability for Industry. It should facilitate the consolidation of the European Defence Technological and Industrial Base, all using the same rules, and facilitating gaining access — especially for SMEs — to the pan-European market of opportunities and partnership.

5.1.3. Harmonisation of the legal obligations: should include legal obligations of companies of this sector in addition to the transfer procedures of defence related products. To this end, it is a must to continue harmonisation in the area of European Defence Equipment Market (i.e. to issue a common framework for the control of assets).

5.1.4. Peace building: all business activities in this sector must duly take into account the principle that the defence products and the dual-use cannot jeopardise nor contradict the promotion of the democratic values and the peace building that the EU is promoting.

5.2. The new intra-Community system could have two impacts on exports:

- It will provide Member States with an opportunity to be consulted in the event of exportation of their defence-related products, unless integrated as components in a more elaborated system.
- Certification will promote active participation of enterprises in respecting export policy decisions of Member States, which are already coordinated in the context of the Code of Conduct, and will therefore bring more security as regards risk prevention against illicit exportations.

6. Concluding remark

6.1. The Committee believes that with the Communication entitled *A Strategy for a stronger and more competitive European Defence Industry* and the proposed Directives on 'Coordination of procedures for the award of certain public works contracts, public supply contracts and public service contracts in the fields of Defence and Security' and 'Simplifying terms and conditions of transfers of defence-related products within the Community', the Commission has taken an important initiative to enable the strengthening of the European Defence and Security Market and calls on the Parliament and the Council to take this initiative further and include it in an overarching approach that will advance the European Security and Defence Policy.

Brussels, 23 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on the coordination of procedures for the award of certain public works contracts, public supply contracts and public service contracts in the fields of defence and security

COM(2007) 766 final — 2007/0280 (COD)

(2009/C 100/18)

On 24 January 2008 the Council decided to consult the European Economic and Social Committee, under Articles 47(2), 55 and 95 of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council on the coordination of procedures for the award of certain public works contracts, public supply contracts and public service contracts in the fields of defence and security

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 1 October 2008. The rapporteur was Mr OPRAN.

At its 448th plenary session, held on 21, 22 and 23 October 2008 (meeting of 23 October), the European Economic and Social Committee adopted the following opinion by 46 votes to 5 with 2 abstentions.

1. Conclusions

exemption of defence contracts from Community rules to exceptional cases ⁽²⁾ only.

1.1. A broad dialogue between the social partners

1.1.1. The Committee notes with great satisfaction that experts from the Member States as well as representatives from the defence industry, including stakeholders and, for the first time, leaders from the social partners, played an active role in the preparation of the proposal for this Directive and were closely involved in drawing up the document adopted by the Commission on 5 December 2007. The consultations with representatives of EU Organised Civil Society — multilateral and bilateral — covered all aspects of defence procurement (demand, supply, regulatory framework and products).

1.2.2. The proposed Defence Procurement Directive aims at reducing the number of cases in which Member States invoke Article 296, as existing EC procurement rules are not considered adapted to the specificities of arms, munitions and war materials.

1.2.3. Article 296 will remain in place, meaning that Member States will still have the possibility to invoke that Article if contracts are deemed so sensitive/secret that even the provisions of the new Directive are not sufficient to protect their security interests. There is thus a close link between the new Directive and Article 296.

1.2. Restricting the application of 'Article 296'

1.2.4. In the interests of coherence between EU primary law (Treaty) and secondary law (Directive), both must have the same field of application. Otherwise it would create legal uncertainty.

1.2.1. The Committee firmly believes ⁽¹⁾ that the Commission's solution, fully respecting the Member States' prerogatives in the field of defence, ensures — in an innovative manner — compliance on the one hand with Article 296 of the Treaty (for defence) and Article 14 of the current procurement Directive (for security) granting to Member States the right to exempt contracts in these fields if necessary for the protection of their essential security interests, and, on the other, the Court of Justice case law and its express request to limit the

1.3. The actual confusion created by the parallel existence and random use of two active 'Military Lists' by the contracting authorities of the MS and the industry should be eliminated as soon as possible — by selecting a common list that is valid for all procurement and trading procedures. An optimal solution could be created by the adoption and utilisation of a common Military List for the whole area of applications covered by both new Directives proposed by the Commission. For the moment, the two most important options available are:

⁽¹⁾ In the opinion, the Committee sets out its position and notes that: 1) the countries representing the central core of Europe's defence economic, industrial and technological capability are in favour of maintaining the national security derogation under Article 296 of the Treaty establishing the European Community (TEC); 2) the application of Article 296 TEC is restricted by European Court of Justice case-law.

⁽²⁾ Public contracts awarded in the fields of defence and security currently fall within the scope of Directive 2004/18/EC, apart from the exceptions arising in the situations provided for by Articles 30, 45, 46, 55 and 296 of the Treaty. The Court of Justice has consistently ruled in its case law that recourse to derogations from Community law, including those covered by Article 296 of the Treaty, should be restricted to exceptional and clearly defined cases.

1.3.1. Option 1: To carry on using 'the 15 April 1958 List' for these activities — mainly for continuity reasons, looking familiar and easily accessible for users with past experience; at the same time, it is well known that the current version of this list is too general and too broad, never updated since its adoption 50 years ago and not entirely covering the new technologies required to face up to very real and complex threats;

1.3.2. Option 2: To start using 'the Common Military List of the EU', adopted by the Council on 19 March 2007 and updated on 10 March 2008, including the equipment covered by the 'EU Code of Conduct on Arms Exports', adopted by the Council on 7 July 2000; the same Code will also be in use with the new Directive on Intra-Community Transfer of Defence-related Products.

1.4. Article 296: still valid in special cases ⁽¹⁾

1.4.1. The Committee is not convinced by the steps taken by the Commission not to reproduce Article 14 of the current Procurement Directive 18/2004 (secret contracts) in the new Directive and instead to make direct reference to the relevant Treaty articles on public security (in particular Articles 30 and 296) This may lead to confusion with the contracting authorities on what is, and what is not considered appropriate.

1.4.2. Because most procurement contracts for sensitive defence and security equipment contain at least some secret or confidential information, the Commission decided to include specific provisions for security of information in the new Directive. Excluding explicitly all 'secret contracts' and all contracts with 'special security measures' without defining them could reduce the field of application of the new Directive dramatically with the major risk that such a reduction would fundamentally alter the nature of the proposal.

1.4.3. On the one hand, the Committee accepts the Commission's two-step approach to solving this sensitive matter:

— secret contracts should not be excluded *per se* from the field of application of the new Directive, but ...

— if necessary, the Member States can exempt them

and considers the procedure proposed by the Commission to be a not unreasonable solution for all involved, but on the other, also recommends including the appropriate elements of Article 14 of the general procurement directive in the Defence Procurement Directive, as a suitable component.

⁽¹⁾ According to the Court, this exemption is limited to 'exceptional and clearly defined cases' and does 'not lend itself to a wide interpretation'.

1.5. *A legal framework for the award of public contracts*

1.5.1. According to the Committee's evaluation, the new Directive is perfectly suited to the specificities of the procedures for the award of public contracts (for works, supply and services) ⁽²⁾ in the fields of defence and security — because:

1.5.1.1. contracts relating to arms, munitions and war material awarded by contracting authorities are excluded from the scope of the Government Procurement Agreement concluded at the World Trade Organisation (WTO);

1.5.1.2. a single contractor exists in each Member State — the Government ⁽³⁾;

1.5.1.3. there is the requirement that long-term security of supplies must be guaranteed ⁽⁴⁾;

1.5.1.4. there is the need to secure a high level of freedom of the procurement process at the level of the Member States.

1.5.2. Concerning R&D, the Committee agrees that market mechanisms and public tendering may not always be realistic as MS themselves carry out part of this work and often conclude long-term relationships with research and technology establishments and industry in order to develop the systems needed by the armed forces.

— These relationships can take the form of spiral development or other mechanisms to ensure continuity and growth in the development process.

— The Committee is not convinced that the current wording in the draft directive reflects these realities sufficiently and fears negative effects for MS as well as industry if artificial cuts would have to be made between the R&D and production process.

⁽²⁾ A contract can be considered to be a public works contract only if its subject matter specifically covers the execution of activities under Division 45 of the 'Common Procurement Vocabulary' (CPV).

⁽³⁾ Except for acquisitions in insignificant quantities by private security companies and local governments.

⁽⁴⁾ Security of supply: the specific needs of the Member States with respect to security of supply for sensitive public contracts in the fields of defence and security justify specific provisions, in terms of both contractual requirements and the criteria for selecting candidates.

1.6. 'Buy European' — an individual Member State's decision

1.6.1. Regarding the proposal to avoid the principle of 'buy European'/'European preference' or a 'reciprocity' clause, the Committee considers the Commission's approach to be acceptable for the Member States, taking into account the following aspects:

1.6.1.1. The Directive will set rules on how to procure defence equipment, but will not determine which equipment should be procured. This is the decision of the customers, i.e. Member States.

1.6.1.2. It remains the prerogative of individual Member States to decide whether to open competition to non-EU suppliers, in compliance with the Government Procurement Agreement (GPA).

1.6.1.3. Awarding authorities will still be free to invite EU companies exclusively, or to include non-EU companies.

1.6.2. In conclusion, the Committee believes that stating a European preference is not synonymous with protectionism, but rather a necessary step in 'rebalancing' international defence industrial and technological cooperation, especially in relation to the United States.

1.7. Trading with non-EU countries

1.7.1. Regarding the trade in defence products with third countries, the Committee considers that the new Directive will not change the current situation and represents a correct solution.

1.7.2. The sector will remain governed generally by WTO rules and in particular by the Government Procurement Agreement (GPA).

1.8. Establishing EDEM — the European Defence Equipments Market

1.8.1. The Committee believes that the new Directive represents a major step towards the establishment of the much-sought-after EDEM, because:

1.8.1.1. Opening the internal market to defence products will improve the competitiveness of the EDEM.

1.8.1.2. The Committee considers that introducing transparent and competitive procurement rules applicable throughout the Union is crucial for the successful setting up of the EDEM. This will lead to a greater openness of defence markets between Member States to the benefit of all: armed forces, taxpayers and industries.

1.9. Offset Policy ⁽¹⁾

1.9.1. The Commission has avoided concrete and direct proposals covering offset as it considers this to be non-productive, and disruptive to market mechanisms, but also the Commission recognises that there are different views on this matter.

1.9.2. Indeed, Member States and Industry have varying experience with this instrument and do not have a homogeneous view on it. Currently the European Defence Agency (EDA) is studying ways to cope with this practice, turning it to the advantage of developing the European Defence Technological and Industrial Base (EDTIB) as long as offset is around, recognising at the same time that in a well-functioning EDEM this practice is no longer needed.

2. Proposals

2.1. The Committee strongly recommends that all the initiatives of the EU in the defence and security domains be undertaken at the highest political level: the European Council, the High Representative for the Common Foreign and Security Policy (CFSP) and the EDA Steering Board — in the ministerial configuration (EDA-SBMF).

2.2. The Committee considers that the European institutions should concentrate their support on the following main goals of the defence industry:

2.2.1. To sustain the performances and the competitiveness of the EDTIB in a global context, to guarantee the early identification of the real industrial and military targets of major interest — both for major companies and for SMEs;

⁽¹⁾ A procedure that requires the foreign vendor of defence equipments, in the case of deliveries with an estimated value higher than an amount established by the government of the country of the awarding entity, to commit himself to a global obligation of industrial benefit expressed in terms of a minimum percentage of the awarding country added value, in proportion to the total value of the contract. Offset orders placed by the vendor (the offsetor) with the national industry of the awarding country, have to be of a high technological standard and must create new or additional business flow for the local companies benefiting from the offset (the offsettee). The vendor shall deliver on that economic commitment within a well determined and reasonable time period, and will be bound to pay a penalty for economic commitments that have not been met within that period. Industrial benefit will be considered as having been achieved once the orders have been invoiced by the offsettee companies, within the period.

2.2.2. To give international visibility to the main programmes of this important sector of industry;

2.2.3. To support present and future investments in developing innovative technologies;

2.2.4. To guarantee jobs in the defence industry at EU level, because maintaining human resources, i.e. the professional corps of skilled sector employees, represents a major condition for sustainable growth of the sector and for the development and implementation of state-of-the-art technologies;

2.2.5. To give a boost to the sector, creating identical competition conditions for all players, not least by eliminating state interference in the activities of the enterprises;

2.2.6. To encourage the initiatives of the European Defence Agency, which must be able to play the role of catalyst of the initiatives taken by one or several Member States. The EDA can help to widen the circle of Member States participating in the programmes — as, for example, in the case of the future European heavy transport helicopter, UAVs, software tactical radio, etc.

2.3. The Committee recommends to the European Council, the High Representative for CFSP and the EDA-SBMF — that they evaluate, select and make public the final decision on the list of the defence equipments and products to be used by all EU participants to EDEM and EDTIB — choosing between:

2.3.1. Continued use of 'the 1958 List', mainly for continuity reasons, even though it is too general and too broad, and has never been updated since its adoption 50 years ago;

2.3.2. Replacement of the existing old list still in use with 'the Common Military List of the EU', adopted by the Council on 19 March 2007 and updated on 10 March 2008, including the equipment covered by the 'EU Code of Conduct on Arms Exports' adopted by the Council on 7 July 2000 — renamed as: 'the EU Common Military List'. The same EU Code was already adopted to serve with the new Directive on Intra-Community Transfer of Defence-related Products.

2.3.2.1. The Committee considers the fusion of the updated '1958 List', identifying the equipment and technology subject to the derogation, with 'The European Union Common Military

List', as defined in 'The EU Code of Conduct on Arms Exports', to be a possible solution.

2.3.3. The Committee believes the European Defence Agency should be a major driving force in the sector, acting as the forum for intergovernmental discussion on the future of the defence industry, defence R&D and expansion of the European Defence Technological and Industrial Base (EDTIB).

2.3.4. At the same time, the Committee recognises the European Commission's competence and the salient role which it plays in the area of Public Procurement, and in activating and strengthening the European Defence Technological and Industrial Base, and believes that the European Commission's experience will be useful to its effort to restructure and develop Member States' defence industry.

2.3.5. The Committee recognises the importance of taking the interests and proposals of the defence industry itself into account in the process of developing a European defence equipment policy. Nevertheless, the Committee believes that EDA activities can be greatly improved by accepting official, closer involvement of defence industry representatives and non-governmental professional experts in the EDA Directorates' work. These representatives and experts (members of organised civil society) should be represented in the Agency Steering Board, subject to arrangements yet to be defined in terms of status, right to speak, vote and the like.

2.3.6. Regarding, once more, the application of the Code of Conduct on Defence Procurements, the Committee acknowledges that all EU and European NATO Member States should be able to take part in cooperation programmes in so far as their financial, industrial and technological capability allows them to do so, and that due respect should also be paid to the interests of 'small-medium' states.

2.4. For statistical evaluation and correct benchmarking, the Committee considers that the Commission should periodically present a Progress Report on the implementation progress of the Directive — structured both on country bases and at the Community level.

2.5. The Committee considers that the proposed Directive should be extended to the entire European Economic Area (EEA).

3. General information

3.1. Current situation

3.1.1. Many Member States have used Article 296 TEC ⁽¹⁾ and Article 14 of the Public Procurement Directive (2004/18) extensively, exempting from EC rules almost automatically the procurement of military and security equipment. In other words: *'What should be the exception is, de facto, often the rule'*.

3.1.2. In the field of public procurement there is a lack of European legislation properly suited to the award of sensitive public contracts in the fields of defence and security.

3.1.3. The use of non-harmonised standards hampers cooperation in R&D, procurement and production programmes.

3.1.4. On the demand side, 27 national customers have great difficulties in harmonising their military requirements and pooling their purchasing power into common procurement projects.

3.1.5. At EU level the regulatory framework containing 27 different sets of national rules and procedures for all relevant areas (exports, transfers, procurement etc.), becomes a major obstacle to both competition and cooperation and creates considerable extra costs ⁽²⁾.

3.1.6. The creation of an EDEM is a key factor supporting European Security and Defence Policy goals.

3.2. 'Defence-Security' convergence

3.2.1. The Committee welcomes the Commission initiative including sensitive non-military security procurements in the area of application of the new Directive — considering that:

3.2.1.1. In today's strategic environment, threats have become transnational and asymmetric ⁽³⁾; the dividing line between military and non-military, internal and external security is increasingly blurred and calls for a comprehensive response;

⁽¹⁾ Article 296 TEC reads as follows — Quote: '(1) The provisions of this Treaty shall not preclude the application of the following rules: (a) no MS shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security; (b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes. (2) The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on April 1958, of the products to which the provisions of paragraph 1(b) apply'.

⁽²⁾ For example, the extra costs created in 2003 by obstacles to intra-Community transfers alone were estimated at EUR 3,16 billion. Unisys, Intra-Community Transfers of Defence Products, European Commission, Brussels, 2005, p. 6.

⁽³⁾ European Commission Communication: 'Towards a EU Defence Equipment Policy', COM(2003) 113 final of 11.3.2003; EESC Opinion OJ C 10, p. 1 of 10/01/2004, rapporteur: Mr WILKINSON.

3.2.1.2. Armed forces and security forces often work closely together and use similar equipment which is developed using the same technologies and produced by the same companies;

3.2.1.3. Non-military procurement in certain areas — such as the fight against terrorism — can be as sensitive as military procurement and requires the same or higher security safeguards during the award process;

3.2.1.4. In cases where security and defence procurement have the same specificities, it seems only logical to make the same procurement rules applicable;

3.2.2. The Committee also believes that offering equal treatment to all European institutions with responsibilities in the area of defence, homeland security and intelligence, represents the optimal solution.

3.3. Introducing innovative solutions

3.3.1. In order to satisfy the unique requirements of the sector, the new Directive proposes three competitive procedures, as well as a pragmatic way forward:

— the **negotiated procedure** with publication of a contract notice ⁽⁴⁾ is authorised without the need for specific justification,

— the **restricted procedure** ⁽⁵⁾ and the **competitive dialogue** may also be used ⁽⁶⁾,

— the **open procedure**, however, which involves distributing the specifications to any economic operator that wants to see them, was felt to be inappropriate in view of the confidentiality and security of information requirements attached to these contracts.

3.3.1.1. Specific provisions on security of information ⁽⁷⁾ are included in the procedures, to ensure that sensitive information remains protected against unauthorised access.

⁽⁴⁾ Those procedures in which the contracting authority consults the economic operators of its choice and negotiates the terms of the contract with them.

⁽⁵⁾ Those procedures in which any economic operator may ask to participate and whereby only those economic operators invited by the contracting authority may submit a tender.

⁽⁶⁾ A contracting authority may limit the number of candidates in the restricted and negotiated procedures with publication of a contract notice, and in the competitive dialogue. Any reduction in the number of candidates should be performed on the basis of objective criteria indicated in the contract notice.

⁽⁷⁾ Security of information: the often confidential nature of the information relating to sensitive public defence and security contracts calls for: (1) safeguards applying to the award procedure itself; (2) criteria for selecting candidates; (3) contractual requirements imposed by the contracting authorities.

3.3.1.2. The inclusion in the procedure of special clauses on security of supply will ensure that the armed forces are supplied on time, particularly in times of crisis or armed conflict:

- (a) The procedure sets up a common regime of proper guarantees, assisted by a clear benchmarking method;
- (b) the Committee considers the Commission Decision that the new Directive will only cover specific contracts in the fields of security and defence, to which the current public procurement Directive is ill-suited, as appropriate;
- (c) these contracts concern the procurement of military equipment (i.e. arms, ammunitions and war equipment) and security equipment particularly sensitive and similar in nature to defence equipment;
- (d) procurement of non-sensitive and non-military equipment remains covered by the current Public Procurement Directive (2004/18), even if it is procured by the awarding authorities in the field of defence and security.

3.4. *The legal basis of the draft Directive are:*

3.4.1. The contributory principle: the requirement to put an end to infringement situations originating from the lack of Community provisions to coordinate the public procurement procedures that currently apply.

3.4.2. The proportionality principle: as long as the provisions of the Directive are fully applied, their transposition into national law will allow each Member State to take into account the specific features and characteristics of the sensitive purchases they make in the fields of defence and security.

3.5. *Choice of instruments*

3.5.1. When transposing the Directive, the Member States may, if they so desire, provide for legislation that applies to all their public procurements, including sensitive contracts in the fields of defence and security.

3.5.2. The new instrument should offer a high degree of flexibility, guarantee the right level of transparency and improve market access for non-national suppliers and SMEs in particular.

3.5.3. To be fully operational, the Directive needs the support of standardisation and an appropriate regime for intra-EU circulation.

3.6. *SMEs and the European Defence Industry*

3.6.1. Regarding the practical implementation of the Code of Conduct on Defence Procurements, the Committee underlines the essential role played by small and medium-sized suppliers of defence equipment and technologies, both as contributors to research and as providers of employment, in developing national and European military capabilities.

3.7. *Concluding question*

3.7.1. As with all reforms, the risk is that everyone agrees in principle on the need to do 'something', but fails to approve any practical measure or sign any document or agreement pushing forward the sector.

3.7.2. Main question: how long can the European Defence Technological and Industrial Base survive if Europe continues to postpone reforms which are accepted as unavoidable?

Brussels, 23 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council relating to common provisions for both measuring instruments and methods of metrological control (Recast)

COM(2008) 357 final — 2008/0123 (COD)

(2009/C 100/19)

On 8 September 2008, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council relating to common provisions for both measuring instruments and methods of metrological control (Recast).

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 448th plenary session of 21, 22 and 23 October 2008 (meeting of 22 October), by 117 votes, with 2 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy related products'

COM(2008) 399 final — 2008/0151 (COD)

(2009/C 100/20)

On 10 September 2008, the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy related products.

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 448th plenary session of 21, 22 and 23 October 2008 (meeting of 22 October), by 113 votes and 1 abstention, to issue an opinion endorsing the proposed text.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the ‘Proposal for a Council Regulation establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers’; ‘The proposal for a Council Regulation on modifications to the common agricultural policy by amending Regulations (EC) No 320/2006, (EC) No 1234/2007, (EC) No 3/2008’ and ‘(EC) No [...] /2008 and The proposal for a Council Regulation amending Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)’

COM(2008) 306 final — 2008/0103+0104+0105 (CNS)

(2009/C 100/21)

On 18 June 2008 the Council decided to consult the European Economic and Social Committee, under Articles 36 and 37 of the Treaty establishing the European Community, on the

Proposal for a Council Regulation establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers;

The proposal for a Council Regulation on modifications to the common agricultural policy by amending Regulations (EC) No 320/2006, (EC) No 1234/2007, (EC) No 3/2008 and (EC) No [...] /2008 and

The proposal for a Council Regulation amending Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 October 2008. The rapporteur was Mr VAN OORSCHOT and co-rapporteurs Mr KALLIO and Mr WILMS.

At its 448th plenary session, held on 21, 22 and 23 October 2008 (meeting of 23 October), the European Economic and Social Committee adopted the following opinion by 117 votes to 28 with 18 abstentions.

1. Conclusions and recommendations

1.1. On 20 May 2008 the European Commission published proposals to streamline the Common Agricultural Policy (CAP) in order to ensure it is working as well as possible in an enlarged European Union and in a changing international context. This is called the Health Check.

1.2. The EESC considers that the Health Check discussion should take better account of the variety of tasks confronting the CAP (e.g. European agricultural model, food security as a central issue). The EESC therefore stresses the need for an adequate agricultural policy at EU level in the short and the longer term with sufficient funding. This will presumably require – at least – as much as before. The necessity of the CAP and the purpose of individual measures should be better explained to the public, so that there is not a permanent discussion about funding.

1.3. The EESC recalls its earlier opinion on the future of the CAP in which the EESC notes that farmers are going through a tough period of transition. The EESC therefore considers that the main concern of the Health Check should be to make implementation easier, more straightforward and to respond to new challenges in the market and in society with respect for the multifunctional role of agriculture.

1.4. The EESC considers that payments to finance the wide-ranging work done by farmers that is not rewarded by the market continue to be necessary. In the meanwhile the EESC considers that payments based on historic production will become more difficult to justify. Member States should be allowed to adjust their payments towards a flatter rate. This should be subject to wide debate in advance in the context of the post 2013 CAP. Member States should be able to decide on an adequate transitional period to avoid placing farms in a difficult situation. The rules of cross-compliance have to be made less complex and duplication of controls has to be avoided.

1.5. The EESC agrees upon further decoupling of payments in order to give farmers ‘freedom to farm’. However, Member States should not be required to decouple in order to preserve fragile industries or regions, provided this does not generate market distortions. The EESC supports the aims of ‘Article 68’ although this article is not the solution for all problems. In some cases more flexibility is needed. Member States should examine thoroughly the consequences of redistribution of payments to farmers before implementation of this measure.

1.6. The EESC considers that adaptations to the present intervention scheme, other than tendering, should be examined in the first instance. The EESC also calls for new tools to be devised to create a sustainable safety net. In

addition, the EESC suggests maintaining the set-aside mechanism while adjusting the percentage to be frozen in line with market trends.

1.7. The EESC calls for a more detailed assessment of possible future developments in the dairy market and consequences before the decision is finally taken to allow the milk quota to expire in 2015. The EESC calls upon the Commission to set out more precisely the measures envisaged to maintain dairy production in vulnerable areas and to explain their financial consequences and how they will be funded. The EESC cannot agree to the planned quota increase until such a strategy is put forward. The EESC advocates setting up a European milk network in order to bring supply into line with demand, uphold producer incomes and stabilise the presence of dairy farmers across Europe. Setting up such a network would enable a new balance of power to be established between industrialists, producers, distributors and even consumers.

1.8. The EESC recognises the new challenges mentioned by the European Commission on climate, water, renewable energies and biodiversity, which clearly require additional funding under the second pillar. These new challenges can only be funded by modulation as existing funds have been assigned elsewhere under the budget until 2013 and new sources of additional monies are unlikely.

2. Introduction

2.1. On 20 May 2008 the European Commission published the proposals for the Council Regulations on several modifications to the Common Agricultural Policy (COM(2008) 306/4). The main objective of this so-called 'Health Check' is to assess the implementation of the 2003 CAP reform and to address those adjustments to the reform process that are deemed necessary in order to further simplify the policy, to allow it to grasp new market opportunities and to prepare it for facing new challenges in market and society.

2.2. Besides the Health Check, it is also necessary to discuss the development of the CAP after 2013 to meet new challenges which agriculture, society and the agricultural value chain are facing.

3. The changing world food situation

3.1. For 30 years farm prices have followed a downward trend in real terms. In 2007 there was a sudden and steep rise in certain agricultural commodity prices. Important reasons for the rise in prices were the increasing global demand, very low stock levels and bad harvests due to climatic conditions. This had a knock-on effect on farmers producing livestock facing high feed prices. However, agricultural prices are beginning to fall again. Between autumn 2007 and April 2008 milk prices fell by about 30 % and wheat prices fell by about 20 % ⁽¹⁾. By way of example this fact, combined with rising costs means that the income of arable farmers is expected to fall by 16 to 24 % in 2008. In real terms the prices of agricultural commodities still remain below levels witnessed during the 1973 or 1979 oil crises ⁽²⁾.

3.2. The last few months have shown clearly that we have entered a period of volatile agricultural prices, which is not good for consumers, confronted with rising prices of agricultural products, nor for farmers and stakeholders in the food chain, who must continuously make reasoned investments. This situation must be incorporated into any discussion on a future agricultural policy if food security is to remain an EU objective.

3.3. Given growth in world demand for food it is expected that consumer prices are unlikely to fall back to their former level in the short to medium term, but a greater volatility of producer prices is expected.

3.4. The effect of higher commodity prices on consumer prices is limited due to the declining share of agricultural raw materials in food production costs compared to energy and labour costs. For example, the cost of wheat only makes up 4 % of the cost of a loaf of bread ⁽³⁾. Furthermore, the share of food in the total household expenditure is low (around 14 % in the EU-27). The EESC considers that it is necessary to rationalise the food chain in the interests of farmers and consumers ⁽⁴⁾.

⁽¹⁾ Presentation of the Health Check Proposal to the COMAGRI, 20 May 2008.

⁽²⁾ European Commission: What caused the present boom in agricultural prices?

⁽³⁾ Speech Mariann FISCHER BOEL: Food, feed or fuel, Berlin 18 January 2008.

⁽⁴⁾ The EESC is working further on this issue in the exploratory opinion 'The EU and the global food challenge'.

3.5. The UN's Food and Agriculture Organization (FAO) has to be improved to manage food supplies and, since agriculture has come under the World Trade Organization, greater inequalities have been created between agricultural systems. Ways of thinking must change: agriculture must be given the opportunity to organise itself worldwide through a discussion forum comprising the most representative — and not necessarily the richest — national farming organisations.

3.6. The EESC considers that the Health Check of the CAP should take into account these changes in the world food situation. In this respect, farmers should be able to continue their multifunctional role within the European Agricultural Model.

4. General Remarks

4.1. The European Economic and Social Committee recalls its initial opinion ⁽⁵⁾ on the *Health Check of the CAP and its future after 2013*. In that opinion, the EESC notes that farmers and food processing businesses are going through a tough period of transition. There is a great deal of willingness to respond in an entrepreneurial manner to new market conditions, provided that the promises made during the reforms are kept and sufficient legal and planning certainty is provided. The EESC considers that the main concern of the Health Check should be to identify needs for adaptation of existing legislation, enabling:

— easier and more straightforward implementation, and

— the removal of obstacles to targeted implementation of reform measures which have already been agreed upon.

Besides these topics the EESC recognises that the EU is facing new challenges in which farmers can play an important role and that the food market situation needs new responses.

However, the key words in the 'Health Check' should be stability by means of market organisation, simplification and adjustment.

⁽⁵⁾ OJ C 44, 16.2.2008, p. 60.

4.2. It is also important that measures under the 'Health Check' underline the further development of the European model of agriculture and enable farmers to fulfil their multifunctional role:

— to meet the highest standards in the world for food safety and quality, environmental protection and animal welfare,

— to maintain the countryside and conserve nature, and

— to make a key contribution to employment, maintain agricultural production and the vitality of rural life throughout all regions of the EU,

— to avoid depopulation of rural areas and the abandonment of agricultural land.

The EESC considers that the Commission proposals contain substantial changes compared to the present situation. It is necessary to reflect on these changes in depth.

5. The 'Health Check' Measures

5.1. Single Payment Scheme (SPS)

5.1.1. The European Commission proposes to allow Member States to adjust their SPS model by moving gradually to flatter payment rates per entitlement in order to render the SPS more effective and efficient. In parallel the proposals include a series of simplification measures in the implementation of SPS.

5.1.2. There is growing concern in Europe for sustainability. There is a lack of progress in taking into account non-trade concerns in international agreements, although this is vital if we are to respect citizens' wishes. Furthermore, there is continued reduction in EU border protection. On the basis of these arguments, the EESC considers that enabling farmers to cover costs of sustainable production not covered by the market through a system of direct payment will be essential for safeguarding the European agricultural model and farmers' income beyond 2013. This must remain a clear task of the CAP.

5.1.3. The EESC considers that compensation payments to finance the wide-ranging work done by farmers that is not rewarded by the market will continue to be necessary. In the meanwhile levels of payment based on historic production will become more difficult to justify. Member States who have not already done so should be allowed to adjust the distribution of their national ceiling towards a flatter rate of payment during the period 2009-2013, or start in 2013. Before doing so, Member States should examine carefully the consequences on farm income, the adaptability of farmers and the need for long term planning certainty. If this approach were to be taken, Member States should be able to decide on an adequate transitional period so as to avoid causing any problems for farms which might have invested under different rules.

5.1.4. The SAPS applied in most new Member States is simple to administer but can also be over simplistic when it comes to support intensive farmers (fruits and vegetables, animal production, tobacco, etc.) in a meaningful way compared to the arable crops sector. A more balanced solution, e.g. within the SPS framework, should be found in the medium term by use of the other existing instruments or new instruments to be EU wide developed.

5.1.5. All land in the new Member States which complies with good agricultural and environmental conditions at the time of request of payments should be eligible.

5.2. Cross compliance

5.2.1. The European Commission wishes to simplify and improve the targeting of cross-compliance. The Commission proposes the withdrawal of certain requirements not linked to farmer responsibility and proposes the introduction of new Good Agricultural and Environmental Conditions (GAEC).

5.2.2. The EESC supports the maintenance of the link between the single farm payment and the respect of EU standards associated with agricultural activity through cross-compliance. The EESC welcomes the Commission proposals to streamline cross-compliance. There is also a clear need to make cross-compliance less complex, in particular by clarifying the rules, introducing a 'de minimis' rule and reducing the number of different inspection visits that are carried out on individual farms. Duplication of controls, such as audits by Quality Assurance Schemes (QAS), should also be avoided.

5.2.3. Agriculture is an important sector which provides much employment throughout the EU. Efforts must be made to reduce the number of accidents in farming and to encourage more skilled labour. Therefore the EESC considers that specified aspects of job safety on the farm are highly important, i.e. instructions on machinery use, hygiene and adequate storage of dangerous materials. They must be governed by national social legislation and could be included in the scope of cross compliance. To provide stimuli to the farmer the EESC recommends to widen the possibilities of the EU social fund in the area of job safety and skills.

5.2.4. In line with the aim to make cross compliance more efficient and more directly related to farm activities, the EESC considers that the statutory management requirements on the placing of plant protection products on the market is not a responsibility at farm level and should thus be withdrawn.

5.2.5. The EESC calls for an impact study of the implementation of the GAEC before any new element is added to the scope of GAEC. This study should include the effects on farmers as well as the administrative burden. The EESC considers that environmental benefits associated with set-aside, buffer strips and landscape features should be maintained, even if there is a desire to abolish the obligatory set-aside. If this is to be achieved via voluntary measures as part of rural development, there must be relevant incentives, which do not exist at present. These measures should be rewarded accordingly.

5.2.6. A special approach should apply with respect to the new Member States. The system of cross compliance should be introduced gradually, bearing in mind that the direct payments system is applied gradually. They should apply cross compliance in full when they reach the 100 % level for the Single Area Payment Scheme (SAPS).

5.3. Partially coupled support

5.3.1. The European Commission considers that decoupling has enabled farmers to respond better to market signals in a more sustainable way. At the time of the 2003 reform of the CAP it was decided to allow Member States to retain a certain level of coupled support in some sectors. The Commission stresses that operating two systems has not contributed to simplification. The Commission proposes to allow Member States to maintain the coupled premia for suckler cows, sheep and goat meat only.

5.3.2. The EESC takes a sceptical view of further decoupling in Member States that maintain partially coupled support in order to enable more market orientation. The EESC is aware that, in some cases, decoupling could lead to the disappearance of certain types of production and to the abandoning of production in certain regions with severe consequences for the environment, the rural economy and employment. Article 68 should be available to address these problems. Member States should not be required to decouple. Remaining coupled support should not lead to market distortions between Member States.

5.4. *Specific support*

5.4.1. The European Commission proposes the broadening of the (present) Article 69 for several purposes, including addressing the question of both disadvantages for farmers in specific sectors in certain regions and of top-up entitlements in restructuring areas. Member States applying SPS may currently retain up to 10 % of their national budget ceilings for measures related to environmental protection or for improving the quality and marketing of agricultural products.

5.4.2. The Commission considers that changes in traditional market instruments and the shift towards direct producer support have prompted discussion on different ways of managing risk, with price risk and production risk identified as the two main sources of variation affecting income. The Commission proposes that Member States can use Article 68 for crop insurance and mutual funds for animal and plant diseases.

5.4.3. The EESC supports the aims which are mentioned in Article 68, although this Article is not the solution for all problems which might emerge. The EESC can agree upon increased flexibility in the use of Article 68 on condition that any additional funds are used for strengthening the position of farmers. It considers that in very specific cases in some Member States the limit on funding could be higher than the current overall maximum of 10 % of the national ceiling. The EESC supports the proposals on crop insurance and mutual funds for animal and plant diseases, considering that the aim should be to protect consumers and farmers. These measures should not undermine existing insurance schemes or community measures (art 44 and veterinary fund). Due to the importance to the whole of society of preventing diseases, the EESC proposes that these funds should be co-financed by the Member States, as proposed by the Commission.

5.4.4. The EESC considers that using Article 68 may lead to a considerable redistribution of payments to farmers. Furthermore

the EESC fears that Article 68 is not a sufficient tool to address all the issues. Therefore Member States should examine thoroughly the consequences for farmers of the possible use of Article 68. The EESC considers that the amounts previously allocated to the agricultural budget should remain within the farm sector and could be used for Article 68.

5.4.5. The cumulative impact on the farm income of modulation and Article 68 should be examined. If the Commission proposals were to be implemented it could mean a cut in direct payments of at least $10 + 13 \% = 23 \%$. Therefore the EESC considers that the effects should be thoroughly examined.

5.5. *Payment limitations*

5.5.1. The European Commission identifies the fact that the introduction of the single payment has made the distribution of payments more visible. The large number of farmers that receive small amounts of payments cause a high administrative burden. The Commission proposes that Member States apply a minimum amount of EUR 250 or a minimum size of 1 hectare or both. In addition, the Commission proposes a progressive modulation. It is also proposed that the New Member States become eligible for modulation as of 2012.

5.5.2. In principle, the EESC accepts the Commission proposals establishing minimum requirements for payments in order to reduce administrative costs while giving Member States a choice as regards implementing these minimum requirements.

5.5.3. The EESC considers that the discussion on progressive modulation centres on the question of whether a higher modulation rate can be expected of those businesses in the EU which receive more than EUR 100 000 in direct payments annually. As large recipients benefit generally from economies of scale, moderate progression is justified, especially as businesses do have the opportunity to use the new measures under the second pillar and thus to again obtain CAP money.

5.6. *Markets*

5.6.1. The Commission raises the question how an effective intervention mechanism can be created, which works as a safety net but without reliance on subsidised exports. The Commission proposes to simplify the provisions on public intervention via the extension of a tendering system. For durum wheat, rice and pig meat, the Commissions proposes to abolish intervention.

5.6.2. The EESC considers that the weakening of internal market management mechanisms and the reduction in border protection which has taken place as a result of CAP reforms and trade negotiations since 1992 has made the EU much more exposed to world market fluctuations. At the same time these fluctuations on the world market, and thus risk, are on the increase: climate change is resulting in more extreme fluctuations in harvests worldwide and global travel is increasing the risk of the spread of disease. Farmers have to deal with all these challenges. In this context, abandoning all regulatory mechanisms could be dangerous during a period of short supply and strong demand.

5.6.3. The EESC considers that one of the most important objectives of the CAP, and pillar 1 in particular, will be to provide sufficient, safe and varied food for its 500 million consumers. Adequate instruments are needed to reach this objective. Despite the fact a tendering system could improve market orientation, it reduces the safety net to farmers and can increase uncertainty on the market. Therefore the EESC proposes that, first, other adaptations to the present intervention scheme should be examined e.g. a shorter period for intervention. The EESC calls for new tools to be devised to create a sustainable safety net, given the need for food security for European citizens and a fair farm income.

5.6.4. The EESC suggests that the Commission set up European market management networks that would provide a robust framework for matching supply and demand and enable producers across Europe to be interlinked, thereby responding effectively to social expectations. This would rebalance market forces, enabling consumers requirements to be better met. The Commission should have oversight of this organisation.

5.7. *Set-aside*

5.7.1. The Commission proposes to remove set-aside as an instrument of supply control, based on the market outlook situation. Member States are given tools to ensure that the environmental benefits can be retained.

5.7.2. Set-aside is a supply management tool which can prove useful and flexible. The EESC considers that despite good market prices at this moment the market situation may

weaken again at some point. The EESC therefore feels that it would be logical to maintain the set-aside mechanism⁽⁶⁾, adjusting the percentage to be frozen in line with market trends.

5.7.3. The EESC considers that any environmental benefits associated with set-aside must be maintained in order to increase acceptance from agriculture. This can be achieved via voluntary set-aside as part of rural development only if adequate incentives are available, which was not guaranteed in the past.

5.8. *Dairy quota*

5.8.1. In 1984 milk quotas were introduced as a response to overproduction. The Commission considers that the conditions leading to this introduction to be no longer relevant. In light of the increase in demand for milk and dairy products the Commission proposes a increase of the milk quota of 1 % per year for the next five years. This increase in quota is meant to prepare for a soft landing of the system as it expires in 2015. The European Commission has analysed the social impacts of changes to the milk quota system. The quota expiry will lead to restructuring of the milk production sector in which smaller producers especially are likely to be subject to predatory competition with potential implications for certain regions.

5.8.2. As the quota will, as the legislation currently stands, expire in 2015, the EESC calls upon the Commission to carry out a more detailed analysis than has been the case until now of how predictability and regional balance can be achieved in a sustainable market post 2015. Milk is an essential, healthy food product and in addition, dairy farmers play an important role in rural economies. In particular, it will be important to introduce measures which help farmers to improve their competitive position.

5.8.3. Dairy production is a very important sector in the vulnerable areas of the EU. Therefore the EESC also calls upon the Commission to envisage measures — including financial provisions — to maintain dairy production and a vibrant rural economy in these vulnerable areas. The EESC considers that the Commission has not submitted a workable concept with the proposals it has put forward. Article 68 will, only in some respects, be a sufficient instrument for this, and is far from being able to cover the expected high follow-up costs.

⁽⁶⁾ OJ C 44, 16.2.2008, p. 63, point 5.7.1.

5.8.4. As there is no real adjustment plan, the EESC is currently against quota adjustments. Quotas must be adjusted in line with market demand, and not arbitrarily. With a view to the post-2015 situation, a European milk network needs to be created, under which production could be adjusted to consumption and a new balance of power established within networks. In this way, milk production could be maintained in the most vulnerable areas.

5.9. *Other support schemes*

5.9.1. The Commission proposes immediate decoupling for the sectors protein crops, hemp, durum wheat and nuts. For rice, potato starch, dried fodder and flax, the Commission proposes to decouple with a two-year transitional period.

5.9.2. Without coupling production could disappear with negative effects to regional economies, the environment or EU supplies. Therefore the EESC considers that the possibility of shifting these payments to the SFP should be examined carefully on a case by case basis and if needed, coupled payments should be continued in order to avoid significant reduction of production in vulnerable areas. These sectors need a reasonable transition period and accompanying measures to develop new market opportunities.

5.9.3. The energy crop premium is administratively cumbersome and, given the targets set by the Council for the incorporation of biofuels, there is no further need for an incentive at the level of production. The funds no longer used for the energy premium should be used to strengthen the position of farmers.

5.10. *Climate change*

5.10.1. The Commission considers climate and energy issues to have moved to the top of the agenda. In March 2007 the EU leaders decided to cut CO₂ emissions by at least 20 % by 2020 and by 30 % if global targets can be agreed upon. The Commission considers that agriculture can make an important contribution to reducing Green House Gas emissions.

5.10.2. The EESC considers that EU agriculture has contributed more than many other sectors to curbing greenhouse gas

emissions and must continue down this path ⁽⁷⁾. Agriculture is also one of the sectors which is most exposed to the impact of climate change.

5.10.3. It is becoming a matter of increasing urgency to better understand the implications of climate change for agriculture and therefore research is the priority. This type of research is being financed under the 7th EU Research programme but this must be speeded up and reinforced.

5.10.4. It is also important to increase incentives to farmers to cope with climate change and to carry out climate neutral production systems. In this respect the EESC supports the indicative list of types of operations on climate change in the rural development plan.

5.11. *Water management*

5.11.1. The EU objectives with regard to water policy are laid down in the Water Framework Directive. The Commission considers agriculture to have a major role to play in water management.

5.11.2. One of the most pressing problems concerns water – both scarcity and quality, and also moisture and flooding. The EESC supports that part of the funds accruing from modulation should be used to increase water management incentives as part of rural development measures under axis 2. The EESC considers that the operations should have a direct link to agriculture.

5.12. *Renewable energies*

5.12.1. In 2007 the EU leaders set a binding 20 % target for the use of renewable energy sources, including a 10 % share of biofuels in petrol and diesel consumption.

5.12.2. The EESC supports the list of indicative action types with regard to renewable energies.

⁽⁷⁾ EC Study: Climate change: the challenges for agriculture (Dec. 2007).

5.12.3. The EESC thinks it is extremely important to promote further research in order to optimise production systems so that the contribution of bioenergy to reducing CO₂ emissions and energy efficiency is maximised. The possibility to develop second generation biofuels, using agricultural co-products, has to be further researched.

5.12.4. Farmers could play an essential role in the provision of sustainable bio-energy supplies at local or regional level (e.g. microgeneration plants using local biomass) thereby contributing to the Kyoto objectives. State aid rules should make an exemption for this kind of projects.

5.13. *Biodiversity*

5.13.1. The Commission considers a large part of the biodiversity in Europe to be dependent upon agriculture and forestry and that the efforts to protect biodiversity have to be increased. Agriculture has a key role to play in protecting biodiversity. Member States have committed themselves to stopping the decline in biodiversity by 2010.

5.13.2. In several Member States there are good examples of projects that improve biodiversity. The EESC supports the indicative types of action the Commission mentions to improve biodiversity on condition that the incentives go directly to farmers because they are essential for the maintenance of vibrant rural areas with economic and employment opportunities.

5.14. *Strengthening the second pillar*

5.14.1. The Commission plans to meet these four new challenges (points 5.10 to 5.13) with a new package of measures which is to be established under the second pillar, with the necessary additional resources coming from modulation. The Commission notes that an increase in compulsory modulation is the only way to obtain additional funding for rural development, since all other EU funds have been earmarked until 2013. The Commission proposes to increase compulsory modulation with 8 % in four steps until 2012.

5.14.2. The EESC considers that the results of negotiations on the 2007-2013 financial perspective have led to inadequate funding of the second pillar. The EESC takes the view that

the different functions of the CAP must be preserved. Any further modulation of first pillar direct payments must respect this requirement⁽⁸⁾. Therefore the EESC will only support the proposed modulation if it is guaranteed that this budget is clearly and specifically targeted towards helping farmers to meet these new challenges. The role of employment and employees in agriculture in this change process should be recognised. The implementation via the national rural development plans must be made more effective and accessible for farmers. National co-financing must be ensured in advance.

6. **Budgetary impact of the Health Check proposals**

6.1. The Commission recalls that the CAP has an in-built financial discipline mechanism. Due to the fact that most support is now fixed and the market outlook has significantly improved, the potential for the application of financial discipline has diminished. Furthermore, the Commission states that the proposals for modulation are budget neutral, but can lead to additional national expenditure. The Commission expects almost no extra expenditures on market measures.

6.2. The total budget for the CAP has decreased from 0,6 % of the EU GDP in 1993 to less than 0,4 % in 2007. The real budgetary expenditure has risen from about EUR 40 billion in 1995 to around EUR 50 billion in 2007 (including Rural Development), despite the almost doubling in the number of Member States from 15 to 27.

6.3. Fifteen years ago the EU spent EUR 10 billion per year on export subsidies. In 2009 this budget is limited to only EUR 350 million⁽⁹⁾. The European Commission has agreed to abolish export subsidies entirely by 2013, on the condition that trading partners provide parallel commitments.

6.4. The EESC considers the CAP to be one of the most important backbones of the European Union. As the world food situation shows, Agricultural Policy will remain very important. The EESC is of the view that farmers not only play an essential role in food supply, but have to fulfil a multifunctional role.

⁽⁸⁾ See footnote 5.

⁽⁹⁾ The Common Agricultural Policy: sorting the facts from the fiction, 20 June 2008.

7. Towards long-term objectives of the CAP post 2013/financial framework

7.1. The EESC considers that it is useful to draw up clear objectives and priorities for the CAP post-2013 in order to contribute to the discussions on the next financial perspectives.

7.2. Bearing in mind that the world's population is expected to continue to grow to 9 billion people in 2050 and consumption per capita will rise, food production needs will increase. At the same time, the amount of good agricultural land is decreasing worldwide due to factors such as erosion, saltification and urbanisation. As a result, it may not be possible for European consumers to take food security for granted in years to come. A future CAP must take into account these new developments.

7.3. At the European level, consumers require healthy and varied food in sufficient quantities, which has to be produced in a sustainable way. Imports must comply with EU standards, which is currently not always the case. At the same time, European citizens are worried about climate change and sustainability. Farmers in the EU can play an important role in meeting society's expectations.

7.4. Farmers would prefer to obtain their income from the market. However, society in Europe also expects farmers to provide a number of services which are not remunerated via the market. Direct payments to reward farmers for ensuring the highest standards of sustainable production systems, as well as additional services, will therefore remain essential, as will payments to promote rural development. Furthermore, the

CAP will remain a fundamental instrument to support regional economies.

7.5. In achieving the objectives outlined under 3.3, in the future the CAP should emphasise more on:

- ensuring secure supplies of safe and varied food and supply of renewables,
- ensuring a fair income to farmers,
- ensuring that production is both sustainable and competitive throughout all regions of the EU,
- contributing to a vibrant countryside with economic and employment opportunities.

7.6. In the longer term the EESC considers that the objectives of the CAP and the instruments to achieve them should be better harmonised among all Member States.

7.7. The EESC stresses the need for an appropriate agricultural policy at EU level in the short and the longer term with sufficient funding. This will presumably require – at least – as much as before. It is the job of politicians to better explain to the public the necessity of the CAP and the purpose of individual measures, so that there is not a permanent discussion about funding.

Brussels, 23 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

APPENDIX

The following Section Opinion texts were rejected in favour of amendments adopted by the assembly but obtained at least one-quarter of the votes cast:

Point 1.7.

'The EESC calls for a more detailed analysis than has been the case until now of dairy market development given that the milk quota will, as the legislation currently stands, expire in 2015. Given the need for planning certainty the EESC calls for quota adjustments which ensure a soft landing for producers, provided that these do not disrupt the market. The EESC calls upon the Commission to envisage measures to maintain dairy production in vulnerable areas and to explain their financial consequences and how they will be funded.'

Voting

For: 66 Against: 42 Abstentions: 41

Point 1.8.

'The EESC recognises the new challenges mentioned by the European Commission on climate, water, renewable energies and biodiversity. These new challenges require additional funding by modulation and by the use of structural funds. The EESC is of the opinion that strengthening food security should be considered a new challenge.'

Voting

For: 64 Against: 58 Abstentions: 37

Point 1.9.

'The EESC considers that the views on modulation differ widely. As a compromise, the EESC proposes that the extra modulation rate to fund new challenges should be limited to 3 % in total and proposes to lift the threshold to EUR 7 500. The EESC is not in favour of further progressive modulation. The extra funding should be aimed specifically at helping farmers.'

Voting

For: 64 Against: 58 Abstentions: 37

Point 5.5.3.

'The EESC considers that several aspects are at stake in the discussion on progressive modulation. Progressivity is also increasing the administrative complexity of farm payments. In many cases farmers with large or small farms provide employment which is important for the region. The EESC considers that modulation already affects the profits of the largest recipients most. On the other hand large recipients benefit generally from economies of scale. Progressive modulation therefore has a significant impact on the competitive balance between agricultural enterprises of different sizes. Farmers need to be able to plan ahead and therefore to be able to count onto commitments made by the authorities. On the basis of these arguments the EESC is not in favour of progressive modulation.'

Voting

For: 64 Against: 58 Abstentions: 37

Point 5.7.3.

'The EESC considers that any environmental benefits associated with set-aside must be maintained in order to increase acceptance from agriculture. This can be achieved via voluntary set-aside as part of rural development only if adequate incentives are available and these incentives are rewarded accordingly. The point of view of the EESC is that this rural development support should be linked to farmers' activities.'

Voting

For: 64 Against: 58 Abstentions: 37

Point 5.8.3.

'Dairy production is a very important sector in the vulnerable areas of the EU. Therefore the EESC also calls upon the Commission to envisage measures – including financial provisions – to maintain dairy production and a vibrant rural economy in these vulnerable areas. The EESC considers that Article 68 will, only in some respects, be a sufficient instrument for this, and is far from being able to cover the expected high follow-up costs.'

Voting

For: 66 Against: 42 Abstentions: 41

Point 5.8.4.

'The EESC considers that in the period 2009-2015 the quota should be adjusted on the basis of the market development. Dairy farmers need planning certainty and a smooth transition. On this basis the EESC calls for quota adjustments which ensure a soft landing for producers. These adjustments should not jeopardise the stability of the markets and they should take into account the vulnerable position of small dairy farmers and regions.'

Voting

For: 66 Against: 42 Abstentions: 41

Point 5.14.1.

'The Commission plans to meet these four new challenges (points 5.10 to 5.13) with a new package of measures which is to be established under the second pillar, with the necessary additional resources coming from modulation. The Commission notes that an increase in compulsory modulation is the only way to obtain additional funding for rural development. The Commission proposes to increase compulsory modulation with 8 % in four steps until 2012.'

Voting

For: 64 Against: 58 Abstentions: 37

Point 5.14.2.

'The EESC considers that the results of negotiations on the 2007-2013 financial perspective have led to inadequate funding of the second pillar. The EESC takes the view that the different functions of the CAP must be preserved. Any further modulation of first pillar direct payments must respect this requirement ⁽¹⁾. Therefore the EESC can only support further modulation if it is guaranteed that this budget is clearly and specifically targeted towards helping farmers to meet these new challenges. In addition to the four challenges mentioned by the Commission, the EESC proposes to add the challenge of food security and food safety, in view of the recent food price discussions. The role of employment and employees in agriculture in this change process should be recognised. The implementation via the national rural development plans must be made more effective and accessible for farmers. National co-financing must be ensured in advance.'

Voting

For: 64 Against: 58 Abstentions: 37

Point 5.14.3.

'Direct payments are extremely important for the values that agriculture represents for society. Besides this, farmers need planning certainty. On the other hand, the EESC recognises the new challenges mentioned by the Commission. The EESC notes that the opinions on modulation diverge considerably. As a compromise the EESC proposes a modulation rate of 8 % in total (current 5 % plus 3 × 1 %). The EESC recommends that besides rural development other funding, like structure funds, should be examined. The EESC also recommends an increase in the threshold to EUR 7 500. This must replace voluntary modulation. The possible negative effects on farmers' income of modulation in combination with Article 68 should also be thoroughly examined.'

Voting

For: 64 Against: 58 Abstentions: 37

Point 6.4.

'The EESC considers the CAP to be one of the most important backbones of the European Union. As the world food situation shows, Agricultural Policy will remain very important. The EESC is of the view that farmers not only play an essential role in food supply, but have to fulfil a multifunctional role. Therefore any budgetary savings should be used to strengthen the position of farmers on their way to sustainability.'

Voting

For: 64 Against: 58 Abstentions: 37

⁽¹⁾ See footnote 5.

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council laying down health rules as regards animal by-products not intended for human consumption (Animal by-products Regulation)

COM(2008) 345 final — 2008/0110 (COD)

(2009/C 100/22)

On 7 July 2008, the Council decided to consult the European Economic and Social Committee, under Article 152(4b) of the Treaty establishing the European Community, on the

Proposal for a Regulation of the European Parliament and of the Council laying down health rules as regards animal by-products not intended for human consumption (Animal by-products Regulation)

The Section for Agriculture, Rural Development, and the Environment which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 October 2008. The rapporteur was Mr NIELSEN.

At its 448th plenary session, held on 21, 22 and 23 October 2008 (meeting of 22 October 2008), the European Economic and Social Committee adopted the following opinion by 82 votes to one with two abstentions.

1. Conclusion

1.1. It is important to maintain a high level of public and animal health protection regarding the use of animal by-products. The EESC endorses the Commission's proposal which is based on thorough preparatory work and past experience. Changes in categorisation should, as is suggested in the proposal, only be carried out following concrete risk assessments by the relevant scientific bodies. It should also be made clear how the proposal relates to other legislation, including waste and environmental legislation.

1.2. The definitions used in the regulation, as well as the provisions concerning the authorisation and use of animal by-products in biogas installations need to be rendered clearer. Also, a number of other specific conditions need to be set out more precisely, and careful consideration given to the possibility that under certain circumstances protein from pork and poultry by-products can be used in fish feed without risk to human and animal health.

2. Background

2.1. The Commission seeks a more risk-based approach to the classification and controls set out in the regulation on animal by-products⁽¹⁾, and also wishes to see a clearer distinction drawn vis-à-vis provisions on foodstuffs, feed, waste, cosmetic products, medicines and medical equipment. According to the Commission, the proposal will also reduce administrative burden for certain establishments and boost operators' respon-

sibility, especially regarding the use of by-products outside the food and feed chains.

2.2. Products will continue to be classified into three categories. The ban on the use of materials giving rise to a risk of transmissible spongiform encephalopathy (TSE) as feed will continue to apply, although it will be possible to use materials which pose no or low risk, depending on their nature and following a risk assessment by EFSA, the European Medicines Agency or the Scientific Committee for Consumer Products. A number of products in Category 2 have been reclassified under the proposal into Category 3 products, and can now be used for certain types of feed. Henceforth, it will be possible to use animal by-products of all categories for practical uses, provided that the raw materials, production process and intended purpose are safe. Burial and incineration in the case of an outbreak of disease will now also be permitted in situations where it would be practically difficult to gather up dead animals.

2.3. The incineration of animal by-products is subject to the rules set out in Directive 2000/76/EC⁽²⁾. Meanwhile, under the proposal the use of animal by-products for fuel purposes is to be authorised, as long as public and animal health requirements and the relevant environmental standards are met. The proposal also ensures consistency with the ban on waste exports⁽³⁾, including their use in biogas and composting plants in third countries which are not members of the OECD.

⁽¹⁾ Regulation 1774/2002 of 3.10.2002 laying down health rules concerning animal by-products not intended for human consumption.

⁽²⁾ Directive 2000/76/EC of 4.12.2000 on the incineration of waste.

⁽³⁾ Regulation 1013/2006 of 14.6.2006 on shipments of waste.

3. General comments

3.1. The rules on the use of animal by-products are both extensive and complicated. However, it is crucial that the legislation is applied and administered optimally, and that, in this area as well, the EU continues to maintain a high level of public and animal health protection. The spreading of TSE and infectious livestock diseases can have serious economic and social consequences. The EESC in principle endorses the risk-based approach, whereby changes in categorisation are made on the basis of concrete risk assessments by the relevant scientific bodies. HACCP⁽¹⁾ should be used, provided that they are implemented and applied uniformly in the Member States.

3.2. In view of the growing demand for protein in fish feed, careful consideration should be given in any review of the TSE-regulation⁽²⁾, to the possibility that under certain circumstances protein from pork and poultry by-products can be used in fish feed without risk to human and animal health.

4. Specific comments

4.1. Under the proposal, animal by-products and their derivatives can be disposed of through incineration, or can be used as fuel. The use of animal by-products as fuel is not considered as disposal of waste under the proposal, and should therefore be carried out in conditions that guarantee adequate protection for public and animal health and comply with the relevant ecological standards. In this context, a clearer distinction between the regulation on animal by-products on the one hand, and waste and environmental legislation on the other is needed, and the terms used in Article 3 of the regulation, as well as in the waste directive, need to be set out and defined more precisely to avoid potential problems with the way they are interpreted.

4.2. Biogas plants, where animal by-products and their derivatives are converted into biogas in accordance with standard parameters, are subject to registration and traceability rules. However, under Article 7(1c) they are exempted from the approval requirements set out in Article 6(1b). When the implementing provisions are being drawn up, the requirements on self-regulatory controls, separation into 'pure' and 'impure' zones, documentation of receipt, treatment and movement of raw materials, should only be applied to biogas plants to the extent that is really necessary.

4.3. Regarding the sanitisation of Category 3 material, the authorisation of other temperatures/processing times, as alternatives to the present 70 degrees/one hour requirement, should be made possible, and greater flexibility allowed in the way compliance is documented.

4.4. The EESC fully supports the possibility of using the glycerol fraction generated in the making of biodiesel for the production of biogas, irrespective of the category. It is scientifically proven that both the production of biodiesel itself and the associated by-products are risk free no matter which category is used, provided that production takes place in accordance with the applicable rules⁽³⁾.

4.5. Under Article 7(1a), approval is not required for certain activities when they are carried out by plants or establishments which have been approved for such activities under other legislation. However, in view of veterinary controls, it is still useful, for example for exporting establishments, to obtain approval under the regulation on by-products.

4.6. From the point of view of resource preservation, by-products from animals approved prior to slaughter should be placed in Category 3 (for example, products that have fallen to the ground, chronic changes and similar), provided that these products have not been contaminated by Category 2 material.

4.7. A solution should be found to exclude blood products from the application of Article 25(1c) in order to facilitate the use of these products as fertilisers.

4.8. Under Article 28(1d), smaller quantities of animal by-products can be exempted from the rules on disposal. The EESC believes that this approach needs to be applied with great caution considering the lack of traceability.

⁽¹⁾ Hazard Analysis and Critical Control Points.

⁽²⁾ Regulation 999/2001 of 22.5.2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies.

⁽³⁾ Statement by the European Food Safety Authority (EFSA) of 22.4.2004 together with Commission Regulation No 92/2005 of 19.1.2005 as amended by Regulation No 2067/2005 of 16.12.2005.

4.9. Livestock manure is defined, under Article 12, as a Category 2 material, and is therefore to be disposed of and used in accordance with the rules set out under Article 20. It should, however, be made clear that livestock manure which is used for energy purposes other than in biogas installations should not be treated as waste, but instead be incinerated in approved or registered incineration plants.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on substances that deplete the ozone layer (Recast)

COM(2008) 505 final — 2008/0165 (COD)
(2009/C 100/23)

On 30 September 2008 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

Proposal for a Regulation of the European Parliament and of the Council on substances that deplete the ozone layer (Recast)

Since the Committee unreservedly endorses the contents of the proposal and has already set out its views on the subject in its earlier opinion, adopted on 2 December 1998 (*), it decided, at its 448th plenary session, held on 21, 22 and 23 October 2008 (meeting of 22 October), by 119 votes with 1 abstention, to issue an opinion endorsing the proposal and to refer to the position it had taken in the above-mentioned documents.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

(*) Opinion of the Economic and Social Committee on the Proposal for a Council Regulation (EEC) on substances that deplete the ozone layer (OJ C 40 of 15.2.1999, p. 34).

Opinion of the European Economic and Social Committee on a Proposal for a recommendation of the European Parliament and of the Council on the establishment of a European Quality Assurance Reference Framework for Vocational Education and Training

COM(2008) 179 final — 2008/0069 (COD)

(2009/C 100/24)

On 23 April 2008 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on a

Proposal for a recommendation of the European Parliament and of the Council on the establishment of a European Quality Assurance Reference Framework for Vocational Education and Training

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 September 2008. The rapporteur was Ms HERCZOG.

At its 448th plenary session, held on 21, 22 and 23 October 2008 (meeting of 23 October) the European Economic and Social Committee adopted the following opinion by 59 votes to two with four abstentions.

1. Executive summary

1.1. The EESC strongly supports the Commission's proposal to create a European Quality Assurance Reference Framework for Vocational Education and Training (hereinafter referred to as EQARF), as quality vocational education and training (VET) is a key and integral aspect of the revised Lisbon strategy⁽¹⁾, designed to promote the knowledge-based society, social inclusion and cohesion, mobility, employability and competitiveness.

1.2. The EESC feels that the EQARF, if implemented, would help strengthen the European dimension of VET and enhance the mobility of learners and workers as well as contribute to transparency and mutual trust between and within national VET systems. It would also help overcome current unemployment problems by addressing the gap between labour market needs and qualifications of labour force.

1.3. The EESC is of the opinion that the EQARF is useful as it gives a particular emphasis to the improvement and evaluation of the 'outputs' and 'outcomes' of VET in terms of the three key EU policy priorities: increasing employability, improving the match between supply and demand for training, and promoting better access to lifelong training (especially for vulnerable groups).

1.3.1. The EESC invites the Commission to further focus on the end-users, learners, workers, institutions - VET providers and companies alike. Particular attention should be paid to those at risk of educational and labour market exclusion (e.g. early school leavers, young people and older workers facing high unemployment rates, people with special needs, people with

an immigrant background etc.) and their (re-)integration into the training.

1.4. The EESC feels that past achievements⁽²⁾ in European cooperation on quality assurance in VET represent a suitable basis for the continuation of current work and for further developments. Serious commitment from the European Parliament and the Council to the EQARF will significantly help ensure that a culture of continuous quality improvement is spread as widely as possible⁽³⁾. This can also inspire and promote the implementation of EQARF at national level.

1.5. The EESC welcomes the solid commitment from Member States to continuous improvement of the quality of VET, currently embodied in the European Network on Quality Assurance in VET (ENQA VET) which was set up in 2005 to ensure the long-term sustainability of the process, involving active and effective cooperation between 23 countries over the past few years.

1.5.1. The EESC recommends that the Commission consider how (in which fields, using which approaches and which practical instruments) the ENQA VET, supported by the Quality Assurance National Reference Points (QANRP), could act even more efficiently and effectively in promoting and supporting EQARF implementation in Member States, a process which will continue until (or beyond?) 2010.

(2) Council Conclusions on Quality Assurance in Vocational Education and Training (28 May 2004).
Copenhagen Declaration (30 November 2002), 'Promoting cooperation in quality assurance with particular focus on exchange of models and methods, as well as common criteria and principles for quality in vocational education and training'.
Maastricht Communiqué (14 December 2004); Helsinki Communiqué (5 December 2006).

(3) Helsinki Communiqué (5 December 2006).

(1) Lisbon Strategy (2000).

1.6. The EESC considers it vital to provide consistency between the EQARF and the other European initiatives based on mutual trust such as the European Qualifications Framework (EQF) ⁽¹⁾, and the European Credit System for VET (ECVET) ⁽²⁾. There is a need for closer harmonisation of activities and identification of specific interlinks between these common European reference tools, at both European and national levels, in order to enhance mutual benefits and synergies, as well as to create the conditions for qualifications to be accredited and transferred across Europe.

1.7. Vocational education and training is a public good, and quality in VET needs control for the sake of the citizens and the society as a whole. Control should be monitored / implemented by public bodies which themselves should also be quality assured. The EESC deems the role of these bodies – designated by governments in the majority of Member States – to be of fundamental importance, and recommends that the Commission strengthens the role of these bodies.

1.8. The EESC urges all stakeholders — institutions, employers, trade unions, sector organisations, chambers of commerce, industrial and professional bodies, providers of employment services, regional bodies, organisations of social economy, etc. — to assume their particular responsibilities and contribute to the achievement of the joint objectives. Bottom-up cooperation in the field of VET quality assurance should be stepped up in all stages of the work.

1.8.1. The EESC calls for more active involvement of the organised civil society and would remind the Commission of the need to cooperate closely with civil society in the field of quality assurance in VET, in order to make the system more inclusive and build it on existing networks and positive experience. The lack of such cooperation and dialogue in many countries is holding back the successful introduction of such a quality culture.

1.8.2. The EESC feels that the social partners, as the main stakeholders in the labour market, should have an important role in reaching the four main objectives in VET (mobility, accessibility, attractiveness and social inclusion), and should also play a central role in defining and controlling the quality of VET systems at European and national levels. It is only with the active participation of the social partners that the system could be adaptable to the changing labour markets, a precondition for any quality in VET approach.

⁽¹⁾ Recommendation of the European Parliament and of the Council on the establishment of the European Qualification Framework.

⁽²⁾ Establishment of the European Credit System for Vocational Education and Training.

2. Introduction

2.1. Given the diversity and complexity of the VET systems and the quality approaches within and across Member States, there is a need for common points of reference to ensure transparency, consistency and portability between the many streams of policy and practical developments across Europe, in order to increase mutual trust.

2.2. Following a long period of preparation and consultation, the European Commission has put forward a proposal for a Recommendation of the European Parliament and of the Council on the establishment of a European Quality Assurance Reference Framework for Vocational Education and Training.

2.3. The recommendation aims to support efforts in the Member States to continuously improve the quality of VET systems and programmes by implementing a common European reference tool: a quality assurance and quality evaluation framework — EQARF.

2.4. The main function of the EQARF is to provide agreed cross-country references that help Member States and stakeholders to document, develop, monitor, evaluate and improve the effectiveness of their VET provision and VET quality management practices.

2.5. The EESC's position on the Commission's proposal is essentially based on its accumulated knowledge and experience ⁽³⁾.

⁽³⁾ See the following EESC opinions:

- 'Proposal for a Recommendation of the European Parliament and of the Council on the establishment of the European Qualifications Framework for lifelong learning', rapporteur: Mr RODRÍGUEZ GARCÍA-CARO (OJ C 175, 27.7.2007)
- 'Proposal for a Recommendation of the European Parliament and of the Council on key competences for lifelong learning', rapporteur: Ms HERCZOG (OJ C 195, 18.8.2006)
- 'Proposal for a Recommendation of the European Parliament and of the Council on Transnational mobility for education and training purposes: European Quality Charter for Mobility', rapporteur: Mr CZAJKOWSKI (OJ C 88, 11.4.2006)
- 'Proposal for a Recommendation of the Council and of the European Parliament on further European cooperation in quality assurance in higher education', rapporteur: Mr SOARES (OJ C 255, 14.10.2005)
- 'Training and productivity', rapporteur: Mr KORYFIDIS (OJ C 120, 20.5.2005).

3. The EESC's comments

3.1. The EESC agrees with the Commission that common quality assurance reference criteria are necessary if we want to set and reach common goals in European VET policy.

3.2. The EESC welcomes and emphasises the positive features of the Commission's proposal on EQARF which are: voluntary commitment of the Member States to use the Framework, its adaptability to different national systems in accordance with national legislation and practice, as well as the need for decisions on its implementation to be taken at national, regional and/or local level.

3.3. The EQARF is based on and improves the Common Quality Assurance Framework (CQAF) which was itself based on best practices from the Member States. The EESC is pleased that the EQARF has been made simpler than the CQAF, with more specific and clearer quality criteria and indicative descriptors, which should make it significantly easier for Member States to interpret, understand and use.

3.4. The EESC is of the opinion that the novel and modern quality assurance criteria and indicative descriptors in Annex 1 to the Recommendation, developed through consensus, make the EQARF a valuable tool in the continuous improvement of VET quality at European and national levels. These quality criteria and indicative descriptors, reflecting fundamental aspects of work on VET quality, enable proactive planning, implementation, evaluation and further development of quality assurance activities at national and institutional (i.e. VET provider) levels. They also allow for steps to improve transparency and consistency between policy measures and initiatives undertaken by individual Member States in the field.

3.5. The EESC feels that it is especially important for the Commission to have access to reliable data based on objective facts on progress towards achieving agreed quality assurance objectives, in line with the three main (policy) objectives (see Point 1.3). The EESC is therefore pleased that Annex 2 to the Recommendation sets out a proposed initial set of common system-level indicators for measuring and evaluating VET quality at national level.

3.6. Indicators are of key importance to good governance and quality of VET systems, since they back up evidence-based policy-making and promote cross-country benchmarking. However, the EESC would remind the Commission that the methods of collecting and compiling data for EQARF indicators

should be harmonised or standardised across the Member States (uniform definitions, interpretation and calculation methods) so that data are more reliable and comparable.

3.7. The EESC feels that it is especially important to encourage VET stakeholders at various levels to undertake systematic self-evaluation (if possible, in combination with an independent external evaluation, for example in the context of the regular European Peer Review). Dealing with areas identified by self-evaluation helps to ensure high quality training provision, thus meeting the expectations and interests of the partners involved (both participants in training and employers). Self-evaluation provides regular feedback on the partners' satisfaction with training provision and educational services, on the needs of the labour market, as well as on employees' skills and competences acquired through training.

3.8. One feature of the EQARF with particular added value is that it encourages the use of common quality criteria, indicative descriptors and indicators, as well as it promotes quality improvement based on regular self-evaluation, both in VET systems and in VET service providers/institutions. The EESC would like to remind stakeholders that quality development at system level in particular countries can only be achieved if the EQARF is introduced not only in VET institutions but also at VET system (management) level. In addition, using common quality criteria, indicative descriptors and indicators also enables comparison between VET management and VET provision practices across the EU.

3.9. The EESC would like to remind the Commission that the most important element for achieving the common objectives is a genuine commitment from Member States to implementing and applying the EQARF. This should involve translating the common basic principles, quality requirements and indicative descriptors into specific objectives and practical initiatives, and consistently implementing such objectives and measures.

3.10. The EESC urges the Commission to encourage and support the use of the EQARF, as well as its continuous improvement at European and national levels. The Commission, in order to foster and support the use of EQARF, should in future find the means to finance the relevant schemes and should likewise raise existing and new quality partners' awareness about funding opportunities at all levels. The Commission should also cooperate more closely with and support the European Network on Quality Assurance in Vocational Education and Training in its task of continuously adjusting and improving common quality principles, quality criteria, indicative descriptors and indicators.

3.11. The EESC is pleased that the proposal includes a significant quality guarantee in the form of a regular review (at three-year intervals) and an evaluation of how the EQARF is being introduced at national level; the results would also provide input for the subsequent review of the Reference Framework at European level. In the EESC's view, the evaluations should focus on the actual impact of the EQARF on VET quality at national and European levels, on the identification of areas where developments or improvements have taken place, as well as on changes in implementation and their extent.

3.12. The EESC recommends extensive information dissemination and improved communication on the EQARF, to reach as many potential participants and stakeholders as possible. A communication plan and strategy should be drawn up to publicise and emphasise the benefits and likely achievements of using EQARF at all levels, for VET providers (institutions) in particular. Action at various levels is needed to ensure effective communication at European and national levels on the one hand, and at system and VET provider levels on the other. Together with the Commission, the ENQA VET could play a significant role in communication at European level, whereas this could be assured at national level by the Quality Assurance National Reference Points.

3.13. In line with its opinion on training and productivity⁽¹⁾, the EESC would once again like to emphasise the need for closer coordination between the various levels of the education and training systems at European and national level as regards lifelong learning. This also calls for coherent approaches on quality assurance and quality evaluation across education and training sectors.

3.14. The EESC is confident that VET should be developed at all levels as an essential and integral part of lifelong learning. It

is important to ensure that VET ties in closely with preceding and subsequent educational levels, particularly with general education and higher education. The different age groups – including young children – should be provided with the necessary development opportunities and infrastructures, and be evaluated according to lifecycles.

3.14.1. Quality evaluation should apply to all forms of education and educational establishments from early childhood onwards, as education in early childhood enhances subsequent academic and professional performance; it should also apply to primary education, to ensure that pupils acquire the basic competences before moving on to a higher educational level. Evaluation of VET will be less credible and effective if it only takes into account the period of VET itself, without looking at academic performance at school, which affects subsequent performance and career paths. The EESC believes that it is important for the Commission to be aware of the links between individual educational levels, taking into account implications and circumstances which are extrinsic to education, and also of their combined influence on the quality of vocational education and training.

3.14.2. The EESC would like to emphasise the importance of strengthening the links between quality assurance and quality evaluation in VET and all sectors included in education, with the aim of improving communication, thus increasing mutual trust as well as finding a common perspective for quality assurance and joint developments. The EESC welcomes that the cooperation on quality assurance has begun with higher education and suggests that this cooperation should be continued and strengthened. Also the implementation of the EQF calls for coherent quality assurance approaches, particularly between VET and HE, since the promotion of lifelong learning is a theme common to both sectors.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

⁽¹⁾ See the EESC opinion 'Training and productivity', rapporteur: Mr KORYFIDIS (OJ C 120, 20.5.2005).

Opinion of the European Economic and Social Committee on the Establishment of the European Credit System for Vocational Education and Training (ECVET)

COM(2008) 180 final — 2008/0070 (COD)

(2009/C 100/25)

On 23 April 2008 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Proposal for a Recommendation of the European Parliament and of the Council on the establishment of the European credit system for vocational education and training (ECVET).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on ... The rapporteur was Ms LE NOUAIL-MARLIÈRE.

At its 448th plenary session, held on 22 and 23 October 2008 (meeting of 22 October), the European Economic and Social Committee adopted the following opinion by 109 votes to none with one abstention.

1. Introduction

1.1. This proposal for a recommendation puts forward a common European certification system to facilitate the transferability and recognition of qualifications, thereby promoting worker mobility.

1.2. Education and training are an integral part of the Lisbon Strategy, the European reform programme for meeting the demands of a knowledge society and the economy. More specifically, developing citizens' knowledge, skills and know-how through training and education is a necessary and indispensable condition for meeting the Lisbon goals of competitiveness, development, employment and social cohesion.

1.3. Although there has been progress, the targets set have not been reached, notably with regard to lifelong learning and worker mobility, areas where many obstacles persist. These inadequacies clearly illustrate the need to develop cooperation tools and mechanisms to facilitate access to lifelong learning and the transferability of qualifications between Member States, institutions and systems. Increasing the transparency of qualifications is an indispensable step in the process of implementing such a strategy and developing the knowledge, know-how and skills required by European workers and citizens, as well as all other stakeholders (especially training institutions).

1.4. The ECVET⁽¹⁾ system, which is aimed at citizens, is expected to promote the transnational recognition of their lifelong training. This system is founded on existing European practices and systems and is based on the following aspects:

- A description of qualifications in the form of transferable and cumulative units of learning outcomes (knowledge, know-how and skills).
- The establishment of a transparent system for the transfer, accumulation and validation of vocational training.
- The establishment of partnerships between institutions to create a favourable environment for transferability and an area of transnational vocational training.

2. General comments

2.1. The impact assessment reveals that the ECVET system facilitates transparency, comparability and the transfer and accumulation of units of learning outcomes between different systems. It does not require any further atomisation of qualifications, nor does it advocate the harmonisation of these or of training systems. It supports and strengthens existing provisions for facilitating mobility (ECTS⁽²⁾ and EQF⁽³⁾). In the long term, it could contribute to implementing the national training reforms needed to set up lifelong learning. This is why ECVET has added value in the areas of mobility and lifelong learning.

2.2. Nevertheless, the difficulties presented by these instruments should not be minimised. Although the purpose of EQF is to compare national systems, these systems must be designed and set up in such a way that they can be readily understood and trusted by partners in other Member States. It will be up to the Commission to establish clear criteria for ensuring relevance, transparency, comparability, and mutual trust among partners. Similarly, although EQF

⁽¹⁾ European Credits System for Vocational Education and Training.

⁽²⁾ European Credit Transfer and Accumulation System.

⁽³⁾ European Qualifications Framework for Lifelong Learning.

was set up as a device for comparison and voluntary transposition between different European, national and sectoral qualifications, we should not underestimate the complexity of existing systems. For this reason, we should strengthen measures promoting greater transparency and arrive at a proper understanding of the different steps involved in introducing diplomas or certificates in 2012.

2.3. It should also be stressed that the ECVET system does not replace the other policies in force within the European Union, and in particular Directive 2005/36/EC concerning migrant workers. But on the other hand, it does not strengthen the links needed with existing European programmes, which stipulate in particular, as regards the least developed regions of the EU, that the ESF should finance the implementation of reforms in education and training systems so as to make people more aware of the importance of the knowledge society's needs, particularly the need for lifelong education and training, and improve access to quality education.

2.4. The ECVET system, which sets up a permanent process, requires a lasting commitment by all the players and a synergy between initiatives adapted to European, national or sectoral levels. Unfortunately, it does not expressly provide for any exploitation of advances or innovations (good practices), which may also generate a dynamic among potential players and partners for the assessment scheduled in 2012.

2.5. While the EESC has noted that the consultations which have taken place at all levels and with a large number of players in the public and private sectors have made it possible to establish a common language, the systematic use of a number of acronyms in the proposals, communications, recommendations, impact studies, reports ordered by the Commission is leading to a plethora of initials and a state of confusion that does not augur well for the aim in view. An abbreviation, set of initials, acronym or slogan that makes sense in one language may mean nothing in another, or even convey a completely negative image. Moreover, this usage may limit the entry of new training bodies and put off the people targeted from getting interested in what was designed to make transfers between national vocational training systems easier, not harder. The EESC also recommends that this effort to harmonise such vocational training systems and make them compatible with lifelong training should take account of the linguistic aspects and of the Commission's efforts elsewhere.

2.6. The Commission will have to ensure that the objective of making it 'much easier for individual trainees to complete their

training courses in different training establishments and in different countries, thereby boosting mobility of learners throughout Europe. This is an even more remarkable achievement, given that there are over 30 000 vocational training establishments around the EU ...'⁽¹⁾ is not accomplished at the expense of linguistic diversity on the one hand, and of the quality of linguistic teaching emphasised by the Commission on the other.

3. Specific comments

3.1. The Commission's choice of legislative instrument to set up the ECVET system, i.e. a Recommendation of the European Parliament and of the Council under Article 150 of the Treaty, establishes a framework for implementing ECVET's principles, whilst taking a voluntary approach. Taking this route will strengthen the consultation process which was put in place and which enabled a broad exchange of views among the various stakeholders, including the social partners.

3.2. Although a voluntary approach may present a number of shortcomings, it improves coordination between the Commission, the social partners and Member States for the purpose of clearly identifying the problems that will arise and, above all, for developing the most suitable innovations and solutions. This process will make it possible to plan an operational and more effective implementation of an ECVET with real added value for European workers and citizens in terms of recognition of competencies, thereby promoting lifelong learning and mobility.

3.3. The Commission's expressed intention to carry out an assessment and publish progress with a view to developing and reviewing the ECVET system on an ongoing basis in order to adapt it indicates a commitment to cooperation. It would be appropriate for the various stakeholders, and in particular the users or their representatives, to be widely involved in the assessment and preparation of the report mentioned in the document.

3.4. The Commission's wish to support and promote transnational mobility and access to lifelong learning in the field of vocational education and training must also include full recognition of the underlying principles in the Recommendation concerning the place and role of those involved:

⁽¹⁾ Commission press release IP/08/558.

- The end-users are students who volunteer to have their qualifications validated for the purposes of recognised certification.
- The certification system based on the recognition of qualifications by means of credit units made up of points must guarantee them impartiality and aim at equality of access, and not constitute additional obstacles or selection criteria.
- European cooperation as regards initial and lifelong education and training is necessary in order to create the conditions for transparency and recognition of qualifications.
- Networks and partnerships should be set up, specifically centred on the ECVET system, with a view to developing new tools and new practices as regards teaching contracts and the transfer of credits.
- The Commission should ensure that the standards being adopted allow not only students but also training bodies to be treated fairly. Recent studies⁽¹⁾ still show that the people who benefit most from lifelong training are those who are already the most qualified, and that those who benefit least from lifelong training are those with the lowest level of - or no - qualifications. There are various reasons why this is so, but such a situation should be avoided for certifications and the Commission must ensure that the certification system also covers those who are least favoured in terms of certifications.
- In this area many training bodies (associations and organisations) which specialised in working with the least qualified, and which had accumulated solid experience over a long period, have recently been cut out of the 'supply' market in certain Member States because very often the economies to be made in the short term were achieved at the expense of the 'most profitable' sections of the public; The human and financial aspects of this experience should be improved, particularly in the fields of culture, the social economy and popular education, which are often the gateways to vocational training for such people.

⁽¹⁾ 'Progress towards the Lisbon objectives in Education and Training, Indicators and Benchmarks, 2007': SEC(2007) 1284. NIACE's survey on adult participation in learning, 'Counting the cost' January 2008. NIACE is the National Institute of Adult Continuing Education in the UK.

3.5. Common standards have been worked out for moving towards a European certification system through greater cooperation. This is particularly delicate as regards knowledge acquired through so-called 'informal' apprenticeships. The standards to be reached should be sorted out and studied by following the criteria proposed by, among others, CEDEFOP in its report (see note below) and by consulting bodies that have gained solid and inclusive experience (and whose successes are not based on entry-level elimination and selection of eligible qualifications).

3.6. The Commission should take account of its own Communication on an Action Plan on Adult Learning⁽²⁾, which would make it possible to include the largest possible number of people more quickly by pinpointing those who need it most, people who were not only vulnerable or disadvantaged, but who should be given priority for human and social inclusion reasons and in the interests of economic and territorial cohesion⁽³⁾.

3.7. Annexes 1 and 2 to the current Recommendation, which have been inspired by recommendations from CEDEFOP⁽⁴⁾, are key to the success of the ECVET system as they contribute to transparency and consistency while laying down principles for development at all levels. They should be the subject of clarification, follow-up and greater publicity to ensure the continuity and sustainability of the system.

3.8. The establishment of a common directory and a common field of designation for teaching objects in the context of pre-consultation and consultation of the Commission, which is a step forward, should not lead us to lose sight of the fact that education is not a matter for commercial services and that, on the contrary, it must remain a basic service accessible to the largest possible number of people, guaranteed by both public investments and political cohesion at both national level and in WTO negotiations, if we want to maintain European competitiveness in the broad sense (general interest).

⁽²⁾ EESC opinion on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Action Plan on Adult Learning - It is always a good time to learn*, rapporteur: Ms HEINISCH. Opinion adopted at the plenary session OJ C 204, 9.8.2008, p. 89.

⁽³⁾ CoR opinion of 19/6/2008 on the *Action Plan on Adult Learning - It is always a good time to learn*, rapporteur: Ms SHIELDS. Opinion adopted at the plenary session of 18 and 19 June 2008.

⁽⁴⁾ The European Centre for the Development of Vocational Training was set up in 1975 by Council Regulation (EEC) No 337/75 and is the EU's reference centre for vocational education and training. Report of Erwin SEYFRIED - FHVR-FBAE of Berlin (College for Public Administration and the Administration of Justice - Centre of Research on Vocational Training, the Labour Market and Evaluation/Fachhochschule für Verwaltung und Rechtspflege - Forschungsstelle für Berufsbildung, Arbeitsmarkt und Evaluation, Berlin) for CEDEFOP: Panorama: Indicators of quality in vocational education and training.

3.9. If we want to be consistent, the objectives of decent jobs and quality education have to go hand in hand as pledges of competitiveness, and the establishment of a European certification system has to continue in cooperation with the Member States, the social partners at all levels and the people concerned by validations, who, as the final recipients, have to remain the focus of these objectives. The objectives must remain legible and clear to all beneficiaries: recognition of acquisitions in terms of skills, transferability, geographical and job mobility and, where operators are concerned: recognition and access to general interest funding. A European certification system may boost employability and mobility if it is built around these concerns: keep the most efficient operators (experience; number of successful validations; quality of validations; recognise the acquired experience of operators (organisations and associations) who have actually tested methods in real life situations; give priority and regain the confidence of operators who have been sidelined (aid for migrants, support for the Roma community, adult literacy, linguistic support ...).

3.10. The EESC would point out that the employees who are currently most concerned by mobility are male employees on secondment in sectors of the construction and building industry, followed by computer services and new technologies services, then tourism, transport, etc.

3.11. As the ECVET system is dedicated specifically to initial and continuous vocational training, recognition and validation of formal (education) and non-formal qualifications (professional experience), the EESC recommends that the certification system pay particular attention to lifelong learning and the recognition of qualifications acquired by workers on secondment ⁽¹⁾.

3.12. The process surrounding the assessment scheduled in four years' time should include wide distribution throughout the Member States under the guidance of the European Commission, with a view to anchoring the system in the developments of currently existing schemes and in civil society.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

⁽¹⁾ EESC opinion on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers*. Opinion adopted at the plenary session (OJ C 224, 30.8.2008, p. 95).

Opinion of the European Economic and Social Committee on the Amended proposal for a Directive of the European Parliament and of the Council concerning the minimum safety and health requirements for the use of work equipment by workers at work

COM(2008) 111 final — 2006/0214 (COD)

(2009/C 100/26)

On 4 June 2008, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Amended proposal for a Directive of the European Parliament and of the Council concerning the minimum safety and health requirements for the use of work equipment by workers at work

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion 11 September 2008. The rapporteur working alone was Mr VERBOVEN.

At its 448th plenary session, held on 22 and 23 October 2008 (meeting of 22 October), the European Economic and Social Committee adopted the following opinion by 102 votes to none, with 4 abstentions.

1. Conclusions and recommendations

1.1. The Committee essentially supports the proposal, but calls on the Commission to take account of the reservations raised in this regard and to amend the text of the recitals accordingly. It hopes to see the swift approval of the proposal by the Parliament and the Council ⁽¹⁾.

2. Background

2.1. Gist of the Commission proposal

2.1.1. The purpose of this proposal is to undertake a codification of 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. The new Directive will supersede the various acts incorporated in it ⁽²⁾; according to the Commission, this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with *only such formal amendments* as are required by the codification exercise itself.

2.2. Comments

2.2.1. Compliance with health and safety regulations in the use of work equipment is an important aspect of prevention

measures. Since 1989 these measures have been the subject of a minimum harmonisation. The directive of 30 November 1989 has been amended several times so as to cover a large number of work situations (mainly related to work at a height) and to incorporate a broad approach to safety at work by referring to ergonomic principles. The adoption of directive 2007/30/EC has also altered the way in which Member States draw up national reports on the application of Community legislation on health and safety. These various revisions may cause difficulties for the intended users of this legislation.

2.2.2. A codification should not make any changes to the content, either to the articles of the directives or to their annexes and recitals. The various types of provisions which make up a directive form a coherent and interdependent whole. Even though the recitals are not binding provisions themselves, they make it easier to interpret the binding provisions and by so doing provide Member States with criteria for coherent application. Having examined the proposal, the Committee believes that the text in question fully upholds this basic principle insofar as concerns the codification of the articles and annexes but deviates from this approach when it comes to the recitals:

— the Committee notes that recitals (7), (8), (9), (10) and (11) of Directive 2001/45/EEC and recital (9) of Directive 89/655/EEC have not been included in the codification,

⁽¹⁾ See also EESC opinion of 15.2.2007 on the Proposal for a Directive of the European Parliament and of the Council concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (Codified version), rapporteur: Mr Verhoven (OJ C 97, 28.4.2007).

⁽²⁾ Directive 89/655/EEC of the Council, Directive 95/63/EC of the Council, Directive 2001/45/EC of the European Parliament and of the Council and Directive 2007/30/EC of the European Parliament and the Council.

— in particular, recitals (10) and (11) of Directive 2001/45/EEC drew attention to the need for specific training for workers required to use equipment to perform work at a height. The Committee would hope that such a recommendation is not omitted from the recitals of the proposed codification,

- the Committee believes that the present proposal should be submitted for consultation to the Advisory Committee on Safety and Health at Work in accordance with Council Decision 2003/C 218/01 of 22 July 2003. This consultation should be mentioned in the recitals of the directive in accordance with the practice applied hitherto. The time which has elapsed since the beginning of the codification exercise amply demonstrates that consultation of the Advisory Committee could have taken place without any particular difficulty.

2.2.3. Subject to the comments set out above, the Committee believes that the Commission proposal combines the provisions currently in force in a logical manner and makes them clearer and does not pose any major problem.

2.2.4. The Committee essentially supports the proposal, but calls on the Commission to take account of the reservations raised in this regard and to amend the text of the recitals accordingly. It hopes to see the swift approval of the proposal by the Parliament and the Council.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Proposal for a Council Directive concerning the general arrangements for excise duty

COM(2008) 78 final/3 — 2008/0051 (CNS)

(2009/C 100/27)

On 4 March 2008 the Council decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the

Proposal for a Council Directive concerning the general arrangements for excise duty

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 October 2008. The rapporteur was Mr BURANI.

At its 448th plenary session, held on 22 - 23 October 2008 (meeting of 22 October), the European Economic and Social Committee adopted the following opinion by 107 votes to one with one abstention.

1. Conclusions and recommendations

1.1. The EESC supports the Commission's Decision to replace in its entirety the basic directive on the application of excise duty, 92/12/EEC, with a new text that takes account of the adoption of the electronic EMCS (Excise Movement and Control System) procedure and gives this a legal basis. The Commission has made use of the opportunity to introduce some changes and innovations that have been made necessary by the experiences of the authorities in the Member States and of traders. A number of procedures have also been streamlined. In general terms, the parts affected by changes or innovations do not give rise to specific objections, but the EESC intends to comment on some aspects as a contribution to the discussions that will follow.

1.2. The Commission suggests a hypothetical date of 1 January 2009 for entry into force of the directive. However, conscious that the examination of the proposal will take much longer, it also proposes that the EMCS procedure could be adopted in the first instance only by the Member States that have adopted it, whilst the others would continue with the paper-based procedure for a certain period.

1.3. The EESC, together with other stakeholders, has misgivings about this: a dual procedure would be confusing and expensive both for the authorities and for traders. However, the alternative, i.e. to launch EMCS only when everyone is ready, would similarly penalise traders and those who are already ready now. An interim solution, which is hardly satisfactory and would be likely to delay EMCS in Europe indefinitely, might consist in using EMCS only for internal transactions within those Member States able to

adopt the electronic procedure. The paper procedure would be used by all Member States for international transactions until everyone was ready to move over to the electronic system.

1.4. The most important part of the Commission document relates to the movement of goods under suspension of excise duty; the EESC supports the various innovations, aside from a few clarifications and proposals (see points 4.6 to 4.9) that are mainly to do with the concept, which is now more clearly defined, of 'irrecoverable loss' of goods. With regard to distance selling, the wording of Article 34 (see point 4.9) could give rise to doubts of interpretation of a legal nature concerning the country in which excise duty is to be collected.

1.5. The EESC also proposes that a clause be inserted into the new directive specifying the quantitative and value limits up to which purchases made by a member of the public in another Member State are considered to have been made by that person as a 'private individual'. There is a risk of differences in interpretation and application by the various authorities.

2. The Commission proposal

2.1. Directive 92/12/EEC of 25 February 1992 lays down provisions on the general arrangements for products subject to excise duty, which are largely paper-based. On 16 June 2003, EP and Council Decision No 1152/2003/EC introduced a **computerised procedure** known as the EMCS (Excise Movement and Control System) which simplified traders' obligations and enabled authorities to carry out integrated, more effective monitoring. The introduction of the EMCS requires the provisions on movements **under suspension of excise duty** to be amended.

2.2. The Commission is taking this opportunity to **replace Directive 92/12/EEC in its entirety**. In addition to catering for the introduction of the EMCS, for which it provides a legal basis, it **systematically changes the whole of the previous directive**: it updates the language used taking into account new legislative standards; recasts the text to make its structure more logical; takes out obsolete provisions; takes account of new legal concepts; and simplifies procedures so as to reduce obligations for traders without compromising controls.

2.3. The new text also incorporates (Chapter V) the essence of proposal COM(2004) 227 – set aside by the Council in 2005 – amending Articles 7 to 10 of Directive 92/12/EEC, on the intra-Community movement of products already placed on the market.

2.4. The proposal was preceded by large-scale consultation of traders and was developed in close cooperation with a specialists working group under the auspices of the Excise Committee. This is an appropriate procedure which should allow the technical aspects of the document to be discussed without undue controversy.

3. General comments

3.1. The EESC congratulates the Commission on its initiative, which has produced a document which is better structured than the original, more thorough and reflects the need to cut red tape. In particular, it takes greater account of traders' needs without reducing the level of controls, which should actually become more effective with the introduction of the EMCS procedures.

3.2. The most important part of the new provisions concerns **movements of products under suspension of excise duty**, with procedures based on the EMCS. According to Decision 1152/2003 the EMCS should be introduced in April 2009; while there are grounds for suspecting that this deadline might not be respected by certain countries, it is practically certain that not all will comply. A period of collective adjustment to the system will therefore be needed, entailing **close cooperation between national administrations** and therefore **harmonisation of internal procedures**: a rather complex matter in administrative, technical and operational terms. The Commission is aware of this and, while it proposes that the directive enter into force on 1 April 2010, it provides for an additional, **intermediate period** for Member States during which the relevant part of the original directive would continue to apply.

3.3. The Member States have now committed to introducing the EMCS, but there is no guarantee that they will all do so willingly and it is quite possible that barriers to its full implementation might still arise. **Resistance** is to be expected, maybe ostensibly on technical grounds but essentially for other kinds of reasons. The precedent of the proposal for a Directive COM(2004) 227, mentioned in point 2.3, on the intra-Community movement of products already released for consumption, does not bode well: after tough negotiations it was decided to 'suspend' the matter pending a full review of the subject, but the present proposal is in essence a reproduction of the previous one.

3.4. The most sensitive issues are **political and economic in nature**. Each Member State applies different excise duties to different products, which leads to the well-known phenomenon of **cross-border purchases** based on cost savings. Under the principles of the single market, each individual should be able to benefit from price differences not only at national level but also and above all in their cross-border purchases, but these principles are called into question when tax becomes a consideration. In reality it is clear that each Member State disapproves of this practice when it is to its detriment but ignores it when it is to its advantage. No type of product subject to excise duty is unaffected by this situation and the recent discussions on tobacco, alcohol and diesel are evidence of this⁽¹⁾: the grounds given were **health, law and order, respect for the environment and harm to the economy**. However, there are underlying reasons which are not always explicitly mentioned, related to **tax considerations**. The different viewpoints therefore derive from the **social, economic and fiscal policies** adopted by each Member State: at Community level the issue becomes purely political.

3.5. The EESC is aware of the sensitive nature of the matter and the difficulties that could be encountered by each Member State in the negotiations awaiting it; their success depends on the degree of **flexibility** that will be needed to reach collective decisions. Each government will have to strike a balance between meeting its own needs and the excise concessions it has to make to others. In other words, it will have to find a way of **pursuing its own social and budgetary goals and reconciling them with a joint excise system, not the other way round**.

⁽¹⁾ See the most recent proposals for directives:

Proposal for a Council Directive amending Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (COM(2004) 227 final - 2004/0072 (CNS);

Proposal for a Council Directive amending Directive 2003/96/EC as regards the adjustment of special tax arrangements for gas oil used as motor fuel for commercial purposes and the coordination of taxation of unleaded petrol and gas oil used as motor fuel (COM(2007) 52 final - 2007/0023 (CNS);

Proposal for a Council Directive on the structure and rates of excise duty applied to manufactured tobacco (Codified version) (COM(2007) 587 final).

4. Specific comments

4.1. In this section the EESC will look at the **main new elements and changes** introduced by the Commission proposal with respect to current legislation. It will not comment on aspects which do not seem controversial, which are intended to streamline the text or which derive from common sense or natural developments in the field.

4.2. As mentioned in point 3.2 above, although the proposed directive will repeal directive 92/12/EEC, **movements in paper form** will not be stopped immediately it enters into force: for a **transitional period** it will allow movements to take place under cover of accompanying documents in paper form. No one can predict how long this period will last: certainly, until the EMCS is adopted by all the Member States the system could run into serious problems. The EESC points out the **burdens placed on traders** – but also on Member States' administrations – which are forced to work with both **electronic and paper-based systems** according to the destination countries.

4.2.1. The alternative of making the system operative only when it is functional in all the Member States gives rise to the danger of postponing the project until a possibly distant future. Moreover, it would force those Member States that are ready to go with the electronic procedure to wait for the others to catch up: an unacceptable situation that penalises those who have fulfilled their obligations on time, but also, more importantly, traders.

4.2.2. The Committee draws attention to a proposal from some experts which, though it may not be a perfect solution, appears to offer an acceptable if not optimal compromise: those Member States who are ready could use the electronic procedure for domestic movements, keeping the paper-based procedure in place for international trade. The system would thus be tried and tested at national level before being rolled out at Community level when all the Member States are ready.

4.3. **Chapter I (General provisions)** makes no substantial changes in respect of Directive 92/12: it merely provides a better framework for the subject with a few adjustments, new definitions and minor changes.

4.4. In **Chapter II (Incurrence of excise duty)**, the change introduced by Article 7(4) provides for the 'irrecoverable loss' of a product under suspension of excise duty to be exempt from taxation. The new term 'irrecoverable loss' refers to a product which has become unusable by anyone, irrespective of the

circumstances of the loss. The genuinely new element is the fact that the directive no longer requires proof to be given of '*force majeure*', but the EESC points out that each Member State is still free to establish rules on the subject.

4.5. **Chapter III (Production, processing and holding)** introduces one major new element: 'tax warehouses' can be authorised for persons resident in another Member State. Although this ties in with the principles of the single market, restrictions have been imposed in the past.

4.6. **Chapter IV (Movement of excise goods under suspension of excise duty)** lays down new provisions: Article 16 states that products can be moved not just to tax warehouses but also to authorised individuals or businesses ('registered consignees'), and, subject to authorisation, to a 'place of direct delivery' specified by an authorised consignee. The EESC endorses this and calls for the monitoring procedures to be sufficiently effective to prevent abuse. However, it would be desirable to have a precise definition of the professionals to whom the terms used in the directive apply.

4.7. The following provisions (Articles 17-19) concern guarantees for covering the risks inherent in movement under suspension of excise duty and do not call for specific comment. However, the provisions of Section 2 (Articles 20-27) are especially significant, concerning the **procedures to be followed on a movement of goods under suspension of excise duty**. Experts believe that the adoption of these procedures should be carefully scrutinised to **ensure that they allow for effective monitoring and are consistent with administrations' resources**. However, the EESC points out that Article 20(1)(2) and (3) stipulates that a movement of excise goods may take place only under cover of an electronic administrative document. This rule will need to be adapted to reflect the system adopted for the transition from paper to electronic means.

4.8. **Chapter V** concerns the **movement and taxation** of excise goods after release for consumption and does not include any essentially new provisions. It reiterates the principle that goods should be taxed in the country in which they were acquired if they are held by private individuals (Article 30), and in the country of consumption if they are held for commercial purposes (Article 31), and confirms the existing rules on identification of the person liable to pay the duty and on goods in transit.

4.9. The provision laid down in Article 34 on **distance selling** is particularly important: by derogation from Article 30 it provides that goods purchased by private individuals and **dispatched or transported to another Member State directly or indirectly by the vendor or on his behalf** are to be subject to excise duty **in the Member State of destination**. It is to be inferred, therefore, that if the goods **purchased by the buyer are sent by the buyer to their address**, they are to be subject to excise duty **in the Member State in which they were purchased**.

4.9.1. The EESC is concerned that the provision might give rise to **problems of interpretation**: in distance selling the purchase takes effect in the place of residence of the seller when payment is made. The purchaser, who is the owner of the goods, is therefore legally entitled to instruct anyone they like (including the seller) to send them the goods *on their orders or behalf*. From a legal point of view, and contrary to the principle of taxation at the point of actual consumption, the goods could therefore *always* be deemed to have been **purchased by a private individual and sent or transported on their behalf** and therefore subject to excise duty in the Member State in which they were purchased, even if dispatch was effected by the seller.

4.10. The EESC also considers that it is worth pointing out what appears to be a loophole in Article 34: the article does not specify the quantitative and value limits up to which purchases

by a person are considered to have been made in their capacity as a 'private individual'. To avoid discrepancies between measures applied by each Member State within the single market, it is necessary to specify unambiguous criteria. In the light of these and other concerns, the EESC calls on the Commission and the Member States to draw up clearer and more transparent rules; this would make life simpler for citizens and businesses.

4.11. The provisions of **Chapter VI** (Miscellaneous) concern affixing of markings and preserve existing provisions on stores for boats and aircraft. Article 38 concerns **small wine producers** (up to 1 000 hl), who benefit from simplified procedures relating to production and holding of excise goods.

4.12. **Chapter VII** (Final provisions) confirms the role of the existing Committee on Excise Duty and sets out the implementing provisions; Directive 92/112/EEC is to be repealed on a date (1 April 2009) which the Commission wisely flags as open to discussion; the same applies to the transitional period (with a hypothetical end date of 31 December 200...) during which Member States can continue to operate under the previous directive. Together with other institutions and experts, the EESC believes that these dates are purely indicative and should be put back **to make the timeframes realistic**, particularly given the practical difficulties surrounding full implementation of the EMCS.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax to combat tax evasion connected with intra-Community transactions and the Proposal for a Council Regulation amending Regulation (EC) No 1798/2003 to combat tax evasion connected with intra-Community transactions

COM(2008) 147 final — 2008/0058 (CNS) 2008/0059 (CNS)

(2009/C 100/28)

On 3 April 2008 the Council decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the:

Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax to combat tax evasion connected with intra-Community transactions and the

Proposal for a Council Regulation amending Regulation (EC) No 1798/2003 to combat tax evasion connected with intra-Community transactions

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 October 2008. The rapporteur was Mr SALVATORE.

At its 448th plenary session, held on 22 and 23 October 2008 (meeting of 22 October), the European Economic and Social Committee adopted the following opinion by 114 votes to one with one abstention:

1. Conclusions and recommendations

1.1. The European Economic and Social Committee welcomes the proposal for a Council Directive amending the common system of value added tax to combat tax evasion connected with intra-Community transactions and the related proposal for a Council Regulation amending Regulation (EC) No 1798/2003.

1.2. The proposed amendments meet the growing demand for simplification, effectiveness and efficiency and forge a clearer link between measures to streamline administrative procedures and the capacity of Member States to combat and curb the problem of intra-Community fraud.

2. Introduction

2.1. The proposal to amend the Directive and Regulation under review is the result of lengthy discussions within the EU institutions. Its aim is to provide the relevant authorities with effective, binding instruments with which to eliminate or at least curb fraudulent conduct that is often aimed at distorting the proper functioning of the internal market.

2.2. It should be borne in mind that in the Community context, fraud is an offence that manifests itself in various forms and different fields of activity, ranging from the criminal counterfeiting of alcohol and tobacco, and smuggling, to direct taxation offences, and, most commonly, VAT evasion.

2.3. Particular attention has been given to VAT evasion. In the background is the idea of thoroughly overhauling the current VAT system for intra-Community trade, which, in accordance with the principle of equal treatment of national goods and goods from other EU Member States, is based on the principle of applying tax in the receiving country, i.e. in the Member State in which the purchaser is registered for VAT.

2.4. While this principle — which has in effect governed the transitional arrangements for intra-Community trade — has, on the one hand, enabled goods to move between EU countries untaxed and therefore allowed the free movement of goods, it has also, on the other hand, substantially damaged the EU's financial interests. We need only think of the established practice in the EU of *carousel fraud*, neatly summed up in the 2006 *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee concerning the need to develop a co-ordinated strategy to improve the fight against fiscal fraud* ⁽¹⁾ with the following definition: 'One typical form of fraud, termed "carousel" fraud, is where transactions within a Member State (on which VAT is charged) are fraudulently combined with intra-Community transactions (on which no VAT is charged between the contracting parties)'.

2.5. The Committee has already addressed this issue on several occasions and provided useful recommendations; these have been duly taken into account in drawing up this opinion ⁽²⁾.

⁽¹⁾ COM(2006) 254 final.

⁽²⁾ EESC opinions on the *Proposal for a Council Directive on the common system of value added tax (recast)*, OJ C 74, 23.3.2005, p. 21 and on the *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee concerning the need to develop a co-ordinated strategy to improve the fight against fiscal fraud*, OJ C 161, 13.7.2007, p. 8.

3. General comments

3.1. Given the clear need to combat a now widespread phenomenon, estimated to cost between 2 % and 2.5 % of EU GDP, the proposed Council Directive amending Directive 2006/112/EC on the common system of value added tax to combat tax evasion connected with intra-Community transactions, together with the proposed Council Regulation amending Regulation (EC) No 1798/2003 to combat tax evasion connected with intra-Community transactions, backs up the commitment made in a previous, comprehensive communication: *Communication to the Council concerning some key elements contributing to the establishment of the VAT anti-fraud strategy within the EU* ⁽¹⁾, clearly setting out the measures to be adopted.

3.2. In fact, the Commission's approach had already emerged from the above communication, which pointed out that *'Notwithstanding its commitment to complete an analysis of potential changes to the VAT system, the Commission sees no contradiction in continuing in parallel a debate on the so-called conventional measures. Providing the tax authorities with more modern and efficient tools for combating tax fraud is an objective to be pursued in any event, independently of the decisions which will be taken on the more far reaching measures'*.

3.3. Given the medium-term shelving of the proposal to make substantial changes to the VAT system, including the idea of radically changing the system of VAT collection, the Committee welcomes the Council initiative to introduce less ambitious, though effective amendments to current VAT legislation.

3.4. The Committee welcomes the proposed amendments; it points out that these specific adjustments to the VAT Directive meet the objectives of increased simplification and efficiency established inter alia during the preparatory work on the proposal. The amendments also forge a clearer link between measures to streamline administrative procedures and the capacity of Member States to combat and curb this transnational problem.

3.5. More specifically, the commitment set out in the explanatory memorandum accompanying the proposed Directive, to reduce 'the interval between the time at which a transaction takes place and the time at which the information is made available to the Member State' — i.e. to reduce to one month the period for declaring intra-Community transactions in the recapitulative statements, together with the proposal to reduce from three months to one month the period for transmission of this information between Member States — gives legal expression to the drive against creating disproportionate red tape. This must, however, be matched by greater investigative capacity and better risk management on the part of Member State tax authorities, in their bid to combat Community fraud.

3.6. Legal clarity, simplification of obligations and greater administrative cooperation would seem to characterise the other provisions amending Council Directive 2006/112/EC.

3.7. One such provision, in addition to the increased frequency of declarations, is the proposal to include among the information collected to combat tax evasion, data on intra-Community acquisitions of goods and services from a supplier established in another Member State for which the customer is liable for VAT. Another is the provision that purchasers or customers carrying out such transactions for an amount higher than EUR 200 000 will be obliged to submit their VAT returns monthly. There is also the amendment harmonising the rules for charging VAT on services in order to make sure that transactions are declared by the vendor and the purchaser during the same period.

3.8. In the Committee's view, these last regulatory provisions in particular encapsulate the *raison d'être* of the proposal to amend the Directive, striking a balance between the need for additional obligations, the reasons for cutting administrative costs (only a small number of businesses would be affected) and the provision of additional information by the financial authorities.

3.9. In other words, more frequent trade data transmission would have to be balanced by the capacity of tax authorities to handle much larger volumes of information, leading to more efficient cooperation mechanisms.

4. Specific comments

4.1. The Committee endorses the amendment to Article 250(2), which allows companies to submit VAT returns electronically. As well as reducing the margin of error in the filing of tax returns, this provision will cut costs for both the companies and the authorities.

4.2. It also approves the derogation for companies which would only occasionally or exceptionally fall within the scope of the amended provisions.

4.3. The Committee also welcomes the new Article 251(f), whereby VAT returns would now cover the acquisition of services as well as goods. This will enable more effective assessment of the exchanged information and help to prevent VAT evasion in the area of services.

⁽¹⁾ COM(2007) 758 final.

4.4. While it cannot be considered a complete deterrent, reducing the tax period to one month is certainly a considerable improvement. The aim is to harmonise the rules for charging VAT on services to enable the information submitted by the vendor and the purchaser to be properly cross-checked.

4.5. The corollary to these VAT return rules is the new timescale for submitting recapitulative statements.

4.6. Equally important is the subsequent provision authorising such data to be transmitted electronically.

4.7. The requirement for Member States to draw up a table correlating national transposition provisions with the Directive itself is a useful step. It is clearly intended as a more thorough means of checking the extensive range of information currently provided by companies to tax authorities, partly in view of the various forthcoming changes.

4.8. Finally, it should be pointed out that the amendment of the Directive necessitates corresponding amendments to the relevant Regulation.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Proposal for a Council Directive on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (Codified version)

COM(2008) 492 *final* — 2008/0158 CNS

(2009/C 100/29)

On 25 September 2008, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 94 of the Treaty establishing the European Community, on the

Proposal for a Council Directive on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (Codified version)

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 448th plenary session of 22 and 23 October 2008 (meeting of 22 October 2008), by 115 votes in favour with 3 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation (EC) amending Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, in respect of certain revenue-gathering projects

COM(2008) 558/2 — 2008/0186 (AVC)

(2009/C 100/30)

On 8 October 2008 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Proposal for a Council Regulation (EC) amending Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, in respect of certain revenue-gathering projects

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr DASSIS as rapporteur-general at its 448th plenary session, held on 22 and 23 October 2008 (meeting of 23 October), and adopted the following opinion by 45 votes to none with one abstention.

1. Conclusions and recommendations

1.1. The EESC notes the Commission's proposal to amend Article 55 of Regulation 1083/2006 and welcomes this step to lighten the administrative burden it imposes.

1.2. The EESC approves the proposal.

2. Reason

2.1. Article 55 of Regulation 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund establishes management procedures and provisions regarding the contribution from these funds to revenue-gathering projects.

Article 55 also lays down a threshold of EUR 200 000 for the application of these provisions.

2.2. These provisions do not seem appropriate to projects co-financed by the European Social Fund, which essentially finances non-physical operations; they also impose a disproportionate administrative burden on the small operations co-financed by the ERDF and the Cohesion Fund.

2.3. Given the impossibility of resolving the issue of the administrative burden by way of interpretation, and following informal consultations with the Member States, the Commission has decided to propose an amendment to Article 55, so that its provisions will henceforth apply only to operations co-financed by the ERDF or the Social Fund and the total cost of which exceeds EUR 1 million. In the Commission's opinion, this technical amendment will significantly simplify the management of such projects.

Brussels, 23 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the Proposal for a regulation of the European Parliament and of the Council establishing a European Training Foundation (recast)

COM(2007) 443 *final* — 2007/0163 (COD)

(2009/C 100/31)

On 17 September 2007 the Council decided to consult the European Economic and Social Committee, under Article 150 of the Treaty establishing the European Community, on the

Proposal for a regulation of the European Parliament and of the Council establishing a European Training Foundation (recast).

Since the Committee endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 448th plenary session of 22 and 23 October 2008 (meeting of 22 October 2008), by 118 votes to two and one abstention, to issue an opinion endorsing the proposed text.

Brussels, 22 October 2008.

The President
of the European Economic and Social Committee
Mario SEPI

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