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## I

(Resolutions, recommendations and opinions)

## OPINIONS

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

452ND PLENARY SESSION HELD ON 24 AND 25 MARCH 2009

**Opinion of the European Economic and Social Committee on the role of forests and the forest-based sector in meeting the EU's climate commitments (Exploratory opinion)**

(2009/C 228/01)

On 20 June 2008 the Commission Vice-President Margot WALLSTRÖM 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 role of forests and the forest-based sector in meeting the EU's climate commitments'* (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 3 March 2009. The rapporteur was Mr KALLIO.

At its 452<sup>nd</sup> plenary session, held on 24 and 25 March 2009 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 145 votes to 8 with 14 abstentions.

**1. Conclusions and recommendations**

1.1 The EESC considers that forests and the renewable wood they produce play a significant role in controlling climate change, because:

- as they grow, forests absorb carbon from the atmosphere and store it in biomass and the soil;
- wood products are a carbon dioxide store – over the period of the store's lifetime the carbon in it is removed from the atmosphere;
- the use of wood energy reduces reliance on fossil fuels, thereby diminishing greenhouse gas emissions;
- the use of wood products in buildings and furniture indirectly reduces fossil fuel emissions as it replaces other materials such as concrete, whose manufacture consumes

more energy and produces more emissions than using wood.

1.2 The EESC notes that wood is used in Europe mainly in construction, as an energy source, for making furniture and in the production of paper. Thanks to the knock-on effects of the processing chain, wood products bring great added value in terms of employment, forest owners' income and economic activity, particularly in rural areas.

1.3 The EESC highlights the fact that, for several decades now, European forests have been functioning as carbon sinks because their annual growth has exceeded fellings, thus helping to slow the build-up of carbon dioxide in the atmosphere. The importance of natural forests as carbon stores and as preserves of biodiversity must be ensured. Sustainable forest management in European countries is monitored using MCPFE <sup>(1)</sup> criteria and indicators which are constantly being developed.

<sup>(1)</sup> MCPFE=Ministerial Conference on the protection of Forest in Europe since 1990.

1.4 The EESC proposes that the EU take the following measures:

- endeavour to use wood in different ways and for different purposes, by promoting, for example, the use of sustainably produced forest bio-energy, increasing information about using wood in construction on the basis of life cycle calculations and common construction standards and by the Member States making wood construction part of their national timber procurement policy;
- to be more active than at present in international forestry policy and to take the lead in promoting sustainably managed forests worldwide;
- to set up a European committee of leading experts made up of representatives from the forestry industry, those framing forestry policy, researchers, forest owners and other key forestry, environmental and climate protection players. Its brief will be to enhance and widen the scope of dialogue on forestry issues and improve the transfer of know-how and decision-making;
- to make every effort to meet the requirements for greenhouse gas reporting in the post-Kyoto period in the following ways:
  - a) acceptance and inclusion of carbon stored in sustainably manufactured wood products as a mandatory instrument in carbon balance calculations;
  - b) development of a REDD instrument<sup>(1)</sup> as an effective carbon trading tool and its acceptance in carbon balance calculations of land-use changes, particularly with a view to preventing forest loss in developing countries.
- to support research, inventories of forest reserves, the mapping of risk areas susceptible to the effects of climate change and the development of systems for monitoring the condition of forests and to ensure funding for these.

1.5 The EESC emphasises that, in the face of the potential negative effects of climate change, EU Member States should develop forest management contingency plans for the prevention of forest damage caused by extreme phenomena (storms, drought, forest fires, damage by insects) and for remedying the effects of such damage, in addition to increasing information about the importance of forest management.

<sup>(1)</sup> REDD=Reduction Emissions from Deforestation and Forest Degradation.

1.6 The EESC recommends that EU Member States also develop dispersed bioenergy production with the aid of feed-in tariffs.

1.7 The EESC emphasises that in addition to their significance for climate change, forests perform many other important ecological, social and economic functions, which need to be safeguarded. Apart from the production of wood, forestry goals include maintaining forest biodiversity, management of groundwater resources, landscape management, use of forests for recreational purposes and tourism, serving as a traffic noise barrier, prevention of avalanches and erosion and providing non-wood goods such as berries, mushrooms and game. Although forests contribute to well-being in many ways, none of these additional functions is reflected in profitability calculations or in timber prices.

## 2. EU climate commitments with relevance for forest and forestry

2.1 In December 2008 the European Parliament approved the EU climate and energy package. The legislative decisions which affect forests and forestry are as follows:

- Revision of the EU Emissions Trading Directive. The directive sets out guidelines concerning land use, land-use changes and forestry for greenhouse gas reporting and emissions trading. The carbon stored in wood products and in forests themselves form an important part of greenhouse gas reporting.
- The chemical wood pulp and paper industry is covered by the emissions trading scheme, but the sector fulfils the criteria on the basis of which it can be considered to belong to the 'carbon leakage' sector. Decisions concerning this sector will be taken later. The use of wood as a raw material compared to the manufacture of most other building materials (concrete, steel and aluminium) is covered by emissions trading, so that price of carbon affects their competitiveness. This confers an indirect advantage on wood materials and on wood construction.
- Framework Directive for Renewable Energy (RED). The target of achieving a 20 % renewable energy share by 2020 implies the need for a considerable increase in forest bioenergy (heating, electricity and biofuels). In order to step up the exploitation of the potential of biomass, the directive (section 34) sets the goal of making greater use of existing wood resources and the development of new forest management methods. The directive contains numerous

goals regarding sustainably produced forest biomass and the construction sector. The aim is to save energy and reduce emissions in the manufacture of materials.

— Transport Fuels Directive. The directive sets out requirements concerning sustainably produced biomass (including as a default value also forest biomasses) in the manufacture of biofuels in accordance with the RED Directives strategic framework.

2.2 Forests cover 31 % of Europe's land area and it is estimated that they sequester approx. 10 % of Europe's annual carbon dioxide emissions<sup>(1)</sup>. The amount of carbon emitted into the atmosphere in sustainably managed forests is smaller (carbon sink) than or equal to (carbon neutral) the amount of carbon sequestered from the atmosphere by forests.

### 3. Forest resources<sup>(2)</sup> and their use in Europe

3.1 There are 156 million hectares of forest land in the EU-27. However, owing to natural conditions not all the forest area is available for harvesting timber and commercial use. It is estimated that an average of 80-90 % of this area is accessible, but in eastern Europe this type of accessible forest area is often only 40-50 %. During the past 15 years the forest area has grown in the territory of the EU-27 by about 10 million hectares as a result of afforestation, reforestation of former agricultural land and natural reforestation. The increase in forest area is equivalent in size to the total land area of Hungary.

3.2 About 60 % of forests in the EU-27 are privately owned, mainly by families, and 40 % are publicly owned, e.g. by the state, municipalities, religious communities and other entities. There is a total of more than 15 million private forest owners, and this number is growing as a result of restructuring of forest ownership in the eastern European countries, as well as various arrangements related to the division of inheritances.

3.3 For centuries people have exploited Europe's forests in various ways, changing their structure. Indeed, Europe's forests have been transformed by human action, so they are described

as 'semi-natural' forests. 85 % of forests are of the 'semi-natural' type. In addition to this type of forest, forestry is also practised in plantation forests. Plantation forest, found mainly in south-western Europe, represents about 8 % of Europe's forest land. Natural forests<sup>(3)</sup>, undisturbed by man, (forest and other wooded land which are not subject to forestry activities), which are found mainly in eastern Europe, the Baltic countries and the Nordic countries, cover about 5 % of the forest area.

3.4 Natural forests and protected forest areas are the most important category of forest for safeguarding biodiversity. Natural forests are also stable ecosystems which help to combat the effects of climate change. Some 8 % of Europe's forested area is protected for the purpose of biodiversity, and around 10 % is protected on grounds of landscape conservation, making a total of 18 % (or 34 million hectares). The number of areas protected by law or other regulations has increased in recent years. The rarest and most precious forests suitable for protection are for the most part already protected in Europe. Protected forest is often located in upland areas or far from habitation, which are some of the most valuable areas – untouched by human activity – in terms of the diversity of species found there. In addition, about 10 % of forests are protected so as to protect water systems, groundwater resources and soil, and to prevent the occurrence of avalanches or erosion. Biodiversity is also promoted in the context of managing commercial forest by leaving decayed trees in the forest and micro-organism habitats in order to preserve rare species.

3.5 Commercial forest growth exceeds felling by a considerable margin in Europe. The stock of standing timber grew by 687 million m<sup>3</sup> in net terms in the EU-27 in 2005 (in forests where natural conditions allow wood to be harvested). Correspondingly, logging amounted to 442 million m<sup>3</sup>. This means that the forest utilisation rate, or ratio of felling to growth, was about 60 % on average (ranging from 30 to 80 %). The forest utilisation rate was over 50 % in the northern Member States and central Europe, but less than 50 % in southern and south-eastern Europe. The forest utilisation rate has increased over the last 10 years, but has not

<sup>(1)</sup> Nabuurs, G.J. et al. 2003. Temporal evolution of the European Forest sector carbon sink 1950-1999. *Global Change Biology* 9.

<sup>(2)</sup> *State of Europe's Forests 2007. The MCPFE Report on sustainable forest management in Europe*. MCPFE, UNECE and FAO. Warsaw 2007, 247p.

<sup>(3)</sup> Definitions: natural forests, classified as 'undisturbed by man', show characteristics of the natural forest development cycle, such as natural tree species composition, natural age structure and deadwood component and no visible sign of human activity. Plantations consist of introduced non-indigenous tree species or have even-aged stands consisting of one or two indigenous species which have been established artificially. Semi-natural forests are forests which are neither undisturbed by man nor plantations. This definition is applied in the EU's RED (Renewable Energy) Directive (point 72) in defining forest areas in which forest biomasses can be harvested sustainably (harvesting is allowed in all forest areas except undisturbed primary forest).

yet reached the same level as it was in 1990. Felling increased to some extent owing to severe storms in the first decade of the new millennium, which meant that in some places timber was harvested in a short time, with felling levels equal to those over several normal years. In 2006, imports of round wood, wood chips and waste wood to Europe (EU 27) amounted to 83 million cubic metres (not including paper and pulp) while exports to countries outside Europe totalled 54 million cubic metres <sup>(1)</sup>.

3.6 Nearly 40 % (or some 250 million m<sup>3</sup>) of forest growth in existing commercial forests is unused owing to the fact that fellings are less than growth. The forest stock of the EU-27 has also been growing constantly over the past 50 years. The total volume of standing timber is around 30 billion m<sup>3</sup>, which is equivalent to 9.8 billion tonnes of carbon. Part of the carbon sequestered by trees is stored in the soil but because of the lack of research there is no Europe-wide estimate for the soil's share of sequestered carbon. There is an important difference between commercial forests and natural forests in terms of carbon sequestration: from the perspective of climate protection, natural woods in their 'end state' are pure carbon sinks, in which carbon sequestration through the growth of biomass and carbon release through the decay of biomass are in equilibrium, whereas commercial forests are constantly developing new and additional carbon sequestration capacity due to the harvesting of timber. However, the EESC would like to make it quite clear does it not consider commercially managed forests to be therefore more valuable than natural forests.

3.7 It is important to examine the potential of Europe's forests for harvesting and other uses so as to understand and evaluate carbon-sequestration, the production of forest bioenergy, and the carbon cycle related to timber products. There is currently no coherent picture of felling potential for the EU-27 as a whole. Several countries have national forestry programmes that set out various felling possibilities taking forest protection needs, biodiversity and other multifunctional needs into account.

#### 4. The impact of climate change on forests

4.1 Forests absorb carbon dioxide (CO<sub>2</sub>) from the atmosphere by assimilation and convert it to biomass, primarily in the form of wood, while releasing oxygen, which is vital for the survival of animals and human beings. Climate change, especially the increase in the amount of greenhouse gases in the atmosphere and rising temperatures, but also the amount of ozone on the earth's surface, nitrogen deposits and acidification of the soil, poses a threat – either immediately or after a time lag – to the health, growth and structure of forests.

4.2 Climate change affects forests in two ways. If the climate gradually becomes warmer or drier, for example, trees have to

adjust to the change. This adjustment is gradual, and its progress and measures influencing it can be planned. The most serious immediate threats to the development of forests come from extreme weather phenomena. Time series compiled since 1850 show a clear increase in storm damage during the last 20 years in Europe. Similarly, forest fires have occurred in abundance over the last decade in the Mediterranean countries. It is impossible to precisely predict the occurrence of extreme weather phenomena, but it is possible to prepare for them using forward planning.

4.3 If existing commercial forests do not adapt sufficiently to a gradual change in climate, the results will be among other things a weakening in the vitality of trees, a decrease in productivity, death of individual trees, reduced ability of trees to compete and a consequent increase in the occurrence of diseases and pests, as well as a change in the distribution of tree species occurring in forests. There is also a risk that trees will not adapt in northern regions, because their rate of growth is changing as a result of the increasing length of the growing season and the fact that they are not adjusting sufficiently to the dormant or winter season. In the event of extreme weather phenomena such as drought, forest fires, storms or snow damage, trees may die across wide areas, reforestation may be prevented and dead tree matter may cause mass propagation of forest pests, also in surrounding healthy forests.

4.4 Climate change affects different vegetation zones in different ways. The main effects in various vegetation zones and countries (northern areas, temperate zone, Mediterranean vegetation zone and alpine and polar areas) are expected to be as follows:

- in the Mediterranean region it is likely that dry, hot periods will increase, resulting in a shortage of fresh water and an increased risk of forest fires and desertification;
- in central Europe the growing season will become longer; forest growth may increase; the proportion of broadleaved trees is likely to grow; rainfall amounts may decline and drought occur; climatic extremes, notably storm damage, will become more prevalent;
- the growing season in the northern coniferous zone is likely to lengthen; forest growth may increase; storm damage will become more prevalent; and in the temperate zone insect pests are expected to spread northwards, possibly causing damage on a massive scale.

A consequence of climate change could be an upwards or northwards shift in the tree-line zone and the gradual extinction of certain species in forests in alpine and tree-line areas in northern and polar regions.

<sup>(1)</sup> Source: ForeSTAT, FAO 2007.



## 5. The role of forest management in adapting to climate change

5.1 Good forest management is the main way of improving the ability of forests to adapt to climate change. Preventative measures such as the timely recognition and removal of dying trees and keeping material that could cause forest fires down to a minimum are part of forest management. Awareness of the importance of forest management in adapting to climate change must be increased among members of the public, forest owners and those responsible for forest management. Most of the EU's forests are managed on an ongoing basis with the result that they generally have high productivity and viability. Potential adaptation measures must be taken now and on a continuing basis since long-term thinking is required in forestry given that life-cycles are typically 15-150 years.

5.2 With regard to forest re-generation, the tree species best suited to a certain locality must be planted there. Native species should be favoured as tree species that are native to a particular locality are better suited to adapting to local climate change because of their genetic make-up. Mixed forest should also be favoured, as the presence of various types of trees with different properties reduces the risks to forests.

5.3 In single species coniferous forests established outside their natural growing area, efforts should be made to alter the composition of the forest to resemble the original distribution of tree species. Planted, single species forests often have lower resistance than mixed forests to storms and the insect damage that frequently comes in their wake.

5.4 Forest management contingency plans, funding options for covering any damage and operational models must be drawn up so that the industry is prepared for the detrimental effects of sudden and extreme weather caused by climate change and the damage it causes to forests. Areas that are particularly at risk from such extreme weather conditions must be mapped out. Operational models also need to be drawn up for dealing with sudden increases in timber felling and for ensuring the smooth functioning of timber markets.

5.5 Climate change and international trade in plant materials increase the spread of alien species and plant pests. The EU's Plant Protection Directive contains provisions on the control of damaging plant pests, on preventing the spread of parasites and on requirements relating to the international trade in timber and seedlings. To prevent the spread of the most harmful wood pests (e.g. the pine wood nematode) and maintain the health of the forests, the EU area needs plant protection regu-

lations that are sufficiently strict as well as effective monitoring. National strategies and programmes are needed to combat invasive alien species.

5.6 Managing forests does not have to contradict biodiversity aims. Biodiversity should be taken into account in the management of semi-natural commercial forests by leaving decayed wood and undisturbed micro-biotopes in commercial stands in order to preserve living organisms. Several EU Member States give financial support to private owners of woods who undertake to protect them voluntarily, as a measure to promote biodiversity. Forest certification schemes also require that forest biodiversity criteria are taken into account in forest management.

5.7 At present, Europe's commercial forests contain a large amount of standing or fallen decayed wood which acts as a carbon store and which also provides a necessary living environment for living organisms. The average amount of decayed wood is 10m<sup>3</sup>/ha. The presence of large amounts of decaying wood can encourage a mass spread of wood pests or large forest fires. The biodiversity advantages are nonetheless considerable and it is therefore important that decaying wood already in the forests is not removed from where it once grew, for example, for burning as fuel.

5.8 Natural forest and protected areas are necessary for preserving biodiversity. With regard to carbon sequestration, natural forest alters over its lifecycle from acting as a carbon sink to becoming a carbon store. Thus, shifting forests away from being actively managed to being fully-protected reduces the surface area suitable for stands of growing trees which can increase the amount of carbon stored in forests and, in particular, provide a source of wood products which compensate for other forms of energy and other materials.

5.9 Integrated protection (decayed wood and small biotopes) in the context of commercial forest management is more effective than comprehensive forest protection in combating climate change.

## 6. The role of wood products in mitigating climate change

6.1 Forests influence climate change during the growing and processing chain in four ways:

— as they grow, forests absorb carbon from the atmosphere and store it in both biomass and the soil;

- wood products are a carbon dioxide store;
- using wood for energy production reduces reliance on fossil fuels, therefore diminishing greenhouse gas emissions;
- the use of wood products in buildings and for furniture, *inter alia*, indirectly reduces fossil fuel emissions when wood is used as a substitute for other materials such as concrete whose manufacture uses more energy and produces more emissions than wood.

6.2 For several decades now European forests have been functioning as carbon sinks and, because of reduced fellings in relation to net annual growth have slowed the build-up of carbon dioxide in the atmosphere. Commercial forests cannot continue this indefinitely because as the growth rate passes its peak the forest ceases to store carbon. Commercial forests must therefore be managed on a continuous basis.

6.3 The compensating effects of using harvested wood products <sup>(1)</sup> (HWP) are important in mitigating climate change. Carbon is locked into the forest wood from the atmosphere and is then transferred and sequestered in wood products like paper, furniture, boards and wooden buildings and is removed from the atmosphere, for example, in the form of a wooden house, for up to several centuries. At the end of the life cycle, wood products can be recycled and burned to produce energy. Carbon reporting on wood products remains voluntary in the Kyoto Treaty's greenhouse gas calculations and as yet remains incomplete, partly because international trade is taken into account.

6.4 Current databases, both national and international, make it possible to calculate the carbon-sequestration capacity of wood products. Rules on calculation are being developed, with the aim of using them for forest carbon balance calculations. The EU should submit a proposal to the Copenhagen Climate Conference in 2009 that reporting on the amount of carbon stored in wood products be included as a mandatory part of carbon balance calculations in the post-Kyoto period from 2012 onwards.

6.5 Including the carbon sequestration capacity of wood products in carbon balance calculations could provide the forestry industry with an additional incentive to manage forests in an environmentally-friendly and efficient way. Continuous management of the forests is of major significance for preserving the viability of forests in the face of the harmful effects of climate change.

<sup>(1)</sup> Harvested wood products (HWP) comprises all wood material (including bark) which leaves harvest sites. Slash and other material left at harvest sites are regarded as dead organic matter and not HWP (IPCC 2006 guidelines).

## 7. Use of wood for construction

7.1 The construction sector has a very important role to play in tackling climate change, as 40-50 % of the world's primary energy is used in the heating and cooling of buildings <sup>(2)</sup>. It is estimated that almost 40 % of CO<sub>2</sub> emissions derive from the manufacture of construction materials, construction activity and the use of buildings.

In 2005, total energy consumption in the EU-27 was 1 170,2 Mtoe. The share of industry in this was 28 %, compared to 30,9 % for transport and 41.1 % for domestic use. The heating and cooling of buildings is responsible for 8 % of CO<sub>2</sub> emissions and a significant proportion of such emissions can be avoided through professional construction and new techniques as well as by increasing the share of wood used in construction.

7.2 Wood is a low-energy, renewable and carbon-neutral building material throughout its entire life-cycle. No other common building material requires as little energy to produce as wood does. Using one cubic metre of wood as a substitute for other building materials reduces CO<sub>2</sub> emissions in the atmosphere by an average of 1.1 tonnes.

7.3 The more widespread construction of wooden buildings worldwide and the use of wood in construction are limited by the lack of uniform standards, rules and certification criteria. The construction sector should have at its disposal analyses of the life-cycle and greenhouse gas emissions of products, based on scientific calculations, so that it could compare various materials on an impartial basis. Member State governments should incorporate 'green construction' timber materials into timber supply policy and apply forest certification requirements that are compatible with the international concept of sustainability on a more widespread basis.

## 8. Forest bioenergy

8.1 Forest biomass is the most important immediately accessible renewable bioenergy resource in Europe and is used as energy in three ways:

- for the production of heat and industrial steam;
- for electricity generation;
- as a transport biofuel.

<sup>(2)</sup> Source: UNECE/FAO Forest Products Annual Market Review 2007-2008 <http://www.unece.org/tardec/timber/docs/ipama/2008> and <http://www.iisd.ca/ymb/efw/20october.html>



The production of heat and electricity and combined production of heat and electricity from forest biomass have seen a rapid increase in Europe over recent years. Heat and electricity are produced for individual detached houses and in heating or heating and electricity plants of various sizes for schools, public operators, hospitals, village communities or cities. The technologies for producing biofuels from forest biomass and wood raw material are still in the trial and development stage and further investment is required. Biomass pyrolysis which produces charcoal suitable for use as soil improvement material is a new opportunity to improve wood energy values and the soil's effectiveness as a carbon sink.

8.2 In 2006 the EU-25 produced energy from renewable energy resources amounting to 110 Mtoe, which is about 14 % of total energy use (Eurostat 2008). The major part (65 %) of renewable energy was produced from biomass, mainly (60 %) forest energy. The share of forest energy in total energy use varies very widely across EU-27 countries.

8.3 Wood-based biofuels obtainable from forests include forest chips of various kinds, wood billets, pellets, briquettes, stump and root wood, charcoal, wood gas and fast-growing energy tree species such as willow. Forest industry by-products (industrial waste liquors and waste wood such as black liquor, bark, sawdust and process waste and recycled wood) offer great energy potential and are used in the production of heat and energy, particularly in the integrated forest industry. Use of by-products and recovered wood for energy purposes could amount to 30-50 % of roundwood use.

8.4 There is scope in Europe for a considerable expansion in the use of forest bioenergy from the current level. Preliminary estimates put the forest biomass harvesting potential of Europe at 100-200 million cubic metres a year, with the proviso that harvesting does not pose a threat to the environment, forest biodiversity and conservation areas. At present, the amount of forest biomass harvested separately and in connection with the harvesting of stemwood is estimated to be some 10-15 % of the harvesting potential.

8.5 Increased use of forest biomass creates new opportunities not only for forest owners by opening the way to a wider timber market and price competition but also for the sawmill industry by offering a larger market for its by-products. Good demand for forest biomass could give rise to changes in the

roundwood market, by leading to increased competition for wood raw materials between the bioenergy sector and industries using stemwood. End-use support, i.e. feed-in tariffs for the production of 'green energy', is an important instrument for developing various kinds of bioenergy strategies at both local and regional level. Support for EU regional development should continue to be a key consideration in increasing the use of bioenergy.

8.6 Markets for woodfuels and especially firewood are chiefly local but increased use of wood for energy purposes in the EU would substantially boost the level of business and jobs in the market for machinery and equipment. Special machinery and equipment are needed to produce pellets, briquettes and other processed woodfuels. Energy production requires a large number of boilers and other high-value equipment that offer major growth potential. Increased use of wood energy would also open up major opportunities for exporting technology to markets outside the EU.

8.7 Work on drawing up standards for sustainable biomass production is underway in connection with the EU framework directive on renewable energy. Standards are important for ensuring sustainable procurement and production of forest bioenergy and guaranteeing common procedures. Standards for sustainably produced forest biomass must be linked to the Europe-wide MCPFE criteria so as to avoid unnecessary work and duplication.

## 9. Forest policy aspects

9.1 Establishing new forests through planting is one of the most effective ways of removing carbon from the atmosphere. The EU should support forest planting projects in the developing countries as part of its development policy as climate change will in all likelihood lead to growing economic disparities between industrial countries and the developing world. Planting projects should be accompanied by adaptation strategies which support capacity-building, the multi-functional use of forests and good governance in developing countries. The EU should also make efforts to prevent illegal logging in the developing countries, to promote sustainable forestry and to assist developing countries in the drafting of their national forestry programmes in conjunction with other sectors.

9.2 The Kyoto Protocol's carbon balance calculations reflecting land-use change do not contain provisions for the developing countries which allow for the reduction in carbon dioxide emissions resulting from the prevention of forest loss to be taken into account. As loss of forests increases carbon dioxide emissions, the EU should support the development and adoption of the so-called REDD-instrument so that it may be used in the calculation of land-use greenhouse gases in the post-Kyoto period from 2012 onwards. This requires the setting of a price which reflects the value of accumulated carbon, so that the Member States may use emissions trading to exercise some influence in preventing tropical forest loss.

9.3 The EU has developed the so-called FLEGT procedure<sup>(1)</sup> which aims to prevent the sale on EU markets of illegally felled timber and derived products. By means of a country specific partnership system, the FLEGT licensing system promotes and supports sustainable forest management in developing countries and encourages Member States and developing countries to work more closely. The EU should support the further development of the FLEGT system and its expansion worldwide.

Preventing illegal logging would slow the rate of tropical forest loss and the increase in carbon dioxide emissions this causes. Forestry certification systems operating on a voluntary basis like the PEFC<sup>(2)</sup> and the FSC<sup>(3)</sup> also aim to reduce illegal logging.

9.4 Through international agreements and organisations such as the UNECE Timber Committee, the Food and Agriculture Organisation (FAO)'s European Forestry Commission, EUROSTAT and the MCPFE, data is already being compiled on European forest resources, the carbon it fixes, the carbon cycle, the diversity of forests, their products and their protective effects. However, more knowledge and research is urgently needed. In developing the community's monitoring systems, as in the new FutMon project, use must be made of existing and evolving national, pan European and global monitoring systems and landowners must be guaranteed full data protection when information is being processed or published. The EU must use its research framework programmes to support further research into these areas and to facilitate data transfer through both basic and applied research and development projects.

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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<sup>(1)</sup> Communication from the Commission to the Council and the European Parliament – Forest Law Enforcement, Governance and Trade (FLEGT) – Proposal for an EU Action Plan – COM (2003) 251 final; Commission Regulation (EC) No 1024/2008 of 17 October 2008 laying down detailed measures for the implementation of Council Regulation (EC) No 2173/2005) on the establishment of a FLEGT licensing scheme for imports of timber into the European Community - OJ L 277, 18.10.2008, p. 23-29.

<sup>(2)</sup> PEFC=Programme for the endorsement of Forest Certification schemes; [www.pefc.org](http://www.pefc.org).

<sup>(3)</sup> FCS= Forest Stewardship Council.

## Opinion of the European Economic and Social Committee on Partnerships between education establishments and employers (Exploratory opinion)

(2009/C 228/02)

In a letter dated 27 June 2008, in the context of the forthcoming Czech presidency of the European Union, the Czech Minister for Foreign and European Affairs asked the European Economic and Social Committee to draft an exploratory opinion on the following subject:

*'Partnerships between education establishments and employers.'*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 March 2009. The rapporteur was Mr MALOSSE and the co-rapporteur was Mr PIRVULESCU.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 24 March 2009), the European Economic and Social Committee adopted the following opinion by 160 votes to 1, with 11 abstentions.

### 1. Summary and recommendations

1.1 Drawn up in response to a request by the Czech presidency to the EESC, this exploratory opinion focuses on relations between employers and education establishments, and sets out recommendations for businesses, business associations, the wide variety of education establishments, and the EU; it also explores possible approaches to social dialogue and civic dialogue with all stakeholder institutions and bodies.

1.2 The opinion takes the following aspects into account:

- the current recession, which is exposing Europe to new external and internal challenges and which in the real economy is taking the form of business closures, restructuring and a steep rise in unemployment;
- structural trends with a strong social and economic impact, such as demographic ageing, the arrival of emerging economic powers to compete with on global markets, and the development of new technologies that require constant adjustment and planning to ensure the availability of new skills to meet future needs;
- the needs of people and groups at risk of exclusion. Vulnerable groups are the most at risk in a period of recession. Partnerships must promote fairness by developing projects that help get women, young people, minorities, people with disabilities and older people into work.

1.3 The opinion highlights various priorities:

- a culture of partnership, with due respect for the fundamentally different roles of businesses and education establishments;
- a general overview of relations and partnerships between education establishments and businesses, of which – outside the field of technical and vocational education –

there are still not enough, and which above all lack the requisite resources and strategic vision;

- the need for all initiatives to strike the right balance between top-down and bottom-up approaches;
- the importance of personal relations in making partnerships work effectively;
- the need to pursue a three-level approach to all issues relating to partnership in the broad sense, between education establishments (universities, vocational training centres, schools, etc.) and employers (private sector, public sector, NGOs, etc.).
  - These three levels are as follows:
    - primary, secondary and tertiary education,
    - basic and continuing vocational training,
  - training in the fields of engineering, technology, innovation and research. special efforts are needed to support professional sectors and SMEs, as, thanks to their flexibility, such businesses are the main engine of job creation in a recession and play a particular role in developing entrepreneurship and creativity;
  - the role of employers' organisations, trade unions and civil society organisations in facilitating projects and unlocking synergies to support initiatives and dynamic, sustainable structures.

**Against the backdrop of competition, the overall approach is to promote cooperation between all stakeholders involved.**

1.4 The EESC suggests building a new framework for partnership between education establishments and businesses at European level, with a view to capitalising on the benefits offered by a European dimension and to securing social progress. The EESC recommends launching a European process, possibly called the Prague process in reference to the Conference on the Partnership between Education and Training Institutions and Employers for Lifelong Learning due to be held in that city on 6 and 7 April at the initiative of the Czech presidency. This process could take the form of a fairly broad European reference framework enabling grassroots operators to put innovative measures in place at local and national level:

- urging Member States and other public authorities to step up investment in education in general, and such partnerships in particular, as an appropriate response to the recession and to the persistent difficulties in the labour market;
- encouraging businesses and education establishments to become involved in such partnerships through innovative input as to both form and content;
- organising exchanges of best practice and formulating technical and financial guidelines enabling initiatives to be tested, evaluated and disseminated at European level;
- developing joint projects (joint reference systems for degrees, networks of schools and initiatives, teacher training, network of mediators);
- promoting cross-mobility programmes involving teachers, pupils, schools and employers' organisations.

1.5 The EESC suggests that this process could be funded up till 2013 by the European Structural Funds and under existing programmes (Leonardo, Grundtvig, Erasmus for students, apprentices and entrepreneurs, etc.), with adaptations where necessary. For example, the ESF could be used to support basic training. A specific top-up programme could be proposed for the period after 2013.

## 2. The need and potential for partnerships between the worlds of business and education

2.1 Throughout Europe, development and quality of life are determined largely by cultural and scientific standards, which are in turn dependent on the quality of education systems. It should be emphasised that in Europe partnership between business and education is facing a number of major challenges due to the following factors:

- in terms of society, rapid growth in demand for knowledge,

- in terms of the economy, an exponential growth in the subjects that need to be taught in order to take into account the needs of the economy, and
- in terms of culture, increasingly complex needs with regard to promoting multicultural values.

Partnership must also take account of the following:

- the universal right to education at the highest possible level of general culture, including language learning and modern communication technology;
- the struggle against all forms of exclusion and discrimination and respect for diversity in all its forms;
- initiative and creativity and all the positive values surrounding the concept of wealth creation and entrepreneurial spirit;
- particular attention to individual cases, especially for specific groups.

2.2 Traditionally, Europe has relied on long term skills forecasting. However, in a rapidly changing global economy, there is a requirement for education and business to work more closely together on immediate and near future requirements of the economy and particularly SMEs.

2.3 For many years, the technical, secondary and tertiary education sectors have benefited greatly from their experience of partnerships. Through these, the sectors concerned are able to 'link in' with the overall economic environment under a range of formal and informal agreements between education establishments and businesses. In addition to the best practices which to some extent may be found everywhere, there is strong determination to create long-lasting partnerships, with due respect for the different roles of all involved – especially education establishments, and their complete independence in awarding qualifications – in a bid to generate synergies, join forces and harness talent so as to work together to meet economic and social needs.

Obviously, businesses and education establishments pursue different goals, but by developing channels for the exchange of information, partnerships and joint projects, they can gain a great deal and thus fulfil their respective roles more effectively. For years, indeed centuries, there have been examples in many Member States of alternate education and training systems where learning takes place at school and in the company (dual system in Germany, apprentissage in France, apprenticeships UK, etc.). Alternate education has proved the high value added of permanent, structured and integrated partnerships.

2.4 In an ideal situation, businesses can offer their knowledge of market needs, both immediate and forecasted, thus enabling education and training to be more effectively targeted. They are repositories of knowledge, professional skills and technological resources.

2.5 In the same way, education establishments have assets in terms of technical and scientific know-how that could be put to practical use, for example in preparing people for the world of work and developing new training possibilities and pathways.

### 3. Challenges for businesses and education establishments

3.1 Despite many positive experiences, the number of partnerships between education establishments and employers remains limited, with many confined to technical and vocational education. As the recession bites, it is vital to rekindle the potential of such partnerships, given that any successful economic recovery is contingent on education and training that is more suited to the needs of the labour market and on businesses making better use of skills and human resources.

3.2 The framework for such new European partnerships must of course be multifaceted. It must involve the various players concerned in differing ways:

- locally, there should be partnerships between companies and education establishments and local authorities;
- these local partnerships should be driven and given a structure by business associations, the social partners, educational bodies and other civil society players;
- at European level, the European Commission, the main European employers' and workers' organisations, other civil society players and of course European governments should give it dimensions commensurate with the 27-member European Union.

3.3 Education and business establishments share a duty to propose joint training pathways and options, not least by means of their representative organisations.

3.4 Businesses need to equip themselves with highly varied skills at various different levels; these skills determine how companies are organised, their operations and economic activities in terms of technological development, internationalisation and new technologies. What businesses need is, firstly to locate the requisite skills on the labour market, and secondly to

train employees, managers and future managers to deal with the demands of their jobs. As for employees, they face the corresponding necessity of developing their employability in their professions, and of having their qualifications validated with diplomas of recognised value both within the company and externally on the labour market.

3.5 Two phenomena are to a large extent the driving force behind developments in European education: the advent of 'mass' education on the one hand, and the diversification of what is taught on the other. Rapid growth over the past few decades in the number of pupils and students has simultaneously brought about significant diversification in the population in terms, among other things, of age structure, previous education and social background.

3.6 Despite the current difficulties, there is enormous potential for cooperation here, and stronger action is needed in three areas in relation to this aspect of the problem:

3.6.1 Currently, there is a severe lack of skilled staff in sectors such as personal services, the building trade, the catering and hotel business, etc. Technical and vocational education has often been the reference point for cooperation between business and education establishments at local level. In many countries this type of training has fallen into abeyance – a fact some see as directly linked to the growing insecurity and exclusion in evidence in our societies. Businesses and education establishments have a shared responsibility for improving career prospects (pay, promotions, etc.) and raising the profile of trades and craft-based professions, while also securing high-quality teaching with a strong emphasis on 'general culture'.

3.6.2 The permanent nature and pace of change mean that activities need constant updating, with ongoing training, re-learning and maintenance of professional skills and qualifications. Lifelong learning has therefore become a necessity for everyone, and offers considerable scope for partnerships between employers and education establishments.

3.6.3 Exceptions apart, education establishments are a largely unknown commodity for businesses, and for SMEs in particular. SMEs may however need employees to be trained in a variety of tasks.

A particularly useful approach would be to involve employers more closely in training teachers involved in developing professional skills. It would also be useful to train mediators to stimulate partnerships and make them work.



#### 4. Moving towards a European framework for links between education and business

At a time of many new challenges, recession and a high increase of unemployment, it is especially important to invest in training, but also to quickly anticipate, assess and manage future skill needs as recognised by the European Commission in its communication 'New Skills for New Jobs' <sup>(1)</sup>. It is vital to tap into existing resources, such as the Structural Funds, to deal with current challenges, and to devise new forms of action for the 2014-2020 period.

4.1 In the 1980s, a single European network (the COMETT programme) was created that was effective in organising thousands of trans-national university-industry exchanges each year, including intensive advanced training courses. Both the quantity and the quality of training have improved throughout the EU, thus helping to enhance European competitiveness and to raise awareness and understanding of the benefits of cooperation between universities and businesses.

Some elements of COMETT were retained in the Léonardo da Vinci programme; however, the specific nature and potential of the networks created by COMETT have gone <sup>(2)</sup>.

#### 4.2 The Bologna process

4.2.1 The creation of a European Higher Education Area, launched in 1999 as the 'Bologna process' by education ministers and university representatives from 29 countries, has resulted in a major reform, officially involving 46 countries which are members of the Council of Europe.

4.2.2 The aim of the process is to create a European Education Area, largely by harmonising the various stages of university education in Europe (B.A./M.A./Ph.D.), not least to make it easier to compare degree courses and thus facilitate the free movement of students and promote mobility. All of these measures are conducive to ensuring greater transparency, removing barriers and improving cooperation between academia and business.

4.2.3 However, it must be noted that:

- the Bologna process does not at any juncture give priority to strengthening links between business and education;

<sup>(1)</sup> COM(2008) 868/3 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions :New Skills for New Jobs - Anticipating and matching labour market and skills needs'.

<sup>(2)</sup> EESC exploratory opinion on Promoting the mobility of young people in Europe, rapporteur: Mr Rodriguez Garcia-Caro (OJ C 224, 30.8.2008)

- obviously, the main role of universities is not to build links with employers, and they do not by and large have the means or the capacity to engage in structured relations with businesses from EU countries;

- employers welcome cooperation, but all too often they do not provide the requisite technical and financial support.

#### 4.3 The Copenhagen process

4.3.1 Launched in 2002, the objective of this EU process is to enable vocational education and training (VET) systems to become a quality reference. Actions similar to the Bologna process but tailored to the field of vocational education and training have been strongly encouraged.

4.3.2 The Leonardo programme facilitates mobility for people wishing to obtain professional experience in Europe together and fosters the exchange of best practices between training stakeholders. The Grundtvig programme seeks to enhance quality and strengthen the European dimension of adult education and to offer Europeans more opportunities for lifelong learning. However, participation in both of these programmes is still too limited, and they have not achieved the critical mass which would enable objectives to flourish. Without wishing to question the practical arrangements for these programmes, steps should in future be taken to reinforce the course of action open to them.

4.3.3 The communiqué issued by the Bordeaux Council (26 November 2008) ties in with the Copenhagen process as regards enhanced European cooperation in vocational education and training. It also reiterates the need to harness appropriate public- and private-sector funding, through instruments such as the ESF, the ERDF, and EIB loans.

With regard to skills shortages and the action required to respond to future needs, the Bordeaux communiqué recommends that vocational training components be developed on as broad a scale as possible, with the involvement of the Member States, the Commission and the social partners.

#### 5. A new European process to promote partnerships between employers and education establishments

5.1 According to the latest progress report on the Education & Training 2010 programme, the European Union cannot overlook the fact that it is lagging behind in the field of education <sup>(3)</sup>, or the difficulty in providing companies with people who have basic training and sufficient specialised skills

<sup>(3)</sup> [http://ec.europa.eu/education/policies/2010/natreport08/council\\_en.pdf](http://ec.europa.eu/education/policies/2010/natreport08/council_en.pdf) - COREPER report to the Council of 31.1.2008, Draft 2008 joint progress report of the Council and the Commission on the implementation of the 'Education & Training 2010' work programme, doc. 5723/08.

to meet today's technological challenges and cope with globalisation. Mobility between European countries is vital here, as is foreign-language learning within the ambit of the European strategy for multilingualism. A joint approach to the subject of relations between business and education establishments must be seen as an essential element in dealing with the issues at hand, and also, above all, as a means of decompartmentalising national education policies and unlocking, at last, the human potential of European integration.

5.2 More help must be given to schools and universities seeking to provide not just basic training, but continuing training as well. For instance, with the exception of a few Member States, education establishments are not eligible to receive financial assistance under structural programmes for the development of human resources. However, experience in countries where this is possible shows that such initiatives can make a significant contribution to building up stronger ties with companies, while also enhancing the overall standard of education and training on offer.

5.3 There is recognition that the main problem with European programmes is their lack of ambition owing to tight budgets. Therefore, rather than recommending yet another European programme with a small target group and affecting only a very narrow and elite section of the public, it would surely be more worthwhile to adopt a systemic approach based on mechanisms that are both simpler (not bureaucratic like many European programmes all too often are) and more ambitious, involving:

- an overall policy framework subject to the approval, evaluation and monitoring of the social partners, the European Parliament, the European Council and the EESC;

- European tools for identifying markets and sectors with a high demand for skilled staff;
- the exchange of best practice including both technical education, life-long training and research;
- European grant facilities funded by the EU, Member States and the private and voluntary sector and concerning all sections of the general public, especially minorities and disadvantaged young people; this could involve work experience, and projects to promote employability and innovation;
- the development of common reference systems for degrees and professional qualifications, and of cross-border networks of local initiatives;
- the creation of European networks of mediators to facilitate partnerships;
- an alignment of existing European funds and programmes to achieve this objective.

5.4 European integration offers substantial added value in terms of sharing experience and broadening the scope for giving wider, more intensive, support to our education establishments, and of providing businesses with an internal market that unlocks the potential for development. The Prague process, which refers to the Conference on the Partnership between Education and Training Institutions and Employers for Lifelong Learning to be held in that city on 6 and 7 April at the initiative of the Czech presidency, could provide a political impetus and an operational roadmap for these developments.

Brussels, 24 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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**Opinion of the European Economic and Social Committee on the Identification of outstanding barriers to mobility in the internal labour market (exploratory opinion)**

(2009/C 228/03)

On 27 June 2008, the European Economic and Social Committee received a referral from the future Czech Presidency on the

*'Identification of outstanding barriers to mobility in the internal labour market' (exploratory opinion).*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 March 2009. The rapporteur was Ms DRBALOVÁ.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March 2009), the European Economic and Social Committee adopted the following opinion by 152 votes to 1 with 5 abstentions.

## 1. Recommendations

1.1 Mobility in Europe should remain one of the EU's political priorities, especially at a time when Europe is being forced to face up to the challenges of globalisation and technological transformation and contend with declining demographic trends and the fallout from the financial and economic crisis. The approach adopted to strengthen mobility must take account of conditions in the individual Member States, be well coordinated at European level, enjoy national support and be transparent in its form. The measures adopted must contribute to establishing a new concept for a fair and balanced mobility and supporting the development of new forms of mobility.

1.2 The EESC supports the European Commission's European Job Mobility Action Plan 2007-2010 and considers it an instrument for removing current obstacles and achieving the objectives set out in the European Strategy for Growth and Jobs.

1.3 The Committee also welcomes the European Commission's plans to publish the Green Paper on the mobility of young people in 2009 and eagerly awaits the findings and conclusions of the public debate.

1.4 The EESC calls for action to unlock the full potential of the EURES (European Employment Services) system and the adoption of further measures to improve the quality, scope and accessibility of the information and services provided and to raise awareness among the European public and, especially, European businesses. Equally, the Committee recommends that the European Commission identify the reasons why some

categories of workers – such as the low-skilled and the unskilled – represent only a fraction of the total number of portal users.

1.5 The EESC invites the Member States to take account of the mobility dimension in all political decisions and – in line with the recommendations of the *Integrated Guidelines for Growth and Jobs* <sup>(1)</sup> – to incorporate firm objectives into their own National Strategies and National Reform Programmes. The Member States should strive to devise mobility-supporting active labour market policy schemes.

1.6 The EESC generally supports the efforts to enhance the coordination of social security at Community level and congratulates the French presidency on the satisfactory outcome in negotiations on the amendments to Regulation 883/2004 <sup>(2)</sup> in line with the results of the discussions on the implementing provision. The EESC once again calls for the implementing regulation for Regulation No 883/2004 to enter into force as soon as possible, to ensure that the improvement and simplification it brings to mobility can kick in as soon as possible.

1.7 Regarding the application of Regulation 883/2004, the Committee recommends that one of its future opinions focus in particular on how this document ties in with Regulation 1612/68 EEC <sup>(3)</sup>, Directive 2004/38/EC and the relevant decisions of the ECJ with a view to ensuring greater transparency, legal security and compliance with the principle of equality in the Member States.

<sup>(1)</sup> Integrated Guidelines for Growth and Jobs (2008 –2010), COM(2007) 803 final, Part V – 2007/0300 (CNS).

<sup>(2)</sup> Regulation No 883/2004 of the European Parliament of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p 1-123). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:166:0001:0123:EN:PDF>.

<sup>(3)</sup> Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257, 19.10.1968, p 2-12).

1.8 While the EESC welcomes the proposal for a directive on the portability of pensions <sup>(4)</sup>, which represents yet another step by the Commission towards increasing cross-border mobility within the EU, it harbours serious concerns regarding its content. The Committee considers that the directive does not, in fact, help remove the principal barrier to cross-border mobility and the portability of pension rights – namely, double taxation. In addition, the proposal includes other provisions which will lead to an increase in the costs of pension systems, and thereby put their future at risk.

1.9 Based on the findings of the July 2008 EUROPASS evaluation report, the Committee recommends that the European Commission examine why low-skilled workers represent such a low proportion. The Committee also calls for action to unlock the full potential of all EUROPASS tools, especially EUROPASS mobility, by improving European coordination and support within Member States, by getting all stakeholders on board, as well as through greater transparency. As regards the *European Qualifications Framework*, the Committee considers that it is crucial to establish ties with the European Credit Transfer and Accumulation System in the area of higher education, vocational training and training in general. If the EQF is to bring added value, it must remain simple, reliable and really help managers recruit the foreign workers they need.

1.10 The EESC noted with interest the second EC report of 18 November 2008 on the application of transitional periods for the new Member States and calls on those Member States which continue to apply transitional arrangements with regard to the free movement of persons to respect the findings of this report and to follow the procedures arising from the treaties. This prerequisite must be met if the principle of fair mobility, curbing social dumping and undeclared work is to be applied.

1.11 The Committee welcomes both the Commission's decision to set up a Committee of Experts which will deal with the technical aspects of the application of the Directive and the invitation for the European social partners to formulate a joint analysis of the impact of the ECJ rulings.

<sup>(4)</sup> Implementing the Community Lisbon Programme: Proposal for a Directive of the European Parliament and of the Council on improving the portability of supplementary pension rights (COM(2005) 507 final – 2005/0214 (COD)).

1.12 The Committee draws attention to the delays in the implementation of Directive 2005/36/EC on the recognition of professional qualifications (deadline for implementation: 27 October 2007).

1.13 The EESC sees the EC's current legislative proposals to facilitate economic migration from third countries as a further step by the Commission to promote mobility and economic migration within Europe. The rights and obligations of third country nationals set out in the proposed directive, which are based on equal treatment, are a good basis for migration legislation and should be extended to all categories of migrant workers. The EESC considers that the interim measures which temporarily limit the free movement of workers from the new Member States are a derogation which should be swiftly revoked <sup>(5)</sup>.

1.14 The EESC fully respects the independence of the European social partners and expects them to actively contribute to increasing mobility in order to improve the situation on the labour market and to boost the EU's competitiveness.

1.15 The EESC calls upon the Member States and the Commission to work together to draw up, implement, monitor and assess non-discriminatory social reintegration programmes aimed at citizens and their families returning to States in which they have lived or resided, after having worked for a period of time in another Member State.

## 2. Introduction

2.1 The European Commission declared 2006 the European Year of Workers' Mobility. The aim of this initiative was to raise public awareness in Europe about employment opportunities within the EU and about their rights and entitlements.

2.2 The mobility of citizens is enshrined in the EC's primary law through the right to free movement and has become one of the key objectives of the Lisbon Strategy and one of the recommendations of the *Integrated Guidelines for Growth and Jobs* <sup>(6)</sup>.

<sup>(5)</sup> EESC opinion on the *Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment* (rapporteur: Mr Pariza Castaños) (OJ C 27, 3.2.2009).

<sup>(6)</sup> *Integrated Guidelines for Growth and Jobs (2005-2008)*, Guidelines No 20, (COM(2005) 141, final – 2005/0057 (CNS)).

2.3 This initiative thus builds on and develops a number of earlier EU measures, in particular the *Action Plan for Skills and Mobility* adopted by the EC in 2002 <sup>(7)</sup>, and the recent *Mobility, an instrument for more and better jobs: The European Job Mobility Action Plan 2007-2010* <sup>(8)</sup>, which reflects the new reality in today's Europe and the challenges it is currently facing.

2.4 In the first half of 2009, the EU Presidency is in the hands of the Czech Republic, whose principal motto is *Europe without barriers*. Accordingly, the Czech Presidency has asked the EESC to draw up four exploratory opinions which will seek to identify the remaining barriers in various areas of the internal market. One such area is the mobility of workers in Europe.

2.5 The Czech Presidency will continue its efforts to increase the mobility of workers in the EU and focus its priorities on promoting the maximum possible freedom of movement for workers within the EU and on facilitating and increasing workers' geographical and job mobility across the whole EU market. It will also seek to complete the work begun on modernising the legal arrangements for coordinating the social security of migrant workers.

2.6 The Czech Presidency draws attention to the negative impact of the current transitional periods on the free movement of workers. It sees unlocking the full potential of workers and making the EU labour market more flexible as a vital part of the Lisbon Strategy.

### 3. General comments

3.1 The European Commission's *Employment in Europe 2008* report shows that the robust economic performance which began in the EU in 2006 generated a set of promising results in the year 2007 – GDP growth of 3.1 % and the creation of 3.5 million new jobs. With the exception of Hungary, employment increased in all EU Member States, and the average level of employment across the whole EU was 65.4 %

in 2007. In all EU Member States except Slovakia, unemployment had stabilised at below 10 %. Both waves of enlargement – in 2004 and 2007 – have had a positive impact on the EU's economy and have not hampered the EU-15 job market. The statistics point to a synergy between the state of the job market, productivity and the quality of jobs.

3.2 The EU was hard hit by the global financial crisis in 2008. Both businesses and households are under intense pressure, as are the job markets. Economic forecasts show that zero rate growth is expected soon and that the EU economy risks contraction in 2009. The Eurozone and a number of Member States are already in recession. The EU's December Council adopted the *European Economic Recovery Plan* <sup>(9)</sup> presented by the European Commission, which sets out ten measures in four priority areas, including a wide-ranging European initiative promoting employment.

3.3 Current declining demographic trends and an ageing workforce are a constant challenge for both Europe and the EU and will have a significant impact on Europe's competitiveness in the future. Finding a solution to this problem will require an approach that is comprehensive and – in light of the current economic situation – highly sensitive. Individual Member States are creating their own mix of national policies geared towards boosting inclusive job markets. Particular attention is being paid to vulnerable groups on the job market such as older workers, young people, migrants and disabled persons. The EC reports have revealed that the EU still has a lot of work to do as regards implementing the existing legislation on the application of the principle of non-discrimination <sup>(10)</sup>.

3.4 It is for this reason that the revival of the European job market and the promotion of worker mobility in Europe continue to remain one of the key elements of the European employment strategy. In spite of the various initiatives and campaigns by the EC and the Member States, mobility within the EU continues to fall short of the EU's objective, as established at Lisbon in 2000, of making Europe the most competitive knowledge-based economy in the world.

3.5 The aim of the EC's new mobility action plan for the years 2007–2010 is to analyse the situation in the light of the challenges posed by globalisation, demographic change and the development of new technologies; it will also tackle the existing barriers to mobility in Europe, identify new trends in mobility models and define what action needs to be taken.

<sup>(7)</sup> Final Report on the Implementation of the Commission's Action Plan for Skills and Mobility COM(2002) 72 final (COM(2007) 24 final).

<sup>(8)</sup> Mobility, an instrument for more and better jobs: The European Job Mobility Action Plan (2007-2010) (COM(2007) 773 final).

<sup>(9)</sup> A European Economic Recovery Plan, COM(2008) 800 final of 26.11.2008.

<sup>(10)</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.



3.6 The European Commission's plan will concentrate on the following:

- Improving existing legislative and administrative practice. This will, in particular, focus on adapting EU legislation to current needs and conditions, bolstering the status and analytical capacity of the TRESS Network <sup>(11)</sup>, and improving administrative cooperation and development between national institutions and state administration.
- Increasing political support for mobility by administrative institutions at all levels, particularly as regards investments in existing schemes at national, regional and local level, and the development of relevant mechanisms for promoting mobility among workers.
- Strengthening, supporting and improving the quality of services provided by EURES <sup>(12)</sup> and broadening its strategic scope by bolstering its analytical potential in the field of mobility flows and labour market changes.
- Raising awareness of the advantages of mobility through innovative approaches, changes in information procedures and the introduction of examples of best practice.

3.7 As an EU agency operating on a tripartite basis, EUROFOUND, the European Foundation for the Improvement of Living and Working Conditions, has become a unique platform for analysis and research into supporting mobility in Europe and identifying existing barriers and new challenges posed by changes on the labour market.

3.8 The European Economic and Social Committee has yet to draw up a comprehensive opinion on mobility and barriers to it in Europe. However, in its capacity as an advisory body for the European Commission, it has consistently reacted to the Commission's communications and initiatives on the movement of workers in Europe and has drawn up a number of important opinions <sup>(13)</sup>.

3.9 Europe's social partners also play an important role. They see mobility in Europe and the removal of all barriers

to it as an issue of vital importance and therefore incorporated it into their *Work Programme of the European Social Partners 2003-2005*. Their initiatives and joint texts have helped identify a number of barriers to mobility in the EU.

#### 4. Facts and figures: EUROFOUND study

4.1 The analysis conducted by EUROFOUND on the basis of the EUROBAROMETER findings <sup>(14)</sup> revealed a series of facts and figures that are vital for gaining an understanding of the patterns of behaviour and attitude of Europeans regarding mobility and migration in Europe:

- Europeans continue to view their 'right to travel and work within the EU' as the EU's greatest benefit and advantage (53 %).
- Although the European institutions and Europeans in general firmly support the principle of mobility in Europe, the Member States continue to harbour fears about the potential effects of economic migration from the new Member States.
- Only around 2 % of EU workers (EU-25) were born in a Member State other than the one in which they currently work.
- Almost 4 % of the EU population have lived in another Member State, while a further 3 % have lived in a country outside the EU.

4.1.1 **On the issue of geographical mobility**, the study revealed that cross-border mobility is not particularly high in Europe. The findings suggest that, on average, Europeans live at the same address for a period of ten years; this figure takes into account the short periods of residence common among young people and the relatively long periods of residence among older sections of the population. The study showed that we should not expect any significant changes in this situation in the near future.

<sup>(11)</sup> TRESS (Training and Reporting in European Social Security).

<sup>(12)</sup> EURES (European Employment Service).

<sup>(13)</sup> For example: EESC opinion on *Free movement and residence of workers*, rapporteur: Mr Vinay (OJ C 169 of 16.6.1999), EESC opinion on the *Proposal for a Council Regulation (EC) on coordination of social security systems*, rapporteur: Mr Rodríguez García Caro (OJ C 75 of 15.3.2000), EESC opinion on the *Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*, rapporteur: Mr Rodríguez García Caro (OJ C 149, 21.6.2002), EESC opinion on the *Proposal for a Regulation of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems*, rapporteur: Mr Greif (OJ C 324 of 30.12.2006).

<sup>(14)</sup> Mobility in Europe: Analysis of the 2005 Eurobarometer survey on geographical and labour market mobility (2006). Office of Official Publications of the European Communities, 2006.

4.1.2 **The driving force for mobility** continues to be a desire to meet new people and discover new places. However, over one third of those who are planning to live abroad (38 %) cite economic reasons (money, quality of employment). In the case of the new Member States, economic reasons dominate – the main driver is a desire to work rather than to use or abuse the benefits of social security systems or better public services. On the contrary, the **principal factor deterring people from moving** is the fear that they will lose their social networks (limited contact with their families and the loss of their support). Further impediments include housing conditions and the standard of healthcare and services.

4.1.3 **Future challenges.** Geographical mobility remains the European Union's principal political task. Inadequate mobility can mean a lower level of adaptability and competitiveness. On the other hand, too much mobility between poorer and richer regions can have an impact on the labour market (shortage of skilled workers, higher unemployment, brain drain).

4.1.4 An important source of information in this context is the study published by the Commission's DG Employment entitled *Geographical mobility within the EU: optimising its economic and social benefits* <sup>(15)</sup>. The study argues that the role of policies aimed at increasing geographical mobility rates is twofold: 1) extending the expected benefits of mobility and 2) reducing mobility costs for the individual. The study primarily focuses on the economic aspects of geographical mobility and its role in levelling out differences between the regional job markets (employment, actual salaries, shortage of workers).

4.1.5 **On the issue of job mobility**, the study revealed that, on average, Europeans work at 3.9 places of employment over their career; the average period of work at any one employer is 8.3 years. 8 % of respondents had changed jobs in the previous year, 32 % during the previous five years and 50 % in the previous ten years.

4.1.6 Regarding future prospects, the study revealed that 41 % of those surveyed expected to change employers in the next five years, while 54 % of those polled did not plan to change their place of employment, leaving 5 % uncertain. Three main reasons emerged for those who expected to change employers over the next five years: a desire for change and a voluntary decision, an unwilling decision and, lastly, a neutral decision based on the pressure of circumstance.

4.1.7 The study revealed that 65 % of the total number of expected job moves in the next five years would be voluntary. Voluntary job-to-job mobility helps improve and develop the skills of workers and increase their employability, raising both their career prospects and their salaries.

4.1.8 The study on *Job mobility in the EU: Optimising its Social and Economic Benefits* <sup>(16)</sup> came to a number of interesting conclusions. The study serves as a basis for the debate among Member States on how to improve the social and economic aspects of job mobility. The study assesses the situation and differences within the EU-27 and monitors the economic factors directly related to productivity, salary levels, innovation and employment, including aspects such as quality of work and social cohesion.

## 5. Specific comments

5.1 All initiatives and measures aimed at improving and facilitating worker mobility and balancing labour market supply and demand more effectively are important not only because they help the labour market function better and cater to its needs but also because they can greatly contribute to achieving the aims of the European Strategy for Growth and Jobs.

5.2 Although the European public has a firm belief in its right to free movement and the majority of Europeans believe that it is no longer realistic to expect to hold onto the same job for life, the study's findings indicate that there is still a whole range of obstacles preventing workers from moving from one country to another or overcoming the risks involved in finding new and better jobs.

### 5.3 A number of barriers to mobility exist, for instance:

- Limited language skills
- Poorly or insufficiently developed knowledge and skills
- Shortcomings in recognising education and professional qualifications across the Member States
- Legal and administrative barriers

<sup>(15)</sup> Study on 'Geographical mobility within the EU: optimising its economic and social benefits' April 2008, EC DG EMPL, Contract VT/2006/042.

<sup>(16)</sup> Study on 'Job mobility in the EU: Optimising its Social and Economic Benefits' April 2008, Danish Technological Institute, Contract VT/2006/043.

- Difficulties in securing sustainable employment for both partners
- Fragmented information on vacancies or lack of transparency regarding opportunities for education and employment
- Insufficient transport infrastructure
- Lack of housing on the market, prices on the housing market
- Recently, a loss of confidence and xenophobia.

5.4 A whole set of remaining obstacles will have to be removed in order to support mobility in Europe. The EESC believes that **effective policies for strengthening the mobility** of workers should comprise the following components:

5.4.1 Firstly, it is **important to develop a better understanding about the barriers to** geographical and job mobility, as well as the measures which support such mobility. Accordingly, there have been a number of efforts in recent years in Europe to identify and tackle barriers to worker mobility. Nonetheless, it would be useful to have more detailed information from studies conducted at both European and national level about the scope, character and key features of barriers to mobility, as well as their economic impact.

5.4.2 Secondly, it is vital to **apply the concept of flexibility to the European labour markets**. Experience shows that countries which manage to apply this principle effectively enjoy a higher degree of adaptability to global change. In this context, mobility is considered to be one of the means of improving employment, worker adaptability and business competitiveness in the global context. Work organisation methods must be able to cater more effectively to the needs of both businesses and workers, thus also helping significantly to increase new forms of mobility.

5.4.3 Thirdly, there is a need to **adapt the education systems** to the needs of the labour market. People should be given greater access to an effective system of lifelong learning. Today's labour markets are ever more affected by rapid changes

and the demand for new qualifications. More and more people will have to adapt to changes in their jobs and careers by acquiring new and diverse qualifications. Individuals will need to be in a position to increase and improve their skills if they are to be employable and adapt to the changes on the labour market. The priorities should be:

- ensuring that people acquire the necessary knowledge and skills even before they leave the education system;
- motivating people to take personal responsibility for improving their skills over the course of their entire life, while putting in place the conditions enabling them to do so;
- making education more attractive, flexible and in tune with the needs of the labour market;
- Particular attention should be paid in this respect to certain groups of employees – young people and older workers;
- applying the principle of partnership among stakeholders – the state, the social partners, educational institutions and businesses.

5.4.4 Fourthly, there is a need to **develop social protection systems** so that they can support and facilitate transition between various situations on the labour market and do not prevent people from travelling abroad in search of better jobs. In view of this, the EESC would refer to its opinion on flexibility, particularly its emphasis on improving the employment prospects of individual workers, allowing them to adapt more effectively to changes on the labour market and to take advantage of better job opportunities. In essence, this means creating new jobs, helping people as jobs change throughout their career and improving their opportunities on the labour market. Experience shows that the most important objective now is not to take a passive approach such as increasing benefits, but to simplify the recruitment of employees by cutting red-tape, invest in skills and apply active labour market policies.

5.4.5 Fifthly, it is important to tackle the **legislative, administrative and fiscal barriers** restricting geographical and job mobility by:

- precisely applying measures on the free movement of workers to guarantee non-discriminatory access to employment;

- encouraging the Member States to speed up and implement Directive 2005/36/EC on the recognition of professional qualifications<sup>(17)</sup> and creating a European framework of professional qualifications;
- adopting measures to prevent the double taxation of supplementary pension systems;
- eliminating problems with discrimination on the basis of nationality in the field of taxation (and social benefits);
- ensuring particular attention is paid to removing the barriers to mobility faced by disabled persons;
- taking into account the specific needs of women with children and persons under their care.

5.4.6 Sixthly, Europeans should be given easier access to quality information about employment and education opportunities. While there is a vast amount of information available about living and working conditions, information about employment or education opportunities is a low priority and often lacking or hard to find. An EU-wide information system about employment and education opportunities is vital for people and companies so they can make informed choices about developing their skills, taking advantage of opportunities and thereby increasing their mobility. The **EURES** website **can play an important role** in this respect. Nonetheless, EURES continues to be hampered by the fact that it has a rather low profile and is not well-known by the public and especially the business world. Accordingly, attention should be paid to improving the information provided about certain issues, such as changes or adjustments to social security payments (whether they are statutory or complementary) in the case of professional or job mobility. In the case of employee pension schemes, for example, it would be useful to have information about the level of accrued rights, the taxation regime used, and whether they can be transferred, as well as the costs and benefits of the various approaches<sup>(18)</sup>.

5.4.7 Last but not least, mobility can be facilitated by action to **improve access to housing and the transport infrastructure**. It is extremely important for people to be able to

obtain affordable and decent housing in areas where there are employment opportunities. Equally, measures to ensure an efficient and flexible transport infrastructure are also of key importance for improving worker mobility. Member States should work with businesses to look at the cost of relocation and establish and develop systems supporting mobile job seekers.

5.5 **The EU enlargements** in 2004 and 2007, which saw the accession of ten and a further two new Member States, prompted discussion about whether internal borders should be opened up to allow the free movement of workers. While the findings of the EUROFOUND survey confirm that migration between Eastern and Western Europe will continue within the EU, they clearly indicate that the level of geographical mobility is low and temporary in nature.

5.5.1 Member States which are still applying transitional arrangements in respect of countries which joined the EU in 2004 have until 1 May 2009 to state whether they will continue into the third stage and apply transitional arrangements for a further two years. In the case of Bulgaria and Romania, the deadline for the Member States to take a position was 31 December 2008<sup>(19)</sup>. For this reason, the EESC noted with interest the European Commission's second *Report on the Functioning of the Transitional Arrangements set out in the 2003 Accession Treaty*<sup>(20)</sup> of 18 November 2008, which essentially merely confirms the findings of the first evaluation report of 2006<sup>(21)</sup>. The findings of the second report clearly show that opening up the labour markets to workers from the new Member States has had an unequivocally beneficial impact not only on the economy of the host countries but on the EU as a whole.

5.5.2 Any decision regarding the revision of transitional arrangements should be taken at Member State level and be backed up by analyses founded on facts. Nonetheless, the EESC believes that ending the transitional arrangements in 2009 could help the creation of flexible and inclusive labour markets, reduce undeclared labour and eradicate poverty in Europe.

<sup>(19)</sup> Greece, Spain, Hungary and Portugal have already lifted the restrictions on the free movement of workers from these countries.

<sup>(20)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The impact of free movement of workers in the context of EU enlargement. Report on the first phase (1 January 2007 - 31 December 2008) of the Transitional Arrangements set out in the 2005 Accession Treaty and as requested according to the Transitional Arrangement set out in the 2003 Accession Treaty, (COM(2008) 765 final).

<sup>(21)</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Report on the Functioning of the Transitional Arrangements set out in the 2003 Accession Treaty (Period from 1 May 2004 to 30 April 2006) (COM(2006) 48 final).

<sup>(17)</sup> Directive of the European Parliament and of the Council 2005/36/EC of 7 October 2005 on the recognition of professional qualifications.

<sup>(18)</sup> The European Commission has already put forward a raft of concrete measures in this field which will raise awareness among the people of Europe and offer them easily comprehensible information (leaflets, handbooks, videos) about their rights and obligations in the area of social security in the EU Member States.



5.5.3 The application of transitional arrangements may, in addition, limit the practical application of Article 69 of Regulation No 1408/71 on the coordination of social security schemes (giving unemployed persons the right to continue to receive unemployment benefits from the Member State that is competent for paying the benefit while looking for employment in another Member State).

5.6 **Posting of workers** in connection with the liberalisation of services in Europe. The advantages which stem from a well-functioning single market are essential for businesses, workers, the people of Europe and the economy in general. They help businesses grow and improve access to a market which now encompasses some 500 million people from thirty countries (EEA). European businesses have become more competitive and have a stronger position on the global market. The new Directive on Services in the Internal Market has become an important tool for the further liberalisation of the single market.

5.6.1 The European Commission has published two Communications<sup>(22)</sup> dealing with the posting of workers in relation to provisions for services. These aimed to analyse the situation and provide the Member States with certain guidelines on the effective application and interpretation of the ECJ's rulings and explain how the two instruments complemented each other and how their benefits could be maximised while at the same time ensuring the protection of posted workers.

5.6.2 The Committee, in accordance with its opinion of 29 May 2008<sup>(23)</sup>, welcomes Decision EC 2009/17/EC<sup>(24)</sup> to set up a high-level committee of experts to promote the sharing and identification of best practices in the field, detailed research work and the resolution of problems regarding the implementation of the Directive. This process also involves the social partners.

<sup>(22)</sup> Communication from the Commission – *Guidance on the posting of workers in the framework of the provision of services* (COM(2006) 159 final), *Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers* (COM(2007) 304 final).

<sup>(23)</sup> EESC opinion of 29 May 2008 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* Rapporteur: Ms Le Nouail Marlière (OJ C 224, 30.8.2008).

<sup>(24)</sup> OJ L 8, 13.1.2009, p. 26-28.

5.6.3 A number of recent ECJ rulings (Laval<sup>(25)</sup>, Viking<sup>(26)</sup>, Rüffert<sup>(27)</sup>) on the Posting of Workers Directive 96/71/EC have prompted controversial discussions on the Posting of Workers Directive. For this reason, the Committee endorses the October 2008 proposal of the European Commission and the French Presidency for the European social partners to conduct a joint analysis to provide a thorough assessment of the legal, economic and social impact of these decisions.

5.7 **Coordination and modernisation of social security systems.** One important instrument for supporting mobility within the EU is the legislative framework ensuring the coordination of the social security systems. The present Regulation No 1408/71<sup>(28)</sup> is to be replaced by Regulation ES 883/2004 of the European Parliament and the Council, which was adopted in April 2004. In accordance with Article 89 of the new Regulation No 883/2004, its implementation must be regulated by another Regulation, COM(2006) 16<sup>(29)</sup>, which was not presented until January 2006. The new implementing regulation aims above all to simplify and rationalise the legal and administrative rules, to clarify the rights and obligations of all those involved in coordinating social security systems, including the introduction of better and swifter data exchange and cost-saving procedures.

5.7.1 The EESC's 2006 opinion<sup>(30)</sup> argued that the new proposal was a step towards improving the conditions for the freedom of movement within the EU. The draft regulation includes a host of simplifications, clarifications and improvements. The EESC particularly welcomes its broader range of issues and people covered, as well as all rules for the improvement of cooperation between social security institutions.

<sup>(25)</sup> Case C-341/05: Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet

<sup>(26)</sup> Case C-438/05: International Transport Workers' Federation v. Viking Line ABP.

<sup>(27)</sup> Case C-346/06: Dirk Rüffert, in his capacity as liquidator of the assets of Objekt und Bauregie GmbH & Co. KG v. Land Niedersachsen.

<sup>(28)</sup> OJ L 149, 5.7.1971.

<sup>(29)</sup> Proposal for a Regulation of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (COM (2006) 16 final – 2006/0006 (COD)).

<sup>(30)</sup> EESC opinion of 26.10.2006 on the *Proposal for a Regulation of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems*, rapporteur: Mr Greif (OJ C 324 of 30.12.2006).



5.7.2 In its opinion, the EESC stressed the sensitive nature of the discussions on Annex 11 to Regulation 883/2004, which defined specific procedures for the implementation of certain legal provisions. The Member States are urged in this connection to identify those features of their national systems that they want excluded from the Regulation in order to facilitate smooth coordination of social security. Intensive negotiations between Member States have been taking place on this subject for some time. The EESC has called for a swift conclusion here and noted that the pursuit of subsidiary issues should not, however, impede the entry into force of the new regulation, particularly as they concern the Commission's initiatives for increasing mobility.

5.7.3 As a general rule, the legislative framework coordinating the social protection systems must be capable of reacting smoothly to the changing realities in the world of work, to new forms of employment, to differences in working time arrangements and, above all, to new forms of mobility. Electronic-based administrative cooperation between Member States should be strengthened.

5.8 Generally speaking, benefits are paid to migrants not only on the basis of the coordinating regulation on social security systems but also under **Regulation 1612/68/EEC** and on the basis of the principle of equality enshrined in **Directive 2004/38/EC** <sup>(31)</sup>. The principle, therefore, is that everybody who is legally entitled to reside in a host country should have the same rights to all available benefits. Nobody should be excluded from the system.

5.9 The problem is that the broad legal framework is comprised of numerous regulations, all of which have a different legal force (regulations, directives and ECJ decisions). Regulations are implemented directly and uniformly. Directives are implemented differently in every Member State. This is why, in future, it will be necessary to ensure the transparency and, above all, consistency of these regulations. The principle of equality (e.g. equal access to tax benefits) and legal security should be maintained. The legal framework will probably not be simplified; however, it may be possible to remedy a number of shortcomings through cooperation between the Member States – this is still a rich source of potential.

<sup>(31)</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance).

5.10 **Mobility in education and professional training** is an intrinsic part of the free movement of persons and a key tool for the creation of a European area of education and training.

5.10.1 The EESC supports the *European Quality Charter for Mobility* <sup>(32)</sup> which finds that mobility for education and training purposes is an essential part of the free movement of persons and that strengthening European mobility represents the way forward in achieving the objectives of the Lisbon Strategy. The Charter puts forward a set of principles and measures promoting the mobility of young persons and adults for formal or informal training purposes and for their personal or professional development.

5.10.2 The European Commission has devised a whole raft of effective instruments to promote trans-European mobility for the purposes of education, vocational training and lifelong learning. EUROPASS <sup>(33)</sup> provides a coordinated set of documents to help people in Europe gain a better understanding of their qualifications and skills. The most recent evaluation report, published in 2008, confirmed the effectiveness of the national centres and web portals and the overall added value of EUROPASS and also identified a number of shortcomings, especially in those instruments that were only loosely based on educational achievement.

5.10.3 This dimension should be enhanced through the implementation of the European Qualifications Framework for lifelong learning <sup>(34)</sup>, which should be closely linked to the European Credit Transfer and Accumulation System <sup>(35)</sup>.

5.11 However, such an unusually high influx of workers from third countries, taken together with the European Commission's current measures to facilitate legal migration, calls for consideration of the new challenges facing the EU's education systems.

<sup>(32)</sup> European Quality Charter for Mobility (OJ L 394 of 30.12.2006) (<http://europa.eu/scadplus/leg/en/cha/c11085.htm>).

<sup>(33)</sup> Decision No 2241/2004/EC of the European Parliament and of the Council of 15 December 2004 on a single Community framework for the transparency of qualifications and competences (Europass).

<sup>(34)</sup> Recommendation of the European Parliament and of the Council (April 2008) on the establishment of the European Qualifications Framework for lifelong learning (2008/C 111/01).

<sup>(35)</sup> 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) COM(2008) 180.

5.11.1 The EESC eagerly awaits the outcome of the discussions begun in July 2008 with the publication by the European Commission of the *Green Paper – Migration & mobility: challenges and opportunities for EU education systems* <sup>(36)</sup>, which calls for reflection on the future and the role of Directive 77/486/EEC, which has hitherto focused solely on the education of the children of migrant workers from other EU countries.

5.12 **Facilitating legal migration and the fight against illegal migration** from third countries, as outlined in the Commission Communication on *The Global Approach to Migration* <sup>(37)</sup> of November 2006, is the Commission's most

recent step to increase mobility and manage migration in Europe in the face of demographic challenges. In accordance with its legislative plans for the year 2007, the Commission published two legislative proposals <sup>(38)</sup> facilitating EU entry and residence for economic migrants from third countries and put forward its proposal for a Blue Card system aimed at attracting highly skilled workers from third countries to Europe. The rights and obligations of third country nationals set out in the proposed directive, based on equal treatment in terms of pay, conditions, freedom of association, education and vocational training, are a good basis for migration legislation and should be extended to all categories of migrant workers. The EESC considers that the interim measures which temporarily limit the free movement of workers from the new Member States are a derogation which, particularly with regard to the employment of highly qualified workers, should be swiftly revoked <sup>(39)</sup>.

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

<sup>(36)</sup> Green Paper – Migration & mobility: challenges and opportunities for EU education systems (COM(2008) 423 final).

<sup>(37)</sup> The Global Approach to Migration one year on: Towards a comprehensive European migration policy (COM(2006) 735 final).

<sup>(38)</sup> Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment ('EU Blue Card' proposal) (COM(2007) 637 final) and a proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (COM(2007) 638 final).

<sup>(39)</sup> See footnote 5.

**Opinion of the European Economic and Social Committee on the situation of ageing workers faced with industrial change — providing support and managing age diversity in sectors and companies (own-initiative opinion)**

(2009/C 228/04)

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:

*'The situation of ageing workers faced with industrial change – providing support and managing age diversity in sectors and companies' (own-initiative opinion).*

The Section for Employment, Social Affairs and Citizenship/Labour Market Observatory, which was responsible for preparing the Committee's work on the subject, adopted the section opinion on 10 March 2009. The rapporteur was Marian KRZAKLEWSKI.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 159 votes to eight with eight abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC believes that the issue of employment in the European Union should be considered in its entirety because it affects all age groups. This is especially true in the context of the current crisis.

1.2 The European Economic and Social Committee calls on the Commission to specifically address the issue of older workers on the labour market and notes that it should enhance and strengthen the implementation of the regulations concerning age in the Employment Equality Directive 2000/78/EC by setting out a European programme and Support Framework for the Employment of Older Workers.

1.2.1 The document should identify a set of best practices facilitating the recruitment and retention of older workers aged 50 or over and, in particular, all those approaching the legal retirement age. Businesses, older workers as soon as they reach the middle of their career, and practically all of society should be made aware of the opportunities and benefits of older workers being in the labour market.

1.2.1.1 All action taken in respect of older workers should maintain measures which promote employment, particularly among the younger generations entering the job market.

1.2.2 The EESC believes that the open method of coordination should be used to establish a common framework and set of principles at EU level for issues related to older

people and the job market. This is of particular importance in the current economic climate with increasing job losses where older workers might be discriminated against on the grounds of age rather than capability

1.3 The models and approaches proposed by the EESC in this opinion focus on older workers at risk of losing their jobs and on those workers who, given their age, are (or soon will be) eligible for normal or early retirement yet who choose to remain in employment.

1.4 Given the significant differences across the EU in the level of employment among older workers, the Member States should draw up and develop 'National Support Frameworks for the Employment of Older Workers' outlining a combination of the following areas of action for older workers and in countries where such national support frameworks already exist, they should be regularly reviewed and further developed through:

— support for active ageing;

— the introduction of incentives for both older workers and the companies employing them, in the policies of Member State governments which encourage older workers to stay on the labour market;

— the improvement of working and living conditions (especially in the case of manual labour);

— the deployment of institutional solutions on the labour market to make it more flexible regarding the employment of older workers.

1.5 The EESC notes with some concern that in spite of the gradual growth in the employment rate among older people, only a small proportion of EU companies consider the issue of older workers to be an important part of their policies. It is therefore important to identify as quickly as possible why businesses are not implementing good practices for the employment of such persons when all studies show that this advantageous solution has been promoted by the authorities in certain Member States.

1.5.1 If older people are to be employed, it is vital to ensure that the prolongation of employment contracts is economically viable for both employers and workers. This should be gauged on the basis of an extended cost/benefit analysis, covering:

- the tax and pension systems of the Member States;
- the conditions for the employment of older workers from the point of view of employers and workers;
- lifelong learning programmes (including continuous vocational training) for the over 50 and even the over 45 age group.

1.5.2 The EESC believes that the key issue for employers wishing to recruit older workers is to establish how they can make the best use of the experience and skills of older people.

1.6 The Committee calls on the European institutions, the governments of the Member States and the social partners to promote age diversity management among companies and employees as an effective method of managing productivity and as a suitable response to the difficult situation on the labour market.

1.7 The Committee wishes to stress the need for the European institutions and Member States to adopt a proactive approach to the issue of age management.

1.7.1 The EESC believes that training in the area of age management should be introduced into training courses for

managers and management studies curricula and include discussion and analysis of such issues as:

- maintaining levels of motivation and creativity among older workers;
- how to help workers adjust to the tempo of work to avoid them 'burning out' over time;
- building relations at work between workers from different age groups.

1.7.2 With a view to increasing the employment rate of older people, the EESC stresses the key importance of a commitment to continuous learning and to policies and practices that encompass school and further education, which clearly serves to improve the level of education among older workers.

1.8 Given the significant difference between men and women in the employment rate for the 55-64 age group, the EESC believes that the European Commission and the Member States must take action to build on the current approaches to the employment of older women and be bold in the formulation of models that have not, as yet, been used.

1.8.1 Raising the employment rate among women in the 50+ age group could be of key importance for achieving the employment rates set out in the Lisbon Strategy.

1.8.2 The Committee urges the Commission, in cooperation with EU agencies, to conduct research to establish whether the low employment rate among women aged over 50 is an example of discrimination on the labour market.

1.9 The Committee draws attention to the fact that exclusion is one of the major obstacles to increasing the rate of employment among older people. In order to be able to address this issue effectively, the lifelong learning programme of the over-50 age group should be integrated as much as possible with training in the use of ICT. To overcome any fears older people may have about using ICT, the first stage of ICT training courses could be held in groups where all participants are of the same age and have similar skills.

1.9.1 Equally, the EESC believes that the responsibility for creating the conditions for plugging skills gaps in new techniques and technologies among the over-50s should lie with the Member States with the active involvement of national and local government, social partners and educational institutions.

1.9.2 This will require a detailed analysis of the current need for basic skills enabling a person to function in the information society so that, where necessary, ways and means to supplement this can be developed with the Member States.

1.10 The Committee wishes to draw particular attention to the fact that any solutions which aim to help integrate older people into the labour market require both systematic, integrated action and an individual approach to specific cases or people.

1.10.1 Such an approach requires instruments for anticipating industrial and technological changes as well as training needs and social changes. The observatory of the labour market, people's skills and changes in society, as well as the statistical (information) systems of the Member States and the EU will all have a particular role to play in this context.

1.10.2 The Committee calls on the Commission to ensure that statistical research on employment among the over-50s is conducted more frequently than in the past, particularly given the significance and sensitive nature of this issue. This need has become all the more important in the context of the current crisis. Older workers are among those most at risk of becoming an 'adjustment variable' in current and future restructuring plans.

## 2. Introduction

2.1 To contend with a shortage of workers in the future due to demographic change, in March 2001 the EU set an employment rate target of 50 % for workers aged 55 to 64 by 2010. Preliminary assessments suggest that the EU will have great difficulty reaching this target by 2010.

2.2 EESC opinions – both those on Commission and Council documents <sup>(1)</sup> and exploratory opinions <sup>(2)</sup> – have covered the following issues in detail:

<sup>(1)</sup> *Strategies for extending the age of exit from the labour market* rapporteur: G. Dantin ; (OJ C 157, 28.6.2005), *Promoting solidarity between the generations* – rapporteur: L. Jahier (OJ C 120, 16.5.2008), *Adult Learning* – rapporteur: R. Heinisch (OJ C 204, 9.8.2008).

<sup>(2)</sup> *Quality of working life, productivity and employment in the context of globalisation and demographic challenges* rapporteur: U. Engelen-Kiefer; (OJ C 318, 23.12.2006); *The role of the social partners in reconciling*

— the message for the EU in the statistical information on older workers,

— the need and justification for a positive approach to older workers,

— the impact of early retirement schemes on the employment rate among older workers,

— the reasons for the fall in employment among older workers before 2000,

— the approaches used and planned to increase the employment rate among older workers and raise the retirement age, including possible incorporation into the flexicurity system,

— the participation of older workers in education and skills development,

— reconciling the working, family and personal lives of older workers and promoting solidarity between generations,

— the quality of older workers' working lives, productivity and employment in the context of globalisation and demographic change.

2.3 If the employment rate among older people is to be improved, policies and procedural models must be drawn up, promoted and implemented to address the problems faced by workers due to age and/or industrial change. Change management through age, educational and skill diversity which focuses on support for workers of all age groups represents one of the more important approaches discussed in this opinion.

2.4 In line with the subject of the opinion, the models and approaches put forward in the own-initiative opinion focus on older workers at risk of losing their jobs due to their age, restructuring processes, various socio-economic changes and on those workers who, given their age, are eligible for normal or early retirement yet who choose to remain in employment. Particular consideration must be given at the present time to age diversity to prevent discrimination against older workers in a period of economic downturn and job losses.



2.4.1 The approaches discussed in the opinion also broadly cover older unemployed people who wish to return to the job market as well as pensioners who, for a variety of reasons, intend to start working again.

### 3. Findings based on the analysis of current statistical information on older workers in the EU

3.1 As at the end of 2005, 22.2 million people aged 55-64 were in work across the EU. Within this age bracket, 1.6 million people were officially unemployed while 28.5 million were not in active employment. Increasing the rate of employment among older people was included among the objectives of the Lisbon Strategy.

3.2 In the EU-25, the employment rate of older people rose from 36.6 % in 2000 to 42.5 % in 2005 (see graph in Appendix 1). This rate increased in all EU countries except Poland and Portugal. In 2005, the employment rate for workers aged 55 to 64 was higher than or equal to the 2010 target in Sweden, Denmark, the United Kingdom, Estonia, Finland and Ireland.

3.3 In 2005, the employment rate among older people in the EU-25 reached 51.8 % for men while the figure for women in this age group was 33.7 %. However, the growth in the employment rate in the years 2000-2005 was higher in the case of women (+6.8 %) than men (+4.9 %).

3.4 The employment rate among the 55 to 64 category is far from uniform across this age group. The graph in Appendix I shows the substantial difference between the employment rate among people aged 55 to 59 and that of the 60 to 64 age group. In 2005, the employment rate for these groups was 55.3 % and 26.7 % respectively. For both men and women, the gap in the employment rate between the 55 to 59 age group and the 60 to 64 age group, which amounted to as much as 28.6 %, was much greater than the divergence between the 50 to 54 and 55 to 59 age groups, which was 17 %.

3.5 The employment of older people is highest in Sweden, which recorded employment rates of 79.4 % and 56.9 % for the 55 to 59 and 60 to 64 age groups respectively. The lowest rate was in Poland, with employment at 32.1 % in the 55 to 59 age group and Luxembourg, with 12.6 % employment in the 60 to 64 category.

3.6 When analysing the data in Appendix 2 comparing the employment rate of older people with their level of education, it is worth stressing that in the case of both men and women, older people with a higher level of education are much more

likely to be in work than those who have only basic-level education. Across the EU-25, only 30.8 % of older people with only the most basic level of education (on a three-tier scale) are in employment. In the case of older people with the highest of the three levels of education, 61.8 % are in work.

3.7 CEDEFOP's analysis of the most recent European survey on continuing vocational training<sup>(1)</sup> reveals that the participation of older people in CVT is significantly lower than that of young people, and that this is true across practically all the Member States. In the EU-27 in 2005, 24 % of workers in the over 55 age group took part in CVT compared with 33 % of workers aged 24 to 54. The low participation of older workers in CVT is most visible in the SME sector. Only 13 % of older workers (aged 55 or over) in small businesses took part in CVT. This data is outlined in detail in the table in Appendix III.

3.8 Older people in the 55 to 64 age group are more likely to undertake part-time work than individuals in the 30 to 49 age group (22.2 % compared with 16.8 %). This form of employment is much more common among women in the 55 to 64 age group (39.5 %) than among men (10.3 %).

3.8.1 Self-employed work is also more common among the 55 to 64 age group than the 30 to 49 category (23 % compared with 15.4 %). However, unlike in the case of part-time work, the number of men who are self-employed far exceeds that of women.

3.8.2 Taking into account the impact of the key factors for the employment of older workers, a cluster analysis<sup>(2)</sup> was conducted in respect of six characteristic groups of EU countries, which analysed the impact of three system approaches applied in respect of older workers in the Member States. A set of key factors affecting the labour market was allocated to each of these approaches.

— **System I – supporting active ageing.**

— **System II – financial incentives applied in respect of older workers leaving the labour market.**

— **System III – general mechanisms** to make the labour market more flexible regarding the employment of older workers.

<sup>(1)</sup> CVTS3, Eurostat.

<sup>(2)</sup> *Active ageing and labour market trends for older workers* Directorate-General for Employment, Social Affairs and Equal Opportunities – Unit D1.

3.8.3 The cluster analysis showed that system I was widely applied in the EU's Nordic countries, but to a much lesser extent in the new EU countries of Central Europe and the Baltic and Mediterranean Member States. System II was widely applied in the EU's western (continental) and Mediterranean Member States, while the English-speaking countries made wide use of system I and limited use of system III.

#### 4. Policies and procedural models addressing the problems faced by ageing workers due to age

##### *Retention of older workers*

4.1 The policies and support models outlined below target workers aged 50 and over (and 45 and over), employed in SMEs and large businesses and in the services sector, at risk due to:

- redundancy as a result of the restructuring or poor competitiveness of their company and changes in the global labour and services markets,
- health problems or the need to care for others,
- lack of appropriate qualifications or skills in using modern technologies, including ICT skills,
- their personal belief that they lack 'adaptability' skills, including most importantly, **self-motivation and the ability to learn**.

4.2 If older workers are to stay in work, it is vital for firms to introduce into their management systems an **anticipatory mechanism, including the regular use of career assessments, as early as the middle of a worker's career, to avoid** workers becoming at risk. This must be supported by government policy which makes it possible to retain workers or allows people to stay in work for longer or return to an active professional life.

4.2.1 The introduction or expansion within a company of the use of anticipatory mechanisms on a regular basis, combined to a great extent with the participation of as large a number of workers as possible in skills assessments is an important support instrument for older workers for **identifying**

**the moment or circumstances in which intervention should begin**. This approach requires investment, which may be funded by the business itself, EU subsidies (in particular the ESF) and public funds.

4.2.1.1 A **competence assessment** is a procedure developed to promote the recognition of skills acquired either formally or informally; under the procedure, all workers are entitled to a review of their skills every few years based on an interview and tests, with the help of careers advice experts. Practical skills acquired could be recognised by a national network of public centres, providing a **platform for further career development**.

4.2.1.2 A **skills audit** should be conducted by an independent consulting firm; in cases where an worker's skill set would be unlikely to secure him or her alternative employment with the same level of pay, the company in question will be required to arrange and pay for the training needed to make up the skills deficit and to bear the cost of progress assessments, while the worker will be required to undertake training and complete the training programme.

4.3 If workers are to be retained, it is important that new roles be created within firms for older workers e.g. as mentors or coaches<sup>(1)</sup> (often in connection with recruitment) or encouraging them to carry out shadowing<sup>(2)</sup> has proved effective, helping companies preserve their institutional continuity and values by teaching and transferring a variety of forms of business capital to new and younger workers.

4.4 One effective policy for retaining workers is to adopt a **flexible approach** to working hours and compensation packages. The demand for different work/leisure balances can be met through flexible working hours, part-time work and a programme of gradual cessation of work. It is also possible to change the structure of salary/benefit packages and make provision for pro rata benefits. Even such methods as introducing a shorter working week or allowing its conversion into extra holidays have been successful in retaining workers.

4.5 The process of retaining older workers at a company frequently involves workers having to decide whether to benefit from their right to early retirement or stay in work.

<sup>(1)</sup> **Mentoring** is a method of helping others on the basis of one's own (professional) experience. **Coaching** is a broader concept; it can include mentoring, but is wider in scope. A coach focuses on the learning process and on the achievement of objectives.

<sup>(2)</sup> **Shadowing** involves workers aged 50 and over accompanying younger, especially newly recruited employees in their work. This method is particularly useful for familiarising young employees with specific procedures and actions, where the young employees are unaware of their existence or scale.

4.5.1 A policy of financial, social and organisational incentives should therefore be applied in respect of workers (e.g. transfer to a less demanding post requiring new skills acquired through training). The principle of the freedom of choice as to how long workers can stay in employment, one of the pillars of the flexicurity system, should be a priority.

4.5.2 The EESC believes that, due to the lack of a conciliatory and creative approach towards those people eligible for early retirement, too few workers in this position stay in work until they reach the normal age of retirement.

4.6 **Education and training policies** are vital for effective worker retention, and are also linked to productivity. **Rather than age, it is skills and experience which should determine a given worker's opportunities on the job market.**

4.6.1 The most important educational and training policies for retaining workers aged over 50 include:

- **Participation and inclusion**, i.e. the participation of older workers in all the training programmes offered by their employer and their involvement in providing on-the-job training. In addition, older workers with particular skills may remain with the organisation past the normal age of retirement.

- **Refresher courses in workplace technology** are intended for older workers who have not attended training in manufacturing processes for a considerable time and who, as a result, feel less involved in the process. The social partners' common action framework for the recognition of skills and qualifications, lifelong learning and adult training are appropriate mechanisms to introduce such training <sup>(1)</sup>.

- **Specialised computer and internet courses for workers over 50**, broadening the participation of older workers,

pensioners and their organisations in the use of ICT. Tailoring the courses to the needs of older people (e.g. larger fonts, 'Senior Web' portal etc.) is important.

*Recruiting older workers – how to win back older workers and persuade them to stay at the company.*

4.7 One characteristic aspect is that it is up to the companies themselves to identify effective methods of reaching older workers who are out of the labour market and persuading them to give up their various activities or interrupt their retirement and return to work.

4.8 On average, one third of pensioners experience difficulties living on their pensions <sup>(2)</sup>. Many of these potential workers are victims of a system of low pensions, who have been discouraged by their inability to find employment, ostensibly because of their age. These unfortunate former workers may be prepared to undergo retraining but have been out of the labour market for several years and have probably abandoned any intention of returning to it.

4.8.1 There is little doubt that there is a need to tackle the causes of this situation, where one third of pensioners experience difficulties living on their pensions, by improving on a system of just, stable pensions financed by employing all available human capital.

4.9 Those capable of returning to work include pensioners whose children have grown up and left home and who have suddenly found themselves with extra time on their hands and who want an additional occupation and/or income.

4.10 It is therefore vital to inform such individuals of the opportunities available and then to contact them directly to encourage them to get in touch with the company, and to get them involved in some form of continuing education or to encourage them to attend courses or training programmes organised to entice them back to work.

These objectives may be achieved by:

- Information seminars focusing on issues of interest to older people.

- Job and career fairs, 'over-50 discussion groups' or 'job centres' which target older people.

<sup>(1)</sup> EESC opinion of 22 October on the Establishment of the European Credit System for Vocational Education and Training (ECVET), rapporteur: Ms Le Nouail-Marlière (CESE 1678/2008). Opinion on Lifelong learning, rapporteur: Mr Rodríguez García-Caro (OJ C 175 of 27.7.2007). Opinion on Adult learning, rapporteur: Ms Heinisch, co-rapporteurs: Ms Le Nouail Marlière and Mr Rodríguez García-Caro (OJ C 204 of 9.8.2008).

<sup>(2)</sup> B. McIntosh 'An employer's guide to older workers'.

- Advertisements at venues frequented by older people, or in the media popular with older people. Care must be taken to avoid the use of language which could be offensive: 'the elderly' or 'old age pensioner.' Instead, when referring to older people, words such as 'mature' 'experienced' or 'solid' should be used.
- The creation of in-house working groups of older workers for formulating strategies for attracting experienced older people. Parties open to pensioners/former workers can also be held at company premises; such workers may also be encouraged to return to work by personal letters or telephone conversations, etc.

4.11 The success of recruitment drives for older people is often in large part down to **networking**. Businesses, government offices, social partners and other stakeholders should all be part of such networks in towns, cities, regions and countries. They can even be expanded to include international partnerships.

4.11.1 The key task for such networks is to help change social attitudes about the importance of staying in work for longer and to create the right conditions for persuading workers aged over 50 and employers to have faith in their ability to 'keep pace with change'.

4.11.2 Such networks could also serve to inform employers about the benefits of hiring workers aged over 50 and to lobby for changes in government policies and the drafting of employment systems which support workers who stay in work for longer and employers who tailor their human resources systems to the needs of older workers.

4.11.3 At the same time, such networks could help the dissemination and development of 'best practices' and identify key competences.

## 5. Diversity management: an approach to addressing the issue of employment of older people

5.1 Research shows that diversity can improve workgroup performance in certain tasks as it brings a wide range of information, resources and decision-making approaches that lead to better outcomes.

5.1.1 In the past it was believed that diversity in the composition of the workforce based on age or race could

create conflict. However, such obstacles can be tackled if workers are given sensitivity training and are encouraged to work in diverse teams to overcome their prejudices.

5.2 A number of well-known European companies practically apply a rule of '**Managing diversity = managing productivity**.' The goal of managing a diverse workforce is to create a culture in which each employee can make a full contribution to the organization and to advance on the basis of excellent performance.

5.3 Diversity programmes which value the different backgrounds of workers and attract and retain the best qualified workers place equal opportunities at the heart of the human resource management approach. Non-discriminatory practices of diversity management are increasingly recognised as a managerial tool to increase efficiency and productivity. This is a priority topic for the International Labour Organisation – identifying the link between equal treatment and economic performance.

5.4 The models and policies for supporting older workers outlined in Chapter 4 can be successfully developed through age and skill diversity management methods. **It should be emphasised that age management in effect begins at the start of an worker's career.**

5.5 Companies which practise **age diversity management** recruit or regroup within the company a certain number of older workers both to ensure an age 'mix' and in response to a shortage of skilled workers. The aim is to have a mix of age groups, qualifications, cultures and competences in-house.

5.6 **Skill diversity management** involves recognising and valuing the professional skills of older and younger workers and taking action to attract and retain the most highly skilled workers.

5.7 The use of age management techniques has the following **advantages**:

- an increase in the workforce's overall skills set and its openness to innovation,
- the presence of well-paid older workers at a company means that younger workers notice the greater potential of their working career,

- improvement in quality and organisation of products and services,
- ensuring that an appropriate level of skills and career development potential is preserved, as well as scope for the internal regrouping of workers.

5.8 According to the European Foundation for the Improvement of Living and Working Conditions in Dublin <sup>(1)</sup>, **success factors for age management** include the following:

- age awareness,
- the existence of a national policy framework supporting age management,
- careful planning and implementation,
- cooperation of all interested parties in age awareness,
- cost/benefit assessment.

#### 6. **Areas of good practice for the implementation and development in the EU of policies and models supporting older workers**

In order to practise and develop within the EU models and policies to help older workers, the following good practices may be exchanged and implemented:

- Involving the social partners in negotiations on **company, sector or cross-sector collective work agreements** containing regulations for **older workers**; these may also include social pacts, specific provisions in work regulations and other bilateral or multilateral agreements.
- Including all stakeholders in the **tabling and drafting of legal regulations at national (and European) level**

encouraging workers aged over 50 to stay on the job market and employers to retain them at the company or to recruit older people.

- Design and implementation of systems and network structures focused on **identifying the situation and wide-ranging indicators for older workers**.
- **Diversity management of a company** (or group of companies) **oriented towards specific age groups of older workers**, such as age or skill diversity management.
- **Implementation of advisory system models for workers aged over 50 and their employers**, which focus on the development of sub-systems to assess the need for skills of employees in a given company, sector, region or even country.
- Use of a system of **advice for workers in the field, through training programmes, courses and other educational and further training activities**, especially those focused on older workers.
- Development of **business and management advice systems focusing on how to improve the adaptability, competitiveness and productivity of businesses** during periods of transition through age diversity management and HR management, using IT.
- **Creation and development of structures and network systems** (sector-based, regional, mixed, bringing together representatives of interested parties, etc.) and **skills and employment observatories** monitoring older workers on the labour market (taking into account their skills) and the restructuring process. Such observatories can encompass sectors, local areas and regions (including cross-border regions).

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

<sup>(1)</sup> Presentation of database on employment initiatives for an ageing workforce: Gerlinde Ziniel, *European Foundation for the Improvement of Living and Working Conditions*.



## **Opinion of the European Economic and Social Committee on Transatlantic Relations: 'How to improve the participation of civil society'**

(2009/C 228/05)

At its plenary session held 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

*'Transatlantic Relations: "How to improve the participation of civil society".'*

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 March 2009. The rapporteur was Liina CARR and co-rapporteur was Jacek KRAWCZYK.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March 2009), the European Economic and Social Committee adopted the following opinion by 196 votes to seven with three abstentions.

### **1. Conclusions and recommendations**

1.1 EU-US relations are today taking place in a new environment and are facing growing challenges and expectations. The election of President OBAMA has created high expectations worldwide and a renewed optimism in the potential of transatlantic relations. In many areas, from a common response to the current financial and economic crisis, to the issue of climate change or the promotion of human rights, to the bilateral economic relationship, there is genuine hope that the EU and the US will work together and provide leadership.

1.2 European and American civil society and social partners have a key role to play in contributing to this renewed cooperation, through their representative character or their expertise in a given domain.

1.3 The EESC encourages the EU policymakers to seize the opportunity and push, in agreement and in cooperation with the US, for the necessary reforms in the UN system, the WIPO<sup>(1)</sup>, the International Criminal Court, G8, G20, the WTO, the World Bank, the IMF and strengthening the ILO to make these institutions more effective in solving the long-term challenges that stem from a globalised world and from the current global financial crisis.

1.4 Given the depth of the financial and economic crisis transatlantic economic cooperation must be intensified. As a first step the EU and US must deliver greater coordination of their monetary and fiscal actions to stimulate the global economy through the G20. They must then work together to

deliver a common new approach to effective and efficient regulation global financial system so that the economy is never again threatened by excessive risk-taking. Clear rules for international finance should be established as part of a major reform of international economic bodies so as to send a strong signal to the public and to businesses.

1.5 The goal of the Framework for Advancing Transatlantic Economic Cooperation - to achieve deeper transatlantic economic integration and growth that will benefit our citizens and the competitiveness of our economies - should be achieved under the supervision of the Transatlantic Economic Council.

1.6 At the core of the Framework is the idea of regulatory cooperation. The European Union and the United States have much in common in the values which underpin our approaches to regulating our economies, though on some issues we have disagreed. Regulatory cooperation implies working together from the outset to seek joint identification of social, environmental and economic problems and their solutions. The EESC encourages the Commission and the member states in the context of transatlantic relations to promote the European social model, which is founded on highly-developed systems of social protection and civil and social dialogue.

1.7 The Transatlantic Economic Council has important work to do in the near future:

— The solutions to the global financial crisis and its consequences for the wider economy will require new regulatory regimes on both sides of the Atlantic.

<sup>(1)</sup> WIPO = World Intellectual Property Organization.

— As the EU and now the US both will engage in major efforts to tackle climate change, many regulatory issues will arise. The TEC will need to ensure that we maximise their effectiveness while improving environmental performance.

— The resort to protectionism exacerbated the Great Depression of the 1930s. The TEC will need to play a role in monitoring protectionist tendencies, in Europe, the United States and around the world.

— The TEC has a broad agenda for its regulatory cooperation initiatives. There remain major, unnecessary differences in the ways the EU and US regulators make new regulations taking into account of all stakeholders' interests.

— Violations of intellectual property rights continue to spiral around the world. The TEC must continue to improve joint enforcement efforts in major problem areas such as China. It should integrate debates on how to ensure the protection of intellectual property rights while, for instance, delivering access to affordable medicines in its discussions.

— The TEC must also improve its mechanisms for cooperation. It must be provided with greater resources and clearer criteria for putting new issues on its agenda.

— Stakeholder consultation must be enhanced through greater transparency and coordination and broadened to include the Dialogues on an equal footing.

— Legislators on both sides of the Atlantic must be given an enhanced role in the process.

1.8 To achieve these and other goals, it is crucial that the TEC process be continued under the new US Administration as well as under the new EU Commission and Parliament. The EESC calls on President OBAMA to move swiftly to appoint a new US Co-Chair of the TEC so that its important work may continue.

1.9 The current economic challenges would be severely exacerbated by any return to protectionism around the globe, as occurred during the economic depression of the 1930s. The

EESC encourages the EU and the US to work closely together to fulfil the pledges made by G20 summit leaders to this end on 15 November 2008 and do all they can to strive to reach an early and successful conclusion of the Doha Round, as well as prevent the creation of new barriers to trade or investment.

1.10 The EESC similarly encourages the EU and US to work closely together to dissuade others from resorting to policies that may restrict access to investment or procurement markets, as has unfortunately been the outcome of recent discussions in Congress. We also look to the EU and US to address the issue of how to reinvigorate world trade so as to enhance global trade negotiations by incorporating sustainable development considerations and social standards. The EESC welcomes the concern of President OBAMA to mitigate the negative effects of trade adjustment on particular workers or citizens.

1.11 The EESC strongly recommends setting up funding mechanisms for the Transatlantic dialogues (TABD <sup>(1)</sup>, TACD <sup>(2)</sup>, TALD <sup>(3)</sup> and TAED <sup>(4)</sup>), and including the TALD and TAED into the Group of Advisors for the TEC.

1.12 The EESC encourages the EU and the US to increase the accessibility and openness of the transatlantic dialogue process and to increase the involvement of civil society stakeholders also from outside the four dialogues.

1.13 The EESC calls on the European Commission to organise in the near future a transatlantic stakeholder meeting in order to take stock of the new situation and to exchange views on and to co-ordinate actions to be taken on new initiatives. The EESC reminds the Commission of a suggestion made in its 2005 Communication to organise a tripartite conference in the field of industrial relations.

1.14 On its own behalf the EESC proposes to initiate contacts with the US economic and social partners and will closely follow the setting up of advisory groups within the US administration to identify possible counterparts on various topics. The EESC will also seek ways to better promote the exchange of knowledge and experience with US civil society stakeholders. To carry out these tasks the EESC should set up an informal contact group to oversee the EESC activities in the field of transatlantic relations.

<sup>(1)</sup> Transatlantic Business Dialogue.

<sup>(2)</sup> Transatlantic Consumer Dialogue.

<sup>(3)</sup> Transatlantic Labour Dialogue.

<sup>(4)</sup> Transatlantic Environment Dialogue.

1.15 The EESC believes that it would be appropriate and useful to step up the collaboration between the EU and the US in the fields of science and culture (cultural dialogue), so as to lay the groundwork for improved mutual understanding and enhanced political cooperation. The EU and the US must work together to promote and support creativity in science, technology and innovation and particularly in the arts, for the sake of new values, growth and the enrichment of men and women.

## 2. Background

2.1 EU-US relations are today taking place in a new environment and are facing growing challenges and expectations. The election of President OBAMA has created high expectations worldwide and a renewed optimism in the potential of transatlantic relations. In many areas, from a common response to the current financial and economic crisis, to the issue of climate change or the promotion of human rights, to the bilateral economic relationship, there is genuine hope that the EU and the US will work together and provide leadership. In its opinion <sup>(1)</sup> in 2004 the EESC identified a range of issues, including the need for improved global governance, that should be included in the Transatlantic agenda. Recent events emphasise the importance of co-operation in this area.

2.2 The challenges that the EU, the US and the wider world are currently facing are serious and a new common approach is required to ensure that never again is the global economy laid open to the depredations of unregulated financial capitalism. The transatlantic and global economy is in the midst of its most acute economic crisis in decades, the phenomenon of climate change requires action by all players to make progress, and many important foreign policy issues must be tackled to promote peace, democracy and human rights in the world. Without deepened EU-US cooperation, our efforts to solve these problems will be insufficient.

2.3 European civil society and social partners have a key role to play in contributing to this renewed cooperation, through their representative character or their expertise in a given domain. For this to take place, improved engagement with all stakeholders by the many political bodies through which the European Union and the United States Government hold dialogue is vital. Citizens' freedom of movement represents another important step for improving EU-US relations by encouraging business, cultural and social exchange. Extending the visa free travel between the EU member states and the US

should continue to be developed as one of the political priorities.

2.4 To date, bilateral relations between the EU and the US have been conducted under the framework of the Transatlantic Declaration <sup>(2)</sup> in November 1990, followed in 1995 by the New Transatlantic Agenda <sup>(3)</sup> (NTA) and, in May 1998, by the Transatlantic Economic Partnership <sup>(4)</sup> (TEP). A further institutional development was the signature of the Framework for Advancing Transatlantic Economic Integration <sup>(5)</sup> in April 2007, which created the Transatlantic Economic Council (TEC) <sup>(6)</sup>.

2.5 All of political interactions have to date focused more on foreign policy, economic and trade issues than on social and sustainability matters. In addition, with few exceptions, the involvement of stakeholders, who have a strong tradition and performance both in a number of European countries and at EU level, has not yet become a strong element of EU-US relations. While strengthening and enhancing what works well in this new period of transatlantic cooperation, the EESC calls on the EU and US to deal with these areas where improvement is needed.

2.6 The opinion will not cover all aspects of transatlantic relations. It will not cover Canada and will focus on a few EU-US issues such as multilateralism, trade, transatlantic economic cooperation, global climate change and the involvement of stakeholders. The EU relations with Canada should be examined in a separate new EESC opinion.

## 3. Multilateralism

3.1 Differing approaches to multilateral institutions has been a feature of EU-US relations in recent years. There is strong reason to believe that the new US Administration will pursue a policy of more vigorous engagement both with allied partners and international organisations. The EESC encourages EU policymakers to seize the opportunity and push, in agreement

<sup>(1)</sup> EESC opinion 'Transatlantic Dialogue: how to improve the Transatlantic Relationship' OJ C 241 of 28.9.2004.

<sup>(2)</sup> Transatlantic Declaration on EC-US Relations, 1990 [http://ec.europa.eu/external\\_relations/us/docs/trans\\_declaration\\_90\\_en.pdf](http://ec.europa.eu/external_relations/us/docs/trans_declaration_90_en.pdf)

<sup>(3)</sup> See [http://eurunion.org/eu/index.php?option=com\\_content&task=view&id=2602&Itemid=9](http://eurunion.org/eu/index.php?option=com_content&task=view&id=2602&Itemid=9).

<sup>(4)</sup> See [http://ec.europa.eu/external\\_relations/us/docs/trans\\_econ\\_partner\\_11\\_98\\_en.pdf](http://ec.europa.eu/external_relations/us/docs/trans_econ_partner_11_98_en.pdf).

<sup>(5)</sup> See [http://www.eu2007.de/de/News/download\\_docs/April/0430-RAA/022Framework1.pdf](http://www.eu2007.de/de/News/download_docs/April/0430-RAA/022Framework1.pdf).

<sup>(6)</sup> See [http://ec.europa.eu/enterprise/enterprise\\_policy/inter\\_rel/tec/index\\_en.htm](http://ec.europa.eu/enterprise/enterprise_policy/inter_rel/tec/index_en.htm).

and in cooperation with the US, for the necessary reforms to strengthen the UN system, including the ILO, the International Criminal Court of Justice, WIPO, G8, G20, the WTO, the World Bank and the IMF, to make these institutions more effective in solving the long-term challenges that stem from a globalised world and from the current global financial crisis. The EESC supports the proposal, most recently voiced by Chancellor Merkel in Paris in January, that an Economic and Social Security Council be introduced in the UN system. This should be at a par with the Security Council.

3.2 One of the lessons learned from the past years of EU-US relations is that whenever the EU-US are not able to reach consensus, large global problems cannot be resolved. To improve this situation with the new Administration, the EU and US should work closely to define their common strategies on many world security and human rights questions.

3.3 Transatlantic governance is not an alternative but a complement to multilateral relationships for both the EU and the US. They remain the two most important players on the world stage, and thus they need to collaborate if they wish to move an issue forward in any international arena, be it managed trade liberalisation or greater respect for certain labour and environmental protection policies.

3.4 Full compliance with and implementation of multilateral agreements is vital to the EU and US' ability to show leadership at a global level. As a start, the EU, its Member States and the U.S. should ratify and implement all ILO Conventions<sup>(1)</sup> and WTO rulings.

## 4. Economic cooperation

### 4.1 *The financial and economic crisis*

4.1.1 As the world faces the deepest financial crisis and most difficult economic climate in decades, transatlantic economic cooperation must be intensified. As a starting point, this means that the monetary and fiscal measures taken on both sides must happen in a coordinated fashion to ensure their effectiveness in our interconnected economies. The EESC is concerned that this has so far been insufficient. The EU and

US must improve their engagement on these issues, particularly through the G20 in cooperation with other major economic players to move our economies forward. The American Recovery and Re-investment Plan agreed in February 2009 and the European Economic and Recovery Plan adopted by the European Council in December 2008 bear striking similarities although the European plan suffers from insufficient unity of purpose. They should be pursued with the aim of complementing each other and avoiding protectionist measures.

4.1.2 The second step to recovery is the development of a new common approach to ensure effective and efficient regulation of the global financial system so that the economy is never again threatened by excessive risk-taking. Both sides deliver regulatory measures, and close coordination is necessary to avoid unnecessary divergences. For this reason the TEC and the 2007 Framework it implements are ever more important.

### 4.2 *The Transatlantic Economic Council*

4.2.1 The goal of the Framework for Advancing Transatlantic Economic Cooperation is to achieve 'deeper transatlantic economic integration and growth [which] will benefit our citizens and the competitiveness of our economies'. This is to be achieved under the supervision of the TEC, which meets at least once a year and has a mandate to 'oversee the efforts outlined in [the] Framework, with the goal of accelerating progress' as well as to set interim goals and facilitate joint action. Such a mandate gives the TEC considerable authority to drive transatlantic economic integration, particularly at a time of crisis.

4.2.2 At the core of the Framework is the idea of regulatory cooperation. The EU and the US have much in common in the values which underpin our approaches to regulating our economies. We share the view that the aim of regulation is to guarantee high standards to protect the environment, human and animal health and safety as well as economic and legal safety. We also believe that regulation should achieve these results in the most efficient possible manner causing the least disruption to economic activity and be based on the highest quality expertise. True, there are differences, as evidenced by cases taken to the WTO, and some of these are the result of different attitudes among citizens. However, in many cases the EU and the US take different approaches simply because of insufficient consultation – between regulators and civil society. Regulatory cooperation implies working together, including through civil society contact, to seek joint identification of social, environmental and economic problems and their solutions.

<sup>(1)</sup> For ratification rates of ILO conventions see Information document on ratifications and standards related activities Report III (Part 2) International Labour \conference, 97th Session, 2008.

4.2.3 One area that could benefit from increased civil society contact is food safety. EU-US relations have long been disrupted by a range of differences in this area including regulations regarding hormones in beef, anti-microbial treatments for chicken. In these cases the EU has not been prepared to accept US standards. Wider points of contention have arisen over the use of genetically modified organisms in food.

4.2.4 To date the TEC has met three times, most recently in Washington DC on 12 December 2008. Despite its short lifetime, the TEC has delivered major steps forward in key areas for the economic community:

- The TEC has led to the recognition of equivalence of the international financial reporting standards and US accounting standards by both EU and US authorities, saving billions for European firms.
  - Discussions in the TEC framework meant that the EU and US have taken coordinated approaches to the issue of sovereign wealth funds.
  - On security, the two sides have agreed to a joint roadmap leading to mutual recognition of their respective secure shipper programmes this year, meaning that in future companies will be able to guarantee the highest security standards while joining only one secure shipper programme.
  - The TEC's High Level Regulatory Cooperation Forum is finding common ground between regulators on issues such as impact and risk assessment and the safety of imported products from China and other countries.
- 4.2.5 Looking forward the TEC has important work to do and the opportunity to enhance its functioning.
- As the EU and now the US both engage in major efforts to tackle climate change, many regulatory issues will arise – such as standards for clean fuels and technical elements of emissions trading schemes. The TEC will need to ensure that we maximise the effectiveness and economic efficiency of these efforts by avoiding incompatible approaches.
  - New security initiatives such as the US 100 % Cargo Scanning Legislation of 2007 do not use the right tools to enhance security with the result of creating new trade barriers.
  - Violations of intellectual property rights continue to spiral around the world. The TEC must continue to improve joint enforcement efforts in major problem areas such as China. It should integrate debates on how to ensure the protection of intellectual property rights while delivering access to affordable medicines in its discussions.
  - The TEC has a broad agenda for its regulatory cooperation initiatives. There remain major, unnecessary differences in the ways the EU and US regulators make new regulation – risk assessment, quality of science, consultation of stakeholders etc. If we are to truly enhance economic integration then more progress needs to be made on these dossiers.
  - The TEC must also improve its mechanisms for cooperation. It must be provided with greater resources and a more defined structure – such as clear criteria for putting new issues on its agenda and a more explicit mandate to encourage regulators to find solutions to their differences. Legislators on both sides must also be given an enhanced role in the process.
  - A key element will be enhanced stakeholder consultation through greater transparency and coordination (see section 6).
- 4.2.6 To achieve these and other goals, it is crucial that the TEC process be continued and expanded under the US Administration as well as the new EU Commission and Parliament. The EESC expects the Administration to move swiftly to appoint a new US Co-Chair of the TEC so that its important work may continue.



### 4.3 Trade

4.3.1 The current economic challenges would be severely exacerbated by any return to protectionism around the globe, as occurred during the economic depression of the 1930s. The EESC encourages the EU and the US to work closely together to fulfil the pledges made by G20 summit leaders to this end on 15 November 2008 and do all they can to strive to reach an early and successful conclusion of the Doha Round, as well as prevent the creation of new barriers to trade or investment. The EU and US will need to work together to enforce existing trade commitments in key trading partners as the temptation to protect domestic companies is exacerbated, and especially to set an example for others to discourage them from resorting to policies that may restrict access to investment or procurement markets, unlike the outcome of recent discussions in the US Congress. We also look to the EU and US to address the issue of how to reinvigorate world trade so as to enhance global trade negotiations by incorporating sustainable development considerations and social standards.

4.3.2 The new US Administration's views in this area will benefit from greater clarification for its trading partners, but at this early stage appear to include a greater emphasis on trade related environmental and social issues combined with an open approach to trade.

4.3.3 The EESC very much welcomes such an approach to international trade and recommends that the EU support any drive to advance trade agreements that improve both the supply of and demand for good governance at national and international level and address labour rights and environmental protection.

## 5. Global climate change

5.1 European countries have long been at the forefront on climate policies. They have been waiting for the US to join them with ambitious initiatives. The new US administration has promised to put tremendous efforts into tackling global climate change. The EESC looks forward to new and strengthened US policies to reduce greenhouse gas emissions. In addition to planning to implement a cap-and-trade system that limits carbon dioxide (CO<sub>2</sub>) emissions from big industries, the OBAMA Administration is likely to increase investment in renewables. Action to relaunch growth should – on a global scale – be used as an opportunity to create green jobs and redirect investment and innovation in this direction.

5.2 The EESC welcomes the US plans to invest in efficient and clean technologies at home while using US assistance policies and export promotions to help developing countries leapfrog the carbon-energy-intensive stage of development; the EESC also welcomes the demands to have binding and enforceable commitments to reducing emissions.

5.3 The EESC encourages the US to come to the UN Conference in Copenhagen in December 2009 with a strong and clear negotiating position that would bring the US and the EU views closer together in preparation for a new post-Kyoto protocol international framework on limiting emissions. The EU is expecting deep commitment to and support for the United Nations Framework Convention for Climate Change (UNFCCC) negotiations.

5.4 On the EU side, to reach a more coherent approach to achieving the EU climate goals the EESC calls on member states to reach a consensus on overcoming the tensions between economic competitiveness and deeper sacrifices for the environment, and not to reduce investment in new research initiatives into new greener technologies amid the global economic crises.

5.5 The EESC calls on both the EU Commission and the new US administration to actively involve environmental NGOs and networks as well as business and trade union stakeholders in preparations for the UN Conference in Copenhagen in December 2009, as well as to re-establish the Transatlantic Environment Dialogue (TAED), which could act as the coordinating body for the environmental stakeholders and as a partner in these preparations.

## 6. Involvement of stakeholders

6.1 The involvement of stakeholders in political decision-making has different traditions in the EU and US. The New Transatlantic Agenda committed the EU and the US to systematic cooperation in, among other areas, building 'people-to-people' bridges across the Atlantic. As a result a number of civil-society dialogues were set up between labour, consumer and environmental groups.

The Transatlantic Dialogues established in the second half of the 1990s have been unequally active and unequally involved in the EU-US cooperation structures, especially in the EU-US Summits, which had a unilateral focus on Transatlantic Business Dialogue (TABD). Furthermore, the Group of Advisors for the Transatlantic Economic Council only includes the TABD, the Transatlantic Consumer Dialogue (TACD) and the Transatlantic Legislators Dialogue (TLD). The two other dialogues – the Transatlantic Labour Dialogue (TALD) and the Transatlantic Environment Dialogue (TAED) were excluded without consultation with the stakeholders involved.

6.2 In this context the European Parliament in its resolution of 8 May 2008 on the Transatlantic Economic Council called for the chairs of the TALD and the TAED to be included in the Group of Advisors. The EESC strongly supports this call by the European Parliament and calls on the TEC to revise its Working Arrangements, which were adopted by the TEC co-Chairs in Berlin on 28 June 2007.

6.3 The new Working Arrangements must also include better arrangements for transparency and coordination with Advisors, including delivery of access to documents and meeting notifications in sufficient time.

6.4 The EESC endorses the new call of the European Parliament in its Draft Report on the state of transatlantic relations in the aftermath of the US elections for a deeper understanding of the parties' civil societies<sup>(1)</sup>. The EESC must play a role in this process.

6.5 The various interest groups involved in the dialogues all have prior experience in building transnational networks. The initiatives taken by the US and the EU in the 1990s to reflect the new realities of European integration also created new opportunities for transatlantic civil society organisations<sup>(2)</sup>.

<sup>(1)</sup> Draft Report on the state of the transatlantic relations in the aftermath of the US elections (2008/2199(INI)).

<sup>(2)</sup> For a short background on the dialogues see EESC's opinion drawn up by Ms Eva Belabed on Transatlantic Dialogue: how to improve the Transatlantic Relationship adopted on 3 June 2004. OJ C 241 of 28.9.2004.

6.6 The four dialogues mentioned above started their activities with varying success and support from political leaders on both sides of the Atlantic. The TACD is functioning well and is very active in its preparations for the EU-US summits and in the work of the TEC.

6.7 Unfortunately the TAED, after a relatively successful start, was suspended after two years of activity. There is a strong case for its re-constitution to provide input in to the TEC and EU-US Summits. The EESC strongly recommends setting up sufficient funding mechanisms for the dialogues and including the TALD and TAED (the latter after its re-establishment) into the Group of Advisors for the TEC.

6.8 The EESC appreciates that bilateral transatlantic relations many not necessarily be the most natural way for transnational cooperation for some civil society organisations. For trade union and environmental groups the transatlantic forum has to compete not only with domestic issues but also with global concerns, such as climate change or the right to organise in developing countries. Nevertheless, involving a wider array of stakeholders in bilateral EU-US relations lends popular support and democratic legitimacy to the whole process. The EESC encourages the EU and the US to increase the accessibility and openness of the transatlantic dialogue process and to increase the involvement of civil society stakeholders.

6.9 The EESC calls on the European Commission to organise, in the near future, a meeting with all stakeholders involved in transatlantic relations in order to take stock of the new situation and to exchange views and to co-ordinate actions on the new initiatives to be taken. The EESC offers active involvement in such an initiative as far as participation of civil society is concerned.

6.10 In its Communication of 18 June 2005 (COM(2005) 196) the Commission made some interesting suggestions, one of which was the promotion of dialogue between representatives of the social partners from the EU and the US, including a tripartite conference in the field of industrial relations. Those suggestions, which were never acted upon, should be revisited – exchanges between the EU and US social partners would be particularly useful in the context of proposals in the US to introduce an Employee Free Choice Act.

6.11 The EESC will initiate contacts with the US economic and social partners (business, trade unions, farmers, consumers etc.) to ascertain their interest in organising a dialogue on one or two specific issues, such as climate change or trade and sustainable development, which would be of mutual interest on both sides of the Atlantic. The aim of such a dialogue is to involve all the different stakeholders all at the same time, unlike the existing dialogues that work within their own remit and member organisations. The EESC will take contact with the European Commission and the US Administration to get their support and to identify their interest.

6.12 The EESC will closely follow the set up of advisory groups within the administration to identify possible counterparts on various topics. The EESC will also reflect on how to better promote exchange of knowledge and experiences with US civil society stakeholders on issues of common interest. In this context, it is proposed that the External Relations Section set up an informal contact group, on an interim basis, to oversee the EESC activity in the transatlantic relations field.

Should this experience prove to be successful, the contact group could then be set up on a permanent and formal basis.

6.13 In its Draft Report the European Parliament insists on the need to replace the existing NTA of 1995 with a new Transatlantic Partnership Agreement, providing a more stable and up-to-date basis for the relationship<sup>(1)</sup>. The EESC strongly supports such a call and hopes that when such a new instrument is negotiated the relevant communities of interest from American and European civil society will be included from the very beginning of the process. The inclusion of organised civil society actors would only strengthen and improve the institutional structures.

6.14 A reinforced dialogue would activate civil society on both sides of the Atlantic, thus fostering effective networks and promoting an exchange of views within and between transatlantic civil society networks, including the Dialogues; it would provide high-level access to government and foster relations between these networks and Dialogues and government/administration.

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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<sup>(1)</sup> European Parliament Draft Report on the state of transatlantic relations in the aftermath of the US elections (2008/2199(INI)).

## III

*(Preparatory acts)*

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

## 452ND PLENARY SESSION HELD ON 24 AND 25 MARCH 2009

**Opinion of the European Economic and Social Committee on the White paper on damages actions for breach of the EC antitrust rules**COM(2008) 165 *final*

(2009/C 228/06)

On 2 April 2008 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*'White paper on damages actions for breach of the EC antitrust rules'*

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 11 March 2009. The rapporteur was Mr ROBYNS de SCHNEIDAUER.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 54 votes to 4 with 3 abstentions:

**1. Conclusions and recommendations**

1.1 Access to effective judicial protection is a fundamental right laid down in the European Charter of Fundamental Rights. The EESC, therefore, stresses the need to promote people's access to such protection, in particular when it comes to securing compensation for breaches of antitrust rules, which harms not only competitors who play the game fairly, but also consumers, SMEs and employees of the companies involved, in that their jobs and purchasing power are jeopardised. The EESC welcomes the Commission White Paper, which it supports in this regard. The Committee highlights the need for more effective means allowing victims of breaches of antitrust rules to receive full compensation for the damage suffered, in line with ECJ case-law. A balanced system that pays attention to the interests of all is essential for society as a whole.

1.2 The guiding principle of competition policy should remain that the Commission and the Member States' public competition authorities rigorously apply Articles 81 and 82 of the EC Treaty in the public sphere. The Committee is aware of the different barriers and obstacles to the private enforcement of individual and collective rights by victims claiming full compensation and warmly welcomes the Commission's efforts to address these problems. These damages actions are necessary part of the effective enforcement of Articles 81 and 82 of the EC Treaty, which should complement but can neither replace nor jeopardise public enforcement. Moreover, an improvement of the rules for private enforcement will in future have benefits in terms of deterring potential breaches.

1.3 The EESC considers that a legal framework is needed to improve the legal situation to ensure that those affected exercise their right to compensation for all damages suffered as a result of a breach of EC competition rules, as set out in the Treaty. The European Union and the Member States should, therefore, adopt the necessary measures – both binding and non-binding – to improve judicial procedures in the European Union and achieve a satisfactory minimum level of protection for victims' rights. Out-of-court settlements can only be complementary to court proceedings. They can be an interesting alternative by offering a less formal and less costly procedure, provided that both parties involved are genuinely willing to cooperate and only if judicial redress is effectively available.

1.4 With regard to collective actions, the Committee considers it necessary to put in place the appropriate mechanisms to launch such actions effectively, adopting a European approach on the basis of measures grounded in European legal culture and traditions, aiding access to justice for the entities qualified by law and victims' groups. Follow-up measures should provide appropriate safeguards against the introduction of features that in other jurisdictions have demonstrated to be more likely to be abused. The EESC calls upon the Commission for coordination with other initiatives to facilitate redress, namely the DG SANCO initiative currently under way.

1.5 The White Paper's proposals cover a complex legal framework, which affects national procedural systems and, inter alia, rules on standing, disclosure, fault and allocation of costs.

1.6 Access to evidence and disclosure inter partes should be based on fact-pleading and on strict judicial scrutiny of the plausibility of the claim and the proportionality of the request for disclosure.

1.7 The EESC calls on the Commission to follow up the White Paper and to propose the appropriate measures to achieve the White Paper's objectives, whilst respecting the principle of subsidiarity but without application of that principle making it harder to overcome existing barriers to access to effective mechanisms for victims to claim for damages caused by breaches of competition rules.

## 2. Introduction

2.1 The EESC emphasises that individuals or companies who are victims of competition law infringements must be able to claim compensation from the party who caused the damage. In

this respect, the Committee takes notice of the fact that insurers do not provide cover for the consequences – mainly the compensation – of intentional antitrust behaviour. It is convinced that this adds to the dissuasive effect on companies, since companies that breach antitrust rules will have to bear the full cost of the compensation for the harm they caused and to pay the fines that will incur.

2.2 As previously observed by the Committee <sup>(1)</sup>, competition policy is closely tied with other policies, such as the internal market and consumer policy. Therefore, the coordination of initiatives to facilitate redress should be pursued as far as possible.

2.3 The Court of Justice of the European Communities has guaranteed the right of victims – whether private individuals or businesses – to be compensated when they suffer damages as the result of a breach of Community antitrust rules <sup>(2)</sup>.

2.4 In the wake of the public debate generated by the Commission's 2005 Green Paper on *Damages actions for breach of the EC antitrust rules* <sup>(3)</sup>, the EESC <sup>(4)</sup>, like the European Parliament <sup>(5)</sup>, endorsed the Commission's approach and urged it to take practical steps. Specifically, the EESC welcomed the Commission initiative, emphasised the obstacles currently facing victims when they seek compensation and recalled the principle of subsidiarity.

2.5 In April 2008, the Commission presented specific suggestions in its White Paper <sup>(6)</sup>. The Paper analyses issues linked to actions for antitrust damages and outlines measures

<sup>(1)</sup> OJ C 162, 25.6.2008, Franco Chiriaco, 'Opinion of the European Economic and Social Committee on the Report from the Commission - Report on Competition Policy 2006, COM(2007) 358 final', point 7.1.1., Brussels, 13 February 2008.

<sup>(2)</sup> See the *Courage and Crehan* (Case C-453/99) and *Manfredi* (Case C-295/04) judgments.

<sup>(3)</sup> COM(2005)672 final, Green Paper – Damages actions for breach of the EC antitrust rules, Brussels, 19 December 2005, pp. 1-13.

<sup>(4)</sup> OJ C 324, 30.12.2006, María Sánchez Miguel, 'Opinion of the European Economic and Social Committee on the Green Paper – Damages actions for breach of the EC antitrust rules', Brussels, 26 October 2006, pp. 1-10.

<sup>(5)</sup> European Parliament resolution of 25 April 2007.

<sup>(6)</sup> COM(2008)165 final, 'White Paper on damages actions for breach of the EC antitrust rules', Brussels, 2 April 2008.



to facilitate such actions. The proposed measures and policy choices are related to the following nine topics: standing; access to evidence; binding effect of NCA decisions; fault requirements; damages; passing-on of overcharges; limitation periods; costs of damages actions; and interaction between leniency programmes and actions for damages.

2.6 In drawing up the White Paper, the Commission carried out a wide consultation, including government representatives from Member States, judges from national courts, business representatives, consumers' groups, legal professionals, and many other stakeholders.

2.6.1 Undistorted competition is an integral part of the internal market and important for implementing the Lisbon strategy. The primary objective of the White Paper is to improve the legal conditions for victims to exercise their right under the Treaty to reparation of all damage suffered as a result of a breach of the EC antitrust rules. Full compensation is, therefore, the main guiding principle.

2.6.2 The White paper deals with the following issues:

- standing: indirect purchasers and collective redress;
- access to evidence: disclosure inter partes;
- binding effect of NCA decisions;
- fault requirement;
- damages;
- passing-on overcharges;
- limitation periods;
- costs of damages actions;
- interaction between leniency programmes and actions for damages.

### 3. General observations

3.1 The EESC is in favour of a more effective system allowing victims of breaches of the EC antitrust rules to receive fair compensation for the damage suffered. Currently, victims of antitrust infringements may claim compensation through the general tort and procedural law of their Member

State. However, such procedures are often not sufficient to ensure effective compensation especially in cases where many victims suffered damage of the same nature.

3.2 The Committee recognises the importance of the issues raised by the White Paper. The following comments focus on those topics that the EESC considers most sensitive in the current debate. The Committee asks the Commission to ensure that effective compensation of victims of competition law infringements is available in all Member States of the EU and therefore asks the Commission to propose the necessary follow-up measures to the White Paper at the EU level. It stresses that the principle of subsidiarity should be taken into account when considering specific proposals at EU level and recalls that these should fit appropriately with the Member States' legal and procedural systems.

3.3 The EESC considers that victims must receive full compensation of the real value of the loss suffered, covering not only the actual loss or material and moral injury, but also loss of profit and encompassing the right to receive interest.

3.3.1 The EESC is of the view that the Community action carried out by the Commission should involve two combined and complementary types of instrument:

- firstly, it should codify in a Community legislative instrument the *acquis communautaire* on the scope of damages that victims of antitrust infringements can recover;
- secondly, it should draw up a framework with non-binding guidance for quantification of damages, that can include approximate methods of calculation or simplified rules on estimating the loss.

3.4. The EESC considers that damages should be available to any injured person who can show a sufficient causal link with the infringement. However, efforts must be made to avoid situations that might give rise to unjust enrichment, for example in the case of purchasers who passed on the overcharge. Regardless of the level at which the measure is adopted (national or Community), the EESC feels that in such circumstances, defendants should be entitled to invoke the passing-on defence against claims for compensation of the overcharge. Regarding the burden of proof, the standard of proof for this defence should not be lower than the standard imposed on the claimant to prove the damage.

3.5 Given the current variations in the way the limitation periods are calculated, it is important for the purposes of legal certainty to standardise criteria in this regard. The EESC therefore considers that:

- the limitation period should not start to run, in the case of a continuous or repeated infringement, before the day on which the infringement ceases or the victim of the infringement can reasonably have knowledge of the infringement and of the harm it has caused him;
- in any case, a new limitation period of at least two years should start once the infringement decision on which a follow-up claimant relies has become final.

### 3.6 *Interactions between public enforcement and damages actions*

3.6.1 The primary responsibility for regulating markets and enforcing competition rules in the EU, as a matter of public interest, must remain placed on public authorities. Therefore, the EESC believes that any future action should uphold effective public enforcement while making it easier for victims of antitrust breaches to obtain redress for the damage suffered. Public enforcement plays a fundamental role in the fight against anticompetitive behaviours, the more so as the Commission and the National Competition Authorities (NCAs) enjoy unique investigatory and settlement powers.

3.6.2 While public enforcement focuses on compliance and deterrence, the objective of damages actions is to provide full compensation of the damage suffered. This full compensation includes actual loss, loss of profits and interests.

3.6.3 When evaluating measures related to the actual and full compensation the EESC expects the envisaged framework on guidance for quantification of damages to set pragmatic guidelines for the use of the courts of Member States, as described in the White Paper.

### 3.7 *Out-of-court settlements*

3.7.1 Whilst a more effective framework for judicial redress of victims of competition law infringements is indispensable,

the EESC supports the Commission's encouragement to Member States to design procedural rules fostering settlements. As an alternative to judicial redress out-of-court settlements may play an important complementary role in providing compensation to victims, without reducing access to court in any way. They could make it possible to reach a fair solution faster, at a lower cost, in a less confrontational atmosphere between parties and at the same time reducing the case load of courts. Therefore, the EESC invites the Commission to encourage the use of out-of-court systems in the EU and improve their quality. However, the EESC observes that alternative dispute resolution mechanisms can only work as a credible alternative for providing redress for victims, if mechanisms for effective judicial redress by courts – including collective mechanisms – are in place. In the absence of effective tools for judicial redress, there are insufficient incentives for fair and expedient settlements.

## 4. **Specific observations regarding the White Paper**

4.1 Given the current volume of mass legal transactions, there is need to establish, within the legal systems, mechanisms allowing aggregation or accumulation of the individual claims of victims of antitrust infringements.

4.1.1 The EESC agrees with the Commission's suggestion to combine the following two complementary mechanisms, and thereby ensure collective redress is successfully achieved for victims:

- representative actions, which are brought by qualified entities (such as consumer, environmental, employers' or victims' associations). The EESC has already delivered its opinion <sup>(7)</sup> on the legitimacy of most of these representative actions.
- opt-in collective actions, in which victims decide to combine their individual claims for harm they suffered into one single action.

<sup>(7)</sup> OJ C 162, 25.6.2008, Jorge Pegado Liz, 'Opinion of the European Economic and Social Committee on Defining the collective actions system and its role in the context of Community consumer law', Brussels, 14 February 2008, pp. 1-21.

#### 4.2 *Observations with regard to collective redress:*

4.2.1 The satisfactory redress of victims of antitrust infringements – competitors who play the game fairly, consumers, SMEs and employees of the companies involved, who are indirect victims of practices that jeopardise their jobs and their purchasing power is a primary concern for the EESC. It expressed its view on ‘defining the collective actions system and its role in the context of Community consumer law’ in its own initiative opinion <sup>(8)</sup>. In accordance with previous opinions, it states that the admission of the need for redress goes together with appropriate procedures for recognising and upholding these rights. The creation of a European collective action is one of the possible options at stake in the debate about how to make such redress effective. The EESC considers that follow-up measures should be balanced and provide effective safeguards to avoid abuses. They should be in line with other proposals on collective redress, namely those currently under way at DG SANCO, and need to be dealt with in a coordinated and coherent manner so as to avoid pointless duplication of judicial instruments, creating huge transposition and application difficulties in the Member States.

4.2.2 The EESC supports the broad consensus among European politicians and stakeholders that the EU must avoid the risk of US-style abuses. Follow-up measures should reflect European cultural and legal traditions, have compensation as their only goal and establish a fair balance between parties, leading to a system that safeguards the interests of society as a whole. The EESC requests that contingency fees and arrangements that arouse the economic interest of third parties be avoided in the EU.

#### 4.3 *Observations with regard to evidence*

4.3.1 To ensure effective access to evidence, which is necessary for effective legal protection, the EESC agrees that across the EU a minimum level of disclosure inter partes for EC antitrust damages cases should be ensured. Expanding the powers of national courts to allow them to order the disclosure of precise categories of relevant evidence could help to achieve this objective, as long as the disclosure is within the framework already set out in the case law established by the European Court of Justice, and is relevant to the case, necessary, and proportionate.

4.3.2 The EESC acknowledges the existing obstacles for victims to prove their case and welcomes the Commission's efforts to improve access to evidence. It underlines that the

differences between the Member States' procedural systems should not be neglected. Disclosure obligations should be subordinate to precise safeguards and be proportioned to the case.

4.3.3 The EESC requests the Commission to subject disclosure obligations to precise safeguards as the challenge is maintaining a system that balances effective access to evidence and the rights of defence. The Committee notes that strict supervision by a judge can be helpful in this respect.

4.3.4 Whenever a breach of Article 81 or 82 of the EC Treaty is discovered, victims of the infringement can, by virtue of Article 16(1) of Regulation 1/2003, rely on this decision as binding proof in civil proceedings. Given the principle of the equivalence of procedural rules, the EESC believes that there should be a similar rule for all decisions made by national competition authorities (NCAs) which establish that Article 81 or 82 has been infringed.

#### 4.4 *Observations with regard to participation and representation of victims*

4.4.1 Regarding ‘opt-in and opt-out’ collective actions, the EESC refers to the advantages and drawbacks of these mechanisms as described in its opinion of 14 February 2008 <sup>(9)</sup>. In this opinion, the EESC pointed out in particular that, while opt-in presents certain advantages, it is difficult to administer and expensive, it leads to procedural delays and is not suitable for a large proportion of consumers, because they do not have proper information on the existence of the procedures in question. The EESC observes that some Member States have introduced different models of judicial redress featuring both the opt-in and the opt-out system.

4.4.2 These observations are also valid for ‘representative actions’. Since reference is made in the White Paper not only to identified victims but also to identifiable victims, actions in the name of a group of unidentified persons do not seem to be excluded. While identifying individual victims can contribute to establish the claims, there may be circumstances in which extending the case to all possible victims would be appropriate for instance where large numbers of victims are involved. The EESC suggests the Commission to clarify this proposal.

<sup>(8)</sup> See footnote 7.

<sup>(9)</sup> Idem footnote No 7.

4.4.3 The EESC recalls its recommendations on the important role of the judge in its previous opinions. Judges may be helped by specific training to enable them to better verify admissibility criteria and the evaluation of and the access to evidence, as collective actions by definition require that the same complaint would not likely be filed individually. The judge must therefore have an important and active role in identifying and allowing legitimate claims at an early stage.

4.4.4 Qualified consumer and trade associations are natural candidates to represent victims in representative actions. The Commission's White Paper expressly allows authorised trade associations also to bring representative actions on behalf of their members. Since other recognised organisations meeting certain standards could also have legitimate reasons to introduce a collective action it should be carefully evaluated whether this could lead to situations where multiple concurring claims are lodged for damage caused by the same infringement. It should be recommended that victims are represented together by a single representative entity to make the action effective.

#### 4.5 *Remarks with regard to the binding effect of the National Competition Authorities' final decisions:*

4.5.1 In principle the EESC agrees with the Commission that final decisions in follow-on damages cases should weigh as irrefutable presumption of the infringement. It believes that national courts are in the best position to evaluate the causal link between the infringement and the damage claimed and should remain the ones exclusively entitled to do so.

4.5.2 The EESC also notes that the value of NCAs' final decisions implies that due attention should be paid to the level of harmonisation of checks and balances and procedural guarantees across the Member States.

#### 4.6 *Comments on the fault requirement:*

4.6.1 In certain Member States, the causal relationship between fault and damage is a constitutive element of tort liability and the plaintiff is required to demonstrate his own entitlement to relief as well as the defendant's fault. The EESC recommends the Commission to take these differences into account, as they emerge from the historical development of

national legal systems. It urges the Commission to ensure that any future regime will guarantee a fair proceeding pursuing a swift and efficient compensation of damages supported by adequate evidence.

#### 4.7 *Observations with regard to the leniency programme:*

4.7.1 Leniency programmes have an enormous impact on the number of detected cartels and a substantive deterrent effect. Their good functioning is therefore in the interest of victims in the first place. The risk that confidential information is made public would have negative effects on the uncovering of cartels and as a result on the possibility for victims to claim damages. The EESC consequently welcomes the proposals aimed at preserving the efficiency of leniency programmes. However, leniency applications should not protect, beyond what is strictly necessary, cartel participants from the civil law consequences of their illicit conduct at the expense of victims.

#### 4.8 *Comments with regard to costs of damages actions:*

4.8.1 The White Paper sets out different approaches to reduce the financial risk of litigation for those who bring a damages action. The EESC agrees with the view that the right to compensation should not be hindered by the unreasonable costs of legal actions. The EESC expressed its views on the question of the cost of these actions in its opinion on the Green Paper <sup>(10)</sup>.

4.8.2 The White Paper invites Member States to revise national cost allocation rules and to provide national courts with the possibility – in exceptional circumstances – to derogate from the 'loser pays principle', currently applied in most national legal systems. The EESC invites the Commission to pay due attention to the ways to ensure both fair access to courts and the validity of the claims in this regard too.

4.8.3 The EESC considers that the Member States should reflect on their cost rules, and the Commission should examine all the rules existing across the European Union. The tendency should be to allow meritorious actions where costs would otherwise prevent claims being brought, without prejudice to the design of procedural rules fostering settlements, as a way to reduce costs.

<sup>(10)</sup> OJ C 324, 30.10.2006, para 5.4.5 (rapporteur: Mrs Sanchez Miguel).

4.8.4 The EESC recalls that it is not desirable to introduce a contingency fee system which would be contrary to European legal tradition. As the EESC stated in a previous opinion <sup>(11)</sup> the system is prohibited in the majority of Member States of the European Union either by law or by the codes of conduct of lawyers.

4.8.5 Finally, the EESC thinks notification and collection of putative claimants could be made in an efficient way and at a reasonable cost through a public European electronic register of actions that can be consulted by victims throughout the European Union.

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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<sup>(11)</sup> See footnote No 7.



**Opinion of the European Economic and Social Committee on the Report from the Commission —  
Report on Competition Policy 2007**

COM(2008) 368 final

(2009/C 228/07)

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

*'Report from the Commission — Commission Report on Competition Policy 2007'*

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 11 March 2009. The rapporteur was Mr BARROS VALE.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 98 votes to two with three abstentions:

## **1. Summary and conclusions**

1.1 Every year, the European Economic and Social Committee assesses the Commission Report on Competition Policy and has used this opportunity to express a range of ideas and proposals that have often been well received by the authorities and have secured changes that the Committee broadly welcomes, with regard both to the priorities and instruments that this policy should have and the actual resources that have been used increasingly efficiently, as the EESC is pleased to note.

1.1.1 Mention must be made of the time-lag between the year under consideration (2007) and the drafting of this opinion. In consequence, the analysis is influenced not only by the period up to that date, but also by the wholly extraordinary circumstances now prevailing and which cannot be ignored.

1.2 The EESC considers, however, that new areas within the field of competition policy should be explored, moving beyond the traditional approach to the matter, which is important but somewhat limited. On previous occasions, the Committee has proposed that the Commission agree to develop new spheres of activity and at the current complex and difficult time, the need for this is even greater, given the state of the economy, and especially in light of the lessons that all those concerned must imperatively draw from the mistakes and above all the omissions that have been made and which have led to the current state of affairs.

1.3 Issues of inadequate (and in some cases even lax) regulation/supervision in sectors of strategic importance not only create unacceptable systemic imbalances and risks; they also affect healthy competition, protect wrongdoers and are

enormously damaging to society as a whole. Competition policy will have to address these matters to ensure that there is no replication of the huge costs that have to be met by the majority of businesses and individuals, due to the 'lack of competition' caused by those whose ambition was not curbed by the inadequate market protection systems, especially the financial markets, which set the conditions for all other markets.

1.4 At another level, and also as the EESC has previously called for, an assessment needs to be made of the options to ensure better coordination (and the creation of appropriate instruments) with the other EU policies in order to prevent unfair competition at the domestic level, arising from differences in businesses' size, location and tax environment. At the external level the EU must guarantee that third countries do not benefit artificially from breaching international rules for trade, core conventions of the ILO on labour and trade union rights, including child labour and inhuman working conditions, or basic environmental protection. The European Union should also vigorously enforce WTO rules against government export subsidies, and against other government policies which distort competition and deprive EU companies of market access.

1.5 The 2007 report addresses two new competition policy instruments not contained in the 2006 report ('State Measures' and 'Competition policy in the wider policy framework'), which, given that the aim is to improve this core Community policy, is one of the most positive aspects of the Commission's work.

1.6 With regard to implementation of the rules on State aid control, the report notes the Commission's considerable work in this field, demonstrating the importance of this issue in 2007.

1.7 As regards the 'role of competition policy in the wider policy framework', the Committee welcomes the Commission's concerns about the matter, but considers that this aspect should be further elaborated in order to clarify the ways or means of further embedding competition policy in the Lisbon Strategy. In terms of the sectoral markets that are covered, further clarification is needed of the measures to be taken, the instruments to be used and the aims to be achieved.

1.8 Despite the current importance of energy market liberalisation, the report appears to provide little information on the matter. As in the antitrust area, in which the practices covered are referred to in considerable detail, the third liberalisation package should be more thorough when addressing the aims to be achieved.

1.9 In the financial services sphere, the report addresses the issue of payment cards, stating that this is a highly concentrated industry in which competition-related problems do exist, and yet it fails to put forward any measures to remedy these issues. No reference is made to banking supervision and the monitoring of prudential rules by the competent bodies, a matter of the utmost importance and one that can give rise to anti-competitive practices that have a considerable impact on the different market players. The EESC wishes to express its deep concern about this aspect, particularly with regard to state holdings in financial institutions which have, in most cases, been very unclear.

1.10 The EESC would also prefer the report presented annually by the Commission to be less a list of achievements (often simply a catalogue of the progress made and the battles won) and more a document that more clearly counterbalances the positive steps taken (which the Committee welcomes) with the problems and obstacles identified and also proposals to remedy these and move towards new standards for competition policy.

## 2. Content of the 2007 report

2.1 With regard to the instruments of competition policy, the report sets out for each instrument, as it has done every year, the vision that has guided the Commission's work in the year under consideration:

— Concerning '**antitrust**' measures, more effective steps to counter such practices were promoted, with the introduction of incentives for those concerned to report any

occurrences. In response to the European Parliament's request for the Commission to draw up a White Paper with detailed proposals to ensure more effective antitrust damages claims, the Commission held a number of consultations with governments, judges and representatives of the different sectors affected by these issues.

— Priority was also attached to the '**detection, investigation and sanctioning of cartels**' with 41 companies (the same number as in 2006), being fined a total of EUR 3 334 million (compared to 1 846 million the previous year).

— In the field of '**State measures**', the Commission closed an infringement procedure against the Czech Republic for having limited the power of the national competition authority to apply competition rules in the electronic communications sector. A decision was also adopted, based on the EC Merger Regulation, declaring that the Spanish authority regulating the sector had breached this regulation.

— With regard to '**merger control**', a Consolidated Notice was adopted on competition-related issues, as well as guidelines on the assessment of non-horizontal mergers and a public consultation was launched on remedies in this field.

— '**State aid control**' was also one of the Commission's concerns, with a new method having been adopted for setting reference rates, and a consultation was launched on a draft General Block Exemption Regulation and the procedure for revising the Commission Notice on State aid in the form of guarantees was launched.

— Concerning the '**role of competition policy in the wider policy framework**', the Lisbon strategy was reviewed and a proposal was made to further embed competition in order to enhance sectoral market monitoring.

2.2 At the sectoral level, the 2007 report covers the most important measures carried out in key areas of the economy, including:

— **Energy**, in which the proposal was put forward for a third liberalisation package for the electricity and gas markets. In the antitrust area, efforts focused on foreclosure and collusion (market sharing).

— **Financial services**, in which the final reports were published on the sector-specific investigations into the European retail banking and business insurance markets.

— **Electronic communications**, in which the existing regulatory framework has helped to make communications markets increasingly competitive. It was recommended that the number of markets susceptible to *ex ante* regulation be reduced, a regulation on roaming was proposed and a number of decisions were adopted on public funding schemes for broadband access.

— **Information technology**, in which the proceedings previously opened against *Microsoft*, *AMD* and *Rambus* continued.

— **The media**, in which the Commission continued to monitor the switchover from analogue to digital broadcasting and to give high priority to ensuring that premium content is made available under open and transparent conditions.

— **The automotive industry**, in which the Motor Vehicle Block Exemption Regulation strengthens intra-brand competition.

— **Transport**, where the aim was for competition policy to ensure the efficient functioning of markets that have been recently liberalised.

— **Postal services**, with regard to which the Commission negotiated its proposal on fully opening up EU postal services markets to competition.

2.3 There appear to be a number of inconsistencies or a lack of clarity in certain spheres of activity, such as electronic communications, where it is hard to understand the need for and aims of the new regulatory package referred to in point 48 (on electronic communications), as this could clash with point 44, which refers to the current package's contribution to increasing competition.

2.4 In the field of information technology too, nothing is said about the aims or measures to be adopted. Reference is made only to cases opened in previous years but there is no

mention of setting rules and policies or the measures the Commission intends to implement.

2.5 Here again, mention should be made of the new situation created by the Internet. It is the focus of intensive commercial activity but is subject to only embryonic rules, providing endless potential for anti-competitive practices, unfettered by any real consumer protection. Internet business therefore urgently needs to be regulated.

2.6 In the transport sector, it is worth highlighting the detailed and welcome reference to the measures taken in the different transport sectors: road, rail (both goods and passenger transport), maritime transport and aviation.

2.7 With regard to postal services, there is a lack of clarity concerning the process of negotiating the Commission proposal for opening up EU postal services fully to competition.

2.8 The report's description of the workings of the European Competition Network is clear and detailed, as is its account of the activities of the national competition authorities. It is worth highlighting the point concerning the improvement seen in cooperation between members of the ECN. Also to be welcomed are the Commission's endeavours during the year under consideration to become involved in **international activities and interinstitutional cooperation**.

2.9 As part of the enlargement process, efforts continued to promote the enforcement of competition rules by the candidate countries and work started on requiring those countries to provide credible evidence demonstrating that these rules have been adopted.

### 3. **A new generation of competition policies and identifying problems that need to be addressed in the current economic situation**

3.1 The EESC considers that it must take this opportunity to opt for a new approach that is no longer confined, where competition policy is concerned, to assessing and commenting on the areas selected by the Commission for inclusion in its annual report. The EESC should go further and propose other areas to be covered by a future generation of competition policies.

Consequently:

3.1.1 First of all, in today's turbulent world, as demonstrated by the developments in economic globalisation and the recent lessons taught by the speeding-up of this process, a new generation of competition policies must be inextricably linked to the new concepts and priorities of a Common European External Trade Policy.

3.1.1.1 This Common European External Trade Policy must guarantee that third countries do not benefit artificially from trade liberalisation as the result of breaching international rules for trade and core conventions of the ILO on trade union rights, including child labour and inhuman working conditions, the rules for basic environmental protection, or the rules on the freedom of establishment and business associations, which may lead to social or environmental dumping. The European Union should also vigorously enforce WTO rules against government export subsidies, and against other government policies which distort competition and deprive EU companies of market access.

3.1.1.2 Europe should continue to work for a level playing field in the area of international trade, and strengthen the authority of the WTO to take action against government subsidies, and against social and environmental dumping in breach of international agreements. European organised civil society also demands that the trade policy and the rights of individual companies and employees accruing from the international agreements in the framework of the WTO, ILO etc. must always be fully enforced by the European Commission. In particular, the rights of individual companies and employees must not be allowed to be ignored or acted upon less than fully, because of general foreign policy considerations, or because of the special interests of individual companies or of individual Member States.

3.1.1.3 It unreasonable and unjustifiable that Europe should strive to impose rules that its own economic actors must comply with in order to ensure balance in competition and in the market whilst frequently ignoring the unfair competition imported on a daily basis from other parts of the world. Only a genuine link between competition policy and a fair common external trade policy, together with clear and bold stances in the WTO can restore balance to the current state of affairs.

3.1.2 Secondly, there is a need to start addressing a certain type of internal imbalance in the field of competition policy that promotes distortions, assessing the consequences of the market players' different characteristics and setting rules that take account of the fact that small and micro-enterprises are by their very nature dependent on their ability to compete with large companies. Similarly, companies in remoter areas are also at a disadvantage in relation to businesses located near major centres of consumption. In future, therefore, European Economic, Social and Territorial Cohesion policies should be closely linked to competition policy, which should be increasingly alert to the variety of factors influencing the markets.

3.2 The economic backdrop against which the Commission's work in 2007 is assessed also requires the EESC to raise a series of practical questions. Because of their topicality and outstanding importance, these questions warrant the attention of Europe's political decision-makers, since they demonstrate the inadequacy of current instruments to address phenomena facing both businesses and the general public.

3.2.1 Regardless of the aims of protecting the economy as a whole and of not benefiting some businesses and/or sectors at the expense of others, and however laudable these aims might be, can Member States be allowed to intervene, by helping certain economic players (and indirectly their shareholders, employees, creditors and suppliers), at the expense of all the others, in scenarios in which those who do not comply reap the benefits and those who do, suffer? What might be the effects of the distortion to competition caused by a new wave of unfair treatment of economic players?

3.2.2 While reaffirming the pressing need for a strong and cohesive competition policy to guide the overall action of the European Union, the EESC understands and agrees that, under exceptional circumstances such as at present, exceptional measures – even distortions of competition – may be introduced. However, these deliberate, authorised distortions must be constantly and closely monitored by the Commission, and corrected as soon as the economic situation returns to normal.

3.2.3 In order to prevent distortions of competition in any sector, allowing governments to offer tax and/or financial incentives that can be accessed transparently and by everyone (providing they meet certain objective criteria) might be the best means of encouraging economic development without causing unjustified discrimination.

3.2.4 What steps were taken by the competition authorities at the different tiers to ensure that the system operated properly during the recent price crisis, either for consumer fuels or for basic foodstuffs? In this instance, the repercussions of the higher

costs of raw materials on the final price were immediate and direct, while falling costs did not have the same effect, producing the universal impression that the key players were colluding to fix prices.

3.2.5 The time, therefore, has come for the Commission to adopt a less stringent and broader approach to competition policy. The EESC thus calls on the Commission to consider the matter and urges it to present new ambitions for this area, which is of such enormous importance to European integration.

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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## Opinion of the European Economic and Social Committee on the Green paper — Copyright in the Knowledge Economy

COM(2008) 466 final

(2009/C 228/08)

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

*'Green paper — Copyright in the Knowledge Economy'*

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 11 March 2009. The rapporteur was Mr RETUREAU.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 24 March), the European Economic and Social Committee adopted the following opinion by 173 votes to six with two abstentions.

### 1. Introduction

1.1 The purpose of the Green Paper is to debate how knowledge in the fields of research, science and education can best be disseminated online and to find answers to certain problems relating to the role of copyright in the knowledge economy.

1.2 'Copyright' is understood to embrace both copyright and related rights, concepts which have evolved out of the classic definition of 'literary and artistic property<sup>(1)</sup>.' Copyright is protected by a number of international organisations and instruments, in particular the Berne Convention, and is governed by the WIPO<sup>(2)</sup> and the TRIPS agreement on the trade related aspects of intellectual property rights, within the framework of the WTO.

1.3 Comprising two parts, the Green Paper is concerned with the issue of exceptions to exclusive rights of holders of copyright and related rights; the second part dealing with specific issues related to the exceptions and limitations which are most relevant for the dissemination of knowledge and whether these exceptions should be adapted in the digital era.

1.4 The TRIPS agreements provide for a strict interpretation in terms of the exceptions and limitations in the field of copyright.

1.5 In its review of the Single Market<sup>(3)</sup>, the Commission drew attention to the need to promote the free movement of knowledge and innovation. The Committee fully endorses this approach which is essential for the subsequent roll-out of the Lisbon Strategy.

1.6 Copyright and related rights are the subject of nine directives<sup>(4)</sup>. Authors of software applications are treated on the same basis as authors of literary and artistic works; however, both under the law and in practice, these rights are more limited than 'traditional copyright.'

### 2. General issues

2.1 In the Commission's view, the rationale behind the directive on the harmonisation of certain aspects of copyright and related rights in the information society has been to ensure a maximum level of protection for authors. It should continue to apply in a digital age involving the digitisation and instantaneous transmission of literary and artistic works, scientific and technical publications and works stored on software; however, the beneficiaries of rights believe that they earn little from making their works accessible online.

2.2 At present, the Community list of copyright exceptions comprises one mandatory exception and twenty optional exceptions; Member States being therefore free to decide whether or not they wish to implement the optional exceptions. The EESC believes that this represents a key obstacle to the genuine harmonisation of those exceptions which may be justified in a knowledge economy, via technological methods which are constantly changing in the digital age. However, since this list is exhaustive, it prevents the introduction of other exceptions by various Member States. Furthermore, through the application of the 'three-step test' drawn up by the WTO and the WIPO, such limitations are subject to three conditions: they may apply only to certain special cases (e.g. visually impaired users), they may not be in conflict with the normal exploitation of the work and they may not unreasonably prejudice the legitimate interests of the right holder.

<sup>(1)</sup> Broadened to include new fields and items of intellectual creativity.

<sup>(2)</sup> World Intellectual Property Organisation.

<sup>(3)</sup> COM (2007) 724 final of 20.11.2007 – A single market for 21st century Europe.

<sup>(4)</sup> Several address the issue of ad hoc rights, such as those enjoyed by authors of databases or designers of electronic circuits.

2.3 The Committee feels that these provisions contribute to a form of harmonisation; nonetheless, the use of an exhaustive list, which is optional, and which allows restrictions in the scope of exceptions, where applicable, entails a number of much more specific problems as regards implementing and monitoring compliance in the case of the online dissemination of works (especially via satellite).

2.4 A more categorical approach, which reflects the objectives of the knowledge society and those of the fight against all forms of discrimination, should be applied to the list, as the objective of harmonisation has not been achieved; too many exceptions still remain.

2.5 The principal economic interests involved are entertainment, certain forms of popular culture and games as opposed to knowledge in the strict sense of the term; however, that being said, there is no need to establish too clear a dividing line between the various categories of content – with the obvious exception of content that is pornographic or dangerous for a young audience.

2.6 Such exceptions should apply to all types of disability which restrict users' full access to the internet and its multimedia content, to all levels of education, including life-long learning and universities of the third age, to public and university libraries and media collections, to patients in long-stay hospitals or undergoing rehabilitation, to prisoners, to private and public-sector researchers, under specific arrangements with libraries and specialist documentation centres. Beneficiaries of exceptions should have a right of appeal in cases where access is impossible or overly difficult; nonetheless, any extension in the scope of exceptions must be accompanied by new compensation arrangements for, as a minimum, original right holders<sup>(1)</sup> as is the case for remuneration for private copy.

2.7 Such compensation should be collected by accredited collection bodies, responsible for the collection and distribution of such remuneration, in return for a fee, based on distribution criteria which may be modified according to the types of mandatory exceptions in place.

2.8 Consultation and negotiations should be launched between the representatives of the various stakeholders involved in the production and utilisation of works; however, the Committee believes that whilst, during the initial phase, the Commission could draft guidelines, it would be useful to follow this up by establishing minimum Community 'standard licences'

<sup>(1)</sup> The authors as persons who have conceived or realised a work by themselves or via a third party.

which could be adapted at national level by negotiation between the parties.

2.9 The EESC considers that the intermediary role of public and university libraries, and documentation and research centres, as well as the oversight provided by the collection bodies help ensure the satisfactory fulfilment of the criteria set out in the TRIPS agreements, which are arguably somewhat strict or interpreted in too restrictive a manner in that they do not make any reference to the needs of the knowledge society or to the explosion in the use of the internet particularly the areas of education, training and exchanges between scientists and researchers.

2.10 Numerous educational, scientific and technical works may already be accessed on the internet on the basis of 'light' licences, such as GPL<sup>(2)</sup> or 'creative commons' for literary and artistic works. Such licences and the production of content useful for the knowledge society<sup>(3)</sup> should be encouraged through public tenders or by giving support to institutions which produce scientific and technical content as well as software through the application of this type of licence<sup>(4)</sup>.

### 3. Exceptions; specific problems

3.1 The green paper focuses in particular on those exceptions to copyright which are the most capable of promoting the dissemination of knowledge, such as the exception for libraries and archives, the exception allowing dissemination of works for teaching and research purposes, the exception for people with a disability and a possible exception for user-created content.

3.2 The digitisation of works at libraries and archives for the purpose of preserving original documents – sometimes unique – and making them accessible online is a process which is currently in full development, as demonstrated by the Community digital library initiative, *Europeana*.

3.3 The conditions for digitisation and communication of works vary greatly among the Member States and are, the Committee feels, sometimes too restrictive in nature. The directive only allows for an exception to the reproduction right in the case of consultation for specific research purposes and in the case of limited conservation, for non-commercial purposes. The three-step test is a strict requirement, but could be made more flexible, particularly if compensation were established for the benefit of authors, even in the form of a lump sum payment.

<sup>(2)</sup> General public licence, which principally applies to free software.

<sup>(3)</sup> See the EESC opinion on *Cooperation and transfer of knowledge* CESE 330/2009.

<sup>(4)</sup> Numerous large private companies make an active financial contribution to such projects through individual or free licences, as they consider them to be a profitable source of innovation.

3.4 A special exception should be made for fragile or rare works, and for lists of works recommended for primary and secondary school pupils and students, and education and lifelong learning could be declared to be of particular national interest. It should be possible to limit the choice of IT format to those covered by an international standard recognised by ISO and which are interoperable with most existing open or proprietary formats <sup>(1)</sup>.

3.5 The number of copies should be fixed, depending on the number of authorised users and based on identified conservation needs <sup>(2)</sup>.

3.6 The question of online accessibility entails a specific set of problems which require additional non-dissemination guarantees on the part of end users. Some may pay licence and service fees <sup>(3)</sup>.

3.7 Consideration should be given to the idea of amending the directive to enable the online lending of works for research and education purposes under conditions that are well-defined both legally and technically. The procedure used and the requirement to have a good understanding of the terms of the special licence and the specific conditions for online lending should help educate people, particularly young people, about the importance of respecting copyright. The Committee has always recommended nurturing a sense of respect for intellectual property as it represents a fundamental part of the ethics of the knowledge economy.

#### 4. Orphan works

4.1 Orphan works represent a significant wealth of creativity.

4.2 The Committee believes that the Green Paper raises a number of valid points and puts forward concrete, positive solutions. Lists of orphan works could be published on a regular basis after the completion of thorough research. If no right holders are identified within a given timeframe, the work would not become part of the public domain but be covered by a protection system appropriate for copyright law, in case a right holder emerged at a future date. The choice of licence system used could take its inspiration from the Danish or Hungarian systems; however, a European standard licence would be entirely feasible and, the Committee feels, preferable.

4.3 The EESC believes that there is no need for a specific directive for orphan works. The management of these works does not involve any new exceptions to copyright but rather specific licence management arrangements as part of a system

<sup>(1)</sup> Each file should contain a 'water mark' with a link to an accompanying note, explaining the conditions and limitations in the use of the licence for specifically defined users.

<sup>(2)</sup> For example one copy on site, one in a similar institution, based on a reciprocal conservation agreement, and one on a digital storage server.

<sup>(3)</sup> For example, for the creation of documentation files for researchers in particular fields and for laboratories or other businesses.

of copyright law. A directive or the addition of a new chapter to the current directive would, the Committee feels, be the appropriate instrument.

4.4 The Commission could publish and regularly update the list of institutions responsible for managing orphan works. This list could be subject to review after an experimental period of five or ten years, to include the publication of a report and statistics.

#### 5. Exception for persons with a disability

5.1 The Committee favours a less restrictive approach to the one currently used in several European countries as regards the nature of the disability and difficulties in accessing work since, in addition to the difficulties experienced by people of various disabilities in accessing works, they often have a low income, which represents an unquestionable and socially unacceptable economic obstacle in terms of their access to information, education and culture.

5.2 Involving disabled peoples' associations should assist the process of reformulating exceptions for the various types of disability. They can also help manage special computer terminals and, where necessary, provide staff specifically trained to help disabled people. Such assistance would be financed by private donations and state aid to associations. Associations could, on similar terms or in cooperation with accredited libraries or museums, negotiate the conditions for the use of works with authors' representatives, ensuring guarantees against piracy; the EESC believes that the exception should also be extended to include databases otherwise there is a risk that access to reference works such as encyclopaedias and dictionaries could be impeded. The 'database' directive should be reviewed in the light of these educational and knowledge access needs, and look at the issue of accessibility for disabled people.

5.3 The role of associations could be extended to include educating people about the importance of respecting user licenses. In this area also, users must be convinced that respecting copyright is an essential condition for the pursuit of creative activity. Nonetheless, it seems unjust to pass on the cost of the licence and the special terminals to disabled people; an exception is vital for all those types of disability which entail problems with access to works. This responsibility should be entrusted to public institutions which have an obligation to make such works including databases and software, available to disabled people. The legislation for databases should be modified as a result <sup>(4)</sup>.

<sup>(4)</sup> This should apply to original databases as well as 'sui generis' databases (dictionaries, encyclopaedias, etc.).

5.4 Europe's principal public libraries and museums could be required to make their collections accessible in a specific format, adapted to the needs of a given disability group, to be paid for from the budget for cultural affairs at regional or national level. This type of policy complies with the obligation to ensure the equality of all citizens and to combat all forms of discrimination.

5.5 The exception for teaching and research purposes provided for in the Directive is too restrictive in its application; its scope should be broadened without prejudice to the WTO test by incorporating information about the source and the author into the document, along with details on the limitations on its use and the prohibition of illegal reproduction.

5.6 A system of compulsory licences could cover the lending of work online for teaching and research purposes based on a standard agreement between the lending bodies and the approved copyright collection bodies.

5.7 It should be possible to apply the exception to both extracts of a work selected by teachers and to entire works: the criterion should be the teaching consideration. This would strengthen legal security without weakening reproduction rights. Strengthened harmonisation under a trans-European educational framework would help avoid situations where an act that is legal in one country is considered as piracy in another.

5.8 Distance learning requires that copies (teaching aids) may be used at home, in particular by students but also European citizens resident in third countries.

## 6. User created content

6.1 This issue is becoming increasingly topical, especially in the context of Web 2.0 <sup>(1)</sup>. Copyright or the alternative licence

proposed by the original author, may be transformed or developed without such action being considered as piracy.

6.2 In the case of initiatives such as participatory encyclopaedias, the simplest approach would be to identify an appropriate type of licence, such as the creative commons or wikipedia licence, with the 'original' author acting as moderator prior to any additions or changes, while at the same time maintaining the diversity of ideas.

6.3 In this concrete example it is worth noting that the internet does not sit comfortably with copyright.

6.4 The fees of authors whose works are distributed on the Internet are less often derived from the payment of direct licence fees than from indirect revenue earned, from advertising, rather than from subscription fees. Even though subscription models are playing an increasingly important role, the internet's 'business model' uses innovative solutions for dissemination involving digitisation and digital dissemination. In this context, we are still very much in a transitional phase of identifying new methods of payment <sup>(2)</sup>, the production and dissemination costs of digital works being incomparable with the much higher sales costs of traditional media.

6.5 A balance needs to be struck between the new forms of dissemination, new copy technologies, the needs of the knowledge society and the rights of authors/copyright. This equilibrium will not be achieved by the mass application of repressive measures which primarily target an age group that is finding itself increasingly criminalised in the absence of legislation or attempts to find new forms of remuneration for authors. There is an urgent need to expand the current limits given the scale and rapidity of advances in technology.

Brussels, 24 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

<sup>(1)</sup> Web 2.0 is understood to refer to interfaces allowing internet users to interact both with the content of websites and between themselves, making Web 2.0 a community and interactive website.

<sup>(2)</sup> As in the case of the Google initiatives or, more recently, Microsoft.

**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 — Towards joint programming in research: Working together to tackle common challenges more effectively**

COM(2008) 468 final

(2009/C 228/09)

On 15 July 2008 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Towards joint programming in research'*

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 11 March 2009. The rapporteur was Mr ZBOŘIL.

At its 452nd plenary session on 24 and 25 March 2009 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 104 votes with 3 abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC welcomes the Communication, noting that the idea of strategic programming of crossborder science and research is hugely important and pressing, especially for making swifter progress in core areas. The European strategic approach is based on the most valuable experience to date and develops it into a functioning system.

1.2 This calls for the implementation of a process led by the Member States to step up their cooperation in the R&D area in order to better confront major societal challenges of European or worldwide scale, where public research plays a key role. In view of this, the EESC also welcomes and supports the Conclusions of the Competitiveness Council of 2 December 2008 <sup>(1)</sup> on this subject and agrees with the statements made there.

1.3 The EESC is convinced of the need to create a basic strategic framework informed by the EU's policy priorities. Implementing the proposed approach will require substantial political will above all else.

1.4 However, the EESC cautions against an unduly top-down approach. It is vital to employ a bottom-up approach in keeping with participants' strategic interests and their ability to share their best science and research capacities.

1.5 At the same time, the Committee realises that such coordination is fraught with difficulty – frequently because of the special interests of some countries and political reluctance to share science and research capacity and, above all, knowledge.

1.6 The EESC agrees fully on the urgency of boosting financial and human resources in competing with the main economic rivals. On no account, however, should this rule out scientific cooperation with these countries and their research organisations <sup>(2)</sup>.

1.7 The Committee also notes that applying Joint Programming to crossborder science and research will be immensely demanding, since it will require a shift in thinking towards greater openness and cooperation <sup>(3)</sup>, which is more easily said than done.

1.8 Recognising and appreciating the broad spectrum of already existing cross-border co-operations and joint projects, and their excellent results, the Committee recommends that the relevant experience should be drawn from such programmes to be exploited in this new strategic programming concept. An appropriate lesson should be drawn also from failures while designing the Joint Research Programming processes.

<sup>(1)</sup> Council of the European Union 3 December 2008 (16.12) 16775/08, RECH 411; COMPET 551; Appendix.

<sup>(2)</sup> See also INT/461: CESE 1021/2009 of 11.6.2009 (not yet published in the Official Journal).

<sup>(3)</sup> See also INT/448: CESE 330/2009 of 26.2.2009 (not yet published in the Official Journal).



1.9 Quicker and more effective application of new scientific knowledge will necessarily require appropriate private sector involvement in the whole process. The Committee also points out the difficulties involved in private sector involvement, especially regarding the use of outcomes, intellectual property issues and so on <sup>(1)</sup>.

1.10 It is essential, in the EESC's view, that very effective operational frameworks be devised and tested for such an important Community activity. These should encourage the Member States, and especially their scientific research capacities, to support and mobilise the necessary bottom-up approach and above all the necessary finances. Sufficient mobility of resources and a support framework that eliminates potential obstacles are core requirements.

1.11 Not only must these operational frameworks include possible secondary synergy effects, but any risks that might undermine the idea of joint European programming must be analysed in detail.

1.12 Consistent with this, the Committee has already endorsed the creation of a European research infrastructure <sup>(2)</sup> to bolster the entire joint planning objective and to help increase joint European added value. Now stressing the urgency of this, it calls on the Member States to lose no time in responding creatively to the Commission's initiative.

1.13 The Committee welcomes the installation of the 'High Level Group for Joint Programming' to identify the themes for joint programming to be chosen, following broad public consultation of the different regional, national and European scientific communities, and of the private sector where appropriate. As a consequence of these activities, the Council, following a resulting proposal by the Commission, should be able to adopt joint programming initiatives no later than 2010.

## 2. Introduction – Commission Document

2.1 Europe not only needs to invest more in research, but also needs to invest it to better effect, if it is to achieve its declared vision: a balanced and sustainable development. The Lisbon Strategy set as its most urgent objective the transition to

a knowledge-based society – with science, technology and innovation at its heart – and called for more and better investment in research.

2.2 The new initiative it proposes – namely Joint Programming – marks a change in European research cooperation. Joint Programming offers a voluntary process for a revitalised partnership between the Member States based on clear principles and transparent high-level governance. It aims to increase the efficiency and impact of national public research funding in strategic areas. Joint programming targets public research programmes first and foremost, which means public-public cooperation. Nonetheless, industry – and other stakeholders – should play a role in the consultative process and in the implementation of specific Joint Programming Initiatives.

2.3 The Communication also responds to stakeholders' demands for a voluntary, bottom-up approach combined with strategic European-level guidance and their rejection of a 'one-size-fits-all' method.

2.4 This Communication is one of the five policy initiatives planned by the Commission in 2008 as a follow-up to the Green Paper on 'The European Research Area: New Perspectives' <sup>(3)</sup>. It relates in particular to the dimension 'Optimising Research Programmes and Priorities' and is a further step in the creation of a 'fifth freedom' by removing barriers to the free movement of knowledge.

2.5 Compared to its main partners, Europe is still under-investing in research, and R&D spending – by both the public and the private sector – has generally stagnated over the past decade. However, Europe should not only increase its spending quickly and substantially, but also find new and more innovative ways to use its scarce R&D resources more efficiently and effectively. To increase the societal returns and benefits from public R&D funds, Europe should also reinforce its capacity to transform research results into societal and economic benefits.

<sup>(1)</sup> See also INT/448: CESE 330/2009 of 26.2.2009 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion INT/450 - CESE 40/2009 - 2008/0148 (CNS) of 15.1.2009 (not yet published in the Official Journal).

<sup>(3)</sup> Besides this Communication, the Commission adopted this year:

— A Recommendation 'on the management of intellectual property in knowledge transfer activities and Code of Practice for universities and other public research organisations', C(2008) 1329 of 10.4.2008;

— A Communication on Better careers and more mobility: a European partnership for researchers, COM(2008) 317 of 23.5.2008. In addition, it is preparing a Council Regulation on a 'Community legal framework for a European Research Infrastructure (ERI)' and a Communication on 'A strategic European framework for international science and technology cooperation'.

2.6 In recent years, Member States and the Community have taken many initiatives to boost the impact and efficiency of public research. Stakeholders have pointed to the lack of collaboration and coordination between national public R&D programmes as a weakness of the EU R&D system. However, despite efforts in recent years to address this problem, Europe's research landscape remains compartmentalised.

2.7 Today, 85 % of public R&D is programmed, financed, monitored and evaluated at national level, with too little collaboration or coordination between countries. Less than 6 percent of total R&D investment and only 15 percent of European publicly financed civil R&D (of which 10 percent is accounted for by intergovernmental organisations and schemes, and 5 percent by the Framework Programme) is financed in a cross-border collaborative manner.

2.8 The issue is not that all research programming should be carried out in a collaborative manner and that purely national programming should be discontinued. It is rather that, in areas of strategic importance for the whole or a large part of Europe, the fragmentation of public research programming leads to sub-optimal returns and is costing Europe dearly, as well as preventing it from realising its declared societal objectives:

2.9 Some of Europe's greatest scientific success stories have involved crossborder pooling of public R&D funds and, above all, the creation of joint scientific bodies<sup>(1)</sup>. However, the impact of these joint initiatives could have been larger if there had been more overall strategic focus and sufficient political commitment, transparency and flexibility. Increasing these initiatives, and the overall size of FP7, makes little sense if the lack of joint strategic programming between Member States is not addressed.

2.10 Joint Programming is concerned with changing the structure of the European research landscape. It is a comprehensive, long-term and strategic process, whose aim is to boost Europe's ability to address major economic and societal challenges such as the interrelated problems of climate and energy. Joint Programming is about achieving structuring effects in order to increase the efficiency and impact of public research funding. Joint Programming requires that Member States be prepared to move in the direction of the definition and implementation of common research agendas with multi-annual, commonly decided activities and funding mechanisms.

2.11 Joint Programming requires a new mindset in the Member States. Above all, it requires concrete commitments and actions by Member States and a rethinking and reorganisation of the way national research programmes are defined and implemented by refocusing them towards common objectives. That is why Joint Programming has to be a voluntary process based on the principle of variable geometry and open access.

2.12 Joint Programming does not involve Community funding *a priori*, though FP7 may act as a catalyst. It is first and foremost about Member States defining common strategies and putting together national resources. At the same time, it does not rule out the possibility of complementary Community funding depending on the added value, European dimension and possible structuring impact of the initiatives concerned.

2.13 The Commission proposes a pragmatic methodology for achieving Joint Programming in a limited number of agreed areas. This methodology is based on experience with European Technology Platforms, but adapted to public research programmes. It involves different steps, in line with the life-cycle of research programmes, namely from programme definition via implementation to monitoring and evaluation.

2.14 Joint Programming could be made easier if a number of framework conditions are in place:

- Agreement on a number of shared principles and procedures for peer review ('the scientific rules of the game').
- Development of common methodologies for foresight activities and for joint evaluation of national or regional programmes or investments in specific areas of research ('the strategic rules of the game', which require flexibility and intuition given the lack of predictability).
- Definition of common principles for crossborder funding of research by national or regional authorities ('the financial rules of the game').
- Effective measures to ensure the protection of intellectual property rights as well as to facilitate the dissemination and optimal use of research outputs.

<sup>(1)</sup> See also INT/450: CESE 40/2009 – 2008/0148 (CNS) of 15.1.2009 (not yet published in the Official Journal).

### 3. General comments

3.1 The EESC welcomes the Communication, noting that the idea of strategic programming of crossborder science and research is hugely important and pressing, especially for making swifter progress in core areas. In that sense, the EESC also welcomes and supports the Conclusions of the Competitive Council of December 2nd, 2008 to that issue and shares the statements made there.

3.2 The idea is also important because it includes within it an attempt to make the most of public funding through a coordination strategy for core research areas and to improve science and research capacities within Member States through broader international cooperation on jointly organised and conducted research projects.

3.3 The Committee welcomes the fact that an impact assessment was carried out which set out four alternatives from which a European strategic approach was chosen. Based on the most valuable experience to date, this will be developed into a functioning system in which the areas for Joint Programming will be identified by the Member States.

3.4 The Committee also welcomes the choice of energy technologies for the pilot coordination project and gave the new approach its full support in its opinion on the SET-Plan<sup>(1)</sup>.

3.5 The EESC is convinced of the need to create a basic strategic framework informed by the EU's policy priorities.

3.6 However, the EESC cautions against an unduly top-down approach. On the contrary, it notes that the international scientific networks we have today are made up of many research groups and partially supported by international agencies such as the IEA. With this in mind, it considers it vital to employ above all a bottom-up approach when involving the various parties in the relevant projects in keeping with their strategic interests and their ability to share their best science and research capacities. International conferences could serve as fora for this and be tasked with putting together appropriate proposals.

3.7 At the same time, the Committee points out that such coordination is fraught with difficulty – frequently because of the special interests of some countries and political reluctance to share science and research capacity and, above all,

knowledge. Putting this idea into practice will thus be contingent upon openness and transparency.

3.8 Recognising and appreciating the broad spectrum of already existing cross-border co-operations and joint projects, and their excellent results the Committee recommends the relevant experience should be drawn from such programmes to be exploited in this new strategic programming concept. Appropriate lessons should be drawn also from failures while designing the Joint Research Programming processes.

3.9 The EESC entirely agrees that the concept must be implemented as a matter of urgency and that funding must be stepped up if the Community is to improve its position and, in turn, its economic competitiveness vis-à-vis its main rivals, the USA and Asia. On no account, however, should this rule out scientific cooperation with these countries and their research organisations<sup>(2)</sup>.

3.10 The Committee also notes that applying Joint Programming to crossborder science and research will be immensely demanding, since it will require a shift in thinking towards greater openness and cooperation<sup>(3)</sup>, which is more easily said than done.

3.11 Quicker and more effective application of new scientific knowledge, which is the ultimate aim of joint strategic programming and home-grown research solutions, will necessarily require appropriate private sector involvement in the whole process. The joint strategic programming concept enables just such participation. The Committee also points out the difficulties involved in private sector involvement, especially regarding the use of outcomes, intellectual property issues and so on<sup>(4)</sup>.

3.12 The process of innovation – in other words, the appliance of scientific knowledge in practice – will be contingent upon widely differing local circumstances. These include existing infrastructure, availability of capital, tax levels and incentives for particular types of investment, as well as experience with similar types of investment mainly in industry. Even direct investment incentives, such as tax holidays, could be involved. Such things could raise difficulties in projects.

<sup>(1)</sup> Opinion on a European Strategic Energy Technology Plan of (OJ C 27, 3.2.2009, p. 53).

<sup>(2)</sup> See also INT/461: CESE 1021/2009 of 11.6.2009 (not yet published in the Official Journal)..

<sup>(3)</sup> See also INT/448: CESE 330/2009 of 26.2.2009 (not yet published in the Official Journal).

<sup>(4)</sup> See also INT/448: CESE 330/2009 of 26.2.2009 (not yet published in the Official Journal).

#### 4. Specific comments

4.1 Clearly, this kind of joint strategic programming and approaches to scientific and technological development must be targeted at the most pressing tasks that society faces – climate change, efficient manufacturing and economical use of energy (including renewables), security, health and population ageing – so that solutions can be found and implemented quickly and effectively.

4.2 It concerns, in other words, the key strategic areas of basic research, primarily funded from the public purse, and joint strategic programming processes and research solutions. Given this, it is particularly important to master the initial phase of every project: pinpointing the players needed and presenting a vision of the project sufficiently motivating to attract high-calibre stakeholders.

4.2.1 However, this should embrace, and on no account rule out, collaboration in pure basic research where no tangible application can be anticipated a priori. History has shown that it is this that has produced the greatest successes (in lasers, quantum mechanics and the theory of electromagnetism, for example).

4.3 While the proposed Joint Strategic Programming will be carried out and financed by, and remain in the hands of the participating Member States, it is highly desirable that EU bodies be involved in initiating and, above all, coordinating moves in the introductory phases of shaping a common vision. The Commission, as well as other organisations, can act as facilitators and should be ready to offer assistance requested by Member States involved in Joint Programming Initiatives. The Council of the European Union, for its part, should arrange for effecting monitoring of activities. This open approach will make sure that Member States are informed about initiatives that are planned or already underway.

4.4 It is essential that Joint Programming employs a realistic and flexible approach and a step-by-step process in order to maximise its possible structuring effect and societal impact.

4.5 It is essential, in the EESC's view, that very effective operational frameworks be devised and tested for such an important Community activity. These should encourage the Member States, and especially their scientific research capacities, to support and mobilise the necessary bottom-up approach and above all the necessary finances. To this end, the Commission should immediately mediate collaboration between interested

parties on the basis of existing joint research programmes. Sufficient mobility of resources and a support framework are core requirements.

4.6 These operational frameworks must not only include possible secondary synergy effects, but also analyse in detail any risks that might undermine the idea of joint European programming and the practical appliance of its outcomes. Very interesting ideas can sometimes be frustrated in their implementation phase by underestimating just such risks. It is clear from the Communication and its supporting documents that the Commission has quite rightly taken these factors on board.

4.7 The SET-Plan pilot project must be monitored very carefully and the procedures used analysed so that the experience gained can serve to constantly improve European strategic programming for cross-border science and research cooperation. For Europe's science research base, it will be a case of hands-on-learning.

4.8 New bodies for organising cross-border scientific research should be created where this will unequivocally benefit Europe as a whole and clearly produce additional value. For this reason, the EESC thinks it is vital to harvest the full potential of organisations that have a proven track record (with success in science and in international cooperation) or the potential to develop further.

4.9 The Committee notes that the joint strategic programming process for science and research and its implementation will fall into three stages.

4.9.1 The development of a **common vision** for the agreed area that sets out long-term goals or goals agreed at the political level. This would be developed on the basis of credible evidence and stakeholder consultations, in particular with the scientific and industrial communities, and should be rooted in joint assessment of current programmes and capacities.

4.9.2 Once the vision has been established, it should be translated into a **Strategic Research Agenda** entailing specific, measurable, achievable, realistic and time-based (SMART) objectives. The strategic research agenda should link the vision's objectives with the resources needed (human, financial and organisational) and so ensure that projects are well prepared and benefit from the necessary knowledge of the given research area.

4.9.3 **The full tool box of public research instruments** (national and regional research programmes, intergovernmental research organisations and collaborative schemes, research infrastructures, mobility schemes, and so on) should be used to implement the Joint Programming Initiative. The implementation may or may not include EU funding and instruments through the Framework Programme. Regular monitoring and evaluation of progress in Joint Research Programming should be ensured and its results reported to the political level.

4.10 Since both the European research infrastructure and the joint programming projects will be funded by the Member States, it will be of the utmost importance to coordinate such funding. The Committee also points out the need to find the

necessary synergies between the creation of the European research infrastructure, joint programming and FP7. The Committee also notes that some Member States do not take these initiatives too seriously.

4.11 The Committee welcomes the installation of the 'High Level Group for Joint Programming' to identify the themes for joint programming to be chosen, following broad public consultation of the different regional, national and European scientific communities, and of the private sector where appropriate. As a result of these activities, the Council, following an expected proposal by the Commission, should be able to adopt joint programming initiatives no later than 2010.

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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**Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management**

COM(2008) 602 final — 2008/0191 (COD)

(2009/C 228/10)

On 22 October 2008 the Council decided to consult the European Economic and Social Committee, under Article 47 of the Treaty establishing the European Community, on the

*'Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management'*

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 11 March 2009. The rapporteur was Mr BURANI.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 24 March 2009), the European Economic and Social Committee adopted the following opinion by 179 votes to four, with three abstentions.

## 1. Summary and conclusions

1.1 The Committee approves of the Commission's initiative, which is in line with its ongoing work on modernising measures to improve and update the legislative framework of the Basel Agreement. It also agrees in general with the implementing provisions proposed, with the exception of certain individual aspects that do not alter the general framework.

1.2 **Hybrid capital** instruments, that contain features of both equity and debt, are currently subject to national rules that ought to be harmonised in order to achieve a reasonably level playing field at international level. The Commission does not give a precise definition for these instruments, as they take various forms and can evolve, but sets out the basic principles for them to be eligible. Their original maturity must be longer than 30 years, they must be fully paid up and they must be designed to absorb all losses. Furthermore, they must not grow excessively in relation to equity. National authorities are given the power to intervene to put a brake on abnormal growth.

1.3 On the subject of **connected clients**, the notion of risk arising from the difficulties of a company upon which another is financially dependent has been introduced and reporting requirements have been simplified, harmonised and restructured. In the area of significant risks, the main innovation is the introduction of **a single limit of 25 %, also including inter-bank deposits**. The EESC believes that this last rule, probably inspired by the catastrophic scenario of recent times, should be revised, given the important regulatory function of the liquidity of these deposits and their relatively minor risk levels, in normal periods, compared with other types of exposure.

1.4 The proposal introduces a rule whereby issuers, intermediaries and managers who directly negotiated, structured and documented the original agreement giving rise to obligations must undertake to maintain a minimum material economic interest of 5 %. This rule was seemingly inspired by the bad experience with American CDOs (collateralised-debt obligations), although their origins and characteristics differ from normal securitisations. The EESC wonders what the impact of this new measure might be on market liquidity.

1.5 Member States are given the possibility of excluding **intra-group exposures from the calculation of exposure when the counterparties are established in the same Member State**. The Committee is well aware of the legal reasons against extending the rule to counterparties resident in other Member States, but would argue that in normal conditions, the failure to include foreign counterparties could affect the overall evaluation of the exposure of the company in question. A reasonable solution might be to **extend the exemption to the entire group on the basis of a case by case assessment**, suspending that possibility in the event of signs of critical problems.

1.6 With reference to the rule in the previous point, and also more generally, the Committee would reiterate its opposition to the principle of **giving Member States the choice of whether or not to adopt certain provisions**. This is contrary to the principle of harmonisation and the need for a level playing field when it comes to competition.

1.7 The EESC thinks that special attention should be given to the risk posed by potential exposure from the use of as yet unused credit lines on **credit cards**. This exposure could rapidly become significant in times of restrictions on consumer and mortgage credit.

1.8 The draft directive introduces a series of new rules on **supervisory mechanisms**, designed to increase the efficiency of controls. First, consideration is given to '**systemically relevant branches**', which are to be placed under supervision in the host country when the situation is recognised as being critical, subject to the agreement of the countries concerned. The EESC agrees, but would stress that measures are needed to deal with sudden, unforeseen events.

1.9 Lastly, the EESC is pleased to note the establishment of the **colleges of supervisors** established by the consolidating supervisor and including authorities of the countries where the companies of a certain group are based. This initiative will improve the efficiency of supervision over groups and speed up the adoption of appropriate measures when necessary.

## 2. Introduction

2.1 The financial markets crisis has prompted the Commission to speed up its work on strengthening and where necessary modifying provisions for the capital requirements framework for financial institutions, which was adopted under the Basel II agreement with Directives 2006/48/EC and 2006/49/EC. It should be noted that discussions on the new measures were already underway when the crisis emerged; structural market reform should be implemented after the publication of a white paper planned for June 2009. The present proposal includes a series of rules that:

- regularise the position of those Member States that applied derogations to Article 3 of the previous directive in the area of derogations for **bank networks** from prudential requirements and extend this possibility to other Member States; the derogations now include bank networks with assets over EUR 311 billion and with more than 5 million members (cooperatives and credit institutions linked to central bodies);
- establish principles and rules that had not been formalised by Community rules, in particular on **hybrid capital instruments**;
- clarify the supervisory framework for crisis management and establish **colleges of supervisors**.

2.2 The proposal was preceded by an on-line stakeholder consultation. The text drawn up took into account the recommendations made without, of course, departing from the basic principles which had underpinned the consultation:

- inter-bank exposures are not risk-free and should therefore be subject to limits;
- in credit securitisation, originators and sponsors (intermediaries) must be required to retain a share of the risks for the exposures that they securitise. In addition, a demonstrable measure of due diligence and rigour must be

required in the case of the 'originate to distribute' business model;

- 'colleges' of supervisors must be set up for all cross-border banks, and supervisors participating in those colleges required to agree on a mediation mechanism via the Committee of European Banking Supervisors (CEBS).

2.3 The EESC welcomes the basic tenor of the Commission's proposals and endorses their main thrust. Recent events and, in particular, various incidents and misdeeds have seriously damaged public confidence in the financial system as a whole and appropriate measures are called for. The prudential rules must not however be so severe as to penalise the operators and their clients needlessly. As the crisis has demonstrated, prudential rules securing the stability and solidity of the markets also play an extremely important social role.

## 3. Hybrid capital

3.1 **Hybrid capital instruments** (hybrids) are securities that contain features of both equity (shares) and debt (corporate bonds); they yield higher returns than corporate bonds but do not provide voting entitlements – or provide more restricted voting entitlements than shares.

3.1.1 The lack of legislation at EU level has led to diverging national eligibility criteria. This has resulted in the lack of a level playing field and the possibility of 'regulatory arbitrage' for banks operating across borders. The Commission refrains from giving a precise definition of hybrids because it feels that it would quickly become outdated or incomplete because of innovation, but it has laid down basic principles for their eligibility.

3.1.2 As a general rule the instruments eligible as original own funds ('tier 1 capital') are all those which fully absorb losses; this includes hybrid instruments, which, in addition to meeting the above criteria must also be permanently available and be deeply subordinated during liquidation. These criteria were agreed on by the G10 in 1998 but were not transposed into European legislation.

3.1.3 Further terms and conditions state that either capital hybrids must be undated or at least their original maturity must be longer than 30 years. They absorb losses in normal conditions and are the most subordinate form of credit during liquidation. They therefore help the institution to continue operations on a going concern basis without hindering recapitalisation. The EESC endorses the measures that the Commission intends to adopt.

3.2 The Commission proposal also places a number of **quantitative limits on hybrid instruments**, which must not be developed excessively to the detriment of share capital – or equity capital in the case of institutions without share capital. Supervisory authorities may waive the limits in emergency situations.

3.2.1 There are particular provisions for banks without share capital, such as cooperatives: members' certificates, defined as 'the most subordinated instruments', should be treated like convertible hybrids insofar as the respective capital has been fully paid up.

3.3 The new measures to be introduced on hybrids, whether qualitative or quantitative, may affect the financial industry's future strategies, but drastic changes made over a short period of time would be in danger of upsetting the markets. The Commission proposes that the Directive lay down a **transitional period of 30 years**. The EESC feels that this is appropriate given the current situation and the way it is likely to evolve in the short to medium term. It may, perhaps, prove dangerous in the long term but there seem to be no viable alternatives.

#### 4. Large exposures

4.1 The current large exposure regime dates back to 1992 and no changes have been made since. Recent events have highlighted the need for new rules. The Commission proposal gives greater consideration to the risk inherent in certain exposures while, at the same time, endeavouring to reduce the costs of data collection, increase transparency and create a more level playing field.

4.2 The concept of **connected clients** has changed. Hitherto the focus has been on the danger that an entity might experience difficulties because of the financial problems of another entity; events have shown that two or more undertakings can be placed at risk because of the problems of the entity on which they are financially dependent.

4.3 The expensive, complex **reporting requirements**, which are a source of high costs and complications for the sector, have also been harmonised and simplified. The most obvious change is the requirement to **report the 20 largest exposures on a consolidated basis** where the IRB approach is used. The various limits applicable have been replaced by a single limit of 25 %.

4.4 The numerous **exemptions**, which are often difficult to understand, have to a large extent been abolished; only those which do not seem to be a high risk continue to apply. The list is still quite long, however, but in general seems to meet carefully-determined prudence criteria.

4.5 The EESC endorses the proposed new rules in general, but it has **some comments** on a number of important points:

4.5.1 Article 111(1), referred to in point 4.3 above, lays down a single limit of 25 % and applies to inter-bank

deposits as well. The reasoning behind this rule is perfectly understandable: banking institutions, including some thought to be among the most stable, have been seen to collapse with almost no warning. Nevertheless, while it is always wise to base rules on worst case scenarios, to use the 'catastrophe scenario' is to go too far. The application of too low a risk limit, as seems to be the case for inter-bank deposits, restricts liquidity at all times and especially at times of market tension. It would be advisable to revise this provision, laying down a **higher limit for short-term inter-bank loans, particularly since the 25 % ceiling will be applied with no consideration for due dates**. In the current period in particular, short-term inter-bank loans can be used as a factor to regulate market liquidity. In addition, they generally carry a lower risk than other types of exposure. The recent episodes arising from exceptional circumstances do not undermine this principle, but exceptional circumstances should be addressed with exceptional measures while normal circumstances should be governed by normal measures.

4.5.2 Article 113(d)(4) allows Member States to exempt certain exposures from application of Article 111(1). In line with the position it has taken consistently on similar cases, the EESC is **firmly opposed to any measure which could distort the level playing field**. Making this optional rather than compulsory will slow down harmonisation. The EESC is well aware that in the presence of divergent opinions it can be necessary to be pragmatic and give a choice rather than impose an obligation. It would also argue that every directive should present all provisions clearly as obligations or prohibitions, leaving it to parliamentary discussions and to Council to make them optional. Such debates would raise social partners' awareness of the arguments for and against a given measure, thus furthering transparency.

4.5.3 This exemption would apply to **exposures incurred by a credit institution to its parent undertaking** or other undertakings in the group, provided (Article 80(7)(d)) that the counterparties are established in the same Member State. This restriction is detrimental to **multinational groups** while failing to increase market security. Centrally-managed **intra-group risks** incurred by entities subject to a single consolidating supervisor should be **included in the exemptions**. The proposed solution runs counter to the fact that national laws on liquidation and bankruptcy preclude the transfer of resources from one body to another should the first prove to be in a critical or pre-bankruptcy state. The aim of the directive, moreover, is to assess the **overall exposure of the group**, disregarding measures designed to address possible emergencies.

4.5.4 One possible solution might be to exempt exposures relating to the parent undertaking or other undertakings in the group based in other Member States, with case by case authorisation, **providing the group as a whole gives no cause for concern regarding its solidity in the near future**. Authorisation could be suspended with immediate effect should the supervisory authorities consider the company or group to be showing signs of difficulty.

4.6 **'Exposures arising from undrawn credit facilities that are classified as low risk off-balance sheet items'** (Article 113) warrant particular attention. The overall limits on credit-card spending are high, particularly as regards certain types of institution. At times when there is a squeeze on credit the margin of undrawn credit can shrink rapidly. The EESC believes that **potential exposures arising from undrawn credit** on cards warrant careful, prudent assessment.

## 5. Securitisation

5.1 The new Article 122 a) requires a commitment from issuers, intermediaries and managers, vis à vis an investing credit institution that was not involved in concluding the original agreement giving rise to obligations, to maintain a minimum material economic interest of 5 %.

5.2 The inspiration for this rule was clearly the bad experience in America with CDOs (collateralised-debt obligations) and as such it would appear to be justified. It should however be noted that the situation originally arose not so much from the insolvency of the issuers as from the poor quality of the mortgage credit on which the CDOs were based, which was described by an American authority as 'sloppy mortgage lending and lax regulation'. This was an isolated case but one that proved to have global implications. However, the case of CDOs cannot be extended to almost the entire securitisation technique, as this instrument contributes to market liquidity.

5.2.1 The introduction of the securitisation credit risk restricts the operational freedom of credit institutions. The EESC would ask that the scope of this measure be properly weighed up.

## 6. Supervisory arrangements

6.1 The crisis which has struck the global financial markets has revealed the need for supervisory methods and structures to be reviewed with a view to averting systemic crises and reacting to emergencies.

6.2 The rules on **exchange of information** and **cooperation** have been reviewed: Article 42a introduces the concept of **'systemically relevant branches'**, recognising that in specific cases **the interests of the host country take precedence over the principle of the home Member State**. The EESC fully endorses this approach, which is fundamentally important.

6.3 Basically, the new rules allow host authorities to **make a request** to the authorities of the home Member State, or the consolidating supervisor where appropriate, for a branch in their country to be considered systemically 'relevant' if its market share exceeds 2 % or it has a significant presence on the national market. The request must include a kind of **'impact assessment'**, anticipating possible suspension or closure of operations on the payment and clearing and settlement systems, and the impact on the market of measures of this kind.

6.4 There is a set timetable governing the procedure according to which a branch can be considered 'relevant'. **It would also be useful to lay down the rules to apply in real emergencies** (Article 130), so that urgent measures can be adopted. The newly-established colleges of supervisors (Article 131(a) - see point 6.5) and, in any case, the existing Committee of European Banking Supervisors, should ensure simplified procedures with the necessary guarantees.

6.5 The creation of **colleges of supervisors** (Article 131(a)) is particularly useful. They are established by the consolidating supervisor, and the authorities of the Member States concerned participate in them. Their task is essentially to provide ongoing, effective monitoring of cross-border groups (and hopefully to adopt appropriate measures in times of emergency) by pooling information and jointly devising appropriate supervision methodologies. The EESC welcomes this decision and all the monitoring rules proposed, which are in line with the more efficient programmes announced earlier in the text and with the wishes of the Financial Services Forum.

Brussels, 24 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI



**Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on cross-border payments in the Community**

COM(2008) 640 final — 2008/0194 (COD)

(2009/C 228/11)

On 30 October 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 cross-border payments in 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 11 March 2009. The rapporteur was Mr BURANI.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 24 March 2009), the European Economic and Social Committee adopted the following opinion by 178 votes to three, with one abstention.

## **1. Conclusions and recommendations**

1.1 The Committee welcomes the broad thrust of the Commission proposal, which aims primarily to extend the range of transactions covered by the regulation on cross-border payments systems to direct debits. Broadly speaking, this initiative ties in with the Commission's policy of aiming to ensure that cross-border payments in the euro area are viewed and treated in the same way as national payments.

1.2 There is some cause for debate owing to the fact that cross-border direct debits are more costly than equivalent transactions at national level. For this reason, and in the interests of transparency, the EESC would urge the Commission to provide information on the details, methodology and sources of the studies it has referred to in order to reach its various conclusions. Knowledge of the facts is a prerequisite for balanced decision-making.

1.3 It should be also be noted that should the regulation enter into force on 1 November 2009 as proposed, there will not be much time for drafting economic plans, and that this cannot be done without legal certainty regarding the Multilateral Interchange Fee (MIF).

1.4 The proposal also contains two requirements for Member States: the first is to establish an authority responsible for payments systems if no such authority already exists, the second is to put appropriate structures in place for dealing with complaints. The EESC believes that the majority of countries have had structures of this kind in place for some time. In such cases, it warns against creating new structures that would duplicate or overlap with the functions carried out by pre-existing structures.

1.5 A further request to the Member States concerns the adoption of 'effective, proportionate and dissuasive penalties' for failure to comply with or violations of the provisions of the regulation. The EESC is in agreement, but would point out

that information on the comparative study of measures taken in the various countries would give an idea of how seriously each Member State is treating the regulation.

1.6 The regulation applies only to countries belonging to the monetary union; countries outside the euro area may choose to apply it to their own currency. The fact that no country has taken up this possibility gives food for thought as to the degree of interest in the usefulness of such initiatives on the part of the various countries.

## **2. Introduction**

2.1 Regulation (EC) No. 2560/2001 on cross-border payment systems in the Community has been in force since 31 December 2001. It provides for the cost of a cross-border payment in any Member State to be the same as that of a corresponding payment made internally. The regulation applies to credit transfers, electronic payments, card payments of any kind and ATM cash withdrawals. The Commission's proposal extends the regulation's scope to include direct debits, improves the system for dealing with complaints and simplifies the statistical reporting system and should enter into force on 1 November 2009.

2.2 The Commission's goal is to improve the functioning of the internal market when it comes to euro payment systems in order to ensure that domestic and international transactions are subject to the same rules, bringing savings and benefits to both consumers and the economy in general. The settlement of disputes requires careful attention in order to address the points made by consumer associations, while statistical reporting entails a heavy administrative burden and high costs for credit institutions.

2.3 The EESC welcomes the Commission's initiative and agrees with its broad thrust, while seeking to make a useful contribution to the discussion in the form of a few comments and suggestions.



### 3. General comments

3.1 In response to pressure exerted by the Commission over the years, the banking sector has established the infrastructure for the Single Euro Payments Area (SEPA), which is now working well, both technically and organisationally and in bringing the charges for international payments down to the same level as those for national payments. The Commission states that the regulation 'can therefore be considered as the inception of SEPA'.

3.2 The achievements so far are clearly cause for satisfaction. There do however remain basic concerns as to their **compliance with the general principles of the single market**. SEPA is aimed primarily at resolving the issue of **payments in euros**. Countries that are not part of the euro area will not benefit except for payments made using the single currency. Since enlargement, it could be said that today SEPA covers **the majority of intra-Community flows: as part of a variable speed internal market**.

3.3 Secondly, **parity** in terms of national and international conditions **applies only within each individual country**. The differences between countries remain and in some cases are not insignificant. However the differences between the euro area countries as a whole and those outside are even greater. The regulation currently in force provides for countries outside the euro area to adopt this option voluntarily, but few have taken up the offer as yet. The overall result is that there is **still a long way to go to achieve reasonable convergence of prices within the EU**.

3.4 Discussion of price convergence does not necessarily imply a goal of price uniformity. A positive step could be taken, however, in terms of transparency and in response to consumer expectations were each country to conduct a careful **cost comparison**: there are major differences in infrastructure costs, tax and social charges, organisational expenses and the ratio between national and international volumes. An analysis of this kind might also provide useful indications on the wisdom of the decision to include *all* cross-border electronic payment instruments in the regulation.

### 4. Specific comments

4.1 Article 1(3) excludes from the regulation payments made by payment service providers *for their own account*. Services provided for **other payment service providers** should also be excluded. The Commission has stated that the provisions should be understood in that way. That being the case, the EESC would suggest that the wording should be clearer and believes that it would be counterproductive were the freedom

to provide services directly between professionals not extended to other professionals using professional intermediary services.

4.2 Article 2(1) specifies that the regulation refers **exclusively to electronic means of payment**: paper-based payment instruments such as cheques and drafts are therefore excluded. The EESC agrees with this decision, but would point out that the differences in commission applied in the various countries for these forms of payment, which are now in decline, are too great to be justified on the grounds simply of cost. In some countries for instance, high charges may appear to be designed not only to cover costs, but also to **dissuade** people from continuing to use paper-based means of payment in the electronic age: this is a measure that the EESC supports.

4.2.1 Article 2 should include a paragraph to clarify the concept of 'electronic payment' referred to in paragraph 1. In view of the cost of mixing techniques and in line with established practice, the new paragraph should state explicitly that **electronic payment should not involve paper-based procedures**.

4.3 Article 1(2) introduces an innovation: the application of the regulation to cross-border payments up to a level of EUR 50 000 will include **all electronic payment instruments, including direct debits**. The EESC does have some reservations regarding the latter instrument.

4.3.1 The SEPA system for direct debits is different from the individual national systems and is more complex and sophisticated. Bringing the price of international direct debits into line with national prices could undermine the principle according to which a product or service cannot be sold below cost price. Furthermore, credit institutions often offer their own clients the direct-debit system, used by companies but not individual consumers, at favourable rates for promotional reasons. The conditions for national transactions are calculated to cover costs with low margins but cannot be extended to the more costly international transactions. The EESC would suggest that **direct debits should be temporarily excluded from the regulation**, with the proviso that they can be introduced if an independent expert report shows that there is no risk of distorting prices and competition.

4.3.2 In any event, in the interests of the basic principle of transparency, the Commission ought to publish its survey, in particular details on national and international costs, and clearly indicate how and on the basis of which sources and using which methodologies the information was collected and processed. In the absence of this information, it is difficult to take a proper stance without it appearing to be preconceived and unbalanced.

4.3.3 In addition, the EESC would draw attention to the fact that the new regulation should enter into force on 1 November 2009. This deadline may prove too short for medium- and long-term economic plans to be drawn up. Legal certainty regarding the Multilateral Interchange Fee (MIF) is an essential prerequisite for the drafting of these plans.

4.4 Article 3 confirms the principle established by the regulation currently in force: charges on **cross-border payments must be the same as those that every service provider applies** for the corresponding domestic transactions. The rule laid down in 2001 appears to have been satisfactorily observed, but a survey in the field would suggest that there is a **serious divergence in many countries between the charges on transfers in euros and those on other currencies**. This is discrimination against citizens living outside the euro area.

4.5 Article 5 introduces an important innovation: the obligation to **report transfers** of up to EUR 50 000 is removed as of 1 January 2010 and of any amount as of 1 January 2012. This requirement, intended as a means of collecting the data necessary for balance of payments accounting, was a source of confusion and was costly. The Member States will be able to collect the information via other systems. The EESC thoroughly approves of this provision.

4.6 Article 6 states that Member States are to appoint the authorities responsible for ensuring the regulation is applied: this preexisting requirement generally seems to be observed. More significant is the rule set out in Article 7, which states that Member States must set up **procedures for dealing with complaints** and the out-of-court settlement of disputes, providing the public with adequate information. These tasks may be taken on by new ad hoc or existing bodies. The EESC agrees, but only for countries where such structures do

not yet exist, warning against the danger of creating new structures with responsibilities that overlap with those of existing structures. It would point out that, in any case, little is known of the workings of these bodies or, more importantly, of the number, nature and outcome of cases dealt with. The lack of complete and transparent information makes it difficult to carry out a **serious study of the nature and real number of cases of non-fulfilment**.

4.7 Article 10 provides for Member States to impose **'effective, proportionate and dissuasive'** penalties on those who do not observe the obligations imposed by the regulation, informing the Commission of the provisions made. In this respect as in the previous point, the interested parties must receive **adequate information**, if for no other reason than to **assess the importance given by each Member State to observance of the regulation**.

4.8 Article 11 extends to Member States outside the euro area **the possibility of applying the regulation to their own currency**. This would do away with the inconveniences and discrimination highlighted by the EESC in point 4.6. It would, appear, however that the reaction of the various Member States to this proposal has been somewhat lukewarm when not entirely absent. The EESC would prefer not to comment on this aspect, but calls on the Commission to think carefully about the supposed popularity of certain options.

4.9 The regulation should enter into force on 1 November 2009. The Commission is to present a report on the working of the IBAN and BIC codes by 31 December 2012 and a report on the application of the regulation by 31 December 2015. The EESC has no comment to make here, other than to repeat the requests made in points 4.6 and 4.7 regarding more comprehensive information for the interested parties.

Brussels, 24 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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**Opinion of the European Economic and Social Committee on the Proposal for a Decision of the European Parliament and of the Council on the participation by the Community in a European metrology research and development programme undertaken by several Member States**

COM(2008) 814 final – 2008/0230 (COD)

(2009/C 228/12)

On 21 January 2009 the Council decided to consult the European Economic and Social Committee, under Articles 169 and 172(2) of the Treaty establishing the European Community, on the

*'Proposal for a Decision of the European Parliament and of the Council on the participation by the Community in a European metrology research and development programme undertaken by several Member States'*

On 13 January 2009 the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr PEZZINI as rapporteur-general at its 452nd plenary session (meeting of 25 March 2009), and adopted the following opinion unanimously.

**1. Conclusions and recommendations**

1.1 The EESC sees the proposal's aims as essential and encourages the Commission to pursue a common metrology system going beyond national research and progress to achieve European added value, shared by all.

1.2 The EESC feels that the ultimate goal is a unified international approach, within which the EU's voice is not seen as secondary but promotes standards geared to materials, products and processes developed in Europe and reflecting the EU's industrial and commercial interests.

1.3 The EESC believes that, in the current globalised economic and social context, a European metrology structure achieving results of excellence can only be beneficial for the EU economy.

1.4 The EESC considers that the community of European researchers must be increasingly involved in developing modern systems which enable metrology to be used at the cutting edge of physics, chemistry, biology, environmental sciences, carbon footprints, nanotechnology, food, health and safety in the workplace.

1.5 The EESC feels that, to achieve the desired results, it is necessary to work resolutely towards greater involvement of industry, commerce and the public sector in the development of European metrology research, with a view to putting forward the new standards in international forums.

1.6 The EESC believes it is particularly important for metrology research not to appear self-contained and self-referential.

1.7 Regulation and standardisation are achieved through measurable systems based on internationally-accepted applied metrology. The EESC therefore suggests involving the European Standards Organisations (CEN (European Committee for Standardisation), CENELEC (European Committee for Electrotechnical Standardisation) and ETSI (European Telecommunications Standardisation Institute)) and national bodies, along with accreditation bodies, in developing new systems right from the outset.

1.8 The EESC calls for every endeavour to be made to achieve close integration in European metrology research between:

- the research community,
- industry,
- universities, scientific bodies and higher education,
- the results of technology platforms,
- organised civil society,

because it feels that excluding any form of 'closed shop' in this way is the only means of achieving internationally-accepted results at European level.

1.9 The EESC sees the merits of the Commission proposal, which supports the EMRP (European Metrology Research Programme) <sup>(1)</sup> initiative by providing a high level of 'communitarisation', in terms of both:

- joint programming and acceptance of Community rules on participation as laid down by FP7;
- the level of estimated resource allocation, going beyond purely national intervention.

1.10 The EESC believes that the governance system needs to be better defined. Clearly, an ambiguous governance system can affect progress in research and the results hoped for.

1.11 In this connection, the EESC stresses the need for greater involvement of stakeholders with a direct interest in the metrology results of research both in establishing priorities and preparing and evaluating calls for expressions of interest – to be published on CORDIS and in the Official Journal (OJ) – with a view to proposals which integrate participation of businesses, universities and research and training centres, and through monitoring programmes and projects funded.

1.12 The EESC feels that the EMRP Research Council should be empowered to control, through binding opinions addressed to the EMRP Committee, the types of research to be funded, the annual work programme and selection of the pool of independent evaluators for the proposals, and that a Commission observer should monitor the evaluation panels, as under FP7.

1.13 In the EESC's view, the preparatory proposals for the forthcoming 2014–2020 FP RTD should include a genuine, ongoing Community programme, coordinated and managed by the Commission, which is based on ongoing consultation of the stakeholders most concerned and takes into account in particular the needs of industry, universities and research and standards bodies as well as international aspects of metrology research, especially in relations with international bodies such as the ISO, the OECD and other reference bodies like the IUAP <sup>(2)</sup>.

## 2. Introduction

2.1 Increasing globalisation of industrial production, service provision and trade requires technical barriers to trade to be reduced to a minimum. Underlying this process is a reliable measurement system accepted by all.

2.2 An increasing number of regulations, particularly in areas such as:

- security,
- food labelling,
- health schemes,
- the environment,
- biotechnology,
- nanotechnology and advanced materials,
- energy,
- transport, telecommunications and security systems

require internationally-recognised systems for traceability and comparability.

2.3 Metrology research has a strong public-good character and is a main supporting activity for regulation and standardisation.

2.3.1 European measurement infrastructure is supported by European organisations such as European cooperation for Accreditation (EA), the European Committee for Standardisation (CEN), the European metrology network EUROMET (European Collaboration in Measurement Standards) <sup>(3)</sup>, now incorporated by EUROMET (European Association of National Metrology Institutes), and the Institute for Reference Materials and Measurements (IRMM) of the EC Joint Research Centre (Geel), in cooperation with the International Bureau of Weights and Measures (BIPM).

2.4 According to the BIPM, 'The development of the interdisciplinary areas of nanotechnology, advanced materials and material properties will soon require a number of new reference measurement standards and methods in the physical as well the chemical fields of measurement' <sup>(4)</sup>.

2.5 In Europe, sustainable competitiveness and innovation require precise measurements and tests in all fields with traceable results to establish long-term standards for reference measurements, as defined by the International System of Units (SI).

<sup>(1)</sup> Under Article 169 of the Treaty.

<sup>(2)</sup> International Union of Pure and Applied Physics.

<sup>(3)</sup> Made up of the National Metrology Institutes of 32 countries and the Institute for Reference Materials and Measurements (IRMM) of the EC Joint Research Centre (Geel).

<sup>(4)</sup> 2007 BIPM report: *Evolving Needs for Metrology in Trade, Industry and Society, and the Role of the International Bureau of Weights and Measures (BIPM)* – Paris, 2008.

2.6 European metrology research is carried out by national metrology research programmes and projects under ERA-NET, provided for in the Sixth Framework Programme; and ERA-NET Plus from the Seventh Framework Programme (FP7). The Framework Programmes have also generated the iMERA (Implementing Metrology in the European Research Area <sup>(1)</sup>) projects; iMERA Plus <sup>(2)</sup>, which was the first phase of the EMRP; the activities of the Joint Research Centre (JRC) <sup>(3)</sup> and the current 'variable geometry' EMRP proposal.

2.7 In the United States, USD 634 million of federal funding was appropriated for the 2009 fiscal year to the National Institute of Standards and Technology (NIST)'s research programmes.

2.8 In this context, the EESC feels it is important to increase the resources available for European metrology research, combining research capacity in the Member States with that of the Joint Research Centre to generate a large, international critical mass, preventing duplication and wastage of resources; the results would be much better than those achievable through ERA-NET Plus coordination under FP7 2007-2013.

2.9 The EESC believes that, given how important metrology research will be in the near future, as various studies <sup>(4)</sup> have shown, this research should be made one of the thematic priorities of the forthcoming 2014-2020 FP. It should be given a permanent Community structure and status, with ongoing, coordinated integration of national initiatives.

### 3. The proposed programme under Article 169

3.1 The purpose of this proposal, based on Article 169 of the EC Treaty, is to establish a European Metrology Research Programme (EMRP) involving and bringing together 22 national metrology research programmes to improve the efficiency and effectiveness of public metrology research.

3.2 Its stated objectives include helping to structure the European Research Area through better coordination of national programmes, thereby tackling common European challenges, removing barriers between national programmes.

<sup>(1)</sup> The iMERA project includes 20 partners from 14 countries, in addition to the EC-JRC's IRMM project.

<sup>(2)</sup> The iMERA Plus project includes 45 partners from 20 countries, in addition to the EC.

<sup>(3)</sup> The JRC's work in the field of metrology is as follows: 'Fostering EU competitiveness, transparency of internal market and trade will be pursued by the production and dissemination of internationally-accepted references and the promotion of a common European measurement system.'

<sup>(4)</sup> See *Instrumentation and metrology in nanotechnology*, US National Science and Technology Council, 2006, and BIPM report, 2007.

3.3 According to the Commission, the EMRP aims to integrate the national programmes of 22 Member States, bringing them together in one Joint Programme, to:

- support, in particular, the objectives of the European National Measurement Systems,

- accelerate the development, validation and exploitation of new measuring techniques,

- support the development and implementation of directives and regulations.

3.4 The proposed *governance* model is based on the experience gained from the first Article 169 initiative undertaken during the Sixth Framework Programme, namely the EDCTP <sup>(5)</sup>.

3.5 A budget of EUR 400 million is earmarked for the EMRP initiative, EUR 200 million of which is contributed by the participating countries for the period 2009-2016, and a further EUR 200 million of which is to be contributed by the Community.

3.6 The European Association of National Metrology Institutes (EURAMET), established in 2007 under German law as a non-profit association, with its secretariat in Braunschweig, Lower Saxony, acts as the European regional metrology organisation and EMRP Executive Agency and will be responsible for coordinating the initiative.

### 4. The EESC's comments

4.1 The EESC endorses the proposal's main objectives and the methods it outlines, stressing that it is important for the objectives to lead in practice to:

- excellence of the metrology structure,

- open, joint, competitive research projects,

<sup>(5)</sup> European-Developing Countries Clinical Trials Programme.



- greater participation by the research community, through skills development,
- genuine international cooperation adding value to the European system,
- a single voice on the world stage,
- first and foremost, greater involvement of industry (employers' and employees' associations), commerce and the public sector in the development of European metrology research.

4.2 The EESC believes that it is essential for metrology research not to appear self-contained but to be able to involve users in setting the programme's priorities, in the project evaluation and selection system and in proposals and monitoring project results, in close cooperation with standards and accreditation bodies. The EESC is opposed to any form of 'closed shop'.

4.2.1 In particular, the EESC believes that the rules for participating in the EMRP must in all respects fully comply with Regulation (EC) No 1906/2006 laying down the rules for the participation in the Seventh Framework Programme and with the Implementing Rules for the Financial Regulation.

4.2.2 The rules for participating in the EMRP should provide a coherent, transparent framework to ensure that it is implemented as effectively as possible, taking into account the need for simplified procedures to facilitate access for all participants. These rules should facilitate use of the intellectual property developed by each participant while, at the same time, protecting the legitimate interests of other participants and the Community.

4.2.3 The EESC stresses that launching an integrated European metrology research system in the form of a Joint Programme with participating national bodies, will not yield satisfactory results if close integration is not provided for between the research community, industry, universities and

standards and accreditation bodies, as well as structured dialogue with European technology platforms<sup>(1)</sup> and organised civil society.

4.3 The EESC points out that Article 169 of the EC Treaty entitles the Community to participate in research programmes undertaken jointly by several Member States provided that the objectives are clearly defined and relevant for the Community and the Framework Programme and have substantial European added value and critical mass, and that the joint programme of activities and implementing and governance structure are clearly defined.

4.4 The EESC feels that the objectives should be better defined, and not just in terms of supporting national measurement systems, enhancing the networks of National Metrology Institutes and Designated Institutes and integrating national activities.

4.5 Clear definition is needed of the priorities for action and expected results, with full evidence of:

- the proposal's European added value,
- clear, exhaustive definition of the joint programme of integrated activities,
- a governance structure.

4.6 The same applies to definition of scholarships for researchers or organisations, National Metrology Institutes or Designated Institutes.

4.7 The proposed governance system should be more clearly defined. The EESC points out that other associations as well as EUROMET operate at European level, e.g. EURACHEM<sup>(2)</sup>. It also stresses that while EUROMET is the dedicated implementation structure for the EMRP, much of the programme itself would have to be managed by the National Physical Laboratory, with a British programme manager, 'as an interim solution'.

<sup>(1)</sup> Cf. microarrays or advanced mass spectrometry.

<sup>(2)</sup> EURACHEM is a network of organisations in Europe having the objective of establishing a system for the international traceability of chemical measurements and the promotion of good quality practices. Europe EURACHEM has 35 member states.

4.8 Lastly, the EESC is concerned to note that neither the proposed legislation nor the annexes provide for genuine involvement of stakeholders with a direct interest in the metrology results of research: industry as a whole, commerce, standards and accreditation bodies, the public sector.

4.9 In conclusion, the EESC feels it would be better to opt for a European metrology research pilot project of limited duration, due to end in 2013, along the lines of iMERA Plus, and, in the preparatory proposals for the 2014–2020 Eighth Framework Programme for RTD, to look into setting up a genuine, ongoing Community programme with clearer, proven mechanisms managed by the Commission for all the Member States and associated countries, with a Management Committee and an Advisory Committee, providing a sound consultation process which is steered and monitored by stakeholders concerned primarily with the needs of industry.

## 5. Specific comments

5.1 The EESC sees the merit of the Commission proposal, which supports the EMRP initiative <sup>(1)</sup>, providing for a high level of ‘communitarisation’, through joint programming, estimated resource allocation, applying a ‘mutual learning’ approach and the rules for participation of businesses, universities and research bodies, and through evaluation of proposals, in which a Commission observer should be involved, as under FP7.

5.2 With regard to the proposed governance for the EMRP, the EESC notes that:

a) the EMRP Committee, made up exclusively of representatives of national metrology bodies with the IRMM <sup>(2)</sup> as the only observer, would be responsible for the execution of the EMRP, in particular:

— decisions on the development and updating of the EMRP;

— creation and closing of sub-programme Committees;

— preparing and deciding on funding conditions for the execution of the EMRP, including the criteria for the selection of evaluators;

— approving the composition of a pool of evaluators;

— deciding on funding research programmes and projects on the basis of the funding conditions insofar as EUROMET is authorised by the European Commission;

— approving the part of the budget for the next financial year concerning the EMRP;

— preparing and announcing calls for expressions of interest and for proposals concerning the EMRP;

— supervising an adequate and orderly accounting of the EMRP tasks of the Secretariat;

— monitoring and control of the progress of the funded programmes and projects and deciding on corrective measures <sup>(3)</sup>.

b) The EMRP Research Council, made up of 16 members, including:

— one from the BIPM,

— one from the European Commission,

— one from the European Research Council,

— one from the European Parliament,

— one from EUROLAB,

— one from a European standards body,

— one from the WELMEC <sup>(4)</sup>,

— nine from industry, research and academia,

<sup>(1)</sup> Under Article 169 of the Treaty.

<sup>(2)</sup> IRMM - Institute for Reference Materials and Measurements - JRC – European Commission.

<sup>(3)</sup> See EUROMET e.V. Byelaws 11.01.2007, Article 14(5).

<sup>(4)</sup> WELMEC: Western European Legal Metrology Cooperation.

**has a purely advisory role as regards strategic EMRP matters and the decision-making process for the Targeted Programmes <sup>(1)</sup>.**

5.3 In this connection, the EESC stresses the need to involve the EMRP Research Council with a binding opinion, giving it the task of cooperating with the EMRP Committee as an equal,

particularly as regards development and updating of the EMRP; sub-programme Committees; selection and composition of the pool of evaluators; decisions on funding research programmes and projects; preparing and announcing calls for expressions of interest and for proposals to be published in the OJEU; and monitoring and control of the progress of the funded programmes and projects.

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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<sup>(1)</sup> See EUROMET e.V. Byelaws 11.01.2007, *Rules and procedures*, part B point III.

**Opinion of the European Economic and Social Committee on the Proposal for a Decision of the European Parliament and of the Council of [...] establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing**

COM(2009) 14 final — 2009/0001 (COD)

(2009/C 228/13)

On 3 February 2009 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

*'Proposal for a Decision of the European Parliament and of the Council of [...] establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing'*

On 24 February 2009 the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr BURANI as Rapporteur-General at its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 24 March), and adopted the following opinion by 95 votes to 3 with 14 abstentions.

## 1. Summary and conclusions

1.1 The ongoing crisis calls for a re-examination of the set of rules that regulate financial activities; with regard to **supervision**, the report of the Group chaired by Jacques de Larosière sets out a number of recommendations which, at the same time, constitute a careful analysis of the weaknesses in the rules and practices of the past.

1.2 The Commission proposal under consideration is in line with these recommendations, and in a sense, pre-empts them. It allocates Community funds for **grants** for the three technical and legal support structures of the Committees of Supervisors: EFRAG, IASCF and PIOB. These grants are meant to ensure the independence of these bodies from external influences. The EESC is in agreement but would point out that the three bodies have been created by the sectors for these same sectors, and that even when their standards are incorporated in EU and international rules, they remain private sector bodies. It is **difficult to separate the public interest from the activities carried out on behalf of these sectors**.

1.3 A **financial contribution** is also envisaged **for specific actions of the Committees of Supervisors**, which are advisory support bodies set up by the Commission and made up of representatives from the Member States' national supervisory authorities. The specific actions are identified as the training of staff of national supervisory authorities and the management of information technology projects. The EESC has doubts about this point because since the beneficiaries of the training and projects are the Member States, **it is unclear why EU funding should be used**.

## 2. Introduction

2.1 The ongoing international crisis has caused, and continues to cause, huge damage the full extent of which cannot as yet be fully evaluated, but which will certainly be very far reaching. Besides the grave economic and social consequences, there has been just one positive outcome: it has forced a **stringent reassessment of the standards** applied by the financial world thus far **and of the certainties** that have clouded perceptions of the risk inherent in all financial activities.

2.2 Such a reassessment demands sincere self-criticism from all stakeholders caught up in the storm regarding their own conduct, evaluations and actions. Financial actors, legislators, monitoring authorities, rating agencies, economists - they all bear a share of responsibility. On the other hand, none of them are solely and wholly responsible. Ongoing events and a recapitulation of past actions reveal that **the crisis is the outcome of a number of concomitant and interdependent factors**.

2.3 **Deficient supervision** stands out sharply from among the many causes of the crisis. The rules appeared to be well-designed but proved inadequate to cope with, let alone foresee, the now well-known consequences; and in some instances, they were the cause. The situation analysis and recommendations for remedying these deficiencies are set out in the **report of the de Larosière Group**. In accordance with the group's recommendations, and pre-empting them with laudable timeliness, the Commission has presented a proposal to establish a Community programme to **support activities that will provide instruments to supervise financial activities more effectively**.

2.4 The programme envisages **grants for three legal structures** to provide technical and legal support to the supervisory authorities in the field of **securities, banking, insurance and pensions**. The three legal support structures for **financial reporting** are the European Financial Reporting Advisory Group (EFRAG) and the International Accounting Standards Committee Foundation (IASCF); and for **auditing**, the Public Interest Oversight Board (PIOB).

2.5 A **financial contribution** is also envisaged for **specific actions of the Committees of Supervisors**, which are independent advisory bodies with no legal personality, set up by the Commission in the three fields and made up of the national supervisory authorities. These bodies act as bodies for debate, reflection and advice for the Commission and 'they contribute to the consistent and timely implementation of Community legislation in the Member States'. The three committees do not have legal personality; in order for them to be able to contract with third parties, it has been necessary to set up **support structures** with legal personality for each one in each Member State where these committees are situated, i.e. the United Kingdom for banking supervision (CEBS), France for securities (CESR), and Germany for insurance and pensions (CEIOPS).

### 3. Observations and comments

3.1 The Committee welcomes the Commission's initiative to provide increasingly sophisticated instruments for supervising the financial sector, in line with the recommendations of the de Larosière Group. It notes, however, that there have been no innovations to the missions or functions of the three legal structures that will benefit from grants or the committees that will receive financial contributions. Thus the financial contributions serve to improve the present situation, which indicates satisfaction with the structures as such, but also the need to improve or bolster the services they provide.

3.2 The two bodies operating in the field of **financial reporting**, IASCF and EFRAG, are founded on high-quality international accounting standards, which are partly incorporated into Community law. According to the Commission they ensure that 'investors, creditors and other stakeholders have access to timely, reliable and relevant information about the financial conditions of companies'. This statement is belied by the facts. Before any reforms are undertaken, decision makers must answer the **question as to whether the failure was due to deficient accounting standards or to carelessly applied accounting rules**.

3.2.1 In the most sensitive sector where major deficiencies were identified, i.e. **the securities markets**, where IASCF and EFRAG rules apply, the Commission explicitly stresses the vital importance of independence from 'undue influence from parties with a stake' and 'non-diversified, voluntary funding from interested parties' as one of the justifications for grants. The matter has been raised in the past at the ECOFIN Council and in the European Parliament. However, another question now presents itself: since these bodies require resources to carry out their sensitive function, **is a 'grant' enough to ensure their independence?** The EESC believes that this question deserves further analysis.

3.3 The same considerations apply equally to **auditing** regarding the grant to PIOB, the body that oversees the process leading to the adoption of ISA (International Standards for Auditing) and other public interest activities of IFAC (International Federation of Accountants). The possible introduction of ISA into Community law (Directive 2006/43/EC) justifies the interest in the **neutrality of rules** and the fact that the Commission is represented by two of the ten members on PIOB's management bodies.

3.4 To conclude on the subject of 'grants', the EESC agrees with the Commission on the need to provide the bodies responsible for international standards with sufficient means to ensure the efficiency and independence of their work. This point is made repeatedly, in more or less explicit terms, which is a clear indication that there is an underlying problem. These bodies were established by the sectors in order to set rules and standards for the sectors themselves; they remain private sector bodies, even when these rules and standards are incorporated into public law. At this stage, it becomes difficult, within a single body, to **separate the public interest from the activities carried out on behalf of the sectors** which have legal control over that body.

3.5 Financial contributions for the **Committees of Supervisors** are specifically intended for the **training of staff** of national supervisory authorities and the **management of information technology projects**. As has already been explained, these committees are independent advisory bodies set up by the Commission and made up of the national authorities. Staff training (recommendation 19 of the de Larosière Report) and project management are undoubtedly important and are also entirely for the benefit of Member States: **the EESC cannot understand why these actions should not be financed by the Member States themselves rather than from Community resources**.



3.6 At the end of its proposal, the Commission mentions the need to introduce a flexibility criterion when selecting the beneficiaries of grants: further analysis of the arrangements for dealing with the crisis could reveal the need to set up new bodies or give new responsibilities to the existing ones. It might therefore prove necessary to add a new beneficiary to one that has already been identified. The EESC has no objection to this but would recall the need to **avoid any unnecessary increase in the number of bodies** involved in the programme. It would be better, as far as possible, to extend the functions of existing bodies.

Brussels, 24 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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**Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities**

COM(2008) 650 final — 2008/0195 (COD)

(2009/C 228/14)

On 6 November 2008 the Council decided to consult the European Economic and Social Committee, under Articles 71 and 137(2) of the Treaty establishing the European Community, on the

*'Proposal for a Directive of the European Parliament and of the Council amending Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities'*

On 2 December 2008, the Committee Bureau charged the Section for Transport, Energy, Infrastructure and the Information Society with preparing the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee designated Mr MORDANT as rapporteur-general at its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March 2009) and adopted the following opinion by 93 votes to 7, with 7 abstentions.

## 1. Conclusions and recommendations

1.1 The EESC considers that the Commission proposal is difficult to implement, and that it will give rise to enormous additional costs and an increased administrative burden. Furthermore, it fails to fulfil one of the key objectives of Directive 2002/15/EC establishing minimum requirements in relation to the organisation of working time in order to improve the health and safety protection of persons performing mobile road transport activities, to improve road safety and to align conditions of competition. The fact is, a mobile worker cannot work more than 48 hours per week (on average) whilst complying with Regulation 561/2006 on driving time and rest periods, whereas a self-employed driver can work up to 86 hours per week and still comply with that same Regulation 561/2006 on driving time and rest periods.

1.2 Road transport in Europe is expected to grow by about 50 % over the next 20 years, regardless of growth in other means of transport (rail and water). The EESC points out that it is not the status of the driver that will determine whether the objectives of the directive are achieved, but the conditions in which he is to carry out mobile transport activities.

1.3 In this opinion, the EESC reiterates the broad thrust of the conclusions of the EESC opinion on *Road transport – working time of self-employed drivers*<sup>(1)</sup>.

In that opinion, the Committee stated:

- The need to include all self-employed drivers within the scope of Directive 2002/15/EC, as provided for in Article 2 thereof (from March 2009) so as to promote road safety, foster fair competition and improve the working conditions of mobile and self-employed workers – and particularly their physical and mental health.

- The importance of the Member States transposing the directive correctly, particularly the definition of self-employed driver, and the co-liability of the different players in the transport chain, as is the case in the regulation on driving time and rest periods.

1.4 The EESC considers that the aims of the directive can only be achieved by applying minimum social protection standards in the road transport sector to everyone carrying out mobile transport activities, regardless of their status.

1.5 The Committee believes that the inclusion of self-employed drivers in the scope of the directive must happen in a way that keeps red tape to a minimum. A definition of working time for self-employed drivers requires that general administrative tasks should not be counted as working time.

1.6 Including self-employed drivers requires the adoption of a number of measures aimed at ensuring the implementation of and compliance with Directive 2002/15.

## 2. Introduction

2.1 Directive 2002/15/EC of the European Parliament and the Council of 11 March 2002 entered into force on 23 March 2005. It deals with the organisation of the working time of persons performing mobile road transport activities. The new common rules it established set minimum social protection standards for the workers in question. These minimum standards are considered to be a significant step forward, firstly in terms of greater protection of the health and safety of workers carrying out mobile road transport activities, and secondly in terms of improving road safety and ensuring fair competition.

<sup>(1)</sup> OJ C 27, 3.2.2009, pp. 49-51.

2.2 This directive, which seeks to protect mobile workers from adverse effects caused by excessively long working hours, inadequate rest or disruptive working patterns, is a special section of the general Working Time Directive (2003/88/EC). It supplements Regulation (EC) No 561/2006 of 15 March 2006 laying down common rules on driving times and rest periods for drivers.

2.3 When adopting the Directive after a conciliation procedure, Council and Parliament agreed that it should in principle apply to self-employed drivers from 23 March 2009 and that the Commission was to present a report to the European Parliament and the Council two years before that date, and ultimately that the Commission would put forward a legislative proposal based on the report, setting out the arrangements either for including self-employed workers or for excluding them from the scope of the directive.

### 3. Commission proposal

3.1 The Commission proposes to amend Directive 2002/15/EC by excluding self-employed drivers from its scope and to clarify the scope of the directive, which will apply to all mobile workers, including the so called 'false' self-employed drivers, i.e. those drivers who are officially self-employed, but in fact are not free to organise their working activities.

3.2 The Commission also seeks to define what a 'false' self-employed driver is: "mobile worker" shall also include any person who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, but:

- a) who does not have the freedom to organise the relevant working activities;
- b) whose income does not depend directly on the profits made;
- c) who does not have the freedom, individually or through a cooperation between self-employed drivers, to have relations with several customers.'

3.3 The Commission proposes to add a condition for any work performed at night. In Directive 2002/15, any work carried out at night is deemed to be night work. In its proposed amendment, the Commission proposes that there should be a period of work which includes at least two hours work performed during night time.

3.4 The proposed amendment also inserts a new article on enforcement so as to ensure the proper and consistent application of the rules set out in Directive 2002/15, stipulating that the national bodies responsible for enforcement of the Directive shall have an adequate number of qualified inspectors and shall take whatever measures are appropriate.

3.5 With a view to ensuring the effective, efficient and uniform implementation of the Directive throughout the Community, the Commission is to support dialogue between Member States with the following aims:

- a) reinforcing administrative cooperation between their competent authorities;
- b) promoting a common approach;
- c) facilitating dialogue between the transport sector and enforcement authorities.

### 4. General comments

4.1 Concerning the problems identified in the impact assessment, the Commission considers that 'road safety concerns due to driver's fatigue are prevented by strict enforcement of driving time and rest period rules that apply to all drivers, regardless of their employment status. Therefore the additional effect of the Working Time Directive is not significant for road safety.' In the conclusion of the impact assessment document, the Commission favours the option of excluding self-employed drivers but including the 'false' self-employed whilst ensuring more effective enforcement. This will reduce distortion of competition and enable better social protection of workers and assimilated groups.

4.2 The exclusion of self-employed workers from the scope of the directive has, according to a number of stakeholders, distorted competition in the road haulage industry. This recently led the Committee to make the following request in its opinion on the mid-term review of the transport White Paper (TEN/257 - rapporteur: Mr Barbadillo Lopez) <sup>(1)</sup>:

*The social legislation covering road transport must preserve equal treatment for workers, whether they are employees or self-employed and, therefore, Directive 15/2002 of 11 March 2002, on the organisation of working time of persons performing mobile road transport activities must apply immediately to self-employed workers, without a transitional period, since the aim of this Directive is to ensure road safety, to avoid distortion of competition and to promote better working conditions.'* (point 4.3.1.2)

4.3 Given the 50 % increase in road traffic expected in Europe over the next 20 years – regardless of other means of transport (rail and water), the physical and mental health of drivers of vehicles from 3.5 tonnes to 60 tonnes, road safety and fair competition can only be achieved by setting clear minimum social protection standards in the road transport sector that apply equally to everyone carrying out mobile transport activities, regardless of their status. The EESC believes that it is not status that should be the determining factor, but the act of carrying out mobile transport activities.

<sup>(1)</sup> OJ C 161, 13.7.2007, p. 89.

4.4 In its opinion (TEN/326) on *Road transport – working time of self-employed drivers*, the EESC expressed serious doubts as to the conclusions set out in the study and the related impact assessment concerning road safety, conditions for competition and social aspects.

The EESC also pointed out that ‘excessive working hours are a major contributory factor to fatigue and hence to falling asleep at the wheel’.

Finally, in that opinion, the EESC stated that ‘A level playing field is achieved when the prices paid to sub-contractors by the major companies organising all aspects of the distribution and transport of goods respect the social legislation concerning the industry, for mobile workers as well as self-employed drivers’.

4.5 It is not true, as the report on the impact analysis claims, that the Working Time Directive is not significant for road safety. The fact is, a mobile worker cannot work more than 48 hours (on average) whilst complying with Regulation 561/2006 on driving time and rest periods, whereas a self-employed driver can work up to 86 hours every week and still comply with Regulation 561/2006 on driving time and rest periods.

4.6 In the Commission proposal, when a driver is found to be a ‘false’ self-employed person, that driver is required to comply with the Working Time Directive. Yet the Commission proposal does not answer any of the following questions: If that driver becomes a mobile worker, he must have an employment contract. Who is the employer who is supposed to employ that driver? If he owns his own vehicle, what is he supposed to do? If he has invested in infrastructure or other equipment, who is responsible for the consequences? Furthermore, what are countries that have already included self-employed drivers supposed to do?

4.7 The Committee believes that this proposal is likely to give rise not only to enormous additional costs, but also to an increased administrative burden.

4.8 The EESC considers, however, that the inclusion of self-employed drivers in the scope of Directive 2002/15/EC requires the directive to have been correctly transposed, particularly the definition of self-employed driver. The directive should provide that general administrative tasks are not included in the working time of self-employed people.

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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**Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on labelling of tyres with respect to fuel efficiency and other essential parameters**

COM(2008) 779 final — 2008/0221 (COD)

(2009/C 228/15)

On 17 December 2008 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

*'Proposal for a Directive of the European Parliament and of the Council on labelling of tyres with respect to fuel efficiency and other essential parameters'*

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 12 March 2009. The rapporteur was Mr RANOCCHIARI.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 130 votes *nem. con.*, with five abstentions.

## **1. Conclusions and recommendations**

1.1 The Committee endorses the decision of the European Commission to follow up its proposal for a *Regulation on the general safety of motor vehicles* (in the process of being adopted) with a system to certify the values that will be established by that Regulation, in respect of three key tyre parameters: fuel efficiency, safety and external rolling noise.

1.2 The Committee also welcomes the fact that the labelling system is intended to provide direct information to consumers, helping them to make a more informed choice when purchasing replacement tyres manufactured after the present proposal is adopted - tyres which account for 78 % of the European market.

1.3 With regard, however, to originally-installed tyres, i.e. tyres fitted by car manufacturers, the Committee considers the initiative superfluous, as existing legislation already requires manufacturers to provide the relevant data at the point of vehicle type-approval and subsequently with the vehicles' technical promotional literature and user manuals.

1.4 As regards the means proposed by the Commission to inform consumers, i.e. a sticker to be affixed to the tyre, the Committee suggests providing for an alternative means to cover the (not unlikely) eventuality that the sticker may be lost or damaged.

1.5 Finally, the Committee hopes that, just as with the *General safety of motor vehicles*, a Regulation will be chosen as

the appropriate form of legislation rather than a Directive, so as to ensure uniform time frames and control systems across all Member States.

## **2. Introduction**

2.1 As we know, the Energy Efficiency Action Plan proposes an energy-saving of 20 % by 2020 by means of a series of measures, which by reducing energy intensity help reduce consumption and therefore environmental pollution.

2.2 In this context, there is a particular and constant focus on road transport, which is responsible for over 20 % of CO<sub>2</sub> emissions.

2.3 In addition to the numerous measures already in force or in the process of being adopted with regard to vehicles, EU legislation is now seeking to address tyre performance. Representing the sole point of contact between the vehicle and the road, tyres are required to contribute primarily to occupant safety, but also to reducing fuel consumption.

2.4 To this end, the *proposal for a Regulation of the European Commission on the general safety of motor vehicles*, currently under discussion at the European Parliament <sup>(1)</sup>, seeks, *inter alia*, to establish new, more stringent parameters for the type-approval of tyres, in terms of fuel consumption, safety and noise.

<sup>(1)</sup> COM(2008) 316, on which the Committee has already issued an opinion, at the plenary session of 14 January 2009 (ref. CESE 1741/2008).



2.5 In energy-saving terms, it should be pointed out that tyres can account for up to 20 % of a vehicle's fuel consumption, as a result of rolling resistance (RR) - the loss of energy due to resistance to motion, caused in turn by the heating and deformation of the wheels while rolling. It should be added that RR, as well as tyre noise, are significantly influenced by the state of the road surface, which in certain cases can cancel out the technological advances of the tyres.

### 3. The European Commission's proposal

3.1 The draft Directive aims to guarantee standardised information for users on fuel efficiency generated by reduced rolling resistance, as well as on wet grip and rolling noise, three of the parameters which are the subject of proposal for a Regulation COM(2008) 316.

3.2 The Commission wants to enable consumers to know the future minimum requirements governing rolling resistance (RR) and, most importantly, to choose tyres with still lower RR, cutting fuel consumption. For passenger cars, for instance, a tyre set with a different RR can reduce fuel consumption by up to 10 % thanks to new technologies.

3.3 This is particularly important for the replacement market which represents 78 % of the total. For tyres placed on new vehicles by manufacturers (22 % of the market), information on fuel consumption is a selling point and is included in the instruction manual. Consumers in the replacement market, however, do not have access to the information needed to compare the price difference of tyres with their impact on fuel consumption.

3.4 Since tyre performance is both interrelated and contradictory (RR compared to wet grip and wet grip compared to rolling noise), the information can indicate the best possible compromise between the three main parameters, allowing the consumer to make an informed choice.

3.5 The Commission proposal therefore plans for an 'energy sticker' to be placed on tyres, graded from A to G for RR and wet grip, along the lines of the already-established labelling for domestic appliances, with the addition of noise level indications, given in decibels.

3.6 The proposal assigns responsibility to Member States for monitoring labelling provisions and deciding on sanctions in the event of infractions.

### 4. General comments

4.1 The Committee supports the Commission's initiative, which is intended partly to ensure a more sustainable consumption pattern, but also to provide more information, enabling the consumer to make a more informed choice when replacing tyres. This information relates not only to fuel consumption but also to other parameters such as wet grip and external rolling noise. Consumers will thus be able to assess whether the higher cost of a particular tyre would be outweighed by the benefits in terms of performance. A more informed consumer would help increase competition amongst manufacturers by encouraging them to upgrade their products.

4.2 In fact, the Commission initially intended only to require information on fuel consumption; the other two parameters were added in the light of the public consultation on the issue. Whilst endorsing the final decision, the Committee would fear, however, that this will make it more difficult to manage the data and carry out the relevant controls.

4.3 The Committee would have misgivings, however, as to the proposed means of presenting the information to consumers. If only stickers are used, the desired result may not always be achieved.

4.3.1 The purchaser does not normally see the replacement tyres before they are taken from the store room of the sales outlet and fitted to the vehicle. Moreover, in store rooms and sales outlets a label can come away and get lost, and sometimes be reapplied to a different tyre. More likely still is that labels could be lost in transit or storage, particularly in the case of silicone-coated tyres, which are less adhesive. Experience has shown that a considerable percentage of the manufacturers' labels currently affixed to tyres are either lost or substantially damaged in the transit or handling of tyres, which – it should be pointed out – are not individually packaged, for obvious cost reasons<sup>(1)</sup> According to the industry's European representative body, the ETRMA (European Tyre and Rubber Manufacturer Association), between 10 % and 15 % of labels are lost in the transit or handling of tyres.

4.3.2 In the Committee's view, an alternative solution should also be foreseen, where stickers are missing. Here, the vendor should be able to issue, along with the invoice, a label/document exactly replicating the data on the sticker, data which, in any case, would have been received from the manufacturer.

<sup>(1)</sup> According to the industry's European representative body, the ETRMA (European Tyre and Rubber Manufacturer Association), between 10 % and 15 % of labels are lost in the transit or handling of tyres.

4.4 With regard, though, to tyres fitted to new vehicles, labelling would seem an unnecessary cost. Existing legislation already stipulates the way in which car manufacturers should inform purchasers about fuel consumption and CO<sub>2</sub> emissions following type-approval of the vehicle. This is also the case with wet grip and external rolling noise, which are also regulated at vehicle type-approval, as the Commission itself acknowledges in the report accompanying the proposal.

Moreover, it is in the manufacturer's own interest always to use the most 'high-tech' tyres available in order to reduce CO<sub>2</sub> emissions from the target level of 130 g/km to the potential level of 120 g/km, attainable through non-engine technology, including tyres.

4.4.1 To that end, the dealer, who is often also a vendor of tyres, could be required to issue an additional document to the purchaser of a car detailing the legal parameters to which the car's tyres conform, and also to propose an alternative, where possible. Such an initiative could also act as a flanking measure to the information and awareness campaigns that the Member States will be required to launch on this issue.

4.5 The Committee is also aware of the request made by sectors in the industry<sup>(1)</sup> for the proposal to be changed from a Directive to a Regulation. It endorses the reasons advanced, i.e. that a Regulation would ensure uniform implementation time-frames and control standards across the Member States, as is the case with the aforementioned *General safety of motor vehicles* Regulation, the precursor to the present proposal.

4.5.1 The Committee therefore hopes that agreement can be reached during discussions between the Commission, European Parliament and Council, as on previous occasions with such sensitive issues as safety and the environment.

4.5.2 Indeed, the Committee considers it crucial to provide Member States with clear harmonised rules to check rigorously that tyres meet the specified requirements. Such checks are particularly important in a market where a significant share of the products comes from outside the EU.

## 5. Specific comments

5.1 The Committee welcomes the fact that the Commission has exempted retreaded and off-road professional tyres from the proposed legislation, as advised by the Committee itself in its aforementioned opinion on the *General safety of motor vehicles*, while affirming of course that the envisaged safety requirements would still have to be observed.

5.2 In line with that opinion, the Committee recommends, finally, that:

- a) tyres manufactured before this legislation enters into force be exempted. On average, there are some 80 million tyres circulating at any one time in the distribution chain of the European market. Applying stickers to all of these distributed tyres would not be feasible; and stresses that
- b) the industry needs at least 18 months' lead time to implement the adopted measures.

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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<sup>(1)</sup> ETRMA: European Tyre and Rubber Manufacturer Association.

**Opinion of the European Economic and Social Committee on the Communication from the Commission on the Second Strategic Energy Review — An EU Energy Security and Solidarity Action Plan**

COM(2008) 781 *final*

(2009/C 228/16)

On 13 November 2008, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*'Communication from the Commission on the Second Strategic Energy Review – An EU Energy Security and Solidarity Action Plan'*

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 12 March 2009. The rapporteur was Ms SIRKEINEN.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 130 votes to 3 with 2 abstentions.

**1. Conclusions and recommendations**

1.1 The EESC welcomes the Commission's Communication, in particular for putting much needed emphasis on security of energy supply, and concludes that:

— the need for a common approach amongst Member States on energy policy, internally and externally, has again been strongly demonstrated by the recent gas crises,

— it is in contradiction with all three energy policy goals – security of supply, competitiveness and sustainability – that the third energy market package has not yet been resolved,

— the challenges of oil and transport have not got the attention they need by the Commission,

— social aspects of energy policies have been overlooked by the Commission in this context,

— the communication lacks a sense of urgency,

— the Communication on 'Overcoming Barriers to Renewable Energy in the EU', looking at renewables as a part of the whole energy system, is of urgent need,

— the Commission's intent to present a policy agenda for 2030 and a vision for 2050 is essential, as big technology and system shifts take time, and

— the update of the Nuclear Illustrative Programme has well taken on board the EESC's comments on the matter.

**1.2 The EESC recommends that**

— all EU instruments that can ease the risks of security of supply must be put effectively and urgently into use,

— after decisions on the recent legislative proposals the emphasis should be on implementation, avoiding new legislative proposals in order to keep the legislative framework as stable and predictable as possible,

— of the five areas of the action plan energy saving, whereby energy efficiency is a central tool, should be the first priority, as it has a big potential for cost-effective actions,

— the Commission should pick priorities amongst its high number of intents for action,

— the problems of isolated energy markets need to be addressed with particular urgency and the TEN-E completed,

- in addition to infrastructure investments, the large investment needs in power generation and the fundamental research to be carried out by 2050 merit more attention,
- in external relations, EU needs to develop a responsible and sustainable global energy approach, in parallel with policies for Europe's own energy security,
- a plethora of measures are needed to enhance energy saving, but overregulation on the EU-level should be avoided,
- EU needs to become the frontrunner in energy efficiency technologies,
- the Commission studies the feasibility of individual targets, whenever is possible, for different strands of energy use as an effective measure to enhance energy efficiency, in particular for services and products with an internal market dimension,
- decisions on the future of nuclear energy should be done urgently, in light of big investment needs in electricity generation, and
- the vision for 2050 need to include the global situation, as forming the framework conditions for EU's ambitions.

## 2. Introduction

2.1 The objectives of the EU's energy policy are sustainability, competitiveness and security of supply. Recently security of supply has not been in the centre of attention, which has been proved unfortunate by the repercussions of the dispute on gas transfer between Ukraine and Russia as well as the strong economic downturn and highly volatile energy prices. Dependence on external energy supply is not a problem as such, but the increasing concentration of dependence on suppliers, which do not play by the same rules as Europe, as well as still increasing demand of gas, increases risks of problems in supply.

2.2 The EU's main legislative proposals over the past two years are the third electricity and gas market package and the energy and climate package. The latter was agreed upon in a

record fast first reading in December 2008, leaving many key details to comitology. The market package has still not been resolved in almost two years, which is in clear contradiction with the necessity of a well functioning internal market in order to meet all three energy policy objectives.

2.3 The different energy policy objectives are interdependent and policies to meet them are to a large extent mutually reinforcing. But not in every aspect. The objective of security of supply must be put in the first place. People and enterprises must under all circumstances have a secure supply of energy, given the serious effects of interruptions or energy poverty.

## 3. The Commission document

3.1 The Second Strategic Energy Review (SER) was published by the Commission in November 2008. The Commission proposes a five-point **Action Plan for Energy Security and Solidarity**, focusing on:

- Infrastructure needs and the diversification of energy supplies;
- External energy relations;
- Oil and gas stocks and crisis response mechanisms;
- Energy efficiency;
- Making the best use of the EU's indigenous energy resources.

3.2 As part of the SER is an update of the 2007 Nuclear Illustrative Programme. It focuses on security of supply, investment needs, and conditions for realising investments.

3.3 Coupled with the SER, the Commission presented:

- the 2008 Energy Efficiency Package,
- a proposal for the revision of the Oil Stocks Directive; and

- a revised proposal for a Directive setting up a Community framework for nuclear safety.

3.4 In the SER document, the Commission states its intention to propose:

- a refinement of the Gas Security of Supply Directive in 2010;
- promotion of the environmentally-compatible development of the EU's indigenous fossil fuel;
- a Communication 'Overcoming Barriers to Renewable Energy in the EU'; and
- a Sustainable Energy Financing Initiative as a joint Commission/European Investment Bank project.

3.5 Finally, the Commission will propose to renew the Energy Policy for Europe in 2010 with a view to charting a policy agenda for 2030 and a vision and a new Action Plan for 2050.

#### 4. General comments

4.1 The EESC welcomes the Commission's communication, in particular for putting much needed emphasis on security of energy supply and for its effort of a comprehensive approach to the timely challenges of energy policy. The EU has instruments of its own that can ease the risks of security of supply. These have been identified by the Commission, and must now be put effectively into use.

4.2 Action by the EU in the area of security of energy supply should, however, not mean more legislative proposals. After adopting the present packages emphasis should be put on implementation. The legal framework must be kept stable in order to have a framework as predictable as possible for actions needed.

4.3 The need for a common approach to energy policy by the Member States has again been demonstrated. To speak with one voice has been repeatedly called for, including by the EESC. However, as long as some, in particular big, Member States mostly look only after their own interest, the European energy scene will remain weaker, more vulnerable and more inefficient than its potential.

4.4 The EESC agrees with the five areas of the action plan, but would put energy efficiency first— or actually energy saving, because the objective should be to decrease energy use, whereby better energy efficiency as a central tool. Even the best results in this area cannot replace the need for urgent action in the other areas. But there is a big potential of cost effective actions for better energy efficiency that should be tapped and thereby avoid other, more costly measures. The most important example is the big potential of energy efficiency in buildings.

4.5 The EESC would have expected more attention by the Commission to the problems of oil and transport. 36 % of EU energy use is oil, mainly for transport, and as road transport is increasing, so are CO<sub>2</sub> emissions. In addition oil prices are expected to be very volatile and the trend is towards much higher prices. The EESC in January presented an Opinion 'Facing the Oil Challenges' on the request of the European Parliament <sup>(1)</sup>.

4.6 The Commission document also overlooks the social aspects of energy policy, which span from loss of jobs, creation of new ones in a greener economy, education and training as well as energy poverty. The Committee notes that energy should not be viewed in the same light as other commodities and that its distribution, which is a service of general interest, must comply with the principles of universal access and affordable cost.

4.7 The EESC misses a real sense of urgency by the Commission, which is severely called upon by past and recent problems of security of supply. The Communication presents numerous (over 45) intents of action – mainly communications – by the Commission. Selecting priorities amongst these seems necessary in order not to lose momentum.

<sup>(1)</sup> See Opinion CESE 46/2009 of 14.1.2009 on *Facing the oil challenges*, rapporteur: Mr Osborn.



4.8 The EESC also welcomes the intent to present a policy agenda for 2030 and a vision for 2050, to be supported by a new Action Plan. The Committee has referred to such a vision already in its Opinion on an optimal energy mix in 2006 <sup>(1)</sup>. Big technology shifts take time, as do real shifts of the energy systems, due to long life spans of infra-structure investments. Therefore a vision of the future, beyond today's limited potential of adjustments of technology and infrastructure, is essential.

## 5. Specific comments

### 5.1 *Promoting infrastructure essential to the EU's energy needs*

5.1.1 The EESC supports the Commission being active in this field, in particular because of concerns about continuing dependence on external energy resources. The EESC wishes to make the following comments.

5.1.2 The six priorities presented by the Commission seem very relevant, and only by selecting priorities efficient implementation can be expected. The Commission has since, in late January 2009, presented specific projects, within these priorities, to receive finance as a part of the EU recovery plan. It is difficult to take position on these priority projects without transparent information on them and other most potential projects, including information on projected financing from private and public sources.

5.1.3 It is to be regretted that the situation of the isolated energy markets of the Baltic States has not been acted upon earlier. Now it needs to be done with utmost urgency. At the same time, the energy needs of small isolated Member States should be catered for through interconnection projects with the European mainland.

5.1.4 As to the gas corridors, the EESC stated in its recent Opinion on the external dimension of energy policy that several projects seem to be needed for future gas transmission needs. In a political sense the projects should not be seen as competing options. It is now important to act urgently to secure the supply of gas, and this calls for concerted action of Member States and the Commission.

5.1.5 The idea of a block purchasing mechanism needs more clarification. The question also arises, why targeting the Caspian region only.

5.1.6 The challenges of security of supply are not solved by energy transport infrastructure only. Power generation needs to be replaced for an investment value of almost EUR 1 000 billions. This has partly been taken up by the Commission in the section on indigenous energy sources, but would need attention also in the context of investment needs and their financing.

5.1.7 A key question as to investments is the role of different players – the EU, its financial institutions, Member States and companies. Companies make the investments, and they do it when the right conditions are met. Even if mistakes take place in a turbulent energy market, companies are best placed to evaluate the market and carry risks. The public sector and politicians can act in order to create the right framework conditions and, within given limits, give incentives and political support. Therefore the EESC strongly supports the Commission's intention to collaborate more closely and effectively with the private sector and financial institutions.

### 5.2 *A greater focus on energy in the EU's international relations*

5.2.1 The EESC presented in January 2009 its Opinion on the external dimension of energy policy. The comments, conclusions and recommendations of this Opinion are still relevant, and in line with the Commission's proposals in its Communication. The Committee is stronger on, in particular two points: the need to act in order to make the supplier countries apply the same conditions as the EU, like access to infrastructure, investment protection etc, in the energy market; and, in particular, that Member States, when supporting negotiations on commercial contracts, make a commonly agreed framework of such conditions a prerequisite for their support.

5.2.2 The EESC also presented a two-pillar approach to external energy relations. One being security of Europe's energy supply, and the other a responsible and sustainable global energy approach. Aspects of the latter, Europe's global responsibility, has only been briefly mentioned by the Commission. This responsibility merits serious attention, and will not be met by EU's leadership in international climate negotiations alone.

<sup>(1)</sup> See Opinion CESE on *Energy mix*, rapporteur: Ms Sirkeinen, OJ C 318 of 23.12.2006, page 185.

### 5.3 *Improved oil and gas stocks and crisis response mechanisms*

5.3.1 The EESC agrees with the Commission's present view on the issue of security of gas supply. The solution to the need of emergency measures must and can be found by other means than costly obligatory gas stocks. The alternative measures cover diversification of sources and supply lines, LNG, co-operation with neighbouring countries, interruptible contracts and fuel switch.

### 5.4 *A new impetus on energy efficiency*

5.4.1 The EESC has given several Opinions on energy efficiency, including detailed discussion of practical measures. The Committee agrees with the Commission's approach, but wishes to add a few observations.

5.4.2 There is a vast, practically limitless choice of measures to use and produce energy more efficiently. The Commission has presented a line of legal measures, like those on buildings, energy labelling, ecodesign etc. More seems to be in the pipeline. The EESC would recommend that the Commission pays particular attention to ensuring that these measures avoid overregulation, and that the best possible use is made of innovation potential. Policy measures – regulation, public support etc. – to enhance energy saving is needed, but it should be carefully designed to be most cost-effective and least market distorting for each target area. EU measures should only address products and services with an internal market dimension. The EESC would like to see more emphasis on the possibilities of voluntary action and self- and co-regulation, including standardisation.

5.4.3 Europe is the front mover in energy efficiency. It needs also to be the front runner in energy efficient technologies. The possibility of profiting from the early mover position must be fully exploited. Measures to support this cover R&D financing, support to innovation and risk financing, appropriate standardisation, open markets in Europe and globally, an effective international climate agreement and international co-operation on energy efficiency.

5.4.4 While the EESC strongly supports the 20 % goal of better energy efficiency it is hesitant about making this an overall binding target. Energy efficiency covers all areas of human and economic activities and the measures to enhance it are almost limitless. How would, for instance, a fair efforts sharing be designed in such circumstances? Instead the Committee recommends that the Commission studies the feasibility of individual targets, whenever is possible, for different

strands of energy use as an effective measure to enhance energy efficiency, in particular for services and products with an internal market dimension.

### 5.5 *Making better use of the EU's indigenous energy reserves*

5.5.1 The EESC agrees broadly with the Commission's messages on the use of EU's own energy resources. It is important to have a realistic view on the development of energy demand as well potentials, limitations and conditions for the development and use of different energy sources.

5.5.2 The EESC particularly welcomes the Commission's intent to table a Communication on 'Overcoming Barriers to Renewable Energy in the EU', and urges the Commission to act urgently on this. The important issue of increasing the use of renewable energy, which in future will become the most important and environmental domestic energy source should have, already earlier, been analysed and approached as a part of the whole energy system. Important issues here are, as the Commission mentions, constraints on the grid, but also the question of back up power. The analysis should also consider whether possible 'back-up power' could under certain circumstances may render the renewables effort negative vis-à-vis emissions or security of supply. Another issue is problems of planning and authorisation.

5.5.3 The Committee also supports the position that obligatory CO<sub>2</sub> emission standards for power plants should be considered only after results of industrial demonstrations of CCS have been evaluated.

5.5.4 As to nuclear power, the EESC has for long represented the view that all options have to be available for power generation in order to meet energy policy objectives. In view of the need of large scale investments in electricity generation in the near future, decisions on the future of nuclear energy needs to be done urgently in those Member States which have opted – or will opt – for nuclear. According to the Commission's projections, nuclear generation capacity in the EU would fall by a fourth by 2020, and if this is not replaced by new nuclear, a part of it will be replaced by gas or coal fired plants, increasing problems of emissions and security of supply. Nuclear safety needs continuous attention as well as involvement from public authorities; decisions have to be made on management of nuclear waste. The EESC gives a separate Opinion on the revised proposal for a Directive setting up a Community Framework for nuclear safety.

5.5.5 The EESC is favourable to the intention of the Commission to present documents on the needs for energy production capacity, be it oil refining or electricity. But it needs to be strictly kept in mind that the EU is not in a position to decide on energy capacity investments, nor even make recommendations, as it cannot carry any responsibility for potential risks. Collecting and analysing relevant information, including modelling, can be very useful, and cooperation with the IEA on this is recommended.

#### 5.6 *Towards a vision for 2050*

5.6.1 The EESC supports the Commission's intent to propose a new Energy Policy for Europe in 2010, with a policy agenda to 2030 and a vision for 2050. It also supports the idea of basing this on a broad consultation on possible long-term objectives.

5.6.2 The EESC further sees – preliminarily – the areas presented by the Commission – electricity decarbonisation, oil dependence of transport, buildings, electricity network and a high efficiency, low carbon global system – as truly central long term challenges. To meet these challenges, all technological options, including fusion and hydrogen, have to be kept in the picture.

5.6.3 The global situation and developments need to be included in the vision, as forming the framework conditions of EU's own ambitions. Fast growing energy demand in developing countries, a changing climate and – hopefully – internationally agreed actions of mitigation and adaptation, availability of fossil resources etc. influence our situation and choices in many ways. A timely example is the shifts of concerns regarding oil – yesterday shocks of record high prices, today fear of insufficient production due to low prices.

#### 5.7 *Update of the Nuclear Illustrative Programme*

5.7.1 The EESC notes with satisfaction that its comments presented in its Opinion on the draft Nuclear Illustrative Programme in 2007 <sup>(1)</sup> as well as in an Exploratory Opinion on investments in nuclear power <sup>(2)</sup> have been well taken on board by the Commission. The starting point is the important role of the EU to develop further the most advanced framework for nuclear energy in conformity with the highest standards of safety, security and non-proliferation. Issues of radioactive waste management, secured long term funding of decommissioning, the threat of terrorism and the need of a harmonised liability scheme are addressed in line with views of the EESC. The EESC emphasises that all the costs arising in connection with these issues should be borne by the operators of nuclear power plants.

5.7.2. The EESC, once again, agrees with the significant role of nuclear in the future energy mix of Europe in mitigating climate change and securing supply of electricity. It also agrees with the need and proposals to meet public concerns. The EESC supports the recommendations on common reactor safety levels and consideration of new build only corresponding to generation III-levels of safety and security. Some measures to facilitate financing of new construction are justified, in particular in present economic circumstances, but state subsidies or EU budget resources are not to be used for this purpose. Although some Member States have indicated that they will be more clearly open to the construction of new nuclear power plants, the construction, financing and operation of such plants together with radioactive waste management is a matter for private companies; governments merely provide the framework for this to happen. Information on projected nuclear facilities should be presented openly and comprehensively, including costs, as early as possible for public discussion and participation.

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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<sup>(1)</sup> See Opinion CESE on the *Nuclear Illustrative Programme*, rapporteur: Ms Sirkeinen, OJ C 256 of 27 October 2007, page 51.

<sup>(2)</sup> See Opinion CESE 1912/2008 of 4.12.2008 on the *Future investments in the nuclear industry and the role of such investments in EU energy policy*, rapporteur: Mr Iozia.

**Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (recast)**

COM(2008) 778 final/2 – 2008/0222(COD)

(2009/C 228/17)

On 30 January 2009 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

*'Proposal for a Directive of the European Parliament and of the Council on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (recast)'*

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 12 March 2009. The rapporteur was Mr PEZZINI.

At its 452nd plenary session, held on 24-25 March 2009 (meeting of 24 March), the European Economic and Social Committee adopted the following opinion by 180 votes with three abstentions.

## 1. Conclusions and recommendations

1.1 The Committee welcomes the Commission's initiative to update Directive 92/75/EEC on the mandatory energy labelling of household appliances, which is already familiar both to millions of consumers and to industry and distributors.

1.2 The Committee considers that the system has enabled:

- manufacturers to position their products on the market more effectively (in higher quality and energy efficiency categories);
- consumers to make informed choices, change their habits and compare manufacturers;
- society to improve the environment and use resources sustainably, whilst ensuring surveillance of the single market.

1.3 The Committee considers it important to underscore the key elements for a successful policy:

- simple, clear and understandable criteria;
- accurate, relevant and comparable information on specific energy consumption;
- effective cost-benefit analyses, agreed upon by all stakeholders;

— proven scientific results;

— minimal red tape and operating costs;

— compatibility and consistency between binding legislation and voluntary instruments;

— dynamic, flexible systems that leave room for innovation and technological progress;

— simple information that is easy for everyone to understand;

— the promotion of sustainability on the global market without creating hidden barriers to international trade.

1.4 The Committee considers that any initiative to revise the labelling scheme should hold on to the characteristics that made it a success: simplicity, transparency, trustworthiness and comparability; ensure that it is kept up to date through flexible, dynamic mechanisms to classify product performance; and provide for informed choices by consumers concerning more efficient, sustainable products and precise standards.

1.5 The Committee recommends, before any extension to new groups of 'energy-related products', that a clear, transparent sector-by-sector impact assessment and cost-benefit analysis be undertaken that is agreed upon by all stakeholders and based on scientific evidence.

1.6 Furthermore, the Committee considers that it would be helpful to preserve the efficacy of Directive 92/75/EEC <sup>(1)</sup> whilst improving and perfecting its dynamic reclassification mechanisms <sup>(2)</sup>.

1.7 The Committee supports the extension of the Energy Label scheme to other energy-consuming products, because the message is clear and transparent, can easily be compared in the marketplace, and has the potential to become a successful marketing tool.

1.8 The EESC believes that for other products or services that do not consume energy but are related to energy consumption other information and environmental tools may prove more appropriate.

1.9 In the Committee's view, overlaps between often competing and/or conflicting regulations must be avoided, as they often lead to increased costs and red tape, and that an integrated sector-by-sector approach combining the three pillars of sustainability should be maintained.

1.10 The Committee agrees that it is important to ensure that incentives can be given, without violating Community rules on state aid.

1.11 With respect to the provisions relating to public procurement, the Committee advises caution when imposing binding measures and considers it important to give Member States room for manoeuvre and ensure a proper balance, including voluntary Green Public Procurement schemes.

## 2. Introduction

2.1 Council Directive 92/75/EEC of 22 September 1992 on the indication by labelling of the consumption of energy and other resources by household appliances is a framework directive aimed at guiding the domestic appliance market towards more energy-efficient products by supplying useful and comparable information to consumers and the market.

2.2 The main plus points of the energy label are:

- its mandatory nature;
- its visibility;
- the simplicity of the message;
- the immediate comparability of products of the same family.

2.3 The Committee believes that the system, whilst limited to certain sectors and subject to thorough sectoral analyses and studies, has enabled:

- manufacturers to position their products on the market more effectively (in higher quality and energy efficiency categories) and reap the benefits on their investments for introducing better and more innovative products;
- consumers to make informed choices and to change their consumption habits;
- society to improve the environment and use resources sustainably by consuming fewer of them.

2.4 The Committee considers it important to emphasise that the current energy labelling directive is one of the most successful Community instruments, as it is based on:

- simple, clear and understandable criteria;
- accurate, relevant and comparable information on specific energy consumption;
- effective cost-benefit analyses, agreed upon by all stakeholders;
- proven scientific results;
- minimal red tape and operating costs;
- comparability, consistency and avoidance of duplication between Community legislation and equivalent voluntary instruments;
- dynamic rules and flexibility, leaving room for innovation and technological progress;
- simple information that is easy to understand for all stakeholders, in particular for consumers;
- the dissemination of the principles of sustainability on the global market.

2.5 The sectors currently concerned, which have a significant environmental impact, include: refrigerators, freezers and their combinations; washing machines, driers and their combinations, dishwashers; ovens; water heaters and hot-water storage appliances; lighting sources; and air-conditioning appliances. For these sectors, the plan is to update the energy labels during 2009 and 2010.

<sup>(1)</sup> The subject of this revision.

<sup>(2)</sup> See Action Plan for Energy Efficiency COM(2006) 545.



2.6 Preliminary studies carried out on behalf of the Commission on energy-consuming products have demonstrated that the use phase of those products is responsible for more than 80 % of their environmental impact.

2.7 Extending the scope of Directive 92/75/EEC to other household appliances and all 'energy-related products', except for transport, which is already subject to separate regulations, represents a major change and a considerable undertaking. Similar efforts are under way in the revision of Directive 2005/32/EC on eco-design.

2.8 Seeking to apply energy savings to 'any good having an impact on energy consumption during use, which is placed on the market and/or put into service in the Community, including parts intended to be incorporated into energy-related products' means not being limited to products that consume energy themselves, but including those that, when used, have a direct or indirect impact on energy consumption, such as doors and windows, construction materials and coatings.

2.9 Including these new products and sectors in the scope of an amended directive could bring about a change in the parameters to be taken into consideration for energy labelling and a change in the label itself, with the addition of different parameters depending on the sector and the product.

2.10 The recast of the Energy Labelling Directive was announced as a priority of the Energy Efficiency Action Plan <sup>(1)</sup> and of the Sustainable Consumption and Production and Sustainable Industrial Policy (SCP/SIP) Action Plan <sup>(2)</sup>, on which the Committee issued a separate opinion <sup>(3)</sup>. This includes not only energy labelling, but also eco-labelling, the Energy Star mark, the technical characteristics of eco-design, the Building Efficiency Standards, the EMAS standard of excellence and other environmental information such as Environmental Product Declarations and various sector-specific labels such as those applying to the food sector <sup>(4)</sup>.

2.11 Similarly, on the issue of Green Public Procurement (GPP), the Committee recommended 'promoting the devel-

opment of ... GPP by: defining the technical characteristics of "green" products', starting with those with the best environmental impact, and suggested:

- including the cost of the product or service's lifecycle in its specifications;
- making a dedicated database available on line;
- bringing EC directives on public procurement up to date by including references to common standards;
- the extension of EMAS certification;
- Ecolabels;
- eco-design <sup>(5)</sup>.

### 3. Gist of the Commission proposal

3.1 The purpose of the proposal is to extend the scope of the Community legislation in force <sup>(6)</sup>, which is currently restricted to household appliances, to allow for the labelling of all energy-related products including the household, commercial and industrial sectors and some non-energy using products, such as windows, that have a significant potential to save energy once in use or installed.

3.2 The general aim of the proposal is to ensure the free movement of products and improve their energy efficiency.

3.3 The proposed framework directive on labelling resulting from the recast of Directive 92/75/EEC also includes provisions relating to public procurement and incentives and will, according to the Commission, be an essential building block for an integrated sustainable environmental product policy, promoting and stimulating the demand for better products and helping consumers to make better choices.

<sup>(1)</sup> COM(2006) 545 final.

<sup>(2)</sup> COM(2008) 397 final.

<sup>(3)</sup> Opinion CESE 337/2009 of 25.2.2009 on *Sustainable Consumption and Production*, rapporteur: Mr Espuny Moyano.

<sup>(4)</sup> See research by the National Consumer Council (UK, 2003) *Green Choice, What Choice?*, which noted that consumers can be confused by the current system of environmental information

<sup>(5)</sup> See opinion CESE on Eco-friendly production, rapporteur: Ms Darmanin, OJ C 224, 30.8.2008, p. 1.

<sup>(6)</sup> Council Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances. OJ L 297, 13.10.1992, p. 16.

3.4 The Commission states that the proposed framework directive is complementary to existing Community instruments, such as the Ecodesign Directive <sup>(1)</sup>, the Energy Star Regulation <sup>(2)</sup> and the Eco-label Regulation <sup>(3)</sup>.

#### 4. General comments

4.1 The Committee welcomes the Commission's initiative to update Directive 92/75/EEC on mandatory energy labelling of household appliances, which is already familiar to consumers, industry and distributors.

4.2 The Committee considers that any initiative concerning the labelling scheme must preserve the basic characteristics that have made it a success: simplicity, transparency, trustworthiness and comparability; but must, at the same time, ensure that it is kept up to date through flexible, dynamic mechanisms that reclassify products as time goes on, so as to assure industry that these mechanisms are geared to technical and scientific progress and to provide consumers with the choice of the most efficient and sustainable products, in terms of energy consumption and performance, on the basis of ever more precise standards.

4.3 The Committee would suggest, prior to the extension to new groups of 'energy-related products', that a sector-by-sector impact assessment and cost-benefit analysis be carried out that is clear, transparent, agreed upon by all stakeholders and based on scientific evidence.

4.4 It might perhaps be helpful to avoid any overlap of often competing regulations, which generate increased costs and red tape, instead placing the emphasis on an 'integrated sectoral approach [...]': this should incorporate the three [...] pillars of sustainability. Environmental requirements should be factored in from the product design phase with an eye to the whole lifecycle, continually raising the bar in terms of quality, innovation and customer satisfaction targets' <sup>(4)</sup>.

4.5 Cost-benefit analyses and impact assessments should, in the Committee's view, be accompanied by analyses of the capacity of the European economy and businesses to support additional costs without having to cut production, reduce headcount, or relocate production outside Europe. The

Committee has, on several occasions, highlighted the need to ensure the sustainability of sectors affected by industrial change.

4.6 The Committee also emphasises the need for clarity and transparency as to the nature of the Energy Label:

- a label that clearly and simply identifies the energy consumption of products during use, based on uniform parameters, thus ensuring full compatibility and dynamic reclassification, as should the updated Energy Label (rolling standards/open-ended labelling scale + phasing out of the worst-performing products);

- a label that, along with energy consumption, assesses performance thresholds in terms of energy efficiency, water consumption, noise, adherence, etc. This makes it difficult to make an objective comparison when choosing between one labelled product and another, and would not make the reclassification process easy either. Such a label might be better included in an eco-design label for products, as part of the revision of Directive 2005/32/EC;

- or an ad hoc sectoral directive could be passed, as the Commission did when it issued a proposal for a directive on the labelling of tyres with respect to fuel efficiency <sup>(5)</sup>.

4.7 The Committee considers that it would be more helpful to maintain the efficacy of Directive 92/75/EC whilst improving and perfecting its dynamic reclassification mechanisms, perhaps in the form of more refined test standards, but leaving its defining characteristics intact.

4.8 The Committee supports the extension of the Energy Label scheme to other energy-consuming products, where its clear and transparent message can easily be compared on the market and has the potential to become a successful marketing tool. For other products or services that do not consume energy but are related to energy consumption, other information tools, such as the voluntary schemes that already apply at EU level for certain products, would seem more appropriate.

4.9 The Committee has already expressed support for proposals to allow incentives without breaching the rules on state aid <sup>(6)</sup>.

<sup>(1)</sup> Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council. OJ L 191, 22.7.2005, p. 29.

<sup>(2)</sup> Regulation (EC) No 106/2008 of the European Parliament and of the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment (recast version). OJ L 39, 13.2.2008, p. 1.

<sup>(3)</sup> Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000, on a revised Community eco-label award scheme. OJ L 237, 21.9.2000, p. 1.

<sup>(4)</sup> See point 1.3 of opinion CESE on Eco-friendly production, rapporteur: Ms Darmanin, OJ C 224, 30.8.2008, p. 1.

<sup>(5)</sup> See COM(2008) 779 final and opinion CESE 620/2009 of 25.3.2009 of *Labelling of tyres with respect to fuel efficiency*, rapporteur: Mr Ranocchiari.

<sup>(6)</sup> See opinion CESE 337/2009 on *Sustainable Consumption and Production*, rapporteur: Mr Espuny Morano - Point 3.5: 'The EESC welcomes the Commission's proposal ...'.

4.10 With regard to the proposed provisions relating to public procurement, the Committee considers that the binding rules that have been proposed should be evaluated more carefully so as to avoid excessively high implementing costs.

4.10.1 On this matter, the Committee believes that Member States should be given appropriate room for manoeuvre by introducing indicative performance standards for products and a proper balance between voluntary schemes – in accordance with the Green Public Procurement recommendations – and binding rules, making best use of the scope for including environmental criteria in public tenders already provided under Directive 2004/18/EC.

Brussels, 24 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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**Opinion of the European Economic and Social Committee on the Proposal for a Regulation (EC) No .../2008 of the European Parliament and of the Council amending Regulation (EC) No 1692/2006 establishing the second 'Marco Polo' programme for the granting of Community financial assistance to improve the environmental performance of the freight transport system ('Marco Polo II')**

COM(2008) 847 final – 2008/0239 (COD)

(2009/C 228/18)

On 12 February 2009, the Council decided to consult the European Economic and Social Committee, under Articles 71(1) and 80(2) of the Treaty establishing the European Community, on the

*'Proposal for a Regulation (EC) No .../2008 of the European Parliament and of the Council amending Regulation (EC) No 1692/2006 establishing the second "Marco Polo" programme for the granting of Community financial assistance to improve the environmental performance of the freight transport system ("Marco Polo II")'*

On 13 January 2008 the Committee Bureau instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr LIOLIOS as rapporteur-general at its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 24 March), and adopted the following opinion by 97 votes with 3 abstentions.

**1. Conclusions and recommendations**

1.1 The EESC expresses its support for the European Commission's policy to enable a shift in the inevitable and forecast growth in road freight transport to other modes, while drawing attention to the lack of ambitious plans and inadequacy of resources available.

1.2 The EESC endorses the proposed measures to amend the Regulation, namely:

1.2.1 delegating management to the Executive Agency for Competitiveness and Innovation (EACI);

1.2.2 reducing and simplifying the project eligibility thresholds;

1.2.3 doubling the funding intensity for projects, bringing it to EUR 2 per 500 tonne-km shifted or avoided;

1.2.4 setting of a very low threshold for inland waterways projects;

1.2.5 allowing single undertakings to apply for funding;

1.2.6 abolishing the specific 10 % threshold for traffic avoidance projects;

1.2.7 including the transport unit in the calculation of the modal shift;

1.2.8 simplifying the funding conditions for ancillary infrastructure.

1.3 The EESC believes that the Marco Polo programme is not fully achieving the goals that were originally set, and that it is consequently not being used to full effect. In particular, the EESC thinks that the budget provided (EUR 60 million) may not be sufficient to shift 25 billion tonne-kilometres of traffic. In view of the substantial external costs saved of EUR 9.15, the Committee believes more attention should be paid to finding the resources needed to shift as many tonne-kilometres as possible and achieve the goals originally set. It is apparent at least that the opportunity cost to society as a whole is many times greater than the direct assistance provided to companies. As it noted in opinions 842/2002 and 247/2005, the EESC believes that the Commission should propose an upward revision to this budget over the duration of the programme so that additional funds are available if a larger number of acceptable plans for measures are submitted than anticipated.

1.4 The EESC is surprised that although support and subsidies for SMEs submitting proposals is proposed and mentioned in the impact assessment, it is not provided for in the new Regulation. It regrets that this recommendation has not been adopted, and proposes that the facility be extended to include small companies, since it believes that the same arguments apply for them and that preparing such proposals entails considerable expense for such companies.

1.5 The EESC welcomes the Commission's apparent readiness to shorten the time frame for approving the funding of proposals. However, it believes that in a rapidly changing business environment, where the promptness of a response to market developments is of crucial importance, particular consideration must be given to further reducing the time it takes to assess, approve and fund each project through measures such as pre-assessment of proposals or partial standardisation of the assessment process.

1.6 The EESC thinks that the geographical spread of the proposals that have been submitted and funded has not been ideal, neither serving the objectives of the EU as a whole nor the need to promote intermodal transport equally among EU members. It therefore proposes that promotion of the project be continued taking account of the problems faced by southern and Mediterranean countries. In addition, the EESC believes that the inherent disadvantages of certain countries (e.g. lack of an extensive rail network, long coastline, large number of islands) should be taken into account so as to provide opportunities for companies in those places to submit proposals.

1.7 The EESC reiterates its view expressed previously that a study should be carried out on the *zero stockholding* and *stock in circulation* policies in order to assess their effects on whether or not viable transport modes are promoted. The practice of zero stockholding favours road freight transport, which has effects on energy consumption and environmental protection. The whole supply chain must be examined in this context.

1.8 The EESC believes that the knowledge of road haulage companies should be harnessed by actively involving them in such programmes for shifting goods transport from roads to other modes. To this end it is proposed that these companies receive regular updates and assistance in order to change the models they have adopted and use in their production processes.

1.9 The EESC believes that since not all the available funding has been used, the Commission should consider raising the above-mentioned funding threshold (from the current 35 % for modal shift measures, inland waterways transport services, catalyst actions, motorways of the sea and traffic avoidance, and 50 % for common learning, to 50 % and 70 % respectively). The Committee believes this is necessary for SMEs, which have higher fixed as against variable costs than large companies. For catalyst actions specifically, we would propose an increase in the subsidy from EUR 2 per tonne-km to EUR 3 per tonne-km, since these are innovative solutions that will have a positive impact on shifting goods transport from roads to other modes, as well as influencing public opinion.

1.10 The EESC recommends that the Commission draw up at least one 'European Guide', for all beneficiaries and in all the

EU languages, describing the characteristics of each multimodal platform, and that it take all measures necessary to increase familiarity both with the funding mechanisms and with the outcome of projects and benefits for intermediate and final beneficiaries. In addition, the EESC believes that the Commission should draw up specific plans to promote the programme and increase its visibility. To this end, the EESC proposes that conferences, awareness-raising events and roadshows be co-organised with the Commission.

1.11 The EESC recommends that the possibility be explored of including in the projects eligible for support under the Marco Polo programme actions involving transport of liquid substances by pipeline or of gas to transshipment/combined transport stations.

1.12 The EESC emphasises that a detailed analysis is needed of the existing situation with regard to maritime transport (inland waterways), since the adoption of intermodal systems is considered problematic here owing to market fragmentation. This situation is reflected by the fact that measures relating to motorways of the sea have not attracted much interest (they represented 9 % of proposals in 2007 and 4 % of proposals in 2008), and that consequently few, if any, proposals have been approved (none were approved in 2008).

1.13 The EESC still believes that the 36-month deadline specifically for modal shift actions is too short and recommends that it be extended to 48 months.

1.14 The EESC sees the need to consider the possibility of funding projects of national scope, with the aim of improving the acceptance of intermodal transport and shifting more freight transport from roads to other modes. In effect, the EESC believes that there might be local measures applying in just one Member State, but whose effects could benefit all users of the modes of transport concerned passing through that Member State.

1.15 The EESC reiterates its endorsement of widening the scope of application to include third countries (both candidate and non-candidate countries), and notes that the cost of measures carried out on their territory must only be covered by the programme in situations where the benefits are direct and measurable for a specific EU Member State.

1.16 The EESC thinks that a report should be published as soon as possible on plans that have been successfully implemented and resources actually saved through these funded projects. This will make it possible to promote the programme and publicise the results achieved to date.



1.17 The EESC repeats its view that the Commission should invite the Member States to record all options for reinstating existing, abandoned or less frequently used networks for freight transport. This applies in particular to the rail network, but is also relevant to maritime and inland waterways networks. The aim would be as far as possible to provide quicker solutions that are more benign than road transport in terms of sustainable development.

## 2. General comments

### 2.1 *Recap of the EESC's conclusions on the Marco Polo I and Marco Polo II programmes.*

2.1.1 In its opinions 842/2002 (17 and 18 July 2002) and 247/2005 (9 March 2005) on the proposal for a Regulation on 'Marco Polo I' and 'Marco Polo II', respectively, the EESC highlighted weaknesses and considered that the programme would not enable the Commission's objective of switching to other modes of transport to be reached, proposing that specific measures be added to the programme. The following recommendations were made in opinions 842/2002 and 247/2005:

2.1.1.1 public funding of infrastructure to enable the switch to other modes of transport (terminals and access infrastructure);

2.1.1.2 giving a management committee the task of monitoring actions on an ongoing basis with a view to making the necessary mid-term adjustments to the Marco Polo programme;

2.1.1.3 making it possible for financial aid to be provided for projects involving actions taking place in just one Member State, provided that the impact of such projects would benefit users of international shipments passing through the Member State in question;

2.1.1.4 providing for inclusion in the projects eligible for support under the Marco Polo programme actions involving air and pipeline transport in a secondary capacity, on condition that other modes were also involved;

2.1.1.5 reducing the minimum subsidy threshold for each action;

2.1.1.6 extending the maximum deadline for modal shift actions;

2.1.1.7 drawing up for all users a 'European Guide' describing the characteristics of all multimodal platforms in the EU;

2.1.1.8 introducing a specific category with a minimum subsidy threshold of EUR 500,000, since inland waterways

transport cannot be compared to sea transport, where the investment required depends on the size of vessels.

2.1.2 The EESC has already expressed its wish to be involved with the Commission in a study on the gradual phasing-out of the practice of *zero stockholding* and adoption of the *stock in circulation* practice for deliveries that are not urgent.

## 2.2 *Expert evaluation*

The EESC welcomed the evaluation requested by the Commission from an independent expert <sup>(1)</sup> and would like to expand on some points that were not discussed in detail in the evaluation:

— The number of proposals submitted is steadily decreasing (from 92 in 2003 to 63 in 2004, 62 in 2005 and 48 in 2006), while the number of proposals approved and funded is almost unchanged, ranging from 12 to 15.

— It is interesting to note that among the projects funded, 75 % of the modal shift originally planned was ultimately achieved, with rail projects showing a 99 % success rate but inland waterways realising only 45 % of the initial target.

— A 64 % shift in freight transport from roads under the Marco Polo I programme represents only 5.8 % of total EU international road freight transport, which is quite a small change overall.

— The process for evaluating proposals up to and including the point of signing a contract was perceived as complex, non-transparent and time-consuming (especially the time between negotiating and signing a contract). Many people consider the criteria for selecting projects to be clear and transparent, but not the procedure for scoring the criteria and the definitive proposal of a project shortlist.

— The lowest thresholds are very high for SMEs, and are not attractive in terms of initiating new intermodal services. This situation results in a small number of large-scale projects by large companies being favoured above a large number of projects by SMEs. An approach targeted at SMEs could therefore help to combat road congestion at local and regional level.

— Owing to the absence of project proposals in the call for shortsea projects, it is proposed that such projects be monitored and participation in them supported.

— It is recommended that the aspect of contribution to reducing road congestion should be made more visible.

<sup>(1)</sup> Evaluation of the Marco Polo Programme (2003-2006), Ecorys, source (available in English only): [http://ec.europa.eu/transport/evaluations/annual\\_en.htm](http://ec.europa.eu/transport/evaluations/annual_en.htm)

### 3. Comments

The EESC laments the failure of the European Commission to take into account most of the recommendations made by the Committee in its two relevant opinions, which would have helped to increase the effectiveness of the programme, as is also made clear by the report, and is pleased that its proposals have been endorsed, albeit at this late stage. The EESC wishes to make the following specific observations.

3.1 Since 1.3.2008, the management of the Programme has been entrusted to the Executive Agency for Competitiveness and Innovation (EACI), among other Community programmes. The EESC welcomes this step, but believes that it should be accompanied by every possible action and initiative to reduce red tape and encourage major institutions to provide resources.

3.2 Following the procedure provided for in letter d), point 2 of Annex I to Regulation 1692/2006, the Commission will double the maximum intensity of funding from 1 to 2 euros per 500 tkm avoided or shifted off the roads. The EESC considers the doubling of funding intensity to be necessary for further development of the programme, given that the social benefit from reducing the external costs and social and environmental effects is many times greater than this funding.

3.3 Allowing single undertakings to apply for support. Allowing single undertakings to submit projects will clarify and simplify the eligibility conditions. The EESC endorses this and repeats that it

must be possible to include projects involving just one Member State if there is a reduction in transport by road.

3.4 *Setting an especially low threshold for inland waterways projects.* A special lower threshold is fixed for projects whose aim is to shift goods transport from roads to inland waterways, as follows:

Type of project	Existing thresholds		Proposed thresholds
Inland waterways	N.A.	N.A.	17 million tonne-km

The EESC is pleased that its proposals for reducing the eligibility thresholds, in particular for inland waterways, have finally been accepted, and believes this will help to attract more proposals.

3.5 *Refunding proposal preparation expenses to micro-enterprises.* In order to increase the number of applications from micro-enterprises, which characterise the road and inland waterways transport sectors, a lump-sum refund of proposal preparation expenses will be provided. The EESC has been surprised to note that assistance to small enterprises in submitting proposals, although proposed and mentioned in the evaluation report, is not provided for in the new regulation.

3.6 *Lowering and simplifying project eligibility thresholds.* Simplifying and lowering some thresholds will bring additional smaller projects and help to achieve the objectives of the programme, as shown in the following table.

Type of project	Existing thresholds		Proposed thresholds
Modal shift	250 million tonne-km	EUR 500 000	80 million tonne-km
Inland waterways	N.A.	N.A.	17 million tonne-km
Catalyst action	N.A.	EUR 2 million	30 million tonne-km
Common learning	N.A.	EUR 250 000	EUR 250 000
Motorways of the sea	1.25 bn tonne-km	EUR 2.5 million	250 million tonne-km
Traffic avoidance	500 million tonne-km	EUR 1 million	80 million tonne-km

The EESC had previously proposed, and therefore welcomes, the reduction in eligibility thresholds for projects put forward, and the adoption of tonne-kilometres as the basis for comparing different proposals.

3.7 *Abolishing the specific 10 % threshold for traffic avoidance projects.* The EESC endorses the removal of this threshold, believing that this will encourage more such proposals.

3.8 *Including the transport unit in the calculation of the modal shift.* The EESC considers the proposal to include distances covered by the transport unit to be useful. However, the question should be considered of how to favour proposals

that make better use of intermodal services, e.g. shipment of unaccompanied consignments by ro-ro.

3.9 *Granting of exceptional extensions of the maximum project duration by 6 months subject to adequate justification by the beneficiary.* The EESC endorses this proposal, since it could reassure beneficiaries that losses borne during start-up will be offset by the Community subsidy.

3.10 *Simplification of funding conditions for infrastructure.* The EESC agrees that the conditions for completion of ancillary infrastructure projects should be deleted and believes that this simplification removes the restrictions imposed, which were pointless and unjustified.

3.11 *Simplification of administrative procedures.* The EESC commends all measures that improve procedures and reduce the time taken to complete the administrative work for each subsidy, since experience to date has been negative. It nevertheless awaits relevant feedback based on participants' experience in order to give a more definite view.

3.12 *Deletion of the second sentence of Article 5(2), which reads 'The funding conditions for ancillary infrastructures within the meaning of Article 2(h) are set out in Annex II'.* The EESC agrees with this proposal since it believes this particular practice hampered the successful implementation of proposals, especially ones that aimed to use maritime modes of transport.

3.13 *The total aid granted in the form of State aid and Community financial assistance in respect of ancillary infrastructure*

*shall not exceed 50 % of eligible costs.* The EESC considers the deletion of this specific measure to be right and believes that national governments will now take a more active part in the relevant projects.

3.14 The second paragraph of Article 14 is replaced by: '*The Commission shall present to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions an evaluation report on the results achieved by the Marco Polo Programme for the period 2003-2009 by 30 June 2011*'. The EESC has reservations about the timetable proposed above, since it believes that if the report is not used for taking corrective measures in the existing programme it would be fairer if there were more time for a fuller evaluation of the amended regulation.

Brussels, 24 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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**Opinion of the European Economic and Social Committee on the Proposal for a Decision of the European Parliament and of the Council establishing an audiovisual cooperation programme with professionals from third countries MEDIA Mundus**

COM(2008) 892 final — 2008/0258 (COD)

(2009/C 228/19)

On 2 February 2009, the Council decided to consult the European Economic and Social Committee, under Articles 150(4) and 157(3) of the Treaty establishing the European Community, on the

*'Proposal for a Decision of the European Parliament and of the Council establishing an audiovisual cooperation programme with professionals from third countries MEDIA Mundus'*

On 24 February 2009, the Bureau of the European Economic and Social Committee instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr HERNÁNDEZ BATALLER as rapporteur-general at its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March), and adopted the following opinion by 79 votes to 5 with 3 abstentions.

## **1. Conclusions**

1.1 The EESC welcomes the proposal for a decision and shares the need to disseminate the values and principles of democratic society and the Rule of Law, because the European Union is founded on the principles of freedom, democracy, respect for human rights and fundamental freedoms.

1.2 The Committee considers it appropriate that the Commission should be able, when implementing the programme, to set the general implementing guidelines and selection criteria, because these are elements that do not alter fundamental aspects of the proposal for a Decision and fall within the scope of Decision 1999/468/EC.

1.3 The EESC agrees with the programme's general aims (the competitiveness of the European audiovisual industry, the opportunities for consumer choice and cultural diversity) although the programme's specific goals should be explained in greater detail, as they are too general, focusing as they do on the cross-border and transnational aspects.

1.3.1 Special support should be given to incorporating the new technologies into the production, distribution and marketing of audiovisual works in their different digital applications and into the circulation of audiovisual works (including new platforms such as VoD and IPTV).

1.4 The financial framework of EUR 15 million is too limited to meet the programme's ambitious general aims and should thus be substantially increased so as to provide the European audiovisual industry with more effective support, whilst strictly applying budgetary discipline and the principles of sound financial management.

1.5 The Commission, in close cooperation with the Member States, should ensure that the programme is implemented in such a way that it dovetails with and complements other relevant Community policies, programmes and measures.

## **2. Background**

2.1 On 9 January 2009, the European Commission presented its proposal for a decision of the European Parliament and of the Council establishing an audiovisual cooperation programme with professionals from third countries MEDIA Mundus.

2.2 This proposal considers the European audiovisual sector's key role in achieving the goals of the Lisbon Agenda and in the i2010 initiative under that Agenda. It also refers to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, ratified by the European Community together with 13 Member States on 18 December 2006. It is worth bearing in mind that this industry employs at least 5.8 million people, or 3.1 % of total EU-25 population.

2.3 The document notes the structural weaknesses affecting the circulation of European audiovisual works on third country markets despite the efforts that have been made to boost the industry (including technological development, the emergence of new players and distribution platforms, support for production content, etc.).

2.4 The Media Mundus programme is thus intended to complement measures carried out under other initiatives that focus more on cooperation within the EU itself (such as Media 2007, Euromed Audiovisual II and the EU-ACP programme for Cinema) as well as the limited existing international film funds.

### 3. Proposal for a decision

3.1 The main features of the proposal for a decision to establish an audiovisual cooperation programme with professionals from third countries MEDIA Mundus are as follows:

3.1.1 This is a programme designed to fund international cooperation projects with third countries for a period running from 1 January 2011 to 31 December 2013. An implementing budget of EUR 15 million is planned for the programme for this period.

3.1.2 The primary aims are to encourage the creation of international networks to enable Europe to play its industrial, cultural and political role in the audiovisual field more effectively, improving competition and the circulation and exhibition of audiovisual work.

3.1.3 Each project will have a minimum of three partners, coordinated by a European professional, who will be responsible for presenting the proposal, managing the project and financial administration and implementation.

3.1.4 One of the programme's key features concerns the continuous training and the qualifications of professionals from Europe and from the other countries involved, focusing on production, distribution, exhibition, broadcasting, marketing and storage of audiovisual works, in addition to the legal frameworks and financial systems.

3.1.5 The programme also seeks to develop measures and initiatives to promote public understanding of audiovisual works (especially amongst young people) with particular

emphasis on increasing public demand for culturally diverse audiovisual content.

3.1.6 One of the programme's most significant features where the circulation of works is concerned is to promote the programming and exhibition of European audiovisual works in third countries and of works from those countries within the European Union. This includes signing agreements with cinema operators in both the EU and third countries, encouraging them to increase programming and exhibition conditions in terms not only of the number of screenings but also of their duration and exposure.

3.1.7 Another proposal is to support partnerships between broadcasters (or Video on Demand platforms) and rights-holders, aimed at compiling packages of works for distribution on VoD platforms.

3.1.8 One of the programme's measures is to support dubbing and subtitling for the distribution and broadcast through all available channels of European and third countries' audiovisual works for the benefit of producers, distributors and broadcasters.

3.2 Funding awarded under the programme may not exceed 50 % of the final costs of the project to be funded, except in cases expressly provided for, where funding may be as high as 80 %.

3.2.1 Co-funding may be provided either entirely or partly in kind if the value of the contribution does not exceed the costs actually borne and is duly supported. This would also apply to premises made available for training or promotional purposes.

3.2.2 The Commission will present a Communication on the continuation of the programme to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions by 30 June 2012 at the latest and an ex-post evaluation report by 31 December 2015 at the latest.

3.2.3 The decision specifically refers to a number of the European Community's horizontal policies that the Media Mundus programme will help to strengthen, by:

— contributing to the debate on and information about the European Union as an area of peace, prosperity and security;



- 
- promoting the fundamental principle of freedom of expression;
  - encouraging awareness of the importance of cultural diversity and multiculturalism in the world;
  - enhancing the knowledge base of the European economy and contributing to strengthening the global competitiveness of the European Union;
  - helping to combat all forms of discrimination based on sex, race or ethnic origin, religion or beliefs, disabilities, age or sexual orientation.

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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**Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1927/2006 on establishing the European Globalisation Adjustment Fund**

COM(2008) 867 final – COD 2008/0267

(2009/C 228/20)

On 20 January 2009 the Council decided to consult the European Economic and Social Committee, under Article 159(3) of the Treaty establishing the European Community, on the

*'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1927/2006 on establishing the European Globalisation Adjustment Fund'*

On 13 January 2009 the Committee Bureau instructed the Consultative Commission on Industrial Change to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr PARIZA CASTAÑOS as rapporteur-general at its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 24 March), and adopted the following opinion by 152 votes to five with twelve abstentions.

## **1. Conclusions and recommendations**

1.1 The European Economic and Social Committee (EESC) supports the proposal by the European Commission that the scope of the European Globalisation Adjustment Fund (EGF) should be temporarily extended to help workers made redundant as a result of the current international economic crisis.

1.2 There is an urgent need for the Parliament, Council and Commission to step up negotiations so that the new Regulation can be adopted as soon as possible during the current term of office.

1.3 The EESC proposes that an evaluation of the EGF should be carried out 12 months after the publication of the Regulation in the Official Journal to review procedures and the management of the Fund, and take stock of the economic situation and labour markets. The evaluation would be carried out by the EESC in partnership with the European Commission.

1.4 The Committee considers that the budget reserve of EUR 500 million is insufficient and proposes that EUR 1 000 million should be made available for the Fund, with provisions for future increases, depending on how the economic crisis develops.

1.5 It currently takes seven months from the time the file is submitted for payment to be made by the Commission. This is too long to be of help to workers who have lost their jobs and the Committee therefore proposes that the EGF be given its own initial budget funding.

1.6 The Committee agrees that the number of redundancies required to trigger access to the Fund should be reduced to 500; that funding should be available for 24 months; and that the EU should make a financial contribution of up to 75 %.

1.7 The EESC proposes that the social partners should be given a more active role at all stages in processing applications for EGF assistance at company, regional, national and EU level.

## **2. Background**

2.1 In March 2006 the Commission presented a proposal to establish a European Globalisation Adjustment Fund <sup>(1)</sup>, with the aim of providing specific, one-off support to facilitate the re-integration into employment of workers in areas or sectors suffering the shock of serious economic disruption as a result of economic delocalisation to third countries, a massive increase of imports, or a progressive decline of the EU market share in a given sector. The Commission drew up a proposal for a regulation, which the Council referred to the EESC for its opinion.

2.2 On 13 December 2006, the EESC adopted opinion CCMI/036 <sup>(2)</sup> (rapporteur: Mr Van Iersel; co-rapporteur: Mr Gibellieri), welcoming the Commission's proposal and agreeing with the objectives of the EGF. The Committee made a number of comments and suggestions with a view to the efficient operation of the EGF regulation <sup>(3)</sup>.

2.3 Regulation (EC) No 1927/2006 <sup>(4)</sup> on establishing the European Globalisation Adjustment Fund has applied since 1 January 2007 and will do so until 2013. Support from the Fund may amount to an annual total of EUR 500 million, and is supplementary to the Structural Funds, in particular the European Social Fund. The European Commission's Directorate General for Employment, Social Affairs and Equal Opportunities is responsible for managing the EGF.

<sup>(1)</sup> COM(2006) 91 final, 2006/0033 (COD).

<sup>(2)</sup> OJ C 318 of 23.12.2006, pp. 38-41.

<sup>(3)</sup> The European Parliament adopted its resolution on 13 December 2006 (PE A6-0385/2006), OJ L 406, 30.12.2006, p. 1; corrigendum OJ L 048, 22.2.2008, p. 82. The CoR was consulted (opinion CdR 137/2006 fin, rapporteur: Ms Oldfather), OJ C 51, 6.3.2007.

<sup>(4)</sup> OJ L 406 of 30.12.2006, p. 1. Corrigendum to the regulation in OJ L 48 of 22.2.2008, p. 82, and for the English version in OJ L 202 of 31.7.2008, p. 74.

2.4 Applications must be submitted by the Member States, not by the companies or workers affected.

2.5 In July 2008 the Commission drew up a communication<sup>(1)</sup> evaluating the first months of operation of the EGF<sup>(2)</sup> and analysing the prospects and proposals for future modifications.

2.6 The Commission's review was positive, although take-up was less than had been expected, and it announced that it would simplify procedures, promote exchange of good practice and improve publicity for the Fund; it also undertook to make proposals to modify the regulation before issuing the next annual report, which is to be drawn up in mid-2009.

2.7 On the other hand, many workers are losing their jobs and numerous businesses are closing down either temporarily or permanently as a result of the world financial and economic crisis.

2.8 In its European Economic Recovery Plan<sup>(3)</sup>, the European Commission announced its intention of making the EGF a more effective instrument for early intervention, as part of Europe's response to the crisis. To this end, the regulation must be amended so that it can intervene more rapidly in some sectors, in particular to co-finance training and job placements for people who lose their jobs as a result of the economic crisis.

### 3. Proposal to amend the EGF Regulation

3.1 The aim of this proposal is to enable the European Globalisation Adjustment Fund (EGF) to react more effectively in support of workers made redundant as a result of globalisation, to enlarge its scope temporarily by covering redundancies caused by the impact of the global financial and economic crisis and to bring the operation of the Fund closer into line with its solidarity objective. In order to achieve this objective certain provisions of Regulation (EC) No 1927/2006 on establishing the European Globalisation Adjustment Fund need to be amended.

3.2 Before drafting the proposal, the Commission consulted the Member States and the social partners, holding a conference in Brussels on 4 September 2008.

3.3 The amendment of the regulation is intended to ensure that the EGF meets the objective of solidarity with workers who have lost their jobs as a consequence of major changes brought about by globalisation, including a temporary provision to support workers made redundant as a result of the global financial and economic crisis.

3.4 The European Commission also proposes a number of modifications to the regulation in order to make the procedures

and application requirements more flexible and straightforward, and to extend the coverage of the EGF.

### 4. General comments

4.1 Thousands of European workers have been made redundant in recent months as a consequence of the international economic and financial crisis. The EESC considers that, alongside the economic and monetary policies being adopted under the European Economic Recovery Plan<sup>(4)</sup>, the EU should also promote specific support policies for workers who lose their jobs.

4.2 In this period of crisis and uncertainty, European citizens should receive a clear message from the European Union, signalling its readiness to help workers who lose their jobs.

4.3 The Committee therefore backs the European Commission's proposal that the scope of the EGF should be temporarily extended to assist workers who have been made redundant because of the current international economic crisis.

4.4 Article 28 of the Interinstitutional Agreement between the Parliament, Council and Commission states that the annual budget reserve for the EGF will be no more than EUR 500 million.

4.5 The EESC believes that in the current circumstances, this budget reserve may not be enough to attain these objectives. The Committee therefore proposes temporarily expanding the budget reserve for as long as the crisis remains acute, jobs continue to be destroyed and workers are laid off. The Committee proposes that EUR 1 000 million is reserved for the Fund for 2009, with a larger sum planned for 2010 if there is an increase in the number of applications for assistance.

4.6 It currently takes seven months from the time the file is submitted for payment to be made by the Commission. The Committee considers that this is too long to be of help to workers who have lost their jobs and it therefore proposes that the EGF be given its own initial budget funding.

4.7 The EESC endorses the Commission's proposal to reduce the EGF application requirement from 1 000 redundancies to 500, as this better reflects the size of European businesses.

4.8 Given the effects of globalisation, the Committee agrees with the Commission<sup>(5)</sup> that account must be taken not only of redundancies caused by structural changes in world trade, but also by other types of structural change that are driven by technology, products, changes in the way production is organised, and access to raw materials and their price.

<sup>(1)</sup> COM(2008) 421 final.

<sup>(2)</sup> Ten applications were received in 2007, and only five in 2008.

<sup>(3)</sup> COM(2008) 800 final, of 26.11.2008.

<sup>(4)</sup> COM(2008) 800 final.

<sup>(5)</sup> Solidarity in the face of Change: The European Globalisation Adjustment Fund (EGF) in 2007 – Review and Prospects COM(2008) 421 final.

4.9 The Committee supports the Commission's proposal to extend the EGF contribution period to 24 months, given that the initial 12-month period set out in the regulation is often not enough for unemployed workers to find jobs.

4.10 The Committee supports the Commission's proposal that the EGF contribution limit should be raised from 50 % to 75 %, as given the critical nature of the current situation the EU should strengthen solidarity with workers who have been made redundant and with the Member States.

4.11 The EESC agrees that for the purposes of calculating the number of redundancies, a redundancy may be counted from the moment of either the employer's individual notice to terminate the contract of employment of the redundant worker, or the de facto termination of a contract before its expiry.

4.12 The EESC's interpretation of Article 2 is that it also covers redundancies in any company or region of the EU that occur as a result of relocation to other regions within the EU. Although all parts of the EU form a single internal market, the pressures exerted by globalisation on companies to compete at world level often lead to relocation to regions with lower production costs, both within and outside the EU.

4.13 In its earlier opinion <sup>(1)</sup>, the EESC argued that the social partners and other stakeholders (businesses or regions) should be properly involved in the procedures. Article 5 of the regulation provides that in the application, the Member States must report on the procedures followed for consulting the social partners. The Committee considers that involvement of the social partners at company, regional and national level in the procedures should be a precondition for the acceptance of an application.

4.14 The Committee recommends strengthening the role of the European Commission in administrative and technical support for the Member States, to help them to prepare applications and thereby enhance the consistency of applications across Europe, and urges it to play a proactive role vis-à-vis the Member States and the social partners.

4.15 The EGF should be supplementary to the Structural Funds, in particular the ESF: duplication must therefore be avoided. The Committee considers that regional authorities, the social partners and civil society organisations can cooperate in ensuring that the two funds are used properly, through the ESF participation procedures.

4.16 The EESC proposes that **an evaluation be made of the EGF** 12 months after the publication of the new Regulation in the Official Journal, to review the procedures set out in the regulation and the management of the Fund, and take stock of the state of the economy and of the labour markets. This evaluation must consider the following issues:

4.16.1 if the economic crisis and job losses continue, the scope of the EGF should be extended beyond 2011;

4.16.2 whether it is appropriate to make a further increase the budget reserve above the EUR 1 000 million mark, taking into account the applications which are made and how the economic crisis develops;

4.16.3 an assessment of whether the trigger number of 500 redundancies for requesting EGF assistance should be reduced, in the light of the problems of smaller businesses in certain sectors and regions;

4.16.4 similarly, depending on the analysis of the files processed, the intervention rate of up to 75 % stipulated under the amendment to the Regulation should be evaluated, as should the 24 month intervention period.

## 5. Specific comments on the articles of the regulation

5.1 Article 1(1): Considering the effects of globalisation, the EESC suggests that the Regulation should also cover redundancies which are not a direct result of changes in trade patterns, but rather other structural changes related to technology, products, the organisation of production and access to raw materials (see 4.7 and 4.11).

5.2 Article 2. Intervention criteria: The Committee agrees that the trigger number of redundancies for EGF intervention should be reduced to 500, but considers that in the next evaluation, the possibility of further reducing the trigger number of 500 redundancies should be examined, depending on the sector and region affected (see 4.6).

5.3 Article 2. Calculating redundancies: the Committee supports the Commission proposal (see 4.10).

5.4 Article 5(2)(a). The Committee agrees with the amendment proposed by the Commission, and suggests also incorporating the proposal made above for Article 1(1). The Committee also suggests that point (f) be amended as follows: 'Since the involvement of the social partners is essential to the effective use of the Fund, applications shall include the procedures followed for consulting and involving the social partners' (see 4.12).

5.5 Article 8. The Committee agrees with the amendments to paragraphs 1, 2 and 3, but proposes the insertion of a new paragraph 4: 'The Commission's technical assistance shall be of a proactive nature, involving the Member States and the European and national social partners in using, monitoring and evaluating the EGF' (see 4.13).

5.6 Article 10(1). The Committee agrees that the amount of the EGF's financial contribution may be up to 75 % of the estimated cost (see 4.9).

<sup>(1)</sup> OJ C 318, 23.12.2006, pp. 38-41.

5.7 Article 13(2). The Committee agrees that the financial contribution may be used for a period of 24 months (see 4.8).

5.8 Article 17. The Committee proposes that point (a) be amended as follows: 'The Commission shall carry out in cooperation with the Member States and the social partners a mid-term evaluation of the effectiveness and functioning of the

Fund, 12 months after the publication of the regulation in the Official Journal' (see 4.15).

5.9 Article 20. The Committee proposes that the Commission's proposal be amended as follows (new subparagraph): 'Following the evaluation provided for in Article 17, on the basis of a proposal from the Commission, the European Parliament and the Council may review this Regulation, including the temporary derogation provided for in Article 1, paragraph 1a'.

Brussels, 24 March 2009

The President  
of the European Economic and Social Committee  
Mario SEPI

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**Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC**

COM(2008) 636 final — 2008/0192 (COD)

(2009/C 228/21)

On 24 November 2008 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community on the

*'Proposal for a Directive of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC'*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 March 2009. The rapporteur was Ms SHARMA.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 24 March 2009), the European Economic and Social Committee adopted the following opinion by 101 votes to 29 with 26 abstentions.

## **1. Recommendations**

### **1.1 General recommendations**

1.1.1 The Commission should be praised for making any attempts to bring greater equality to women in both the labour market and in creating opportunities for women who want to be employed, self-employed or entrepreneurs. However, for civil society the title of this Directive <sup>(1)</sup> recast is misleading in that it does not discuss equality in self employment between men and women as it focuses particularly on maternity social security benefits for self-employed women, social security payments for assisting spouses and care leave. Equality must be seen in a holistic approach accounting for its impact in other areas such as social rights, equal opportunities, rights of the child and family rights.

1.1.2 The Commission should review each of the three separate areas addressed in this directive as individual cases to ensure they are given due consideration in the context of equality. Whilst the Committee understands that DG Employment is tasked with addressing social protection, the Committee would like to reinforce that the self-employed status should not be discussed in the same context as an employee status.

1.1.3 For rights to be truly addressed, any proposed measures or tools presented must be practical and implementable. The proposed amendments to this directive

undoubtedly improve the situation under European law of self-employed women and assisting spouses who have a child and will consequently benefit their children. The EESC considers that the directive's recast is necessary.

1.1.4 Better enforcement of current legislation in areas of gender equality would be more productive in removing inequalities if applied in a greater number of cases. The Commission should therefore ascertain the reasons for the weak implementation.

1.1.5 The EU, in its attempt to increase the number of entrepreneurs, and in particular female entrepreneurs, must consider the values that are important to those wanting to start in self employment. This, together with an overall cultural change towards entrepreneurship in Europe, would identify where the Commission Directorates should concentrate their efforts.

1.1.6 Any increases in social security contributions, or any administrative burden, not only to the State, but also to businesses, must be carefully considered.

1.1.7 The question has to be asked as to the cost to Europe of reviewing this directive. The impact assessment presented by the Commission clearly shows that the benefit to member states is marginal.

<sup>(1)</sup> Proposal for a Directive of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC COM(2008) 636 final - 2008/0192 (COD).

## 1.2 *Recommendations relating to Self-employed and Entrepreneurs*

1.2.1 Self employment by its very nature has many unique qualities, and it is not possible to consider the self-employed in the same way as employees, nor is it possible to consider the self-employed as a general term for entrepreneurs.

1.2.2 The Committee understands that it is difficult to conceive how maternity provision for self-employed women could function. The business and responsibilities associated with self employment mean a long leave of absence cannot be taken without extensive planning, financial security or appropriate personnel to manage the work. Any such absence could result in the termination of contracts or the loss of the business, particularly when considering very small enterprises, if not managed correctly.

1.2.3 In all proposed measures consideration must be made for the time needed to ensure the proper course of pregnancy, the physical recovery of the mother after child birth, the bonding time required between mother and baby and the well being of the baby.

1.2.4 Unfortunately, the Commission offers no solutions to any of the above dilemmas, leaving the considerations to each individual Member State. Most self-employed women would have to train someone to cover their position, close the business or continue to work through the full period of maternity, which is the situation for all self-employed women under current legislation.

## 1.3 *Recommendations relating to Assisting Spouses*

1.3.1 In general the directive does not address the lack of recognition of 'assisting spouses', the quality and quantity of their contribution to a business, or policy measures to support these women. The directive does not propose any measures that will improve the social or financial standing or the social protection of assisting spouses.

1.3.2 There is a need to respect Member States' competence in this area and leave them to develop ways to bring such 'workers' into their existing employment and insurance

arrangements, and via that into social protection schemes. The EU can best add value here by supporting the sharing of information and good practice under the Open Method <sup>(1)</sup>.

1.3.3 The Commission should conduct research into the reasoning behind the lack of participation of assisting spouses in the formal economy or voluntary social protection provisions, as well as difficulties in cases where the assisting spouses are separated but are still partners in business.

## 2. **Background**

2.1 Women play an active role in society, socially and economically, often without recognition, reward or legal status. The EU specifically needs to concentrate on achieving the Lisbon Strategy and one of the ways highlighted is by increasing female participation in the labour market and by increasing the number of entrepreneurs and in particular female entrepreneurs.

2.2 The new directive proposed to replace Directive 86/613/EEC seeks to address shortcomings in the field of self employment and assisting spouses within family businesses, by:

- improving protection in the event of maternity by offering maternity provision for self-employed women;
- providing leave to care for family members;
- recognising the contribution of assisting spouses by providing social protection equivalent to their self-employed partners;
- giving equality bodies competence in the field.

## 3. **General Comments**

3.1 The Commission should be praised for making any attempts to bring greater equality to women in both the labour market and in creating opportunities for women who want to be employed, self-employed or entrepreneurs. However, where changes are being made the measurement of impact financially, in time and resources to all the stakeholders should be considered.

<sup>(1)</sup> Belgium, Luxembourg and France all have good models of integrating Assisting Spouses.

3.2 For rights of any kind to be truly addressed, proposed measures presented must be clear, practical and implementable. Unfortunately, this directive does not appear to offer substantial benefits, enforceable or workable, to address existing inequalities. Additionally, the proposal is confusing in that it highlights three separate subjects to discuss in the same document, as well as equality bodies.

3.3 Europe has a legal framework which prohibits gender discrimination through a range of legislative measures. However, all European statistics demonstrate that women remain lower paid than men, are under-represented politically, in the workforce, at management level and as entrepreneurs. Better enforcement of current legislation in all of these areas is required and the commission should first review the lack of application of the current equality framework.

3.4 The EU, in its attempt to increase the number of entrepreneurs, and in particular female entrepreneurs, must consider the values that are important to those wanting to start in self employment <sup>(1)</sup>. Offering maternity provision could have no effect on the numbers of women considering entrepreneurship. The Commission's own figures show a decrease in the numbers of start ups, male and female, and this is due to the negative attitude to self employment in Europe. A change in culture is required to make a significant change. As an example Europe's new Small Business Act <sup>(2)</sup> could offer greater measures to support female entrepreneurs.

3.5 Social protection falls within the competence of the Member States. This new directive is not currently supported by all member states and risks becoming ineffective at European level and a pointless exercise. The proposed directive would

need significant improvement with minimum protection standards and implementation across all Member States if it is to be truly effective. In general, the Commission's proposed measures are prescriptive, ignoring the diversity of members' states social protection schemes, as well as the principles of better regulation.

3.6 In general, the concerns of small businesses and self-employed, in particular in the agriculture, craft and SME sectors, tend to be constrained financially and any additional burden may be considered negative, even though the social protection could provide a safety net for potential mothers or assisting spouses. Any increases in social security contributions, or any administrative burden not only to the State, but also to businesses, must be carefully considered.

3.7 The new directive aims at addressing the equality agenda in its proposed changes, however it makes little reference to parental leave or to self-employed men in respect of paternity leave.

3.8 In line with the UN Convention on the Rights of the Child <sup>(3)</sup>, the Commission should conduct a parallel procedure which considers the impact on the child of the proposed measures. The child must be well nurtured and its personal well-being accounted for.

#### 4. Specific comments

4.1 The Commission has made a comprehensive impact assessment on this directive consulting with many stakeholders. Following the review of the impact assessment the EESC considers that there are too many unanswered questions, particularly relating to true effectiveness, clarity and implementation of the proposed recast.

4.2 Self employment can be separated into several categories: the entrepreneurs, the business owners, freelancers, home-workers and the 'pseudo-self-employed', those subcontracted by their original employers to now take on work in a self-employed capacity. However, leaving the choice of maternity protection to the self-employed and the assisting spouses is essential because it respects the choice of autonomy and independence which by definition characterise the statute of the self-employed. Creating an obligation for self-employed women

<sup>(1)</sup> See for instance EESC opinions on entrepreneurship education such as:

- on 'Employability and entrepreneurship – The role of civil society, the social partners and regional and local bodies from a gender perspective', rapporteur: J.M. Pariza Castaños, (OJ C 256 of 27.10.2007);
- on 'Entrepreneurship mindsets and the Lisbon Agenda', rapporteur: M. Sharma; co-rapporteur: J. Olsson (OJ C 44 of 15.1.2008);
- on 'Promotion of Women's Entrepreneurship in the EUROMED Region', rapporteur: G. Attard (OJ C 256 of 27.10.2007);
- on 'Fostering entrepreneurial mindsets through education and learning', rapporteur: I. Jerneck (OJ C 309 of 16.12.2006).

<sup>(2)</sup> "Think Small First" – A "Small Business Act" for Europe', COM(2008) 394 final (25.6.2008).

<sup>(3)</sup> *Convention on the Rights of the Child*, adopted by General Assembly resolution 44/25 of 20 November 1989 and entered into force 2 September 1990, in accordance with article 49. In: <http://www2.ohchr.org/english/law/crc.htm>.

to leave for a longer period will not be compatible with a good functioning of their business and very often will go against the viability of their enterprise. Consequently the present directive should avoid any direct reference to the maternity leave directive 92/85/EC. Therefore it would be inadequate to try and align the self-employed and assisting spouses maternity leave system with the one for employees.

4.3 Clarity is required as to how Member States would administer the maternity leave described in Article 7.1 for those who are not employed. These workers make their own work arrangements and can choose when to take time off work. They do not need an entitlement to 'leave'.

4.4 Furthermore Member States should not only consider an allowance payment, but also the provision of assistance in form of a temporary replacement. For female self-employed and assisting spouses support replacement schemes are equally important as financial allowances. The directive should avoid the establishment of any priority order of these benefits. In addition the level of adequate allowance should be decided at national level taking into account the objective difference between self-employed and assisting spouses.

4.5 The consequences must be considered of Article 7.4, in the case of assisting spouses, which provides for specific assistance in finding a replacement worker during periods of maternity leave. No such obligation exists in respect of full employees in a business, and to provide it for assisting spouses would be an administratively complex and costly burden, mostly affecting small businesses, as well as Government.

4.6 Clarity is required in respect of Article 7.2, on ensuring an adequate maternity allowance is unconditional, in contrast to Article 6, where social security benefits are to be given to assisting spouses 'under the same conditions as those for the self-employed', and to Article 11(4) of the Pregnant Workers Directive which permits member states to attach certain conditions of eligibility to maternity benefits.

4.7 The hours worked by the self-employed in general tends to exceed that of those in an employed status adding childcare issues to the concerns of self-employed women. Here also the Commission makes not recommendations towards childcare

provisions, or indeed care responsibilities of the self-employed. All Member States should improve accessible and affordable, high quality childcare to contribute to improving reconciliation measures for self-employed and assisting spouses in the same way it is done for workers.

4.8 The general objectives of the directive are to improve gender equality for self-employed workers and for assisting spouses. Moreover, the Commission hopes that this directive will increase the number of women in self employment, give assisting spouses a recognised status, increase the number of assisting spouses covered by social security and give self-employed and assisting spouses effective legal remedies. Nonetheless,

- gender equality for all is currently covered under Europe's legal framework on equality;
- the number of women in self employment is unlikely to increase due to minor social protection measures when in almost all Member States they can already make voluntary contributions to be protected;
- assisting spouses would still not receive a legal status, or effective legal remedies, despite making voluntary social protection contributions.

4.9 18 out of the 27 member states already offer assisting spouses and the self-employed the facility to make voluntary contributions towards maternity benefits. This measure must be extended in all member states, ensuring that social security can be provided where the woman wants to participate in the scheme. It is unacceptable that any member state can discriminate against any person making a contribution to protect themselves under a government scheme whether employed or self-employed, or indeed not employed, as is the current recognised status of assisting spouses.

4.10 Article 6 would propose the creation of a wholly new category of social insurance (neither employee, self-employed, or voluntarily insured. However, the Committee believes there is no justification to create an entirely new class of social insurance or maternity cover arrangements.

4.11 Assisting spouses are part of an 'invisible' economy which contributes to Europe and remains hidden. A discussion need to take place on their legal status, either as self-employed, or as employees. The current directive, not reviewed since 1986, requests: 'Member States shall undertake to examine under what conditions recognition of the work of the spouses referred to in Article 2(b) may be encouraged and, in the light of such examination, consider any appropriate steps for encouraging such recognition'. Only few countries<sup>(1)</sup> have acted on this obligation due to the ambiguous legal status and therefore this directive should not be recast until an agreed status can be established. Once the legal status is established, there must be an information dissemination mechanism to inform assisting spouses of their legal rights.

4.12 The Committee understands that the legal base has been called into question by several Member States, specifically the scope and sufficiency of Article 141 EC in isolation, particularly in relation to Article 6 of the Directive. The Committee urges the Commission to carefully consider the opinion of the Council Legal Services before the implementation of the proposed directive.

4.13 Failure to do so will no doubt result in a similar conclusion to that of 1994 when the Commission adopted a report<sup>(2)</sup> on the implementation of Directive 86/613/EEC in which it concluded: 'In strictly legal terms, it appears that Directive 86/613/EEC has been implemented in the Member States. However, the practical result is not entirely satisfactory when measured against the prime objectives of the Directive, which was a general improvement in the status of assisting spouses'. The report also stressed the lack of an overall policy for dealing with the situation of assisting spouses and pointed out that 'with a view to the recognition of the work of the spouse (...), the only way in which this objective is likely to be achieved is for spouses to be granted social security entitlements in their own right'.

4.14 The recast in 'Article 2 regroupes all the definitions of the terms used in the Directive'. The definitions of 'self-employed workers' and of 'assisting spouses' are taken from Article 2 of Directive 86/613/EEC. The definition of 'assisting spouses' is amended: the words 'assisting' and 'or life partners' are added. The amendment aims to cover all persons recognised as 'life partners' by national law and regularly participating in the activities of the family business, irrespective of marital status. In order to remove ambiguity, 'partner' is replaced by 'business partner'<sup>(3)</sup>. However, if the assisting spouse remains with no legal status in their own rights, contesting their participation in the business in a court of law could still remain ambiguous, and their protection in the event of death, separation or dispute, be absent.

4.15 Care leave to look after family members is referred to in the recast without reference to practical measures for application. This is unacceptable in a Europe with an aging community. Measures must be made available for both sexes to care for elderly relatives and young dependants alike; this is of particular relevance to families with disabled children.

4.16 The Commission must review this debate outside of this directive recast due to increasing priority with Europe's demographics. The number of days which will be lost to the economy both from employees and the self-employed will only increase over the next generations if a serious debate on elderly care, as well as the nurturing of the young, does not take place.

4.17 During the consultation with civil society in the Committee, the concept of 'pseudo-self employment' was highlighted. In view of the increasing number of concerns on this question, further investigation by the appropriate EU bodies is needed. The Committee expresses its willingness to support the Commission in its work in this field.

Brussels, 24 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

<sup>(1)</sup> Notably Belgium, Luxemburg and France.

<sup>(2)</sup> Report from the Commission on the implementation of Council Directive of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood - COM(94) 163 (Part II: Conclusions, pt.1 and pt. 4.).

<sup>(3)</sup> COM(2008) 636 final, Explanatory memorandum, pt. 5.



## APPENDIX

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

The following amendments, which were supported by at least a quarter of the votes cast, were defeated in the course of the debate (Rule 54(3) of the Rules of Procedure):

**Point 1.1.2**

Amend as follows:

*'The Commission should review each of the three separate areas addressed in this directive as individual cases to ensure they are given due consideration in the context of equality. Whilst the Committee understands that DG Employment is tasked with addressing social protection, the Committee would like to reinforce that the self employed status should not be discussed in the same context as an employee status. The Commission also takes this difference into account, since self-employed women must apply if they wish to have the same amount of maternity leave as provided for employed women in Directive 92/85/EC, which means that there is no ban on working in principle and such women have the right to choose between a temporary replacement and an allowance.'*

Result of the voting:

For: 72 Against: 73 Abstentions: 8

**Point 4.11**

Delete text.

*'Assisting spouses are part of an "invisible" economy which contributes to Europe and remains hidden. A discussion need to take place on their legal status, either as self-employed, or as employees. The current directive, not reviewed since 1986, requests: "Member States shall undertake to examine under what conditions recognition of the work of the spouses referred to in Article 2 (b) may be encouraged and, in the light of such examination, consider any appropriate steps for encouraging such recognition". Only few countries <sup>(1)</sup> have acted on this obligation due to the ambiguous legal status and therefore this directive should not be recast until an agreed status can be established. Once the legal status is established, there must be an information dissemination mechanism to inform assisting spouses of their legal rights.'*

Result of the voting:

For: 68 Against: 73 Abstentions: 11

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<sup>(1)</sup> Notably Belgium, Luxemburg and France.

**Opinion of the European Economic and Social Committee on the Proposal for a Council Recommendation on patient safety, including the prevention and control of healthcare associated infections**

COM(2008) 837 final/2 — 2009/0003 (CNS)

(2009/C 228/22)

On 21 January 2009, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*'Proposal for a Council Recommendation on patient safety, including the prevention and control of healthcare associated infections'*

On 24 February 2009, the Bureau of the European Economic and Social Committee instructed the Section for Employment, Social Affairs and Citizenship to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr BOUIS as rapporteur at its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March), and adopted the following opinion by 135 votes with four abstentions.

## **1. Comments and recommendations**

1.1 It is estimated that in EU Member States between 8 % and 12 % of patients admitted to hospital suffer from adverse events whilst receiving healthcare<sup>(1)</sup>, being free of such infections on admission.

1.2 Although few studies have been carried out in this area, it would seem that healthcare-associated infections (HCAI) increase the risk of death threefold, when a comparison is made of mortality rates of infected patients with the number of uninfected patients with the same pathology.

1.3 HCAI entail substantial additional costs, mainly due to prolonged hospitalisation, anti-infection treatments, laboratory tests and infection monitoring, management of after-effects, and even the compensation of families in the event of death.

1.4 A 10 % decrease in the number of HCAI would bring about a saving more than five times greater than the cost of possible preventative efforts in hospitals<sup>(2)</sup>.

1.5 This proposal for a recommendation on patient safety, including the prevention and control of healthcare associated infections is therefore consistent with an ethical, social and economic approach. Controlling HCAI is of such importance that a proposal for a Directive would have been warranted.

1.6 This proposal is welcomed by the Committee; it is in line with Article 152, which provides for Community action to complement national policies on improving public health and preventing illness.

1.7 While endorsing the proposed supporting actions, the Committee would put forward a certain number of comments and proposals aimed at clarifying and increasing patient safety by preventing and controlling healthcare associated infections.

1.8 The Committee feels that there is a particular need to develop analysis of the conditions of occurrence of HCAI and adverse events. In this regard – given the possibility of legal action – it would advocate clarifying the status of the data collected, with a view to upholding patient rights, whilst also encouraging analysis by risk-management professionals and structures.

1.9 The Committee would stress the need for national policies and programmes to be established and developed, for public and patient information, for the coordination of reporting systems, and for staff training at State and healthcare institution levels.

1.10 Pointing out that HCAI affect both hospitalised patients and outpatients, the Committee calls for the same monitoring efforts to be applied to medical treatment and the control of adverse events in all types of healthcare facility.

## **2. Gist of the Commission recommendation**

### **2.1 Background**

2.1.1 Article 152 of the Treaty provides that Community action, which is to complement national policies, is to be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health.

<sup>(1)</sup> Technical report on *Improving Patient Safety in the EU* prepared for the European Commission, published in 2008 by the RAND Cooperation.

<sup>(2)</sup> Report on *La politique de lutte contre les infections nosocomiales* by the French parliamentary office for health policy assessment (2006).

2.1.2 It is estimated that in EU Member States about 10 % of patients admitted to hospital suffer from adverse events whilst receiving healthcare <sup>(3)</sup>.

2.1.3 EU Member States are at different levels in the development and implementation of effective and comprehensive patient safety strategies.

## 2.2 *The Recommendation approach*

2.2.1 Member States should set up or improve comprehensive reporting and learning systems so that the extent and causes of adverse events can be captured in order to develop efficient solutions and interventions.

2.2.2 Comparable and aggregate data should be collected at Community level and best practices should be disseminated among the Member States.

2.2.3 The prevention and control of HCAI should be a long-term priority for healthcare institutions; all hierarchical levels and functions should cooperate in this.

2.2.4 Patients should be informed and empowered by involving them in the patient safety process.

## 3. **General comments**

3.1 The Committee points out that a HCAI is an infection contracted in a healthcare institution by a patient who was free of such infection on admission; such infections can either be linked to the treatment received, or can simply arise during hospitalisation irrespective of any medical intervention.

3.1.1 The Committee wishes to emphasise that higher hygiene standards for health professionals can only be guaranteed if the necessary conditions are met, in particular the working conditions concerning periods of contact with patients, ongoing training and employees' satisfaction with their working conditions. The Committee thus calls on the authorities responsible for the health sector to make the requisite resources available.

3.2 The Committee notes that HCAI can be transmitted either endogenously or exogenously – i.e. from one patient to another via the hands of a healthcare provider or via medical or paramedical equipment; infections can also arise from a contaminated environment (water, air, materials or equipment, food, etc.).

3.2.1 Regardless of the means of transmission, the incidence of infection can be increased by the condition of the patient in respect of:

— age and pathology;

— certain treatments (particularly excessive use of antibiotics); and

— certain medical intervention required by the treatment.

3.3 Furthermore, given that medical progress is enabling increasingly frail patients to be treated, thus multiplying the risk factors, the quality of healthcare as well as the safety of all medical treatment and the environment of the facility must all be subject to a highly organised system of defined and monitored procedures, increased vigilance, and information and training measures.

3.4 Reducing the avoidable element of HCAI, such as nosocomial illnesses, is crucial to patient safety, given that hospitalisation already entails other risks such as falls, side-effects of medication, etc. Infection prevention should therefore form part of a broader approach covering all adverse events.

3.5 For these reasons, the Committee welcomes the draft recommendation presented by the Commission.

## 4. **Specific comments**

### 4.1 *General patient safety issues*

4.1.1 The Committee would particularly stress the need for each Member State to set up a HCAI control committee – to work in conjunction with hygiene task forces – charged with drawing up a national strategic programme, subject to regular assessment, which could be applied at regional and healthcare institution levels.

4.1.2 The Committee feels that bolstering anti-HCAI structures and encouraging healthcare institutions to adopt an infection prevention and control policy is of utmost urgency. The same attention should be given to outpatient care.

4.1.3 The Committee welcomes the willingness of patient organisations and representative bodies to be involved in framing patient safety policies and programmes at all levels; this requires effective transparency in on-site monitoring and publication of the relevant information.

4.1.4 The Committee thinks that the legal status of qualitative and quantitative data on HCAI and other adverse effects should be ascertained, given that certain data can be used in court in the case of legal action. A balance needs to be struck between upholding patient rights and encouraging in-depth analysis of adverse events by risk-management professionals and structures.

<sup>(3)</sup> Idem footnote 1

4.1.5 The Committee, conscious of evaluation procedures in a climate of confidence, would emphasise that any reporting system should be distinct from disciplinary systems and procedures applicable to medical, paramedical, administrative or service staff.

4.1.6 Mindful of the need for patients to be properly informed on risk and safety levels, the Committee would call for welcome booklets to be produced, highlighting recommendations on good hygiene practice and the measures taken.

4.1.7 Given that the cornerstone of any prevention strategy is fostering the education and training of staff involved in patient safety, the Committee thinks that the training of staff specialised in the field of hygiene would be consolidated by better defining the content of the training received by doctors, nurses and all other hospital staff.

4.1.8 The Committee would stress the need for health professionals to be receptive to comments by patients and/or their relatives in respect of their failure to comply with hygiene procedures. In tandem with raising patient awareness of hospital hygiene rules, health professionals should also be made aware of the need to listen to and take on board the comments and wishes of patients and their relatives.

#### 4.2 *Prevention and control of HCAI*

4.2.1 The Committee believes that curbing HCAI also requires:

- environment monitoring by a bio-hygienist technician, focused on air treatment, water monitoring, disinfecting materials and the microbiological aspect of surfaces;

- strict compliance with the hand-hygiene procedures by healthcare providers, patients and their visitors;
- monitoring of the catering aspect of healthcare facilities, with microbiological tests to check the conformity of supplies and prepared products, cold and hot chains, food processing and disposal systems, and the hygiene practices of kitchen and food service staff;
- close monitoring of cleanliness of hospital, surgery and treatment premises which may require a regular change of cleaning products;
- very close monitoring of hot and cold water supplies and water that has been treated for medical use.

4.2.2 The Committee regrets that the Commission recommendation does not make sufficient reference to the obligation to analyse adverse events. A certain number of systems, such as the morbidity-mortality review, could improve healthcare safety if implemented regularly.

4.2.3 The Committee deems the exchange of information – based on observations and good practice implemented in the framework of Commission-Member State coordination – a suitable means of classifying, codifying or even standardising certain practices; moreover, this could help establish benchmarks that could be extremely useful in the construction or renovation of healthcare facilities.

4.2.4 The Committee notes that the Commission has called on the Member States to establish an inter-sectoral mechanism within one year of the adoption of the recommendation, and will check to see if this is carried out.

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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**Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Central Bank — EMU@10: successes and challenges after 10 years of Economic and Monetary Union**

COM(2008) 238 final — SEC(2008) 553

(2009/C 228/23)

On 7 May 2008 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Central Bank — EMU@10: successes and challenges after 10 years of Economic and Monetary Union'*

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 5 March 2009. The rapporteur was Mr BURANI.

At its 452nd plenary session, held on 24-25 March 2009 (meeting of 24 March), the European Economic and Social Committee adopted the following opinion by 79 votes to one with 17 abstentions.

## **1. Summary and conclusions**

1.1 With this opinion the EESC comments on the Commission Communication which describes the successes of Economic and Monetary Union (EMU) ten years on from its launch and highlights the challenges facing us in the future. The Communication was drafted before the full extent of the current crisis became apparent. The EESC has, as far as possible, avoided being led by current events to comment on points outside the scope of the Commission's text. Topical events will be dealt with in other opinions.

1.2 Initial expectations have not all been met. The optimism felt when EMU was launched has been dampened by adverse economic trends: objective factors which were to a large extent unrelated to the single currency. The public has not always been properly informed and has in part been influenced by continued mistrust of the European Union, and it has thus blamed the euro for factors slowing down the economy which are in reality unrelated to euro issues.

1.3 One undoubted success of monetary union is that it has anchored long-run inflation expectations at close to the definition of price stability; moreover, general interest-rate cuts have contributed to economic growth. Then integration of the financial markets has helped to bring to Europe an economic crisis which originated elsewhere.

1.4 Despite the fact that the euro is the second international currency, the Eurogroup and the ECB do not play an institu-

tional role in international economic and financial organisations. There are various reasons for this, but one factor is that Member States which are part of the euro area (and others that are not) do participate in these organisations. Better economic governance would in theory be more possible if these two institutions were represented in international bodies.

1.5 Within the EU, future challenges consist mainly of making up the shortfall of the past ten years: the disparities between EMU countries in terms of inflation and labour costs, and the as yet incomplete integration of the goods and services markets. The first aim should be addressed as part of a series of national programmes which, with due regard for the Stability and Growth Pact, work towards convergence agreed on by governments and the social partners. The second should be addressed in a study which sets out the inherent, natural limits to integration, beyond which it actually becomes impossible or too burdensome.

1.6 Internationally, EMU is facing political and competition challenges which it will have to tackle with programmes in the area of domestic budget policy and better integration of structural reforms, by reinforcing the international role of the euro and, lastly, with effective economic governance. With regard to this last point, attention should be drawn to public spending, competitiveness and social systems – three areas in which uniform action is difficult due to the diverse situations in the Member States.



1.7 As regards financial governance, the EESC calls for an overhaul of all the policies on which market practices have thus far been based: the early origins of the financial crisis caused by subprime lending, which has itself been exacerbated by the economic crisis, lie in the placing on the market of products which are by their very nature unreliable. This was the result of misinterpretation of the market-economy approach, which should not be abandoned but which certainly needs rules to regulate it.

## 2. Introduction

2.1 In May 2008 the Commission published a Communication which takes stock of the first decade of operational Economic and Monetary Union (EMU) and outlines a political agenda for the second decade<sup>(1)</sup>. The Communication was published in the second issue of *European Economy*<sup>(2)</sup> and was accompanied by an analysis (over 300 pages) of the subject. The EESC is one of the institutions to which the Communication is addressed and thanks the Commission for giving it the opportunity to express its point of view. It hopes that its comments will be taken in the spirit in which they are intended – as an attempt to make a constructive contribution to the debate.

2.2 The analysis is a valuable help in understanding the issues described in the Communication, shedding light on the Commission's statements; it is an econometric and financial analytical paper with a small, specialist readership. The EESC has taken note of it and refers to it in relation to a number of issues requiring detailed analysis.

2.3 The EESC comments on a number of the Commission's points, taking them in the order in which they appear in the Communication, in the hope that its comments will be useful and seen as an active contribution from the social partners represented by the EESC.

## 3. The Communication: a historic step

3.1 The paper starts by saying that EMU 'sent a **very powerful political signal** to European citizens and to the rest of the world that Europe was capable of taking far-reaching decisions' and that 'ten years into its existence, the euro is a **resounding success**'. These statements seem **inappropriate as they are presented in the Communication**: an expression of satisfaction is convincing as a conclusion where evidence has been given but counterproductive if presented as a premise. The EESC essentially agrees with the content of the

statements but would have preferred to see them presented at the end rather than as a premise.

3.2 Modifying this, the Commission notes that **so far the euro 'has fallen short of some initial expectations'** because of too slow a growth in productivity, globalisation and scarcity of natural resources, climate change and the ageing population - all issues which 'place additional strains on the capacity of our economies to grow'. At first glance these statements seem to establish a link - although this is certainly not the Commission's intention - between global socio-economic trends and the euro's failure to meet expectations.

3.2.1 Further on (page 7), the Commission regrets that '**the euro is often used** [by the public] **as a scapegoat** for poor economic performances that in reality result from inappropriate economic policies at the national level', thus rightly making a distinction between economic trends and euro issues. It would have been more useful in terms of promoting the euro to explain that the single currency is suffering - as are most other currencies, to a greater or lesser degree - from a **global economic trend which is affecting monetary policy**.

3.2.2 Monetary policy, in particular EMU policy, cannot alone resolve the difficulties of **integrated global markets**, in which problems spread from market to market in real time in a domino effect. Markets outside Europe have operated for too long on the basis of an excessively hands-off approach to the market economy in both the economic and financial sectors. A free market needs **rules** laying down constraints which cannot be disregarded and effective **surveillance** to ensure that they are observed: Europe has met these two requirements to a large extent but, regrettably, the same cannot be said of others.

## 4. The main successes of the first ten years

4.1 The Commission rightly stresses that monetary policy has '**anchored long-run inflation expectations** at close to the ECB's definition of price stability'. It admits that inflation has increased recently, 'mainly due to soaring oil and commodity prices', but predicts a 'return to low inflation ... once these external pressures unwind', as has happened recently. As regards **interest rates**, it attributes **tighter credit conditions for households and businesses** to turbulence in financial markets, and here, too, 'a return to ... more normal credit conditions is expected, even though oil ... prices may continue to trend up ...'.

<sup>(1)</sup> COM(2008) 238 final

<sup>(2)</sup> European Economy 2/2008, EMU@10, *Successes and Challenges after 10 Years of Economic and Monetary Union*, Economic and Financial Affairs Directorate-General.

4.1.1 The vast majority of observers predict a long-term crisis and do not forecast how long it will take national economies, particularly those of Western countries, to recover; regrettably, the ever-changing nature of the world geopolitical picture reduces econometric forecasts to a mere exchange of views. The EESC wishes to draw attention to one point of the Communication in particular: the Commission disapproves of the way inflation has led to tighter credit conditions for households and businesses, but **it does not mention the fact that, as well as being credit users, families are also savers**, contributing their investments to economic growth and, ultimately, to financing the public debt and businesses.

4.1.2 **Interest rates for savings**, in the form of both bank deposits and securities, have **risen more slowly than inflation**: once tax has been taken off, this leads to considerable erosion of **purchasing power**, while the capital invested loses value. The huge losses sustained by stock markets have, however, encouraged families to seek more secure investment in conventional savings deposits despite low return and erosion of capital.

4.2 The EESC agrees with the Commission when it lists the benefits brought by the euro: the Stability and Growth Pact, reformed in 2005, led Member States to adopt fiscal policies which support macroeconomic stability in EMU, fostering economic and market integration and causing the euro to act as **'a powerful catalyst for financial market integration'**. However, this integration, which 'has improved the euro area's resilience against adverse external developments', warrants some reflection.

4.2.1 While it is true that EMU has made it possible to build a strong integrated financial market which is certainly more resilient to adverse external events in a number of individual national markets, it should be borne in mind that integration within EMU also goes hand in hand with close, **complex connections with global markets**. The Commission points out that 'the euro area appears protected from the worst of the present global financial turbulence', but this turbulence, first and foremost in the area of subprime lending, has been imported from external markets and caused by situations unrelated to EMU.

4.2.2 In view of this, the issue raised by the Commission later on in the Communication becomes relevant: **the external**

**influence of the Eurogroup, not just on economic governance but also on the institutions regulating the financial markets**. The subprime crisis was triggered by inappropriate credit practices and questionable securitisation systems, some of which are not in use in Europe: it therefore seems reasonable to ask whether the damage could have been avoided, or alleviated, if the **Eurogroup (or ECB) had been able to play an institutional role in global economic and financial organisations**.

4.2.3 This idea is underscored by the public support measures and the bankruptcy of major US financial groups with European subsidiaries, which raise sensitive competition and surveillance issues. However, the EESC is not alone in making this assertion: the Commission itself regrets 'the absence of a strong voice in international fora' but it does not say, still less comment on, how much - or how little - the Council has done to **give Europe this 'strong voice' in practice**.

4.3 There is no need to mention the 'significant benefits to its member countries engaged in a catching-up process': the Commission has addressed the issue in a previous Communication <sup>(1)</sup>, on which the EESC has commented in an opinion <sup>(2)</sup>.

4.4 The euro **'has ... established itself as the world's second international currency'** and represents a quarter of world reserves; bank loans from euro-area banks to external beneficiaries make up 36 % of total loans, compared with 45 % from US banks. However, we cannot rest on our laurels: the importance of the euro, which according to all the forecasts is set to increase, must be converted into **tangible results and benefits**, first and foremost as regards **oil prices**. Dependence on this energy source is one of the brakes holding back the economies of the euro-area countries, some of them particularly severely. The price fluctuations are not solely due to producer countries' monopolistic policies: they are also caused by speculation and fluctuation of the dollar, which is no longer stable enough to be a reliable currency. We need to start reflecting on a strategy for **quoting oil prices in euros**, at least in transactions with EMU countries: however, this is a move which will not be problem-free, and should in any case be undertaken with caution. Success will not depend solely on the position of the euro but also on the bargaining power of Europe as a whole.

<sup>(1)</sup> Communication from the Commission – *The EU Economy: 2006 Review - Strengthening the euro area: key policy priorities* COM(2006) 714 final.

<sup>(2)</sup> EESC Opinion on *The EU Economy: 2006 Review - Strengthening the euro area: key policy priorities* OJ C 10 of 15.1.2008, page 88.

4.5 Lastly, the Commission turns to **economic governance**, now possible thanks to the work of the Eurogroup, which has been even more effective now that it can count on a **permanent president**. However, internal governance of the euro is not enough to ensure its stability and prestige: the above comments highlight the need for 'external governance', which will only be possible (see points 4.2.2 and 4.4 above) **if the Eurogroup and the ECB can play an institutional role in international organisations**, particularly the International Monetary Fund. It is no longer acceptable for authorities which represent the single currency overall not to be entitled to vote.

## 5. EMU's remaining challenges

5.1 The EMU area's economy is in a period of recession, like the US economy and the economies of other European countries outside the EMU area: this is a situation which is common to the West and it would be misleading to attribute it to a direct or indirect effect of the euro. More detailed analysis reveals, however, that there are **'substantial and lasting differences across countries'** in terms of inflation and unit labour costs'. The Commission attributes them to reasons which are now well-known: lack of responsiveness of prices and wages; poor achievement in the field of structural reforms; limited market integration and under-development of cross-border provision of services.

5.1.1 The EESC feels that the prospects for action in each of the above areas are largely dependent on the Member States and their social partners. At the same time, it calls on the Commission to launch a study on **the long-term possibilities of achieving integration of the goods and services markets**, both in the euro area and throughout the Community. Whatever principles the Commission might wish to uphold, **integration has an inherent, natural limit** which can never be crossed: despite the necessary endeavours to harmonise or remove competition and legislative barriers there will always be differences of social context, taxation, labour markets and language which cannot be eliminated.

5.1.2 The purpose of the aforementioned study should be to steer the Commission and Member States towards defining a policy based on **ongoing assessment of the costs and benefits of harmonisation**: completion of the internal market and competitiveness cannot be the sole aim. The social and economic implications for individual countries and their adjustment capacities need to be taken into account.

5.2 Inflation aside, other elements which contribute to poor economic growth are **only indirectly affected by monetary policy**, and they are in any case outside the remit of the Eurogroup. The EESC therefore feels it would be wrong to blame the euro for an **economic situation which is common to euro-area and other countries**. Moreover, in none of these other countries has the public blamed the national currency, while a large part of the public in the euro area has blamed the single currency.

5.3 Against a generally encouraging and optimistic backdrop, one Commission statement gives cause for concern <sup>(1)</sup>: 'beyond the fulfilment of initial expectations, the EMU policy agenda for the next decade will be marked by the emergence of **new global challenges which will have an amplifying effect on the weaknesses of EMU** outlined above'. It seems that, rather than 'the weaknesses of EMU', the real issue is the competitiveness of euro-area countries: the need to replace declining industries, research, innovation and human capital, along with rising food, energy and (to some extent) commodity prices, in a context of climate change, an ageing population and immigration. The issue is therefore, first and foremost, economic and social in nature.

5.3.1 All these aspects combine to form what the Commission calls **'policy challenges that are particularly compelling for the euro area'**. While it agrees with the Commission's analysis, the EESC interprets this statement as meaning that although the aforementioned problems do affect EMU policy, they are to be resolved at Community rather than Eurogroup level. In other words, the policies to be developed are to be 'European' while the Eurogroup's remit should be limited to direct (and coordinated) action relating to euro monetary issues alone.

## 6. A policy agenda for the second decade

6.1 The Commission paper outlines the agenda, stating that 'the experience of the first decade of EMU, while overall ... successful, reveals a number of shortcomings that need to be addressed'. In addition to **consolidating macroeconomic stability**, it will be necessary to increase 'potential growth' and the 'welfare of citizens', protect the interests of the euro area in the global economy and ensure 'a smooth adjustment capacity' as new members join EMU.

<sup>(1)</sup> COM(2008) 238 final. EMU@10: *successes and challenges after 10 years of Economic and Monetary Union*, section entitled *EMU's remaining challenges amplified by new global trends*, end of the fifth paragraph.

6.2 To achieve these objectives the Commission proposes a **three-pillar agenda**:

- a **domestic agenda**: including greater fiscal-policy coordination and surveillance and better integration of structural reform in overall EMU policy coordination;
- an **external agenda**: enhancing the euro area's role in global economic governance;
- **economic governance**, necessary to implement these two agendas.

6.3 As regards **domestic policy**, no essentially new principles are specified but guidelines for healthy governance, set out on a number of occasions in the past, are reiterated: sustainability of public finances and enhancement thereof in terms of rational use of expenditure and taxation systems, channelling them towards growth-friendly and competitiveness-enhancing activities. In addition to this, the Communication mentions the 'need to **broaden surveillance to address macroeconomic imbalances**' such as the growth of current account deficits and persistent inflation divergences. The Commission stresses that integration, particularly of the financial markets, has helped to consolidate EMU, but that it can also, if not accompanied by appropriate policies, amplify divergences among the participating countries.

6.3.1 The EESC agrees with this analysis but draws attention to the need to be realistic, in other words to take into account the difficulties of establishing principles which it will be possible to implement in practice.

6.3.2 **Public expenditure** is a key element. The Commission advocates 'laying down well-designed expenditure rules, which would allow the automatic fiscal stabilisers to operate within the limits of the SGP while attuning the composition of public expenditure to the structural and cyclical needs of the economy'. It is difficult to give practical effect to this recommendation in periods of turbulence whose length cannot yet be predicted. **Inflationary pressures** have impacted heavily on income distribution, salaries and investment and, ultimately, on **competitiveness and social systems**, but the extent of this differs widely between the various EMU countries. The make-up of the primary deficit varies from country to country, the balance of trade is increasingly affected by higher or lower energy costs, and there are substantial structural differences between pension schemes which are difficult to iron out

when things are running normally and even more difficult to correct when they are not.

6.3.3 To be realistic, the hoped-for **convergence** should be seen as a **medium- to long-term goal**. The EESC agrees that there is a 'clear need to **broaden surveillance to address macroeconomic imbalances**' using existing instruments, but warns against taking it for granted that they will be effective in the short term.

6.3.4 As regards **euro-area candidate countries**, the Commission plans to provide closer surveillance of their economic developments, in particular as regards the countries participating in the Exchange Rate Mechanism (ERM) II framework. No new elements are introduced here either: it is merely a question of making existing mechanisms more effective. One thing must be clear: once a country has met the criteria for joining EMU, accession is no longer optional – it is required by the Treaty of Accession. The current crisis could, moreover, cause some delay in meeting the criteria; in view of the priority of giving Europe a single currency, some flexibility might be advisable when assessing compliance with the criteria or adjusting them.

6.3.5 As regards **integration of the products, services and labour markets**, the Commission notes ongoing regulatory barriers and disparities in progress between countries. However, these aspects are not specific to the EMU area and should therefore be seen as part of the wider picture of the EU as a whole. As explained in point 5.1.1 above, there are inherent, natural limits to integration, and also other **limits brought about by economic and social constraints** in the various countries: these limits must be considered on a case-by-case basis and, where necessary, respected.

6.3.6 As regards the **financial markets**, the Communication states that 'the euro area can draw comparatively large benefits from promoting EU financial integration' but that 'further efforts are required to enhance the efficiency and liquidity of euro area financial markets'. The EESC notes that ECB policy in this area is exemplary and inspires confidence that it will be able to resist acute crises, as it has thus far. The effects of the US crisis could have been much worse if they had not been curbed by a **policy based on safeguarding the resilience and liquidity of markets**; regarding the surveillance structures, which failed to foresee, still less avert, the collapse of a number of major institutions, the EESC will refrain for the moment from passing judgment, pending further information which the market and the public are entitled to request.



6.3.6.1 With reference to the preceding point, the EESC notes that the US crisis was due to a market with inadequate rules and surveillance. Paradoxically, **the free market economy par excellence had to resort to aid from the public authorities** to face the disaster, receiving state aid and huge injections of liquid funds. This was a loss for the economy, for the national budget and for the American people, but above all for the credibility of a system.

6.4 As regards **external policy**, the Commission sets out an agenda intended **to enhance the euro area's international role**, implementing a strategy which is 'commensurate with the international status of its currency'. Moreover, it reiterates the call, already made on many occasions in the past, for it to **'speak with a single voice'** in all international currency forums. The EESC stresses once again its full support for the agenda: the fact that the euro's governing authorities cannot participate in global monetary institutions is **unacceptable** in both operational and – above all – political terms.

6.4.1 The Commission mentions resistance from 'other countries', which it believes see the EU and the euro area as over-represented in international organisations (in terms of both seats and voting power). Hesitant disclosures suggest that this resistance does exist and that pressure for greater representation from EU countries, both EMU members and non-EMU members, is neither strong nor coordinated. **The Eurogroup should speak convincingly, first and foremost in the Council.**

6.4.2 To weaken the resistance of non-EU countries there is **one step** that the EMU countries could take **which would have great symbolic value**: they could give up not their seats but their **right to an individual vote**. Logically, since the euro as a currency is governed by a single authority, **that authority alone should have the right to vote**. The social partners are entitled to information in this respect too; the reluctance to provide it is certainly due to sensitive political issues, but the silence and lack of transparency do nothing to further acceptance of Europe, still less of the euro.

6.5 The Commission Communication ends with what is perhaps the densest section in terms of content and implications: **governance of EMU**. It calls for 'strong involvement of all EU Member States within the ECOFIN Council' on economic policy, more thorough integration of EMU issues and 'a more consistent approach' in sectors within ECOFIN's remit: macroeconomic policy, financial markets and taxation.

6.5.1 Such an approach would appear self-evident. However, the EESC notes that the ECOFIN Council's decisions very rarely mention EMU as being directly or indirectly concerned by decisions. Economic policy and monetary policy are inter-dependent: the euro is not the only currency in the EU but it is the most important, not just because it represents a substantial group of countries but also because other Member States are likely to join it.

6.5.2 The Commission plays a key role in EMU governance: not just a supportive role ensuring effective operation but also in terms of budget and macroeconomic surveillance. The Commission proposes to step up its work and make it more effective, and to enhance its role in international forums. These roles will become wider and more effective with the **new Treaty**, which enables the Commission to **'adopt measures'** specific to EMU member countries on budgetary discipline and economic policy guidelines, as well as giving it surveillance tasks. In addition, Article 121 of the new Treaty gives the Commission the power to issue 'warnings' to a Member State when it deviates from the broad guidelines.

6.5.3 The EESC welcomes the Commission's undertaking and trusts that with the new Treaty it will be able to perform both its conventional and its new roles with the utmost effectiveness, enjoying all due respect. In particular, however, it calls on all economic and monetary authorities to learn from the US subprimes crisis and to decide to **give the policies which have thus far underpinned the operation of the financial markets a thorough overhaul.**

6.5.4 The events in the US have sparked a **systemic crisis** throughout the world. Europe has already been hard hit and the possibility of further shocks cannot be ruled out. It would be highly beneficial to analyse the crisis both from a macro-economic perspective and from a historical perspective, **taking into account microeconomic considerations**. This two-pronged approach could reveal the underlying reasons for the crisis, which had been brewing for some time.

6.5.5 **100 % mortgages have always been available** in the United States, with related expenditure pushing the size of loans up considerably. In Europe, however, until a few decades ago most countries observed the need for caution and, in some cases, banking rules: the **maximum loan granted was 70-80 %**. The reason for this is clear: property prices might fall and reduce the value of the security.



6.5.6 Under the momentum of market liberalisation and, in particular, the competition unleashed by market integration, the '70 % rule' was abandoned in Europe too, although this has not thus far caused any major problems. Nevertheless, **the '100 % rule' is still unhealthy in prudential terms and as regards market ethics**. The 'easy credit' system leads anyone and everyone to buy property: if a crisis then threatens, 'weak' debtors stop making payments and this leads to a situation of **general over-indebtedness**. For its part, the credit provider acquires a mortgaged property whose value often does not cover the loan provided and therefore decides to sell it, but putting the property on the market further contributes to the downward pressure on the market.

6.5.7 **The interaction between economic crises and property-market crises is clear**, but when use of securitisation, 'packages' and 'subprimes' becomes general practice **it spreads across the whole financial market, generating an 'intersystemic' crisis** of unprecedented proportions. Then there is the legitimate fear that this will not be the end of the story: high debt levels among families, thanks to

consumer credit and credit cards, are causing concern that another 'bubble' of unpredictable proportions will burst.

6.5.8 Leading political and monetary authorities in Europe have done their best to avoid even worse crises, **injecting liquid funds and taking over financial institutions**: this is an emergency which requires **state aid**, and therefore conflicts with the principle of an unregulated, free market economy which is subject to little surveillance.

6.5.9 In addition to addressing the crisis, there is now an urgent need to **look back into the past for the roots of the crisis**. Clear rules must be established on provision of mortgages and credit cards, more effective surveillance systems must be put in place, covering the diverse and non-transparent 'non-bank' sector, and a further assessment needs to be made of whether it is right to allow onto the securities market a large quantity of non-transparent products whose nature and reliability even the experts are unable to discern. It is not a question of abandoning the market economy, rather of giving it some rules.

Brussels, 24 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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**Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament, the Committee of the Regions and the European Economic and Social Committee: Green Paper on Territorial Cohesion. Turning territorial diversity into strength**

COM(2008) 616 final

(2009/C 228/24)

On 6 October 2008, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*'Communication from the Commission to the Council, the European Parliament, the Committee of the Regions and the European Economic and Social Committee - Green Paper on Territorial Cohesion. Turning territorial diversity into strength.'*

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 5 March 2009. The rapporteur was Mr OLSSON.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion with 88 votes in favour and 11 abstentions.

## 1. History

1.1 Since it was set up the European Union has had the task of ensuring the harmonious development of economies while reducing regional differences <sup>(1)</sup>.

1.2 This task, which remained in the background during the first decades of European integration, took on major importance with the 1988 reform launched by Jacques Delors, following the adoption of the Single European Act which established the economic and social cohesion policy.

1.3 The Treaty of Amsterdam, signed in 1997, listed social and territorial cohesion alongside services of general economic interest as expressions of European values <sup>(2)</sup>.

1.3.1 The Treaty of Amsterdam states that 'the Community shall aim to reduce the gap between the development levels of the various regions and the backwardness of the least favoured regions or islands, including the rural areas'.

1.4 If the process of ratifying the Lisbon Treaty is completed, the European Union will have a new objective: promoting economic, social and territorial cohesion <sup>(3)</sup>.

1.5 Particular attention will be paid to 'rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions' <sup>(4)</sup>.

1.6 In May 2007, at the informal Council of ministers responsible for urban development and territorial cohesion,

the Territorial Agenda was adopted. In this document the 27 Member States undertake to cooperate among themselves, and with the Commission and the other European institutions, in order to 'promote a polycentric territorial development of the EU, with a view to making better use of available resources in European regions' <sup>(5)</sup>. They also adopted a work programme for the period up to 2011.

## 2. General remarks

2.1 On 6 October 2008 the Commission adopted a Green Paper on Territorial Cohesion. Turning territorial diversity into strength <sup>(6)</sup>. In this short document it begins by presenting economic and social cohesion from a territorial point of view. It then goes on to identify the strengths and challenges of European territorial diversity in the light of three main policy responses - concentration, connecting territories and cooperation - to which are added specific geographical characteristics such as mountain regions, island regions and sparsely populated regions. It suggests that the optimum approach for achieving the objective of territorial cohesion is to improve the coordination of sectoral policies while expanding multi-level partnership.

2.2.1 The consultation ends with a list of 15 questions grouped under six themes. The EESC will follow the order in which the questions are asked. It notes, however, that the questions are in each case preceded by a sentence which in some cases ought to be discussed.

2.2.2 The Green Paper gives the EESC an opportunity to spell out its thoughts on territorial cohesion, making use of the specific role assigned to it by the Treaties, as well as its composition and the expertise of its members.

<sup>(1)</sup> Preamble to the Treaty of Rome.

<sup>(2)</sup> Article 14 of the Treaty on the Functioning of the European Union.

<sup>(3)</sup> Article 3(3) of the future Treaty on the Functioning of the European Union.

<sup>(4)</sup> Future Article 174 of the Treaty on the Functioning of the European Union.

<sup>(5)</sup> *Towards a More Competitive and Sustainable Europe of Diverse Regions*, Territorial Agenda of the European Union, informal meeting of the Council of Ministers for urban development and territorial cohesion, Leipzig, 25 May 2007.

<sup>(6)</sup> COM(2008) 616 final.

2.2.3 In order to fuel the debate, the EESC will aim to complement rather than support the discussions of the other Community bodies.

2.2.4 It should be borne in mind that the territorial dimension of Community action and sectoral policies, and the territorial approach of economic and social cohesion policy, have been dealt with in several EESC opinions, which provides an extremely valuable source of inspiration.

2.2.5 Thus, the EESC considers that territorial cohesion should be a common objective to which all geographical levels contribute, while respecting the subsidiarity principle, but which can be effectively achieved only if all the levels assume their responsibilities in a coordinated and complementary way.

2.2 The EESC has an essential role to play in encouraging the greater involvement and participation of organised civil society in the European project and, in the case at hand, in facilitating the implementation of policies and actions which promote territorial cohesion. The EESC underlines that **participatory democracy**, recognised as one of the Union's democratic principles <sup>(1)</sup>, is an essential condition for the achievement of this goal.

2.2.1 The trend towards greater economic and social disparities, which is often cumulative in certain areas, carries with it a significant political risk. It is likely to reinforce people's distrust of their political leaders in general, and of European integration in particular.

2.2.2 Conversely, territorial cohesion can make it possible to preserve or **develop social capital**. The richness of relations between the members of a group or community at local level, which is a guarantee of dynamism and innovation in social, economic, political and cultural terms, depends to a high degree on harmonious living conditions and opportunities for exchange with other areas.

2.3 The EESC attaches particular importance to an approach which takes the citizens, their needs and their expectations as the starting point. The living conditions of the people, particularly the **most disadvantaged**, must be at the centre of the discussions and must be a fundamental objective of territorial cohesion. Social progress, supported by economic development, is the fundamental basis for reducing existing disparities, either between individuals or between areas.

2.4 The EESC considers that the **individual and citizenship** must be at the heart of Community policies and actions, the EESC stresses the implementation of the Charter of fundamental rights as an indispensable instrument of territorial cohesion.

2.4.1 It considers that territorial cohesion must be based on **a new contract with citizens and organised civil society**, allowing interaction between bottom-up participatory procedures, also including civil dialogue, and EU initiatives.

2.4.2 It therefore advocates application of the 'think small first' principle in order to design sectoral policies which reflect the needs of citizens and socio-economic actors at the smallest territorial level.

2.5 The EESC is an advocate of a European social model based on **common European values and objectives** which include economic development and social progress. Social policy and economic policy are interdependent and mutually reinforcing and they usually have a specific impact on the ground.

2.5.1 The EESC points out that the concept of territorial cohesion has been enshrined in the EU Treaty for more than ten years, together with services of general economic interest. It therefore calls on the Commission **to take stock** at the earliest opportunity of the practical application of this article **in legal, case-law and economic terms** since the entry into force of the Treaty of Amsterdam.

2.5.2 The EESC draws attention to the fact that the concept of a region is not only a geographical one. It is also concerned with identity. Territorial cohesion is therefore connected with the idea of belonging, and includes all the components of individual and collective life.

2.5.3 For some the region has positive connotations and is a source of pride, when for example people think of their village, town or region, its history, its natural heritage, or its cultural or economic dynamism. For others, it has negative associations, with people tending to think of disadvantages, economic deprivation, social violence, e.g. in the case of disadvantaged inner city areas.

2.5.4 Action in favour of territorial cohesion must therefore be both **multi-dimensional and multi-directional**. At times it must aim to facilitate and maintain the positive aspects, and at other times to remedy or prevent the negative ones.

2.6 The EESC considers that the territorial cohesion objective should be given concrete expression and made **operational**, with a clear **road map** being drawn up. In the past the 'roadmap' approach has proved extremely effective, for example the 92 objective of the single market, the stages of economic and monetary union or the enlargement negotiations with the Central and Eastern European countries. The Committee recommends that at the end of the consultation process a timetable be drawn up together with proposals for instruments and methods for action.

<sup>(1)</sup> Future Article 11 of the Treaty on European Union.

2.6.1 In this connection it also points out that the current European budget is not sufficient to ensure the proper implementation of economic, social and territorial cohesion in Europe <sup>(1)</sup>. Moreover, it deplores the fact that too often the unwieldiness and complexity of procedures make it difficult for final consumers - individuals and businesses - to have access to financing.

2.6.2 The EESC welcomes the Green Paper as another step on the road towards European integration and it welcomes the opening of this debate. It recognises that the new objective threatens to give rise to practical obstacles and political opposition. However, the EESC regrets that the document provides insufficient information on existing coordination and cooperation activities and that it does not go sufficiently far in proposing areas for action.

### 3. Replies to questions

3.1 *What is the most appropriate definition of territorial cohesion?*

3.1.1 The EESC regrets that the Commission has not included the discussions which have already taken place on the subject in the Green Paper, although it proposed definitions in its Cohesion Reports.

3.1.2 It endorses the analysis set out in the Commission's Third Report on Economic and Social Cohesion that 'in policy terms, the objective is to help achieve a more balanced development by reducing existing disparities, avoiding territorial imbalances and by making both sectoral policies which have a spatial impact and regional policy more coherent. The concern is also to improve territorial integration and encourage cooperation between regions'. And 'despite the difficulties of some regions, equality of access to basic facilities, essential services and knowledge - to what are termed "Services of General Economic Interest" - for everyone, wherever they happen to live, is a key condition for territorial cohesion'.

3.1.3 Referring to its previous opinions, the EESC also considers that territorial cohesion must make it possible to adopt a shared vision of the 'European territory' <sup>(2)</sup>. It considers that balanced and sustainable 'regional development within the EU' <sup>(3)</sup> must help to reconcile competitiveness with economic and social cohesion, knowledge-based <sup>(4)</sup> economic performance with the 'principles and objectives of solidarity and social equity' <sup>(5)</sup>.

3.1.4 The EESC considers that the public will not take ownership of territorial cohesion unless it has real meaning for them and unless they participate in its design and application. Finally, the EESC stresses a definition of territorial

cohesion which highlights its 'benefits' from the point of view of the public and the socio-economic players on the ground. **Territorial cohesion must guarantee equality of opportunity and fair living conditions for all Europeans everywhere.**

3.2 *What additional elements would it bring to the current approach to economic and social cohesion as practiced by the European Union?*

3.2.1 The EESC considers that territorial cohesion underlines the need to ensure synergy between economic and social cohesion. In the current situation, with a succession of crises - financial, economic, food-related, property market, climate-related - the Committee draws attention to the unsustainability of the development model we have used for the last 50 years.

3.2.2 The EESC feels that **the three dimensions - economic, social and territorial cohesion - should be simultaneously promoted**, while encouraging the development of a more sustainable development model.

3.2.3 The Committee points out that in the Third progress report on economic and social cohesion the Commission sketched out three aspects for territorial cohesion policy which would have equal weight: the first of these, corrective in nature, was reducing existing disparities; the second, preventive dimension meant improving the coherence of sectoral policies with a territorial impact; and the third, involving incentives, meant reinforcing territorial integration by encouraging cooperation.

3.2.4 This three-pronged approach seems reasonable to the EESC, which would point out, however, that territorial cohesion must under no circumstances be limited to adding an additional dimension to current economic and social cohesion policy. A territorial strategy, to be defined at European, national and even local level, should cover all policy areas <sup>(6)</sup>.

3.2.5 With regard to the Union's structural policies (as defined in the Green Paper), the Committee calls for improved integration of the funds, going further than the necessary degree of coordination.

### 3.3 Scale and scope of territorial action

3.3.1 The EESC is surprised that the Commission presents multi-level governance only as a possibility; the Committee considers that it is, rather, a necessity which has proved its effectiveness and is progressively establishing itself as a principle of government in the European Union.

<sup>(1)</sup> EESC opinion on the Fourth Report on Economic and Social Cohesion, OJ C 120, 16.5.2008, p. 73, point 2.1.

<sup>(2)</sup> EESC opinion on the Territorial Agenda, OJ C 168, 20.7.2007, p. 16.

<sup>(3)</sup> EESC opinion on The CAP second pillar: outlook for change in development policy for rural areas (follow-up to the Salzburg conference), OJ C 302, 7.12.2004, p. 53, point 2.4.

<sup>(4)</sup> EESC opinion on Industrial change and economic, social and territorial cohesion, OJ C 302, 7.12.2004, p. 41, point 1.3.

<sup>(5)</sup> EESC opinion on the European Spatial Development Perspective (ESDP), OJ C 407, 28.12.1998, point 2.5.

<sup>(6)</sup> EESC opinion on the Territorial Agenda, OJ C 168, 20.7.2007, p. 16.

3.3.2 The Committee agrees with the comment concerning an integrated approach but considers, as indicated above, that this should be translated into specific measures, such as the integration of the funds associated with the Union's structural policies. It draws attention to the regrettable fact that current practice falls far short of that used in previous programming periods. The increased complexity of accounting, financial and auditing rules have led to increased administrative checks, resulting in more complex procedures for final beneficiaries.

3.4 *Is there a role for the EU in promoting territorial cohesion? How can the EU make a contribution while respecting the principle of subsidiarity?*

3.4.1 The EESC believes that the focal point of an effective territorial cohesion policy consists primarily in identifying appropriate governance systems in order to take action through the integrated management of complex situations that provide for the co-existence of:

— multilevel territorial interventions and decision-making;

— multiple decision-making centres with their own specificities and priority objectives;

3.4.2 A bottom-up approach involving committed citizens is conducive to the integration of Community and national policies, in particular because civil society organisations ought to have a holistic approach to policies and actions, unlike the authorities responsible for sectoral policies at national and European level. This approach is completely consistent with subsidiarity in all its forms.

3.4.3 The EESC reiterates its call for detailed timeframes for short, medium and long-term objectives and actions<sup>(1)</sup> and including deadlines and actions already set or proposed by the institutions and the stakeholders, particularly at European and national level.

3.5 *How far should the territorial scale of policy intervention vary according to the nature of the problems addressed?*

3.5.1 For the EESC one of the most important practical expressions of territorial cohesion is **guaranteeing** all the people of Europe **access to SGEIs and SSGIs**<sup>(2)</sup>, wherever they may live or work. This is an area which requires a high degree of policy coherence and effective multi-level governance. The current situation is far from satisfactory, particularly for the most fragile regions and for their residents and economic and social actors.

<sup>(1)</sup> EESC opinion on the Communication from the Commission to the Council and the European Parliament on a Thematic Strategy on the Urban Environment, OJ C 318, 23.12.2006, p. 86, point 2.3.7.

<sup>(2)</sup> Respectively, services of general economic interest and social services of general interest.

3.5.2 The EESC reiterates its call 'for common benchmarks and standards to be defined at Community level' 'for all services of general interest (both economic and non-economic), including social services of general interest, to be set out in a framework directive, adopted under the co-decision procedure, whereby a Community framework can be established which reflects their specific characteristics' <sup>(3)</sup>.

3.6 *Do areas with specific geographical features require special policy measures? If so, which measures?*

3.6.1 With a view to the introduction of true equal opportunities between regions, the EESC advocates the adoption of a specific policy for regions with permanent handicaps, including the outermost regions, based on the principles of permanence (long-term predictability of measures), positive discrimination (regarding budgetary resources and certain legal derogations to common principles) and proportionality (the scale of the measure and its impact must be appropriate to the specific case) in order to take account of diverse situations <sup>(4)</sup>.

3.6.2 In these regions, which require additional work on development engineering and the preparation of financial projects, the role of the EU must not be to replace authorities and local and regional socio-economic partners, but rather to encourage them strongly to engage in consultation and cooperation.

3.7 *Better cooperation*

3.7.1 The EESC considers that cooperation is one of the pillars of the European social model and an essential instrument of integration.

3.7.2 The EESC considers that territorial cooperation is encountering obstacles as a result of the reluctance of the various levels of public authority to cooperate and share their competences. The EU must promote a culture of cooperation in the regions, facilitating and simplifying the use of existing tools like partnership.

3.7.3 The EESC acknowledges the contributions of the first two dimensions of the territorial cooperation objective, cross-border cooperation and transnational cooperation. However, it also stresses the importance of interregional cooperation – forgotten by the European Commission in the Green Paper – which is a remarkable instrument for exchanges of experience and good practice between non-adjacent regions sharing the same objectives.

<sup>(3)</sup> EESC opinion on the Fourth Report on Economic and Social Cohesion, OJ C 120, 16.5.2008, p. 73, point 3.4.

<sup>(4)</sup> EESC opinion on How to achieve better integration of regions suffering from 'permanent natural and structural handicaps', OJ C 221, 8.9.2005, p. 141.



### 3.8 *What role should the Commission play in encouraging and supporting territorial cooperation?*

3.8.1 The EESC considers that territorial cooperation must be an opportunity for actors and individuals from the less affluent territories to implement their own development strategy and not simply to be placed in a situation of dependence and forced to wait for possible financial compensation. In order to encourage them to exploit their assets and construct their projects, they must have access to specific networks for innovation and exchange of good practice, linking them with other actors from regions facing the same geographical, climatic or demographic challenges.

3.8.2 The EESC is therefore asking the Commission to place greater stress on territorial, social and political innovation in the INTERREG IVC interregional cooperation instrument, to beef up cooperation under the fourth axis of the EAFRD, dedicated to the LEADER programme, and to introduce new arrangements to facilitate the use of the available finance.

### 3.9 *Is there a need for new forms of territorial cooperation?*

3.9.1 The EESC calls for the (re)establishment of Community initiative programmes as soon as the mid-term review of the structural policies takes place. The dropping of programmes which have proved their effectiveness like URBAN, EQUAL, Interprise and others has been a loss for thematic territorial cooperation and for social innovation, as this role has not been taken over in the mainstreaming of funds or anywhere else.

3.9.2 The EESC stresses that the usual forms of territorial cooperation will need to be adapted in the case of peripheral regions, such as outermost regions in the Caribbean or the Indian Ocean and the regions along the Union's eastern frontier.

### 3.10 *Is there a need to develop new legislative and management tools to facilitate cooperation, including along the external borders?*

3.10.1 The EESC strongly supports the establishment of European Groupings of Territorial Cooperation (EGTCs). It calls for national legal frameworks to be adapted to enable them to be used throughout the EU. As their establishment is barely beginning, the EESC considers that it is too early to take stock or to start thinking about new instruments. This could be done in the context of the road map proposed above.

### 3.11 *Better cooperation*

3.11.1 The EESC considers that improving territorial cohesion requires a **strategic** approach to territorial devel-

opment through more coherent action, as no individual policy can remedy all the territorial disparities caused by sectoral policies and by the uncontrolled trends of the current development model.

### 3.12 *How can coordination between territorial and sectoral policies be improved?*

3.12.1 The EESC stresses that all European policies must promote the objective of social cohesion as well as more balanced economic development for the European territory <sup>(1)</sup>.

3.12.2 Territorial cohesion needs prior coordination of all sectoral policies and different levels of governance, from local to EU level.

### 3.13 *Which sectoral policies should give more consideration to their territorial impact when being designed? What tools could be developed in this regard?*

3.13.1 The Committee agrees with the European Parliament that an integrated approach to Community policy incorporating the territorial dimension is essential, particularly in the fields of transport, environmental, agricultural, energy, competition and research policy.

3.13.2 The Committee recommends that the discussion of the future of agricultural policy take account of territorial cohesion challenges in view of the importance of agricultural policy in its economic, social, environmental and landscape dimensions throughout Europe.

3.13.3 The legislation, policies and programmes of the European Union should be analysed in terms of their impact on territorial cohesion. The Commission has a particular responsibility for this impact assessment, which should closely involve all the players concerned. Quality criteria should be established for the necessary analysis and evaluation <sup>(2)</sup>.

### 3.14 *How can the coherence of territorial policies be strengthened?*

3.14.1 The EESC calls for improved coherence and proposes that the Council of Ministers **apply the open method of coordination** <sup>(3)</sup> for territorial cohesion, with clear guidelines followed by calibration, peer review, exchanges of good practice, indicators and participation of all the players concerned. It recommends that multilevel governance and inter-sectoral coordination be recognised as being among the guidelines of this method when it is implemented.

<sup>(1)</sup> EESC opinion on the Territorial Agenda, OJ C 168, 20.7.2007, p. 16, point 7.2.

<sup>(2)</sup> EESC opinion on A new European Social Action Programme, OJ C ... (SC0/295).

<sup>(3)</sup> EESC opinion on the Territorial Agenda, OJ C 168, 20.7.2007, p. 16.

3.14.2 The establishment of the open method of coordination could also be part of the road map proposed above.

3.15 *How can Community and national policies be better combined to contribute to territorial cohesion?*

3.15.1 The EESC draws attention to the progress made by the Member States at the informal meetings of urban development and territorial cohesion ministers in Leipzig, the Azores and Marseille. It calls for voluntary coordination of national policies and integration of sectoral policies, in accordance with the commitments set out in the Territorial Agenda, and for local and regional authorities to be encouraged to apply these practices at their level of government. The Committee points out that, even in the absence of explicit competences, the cultural and natural heritage is a key challenge throughout Europe which requires a coordinated approach.

3.16 *New territorial partnerships*

3.16.1 The EESC considers that **wider participation** when policies are drawn up and implemented is essential to territorial cohesion.

3.16.2 The **social dialogue** must be one of the main pillars of territorial governance. In order to increase the involvement of the social partners, the EESC recommends that the territorial social dialogue be put to good effect and promoted by the Commission.

3.16.3 The EESC welcomes the position of the ministers concerned, who in the First Action Programme<sup>(1)</sup> stressed their 'belief that multi-level governance is a fundamental tool for a balanced spatial development of the European Union' and expressed their intention of convening with selected stakeholders and local and regional authorities to discuss the implementation of the Territorial Agenda priorities.

3.17 *Does the pursuit of territorial cohesion require the participation of new actors in policy-making, such as representatives of the social economy, local stakeholders, voluntary organisations and NGOs?*

3.17.1 The territorial development pacts offer an interesting approach to the extent that the diversity of situations and specific challenges requires the mobilisation of different

instruments and skills, and in particular **all the stakeholders, especially the social partners, the social economy and NGOs** working in the social environment as well as in the fields of local development, gender equality and lifelong training.

3.17.2 In the light of the restructurings caused by the economic and financial crisis, it is now even more important and even urgent to establish pacts of this kind in the territories concerned.

3.17.3 The EESC supports the idea put forward by the CoR that partnerships between local and regional authorities, on the one hand, and social economy organisations, on the other hand, can be an important tool for bringing about effective socio-economic development in towns, cities or local and regional areas and for promoting territorial cohesion. This partnership approach should be extended to all the new civil society actors concerned.

3.17.4 The EESC draws attention to the importance of the social economy, where 10 % of European firms are believed to operate. It also stresses its role in cohesion and sustainable development, to the extent that it anchors employment at local level, energises rural areas, creates social capital and provides for the sectoral and territorial restructuring process<sup>(2)</sup>.

3.18 *How can the desired level of participation be achieved?*

3.18.1 The EESC considers that well-structured consultations can lead to successful partnerships with non-governmental stakeholders and the social partners in the whole chain of defining, monitoring and evaluating territorial cohesion<sup>(3)</sup>.

3.18.2 Good 'multi-level governance' also means partnerships with representative organised civil society at regional and local level. By their action these organisations could contribute to the development of a participatory model of civil society in the design and implementation of policies to strengthen territorial cohesion<sup>(4)</sup>.

3.18.3 Organised civil society should be given the opportunity for responsible and transparent involvement at the regional and local level in planning and implementing territorial cohesion policies and activities<sup>(5)</sup>.

<sup>(1)</sup> First Action Programme for the Implementation of the Territorial Agenda of the European Union, 23 November 2007.

<sup>(2)</sup> See the European Parliament's Report on the Social Economy (rapporteur: Patrizia Toia, 2008/2250 (INI) and the Social Economy in the European Union published by the EESC in 2007.

<sup>(3)</sup> EESC opinion on the *Partnership for implementing the Structural Funds*, OJ C 10, 14.1.2004, p. 2 Opinion on Governance and partnership at national and regional level, and a basis for regional policy projects, OJ C ..., points 1.9 and 1.10 (ECO/228).

<sup>(4)</sup> EESC opinion on Governance and partnership at national and regional level, and a basis for regional policy projects, OJ C ..., point 1.2. (ECO/228).

<sup>(5)</sup> The concept of territorial social responsibility (TSR) developed by the European Network of Cities and Regions for the Social Economy (REVES) is a model of this kind of active participation.

### 3.19 *Improving understanding of territorial cohesion*

3.19.1 With a view to improving public understanding of territorial cohesion, the EESC stresses the importance of holding an **ongoing debate** at all levels in order to face future challenges and strategic choices in territorial cohesion. The aim of the debate should be to help forge a new consensus on territorial cohesion based on a common commitment by all stakeholders, e.g. civil society organisations.

### 3.20 *What quantitative/qualitative indicators should be developed at EU level to monitor characteristics and trends in territorial cohesion?*

3.20.1 The EESC considers that new 'well-being' indicators need to be established which are not closely based on GDP/GNP but which make it possible to show progress in the area of the quality of life measured against the territorial level <sup>(1)</sup>.

3.20.2 The Committee considers that a new series of evaluation criteria for regions are needed as a matter of urgency in order to draw up a new map of European cohesion to determine the eligibility of Community regions for aid, as the GNP per capita criterion alone is a source of relative discrimination in the implementation of structural policies. The skill levels of human resources, income inequalities, infrastructure deficits, including the degree of access to services of general interest and the extent of social protection, the distance from the centre of gravity of the European economy and demographic structure etc are all important factors which need to be taken into account <sup>(2)</sup>. Eurostat, ESPON and their national counterparts should work to consolidate a more complete and precise set of statistical tools. These assessment criteria and the statistical tools will serve as a basis for the open method of coordination indicators proposed above.

3.20.3 The methods established by the regions themselves should be taken into account and good practice disseminated <sup>(3)</sup>.

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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<sup>(1)</sup> EESC opinion on A new European Social Action Programme, OJ C 27, 3.2.2009, p. 99, point 7.11.1.

<sup>(2)</sup> EESC opinion on the Impact and consequences of structural policies on EU cohesion, OJ C 93, 27.4.2007, p. 6, point 1.3.

<sup>(3)</sup> For example the concept of territorial social responsibility developed by the European Network of Cities and Regions for the Social Economy (REVES).

**Opinion of the European Economic and Social Committee on the Proposal for a Council directive amending Directives 92/79/EEC, 92/80/EEC and 95/59/EC on the structure and rates of excise duty applied on manufactured tobacco**

(COM(2008) 459 final — 2008/0150 (CNS))

(2009/C 228/25)

On 11 September 2008 the European 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 Directives 92/79/EEC, 92/80/EEC and 95/59/EC on the structure and rates of excise duty applied on manufactured tobacco'*

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 5 March 2009. The rapporteur was Mr CHREN.

At its 452nd plenary session, held on 24-25 March (meeting of 25 March 2009), the European Economic and Social Committee adopted the following opinion by 32 votes to 2.

## 1. Conclusions

1.1 While the main objective of the first excise duties on tobacco was solely fiscal, their function is changing in the today's world, and they are becoming more and more a tool of public health and social policies. The European Economic and Social Committee (EESC) endorses the effort of the European Commission to consider other than purely fiscal effects of tobacco products in its excise duties policies. This new policy approach especially focuses on achieving the health policy goals included in the Framework Convention of Tobacco Control, which was formally adopted by the European Union in 2005 and thus became binding for its future policy-making.

1.2 However, it must be noted that other policy objectives of tobacco excise review, including the primary one of a proper functioning of the internal market as mentioned in the Article 4 of the tobacco excise tax directive, should not be forgotten, neither thrown aside. The EESC thus believes that the toughest assignment for policymakers in this area is to find the optimum balance among the interests of different economic, social, security, economic, and fiscal policies. Different aspects and different values have to be taken into account.

1.3 The European Commission's proposal to bring gradually the minimum rates for fine-cut tobacco into line with the rate for cigarettes, and toughen the definition for cigarettes, cigars and pipe-tobacco in order to avoid tobacco product name manipulations aiming to apply the lowest excise duty is commendable.

1.4 The EESC endorses the approach of the European Commission, which gives more freedom to the Member States in adopting decisions in line with their own policy goals, such as wider range for the specific part of the tax burden levied on

cigarettes, or more generous rules for setting minimum tax floor for cigarettes.

1.5 The EESC recommends that the proposed EUR 90 minimum excise should be reduced or the four year period should be extended to 8 years (January 1, 2018). Considering different traditions and social differences among Member States, it has to be noted that in some countries, especially in those that joined the EU just recently, the raising of minimum excise duty from EUR 64 to EUR 90 per 1 000 cigarettes could bring several negative consequences. Some of these countries still did not reach even the level of minimum excise duty as required by the current directives. The EUR 90 minimum excise duty for all retail prices constitutes an increase of 41 % in a period of 4 years and is at least 300 % higher than the expected consumer prices increase in the EU. There is a chance that such a radical step would negligibly reduce consumption, reduce potential budget revenue, reduce consumers' purchasing power, empower smuggling and illegal activities, and increase inflation.

1.6 It has to be noted that few of the proposed actions will lead to a closer harmonisation of tax rates within the European Union. It is very likely that, given the proposed actions, the absolute and relative differences in taxation among Member States will not disappear.

1.7 For example, the historic reason for proportional requirement is harmonisation of excise duty in EU, yet it has not led to any harmonisation in the past and may well bring the opposite results. The proposed increasing of the minimum excise incidence from 57 % to 63 % would lead to further divergence of excise duties in absolute terms and could have serious inflationary impacts, as is shown in the Commission Impact Assessment Report. Given these questionable effects of this proportional minimum requirement, not only its proposed increase, but the reasons for its very existence should be again seriously analyzed and re-considered.

1.8 The replacement of the Most Popular Price Category (MPPC) with weighted price average (WAP) as a benchmark for proportional minimum requirement would hardly lead to more transparency on the market, neither to better predictability of the government revenues, nor to more harmonisation on the cigarettes market. Therefore, the question whether the Commission's proposal could not be further simplified, arises.

1.9 The issue of the best type of tax levied on tobacco products still remains open. The emphasis on the proportional tax rate may have positive effects on eliminating the black market, however, this effect depends on various factors, and thus is not unequivocal. The preference of the purely specific tax rate may help achieving higher tax revenues and lead to a higher minimum tax floor to assist towards health policy goals and tax approximation within the Internal Market.

1.10 The requirement of a mandatory minimum excise tax incidence (of 38 % and 42 % respectively) for all fine-cut tobacco, instead of current minimum tax set either as a percentage of the retail selling price or as a fixed rate per kilogram would result in a mandatory ad valorem excise duty structure and abolish the current freedom of structure for fine-cut tobacco, and thus can't be recommended.

1.11 The linkage between tax and health policy is, to a large extent, conditioned by linking the tobacco excise tax revenues to activities aimed on elimination of the negative consequences of tobacco consumption. However, given the total funding of such activities today, it is quite clear that most of the tobacco excise duty revenues is being spent on activities and policies with no connection to such health policy goals. It is thus quite clear that the fiscal goals are still the primary objectives of the excise duties on tobacco products.

## 2. Introduction

2.1 Under the Tobacco Excise Directives the European Commission is required to examine every four years, the smooth operation of the single market, the real value of excise-duty rates and the wider objectives of the Treaty. EU rules on tobacco must guarantee the proper functioning of the Internal Market while at the same time be in line with the EU objective to discourage tobacco consumption.

2.2 The current review is the fourth one and suggests a number of significant amendments to existing Community legislation in order to modernise the existing rules and ensure

a level playing field for the operators. The reform comprises of several proposals:

2.3 Although excise duty is primarily an instrument for generating revenue at national level, policy-making in this area has to take the wider objectives of the Treaty into account<sup>(1)</sup>. In addition, the public health protection is a crucial issue in this review given that the European Community became party, on 30 June 2005, to the World Health Organisation's (WHO) framework convention on tobacco control and that several Member States demand that a higher level of human health protection and consequently higher European minima for excise duties on tobacco.

2.4 The Commission's proposal suggests the setting of a monetary minimum duty and establishing a tax 'floor' for all cigarettes sold in the EU allowing to address health concerns for all categories of cigarettes. It increases the minimum requirements in order to contribute to a reduction in tobacco consumption over the forthcoming five years, notably by preventing that Member States' tobacco control policies be undermined by considerably lower levels in other Member States. In addition the proposal allows Member States greater flexibility to apply specific duties and to levy minimum excise duties on cigarettes in order to achieve health objectives. Finally, it brings the minimum rates and structure for fine-cut tobacco intended for the rolling of cigarettes into line with the rate and structure for cigarettes in order to discourage substitution of cigarettes by fine cut.

## 3. Summary of the proposed action of the Commission

3.1 To replace MPPC with weighted price average (WAP) as the benchmark for proportional minimum requirement. The Commission argues that the MPPC, as benchmark for minimum rates, is not in line with Internal Market objectives as it entails a partition of the tobacco markets of the Member States.

3.2 To increase minimum excise duty for cigarettes in line with internal market price harmonisation and health considerations. It is proposed to increase minimum excise duty on Jan. 1, 2014 from EUR 64 to EUR 90 per 1 000 cigarettes and the proportional minimum from 57 % to 63 % of weighted price average. However, Member States which levy an excise duty of at least EUR 122 per 1 000 cigarettes on the basis of the weighted average retail selling price would not need comply with the 63 % requirement. Also, countries with transitional periods to achieve the current minimum levels of cigarettes taxation could use a 1 or 2 years long transitional periods to achieve these new higher requirements as well.

<sup>(1)</sup> Article 152 of the Treaty provides that a high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities.



3.3 To apply the minimum excise duty rate requirement set out in the European Union directive will apply not only to MPPC cigarettes (as is currently provisioned), but to all the cigarettes sold in the country. According to the Commission, this would also establish a 'tax floor' for cigarettes sold in the EU, which should address the Internal Market and health concerns for all categories of cigarettes.

3.4 To allow the Member States to widen the band of specific excise duty share of total tax burden from 5 % – 55 % to 10 % – 75 % in order to make excise duty structure more flexible.

3.5 To bring gradually the minimum rates for fine-cut tobacco intended for the rolling of cigarettes into line with the rate for cigarettes. The chosen taxation relationship between fine-cut tobacco and cigarettes is 2/3. Thus, the minimum excise duty for fine-cut tobacco should be EUR 43 per kilogram, and the proportional minimum requirement should be 38 % of weighted average price. Applying the aforementioned relationship on the proposed excise duty increases for cigarettes from 1 January 2014, excise duty on fine-cut tobacco would be increased to EUR 60 and 42 %. Also with this proposal, the current optional use of either a proportional requirement or a minimum specific tax for fine-cut would be abolished, which would lead to a mandatory ad-valorem tax structure for this type tobacco product.

3.6 To adjust for inflation the minimum requirements for cigars, cigarillos and smoking tobacco. This is needed to take into account inflation for the period 2003 to 2007, which has been 8 % according to Eurostat data on the annual rate of change of the harmonised index of consumer prices. It is proposed to increase minimum requirement to EUR 12 for cigars and cigarillos and EUR 22 for other smoking tobacco.

3.7 To amend and toughen the definition for cigarettes, cigars and pipe-tobacco in order to avoid tobacco product name manipulations aiming for the lowest excise duty.

3.8 The Commission argues that from an internal market, budgetary as well as a health point of view, specific and minimum duties have clear advantages. Due to this, the Commission proposes to provide more flexibility to those Member States that place greater reliance on specific excise duties or on minimum duties.

3.9 European Commission regularly examines the structure and rates of excise duty in Member States and uses information on the quantities and prices of the tobacco products released for

consumption. In order to ensure an efficient and effective collection of this information from all Member States, new rules are proposed regarding the provision of information as well as the definition of the necessary statistical data.

#### 4. Different approaches to the excise duties tax rate

4.1 Over the one and a half century since the first cigarette was introduced to the market in London in 1861, tobacco and tobacco products became a subject to extensive regulations and taxation. Introduction of excise duties was a milestone in this area. While the main objective of the first excise duties on tobacco was solely fiscal, their function is changing in the today's world, and they are becoming more and more a tool of public health and social policies.

4.2 This situation opens a lot of ethical, economic, and other questions. Among them, the issue of the most appropriate forms of taxation, especially in the context of the European single market, is the most common. The questions of how to use the proceeds from tobacco taxation, and whether the health and social objectives can be best achieved through the tax policy, arise.

4.3 Europe has gone through a more than 30 years long way of trying to harmonise tobacco excise duties. The goal of this process was to harmonise the structure of taxation, and then also the tax rates. While the EESC clearly supports harmonisation in this area, it is a regrettable fact that a real convergence has never really happened. National traditions, and long-lasting historical divergences in national tax systems are the main reasons of the persisting differences among particular Member States.

4.4 Three types of excise tax structures can be used today for tobacco and tobacco products – specific, ad valorem, and mixed. Currently, Member States are obliged to use the mixed structure on cigarettes, and are free to choose which of these three types of tobacco of tobacco excise duties they use for other tobacco products.

4.4.1 The ad valorem tax rate is set as a percentage of the retail selling price of the particular tobacco product. For the fiscal reasons, in a situation when inflation is high, the ad valorem tax rate is the most efficient for the government, as the tax revenues automatically increase with every increase in the tobacco product's price. However, the ad valorem tax rate may also discourage producers from improving the products' quality if it means higher prices and thus also higher tax payments.

4.4.2 The specific tax rate is set as a fixed amount per kilogram or per piece (in case of cigars and cigarillos). The specific tax rate is the most efficient tool to decrease the consumption of tobacco products. However, it also has its drawbacks. Tobacco producers have no influence over the excise tax based on the specific rate; nor does the quality or the price of tobacco products affect the tax revenues of the government.

4.4.3 The mixed structure is a combination of the specific and the ad valorem tax rate. Member States are obliged to use such a tax rate in case of cigarettes. However, a minimum excise tax can be also set – its importance then increases with the increase of the ad valorem proportion of the total combined tax rate.

4.4.4 Apart from the excise duties, tobacco products in the EU are also taxed by the value added tax. According to the legislation, the basic VAT rate has to be applied to all tobacco products in all Member States.

4.5 All the related factors should be reflected when deciding over the structure of the tobacco excise duty. When choosing between the preference of one or other type of taxation, impacts from the view of consumer, government, and producers should be considered. There is nothing such as a one optimal tax structure for all, as the optimal combination of specific and ad valorem tax rate depends on the policy objectives of each particular country or government.

Table 1: Comparison of Specific and Ad Valorem Taxes on Tobacco Market Participants

Participant/Concern	Impact	Specific Tax	Ad Valorem Tax
<b>Consumer: Quality and Variety</b>	Provide an incentive for higher quality and greater variety of products	Yes (upgrading effect).	No.
	Effect of tax increase on price.	Higher prices (overshifting).	Lower prices (under-shifting).
<b>Government: Revenue and Administration</b>	Maintain revenue value under high inflation.	No (should be adjusted by CPI).	Yes.
	Minimise evasion/avoidance and realise expected revenues.	Manufacturer can manipulate cigarette length or pack size to reduce tax payment.	May need to set minimum price to counter abusive transfer pricing.
	Administration and Enforcement.	Easy.	Must define the base for ad valorem in a way that minimises the industry's ability to avoid taxes.
<b>Domestic Producer: Profits and Marketshare</b>	Protect domestic brands against international brands.	No.	Yes (the higher the price, the higher the absolute amount of tax paid per unit since tax is a percentage of price).

Source: The World Bank, [www1.worldbank.org/tobacco/pdf/Taxes.pdf](http://www1.worldbank.org/tobacco/pdf/Taxes.pdf).

## 5. Different approaches to the excise duties tax base

5.1 In the effort to harmonise the tax policies of EU Member States, the so-called 'Most Popular Price Category' (MPPC) was chosen as a mechanism to calculate the minimum tax requirements for tobacco products.

5.2 However, the efficiency of the MPPC as a tool is questionable. The most common reservations to using the MPPC include:

- There are no consistent or harmonised rules for defining the MPPC, which leads to a large divergence among the Member States (see Picture 1 and Chart 1).

- Since the situation 30 years ago, when the MPPC was introduced, the market situation has change and the diversity of products has increased significantly.
- Dominant producers have the power to increase the tax burden of their competitors by changing the price of their products with the aim of changing the MPPC.
- The prices of MPPC can change year after year, which complicates the estimation of future excise tax revenues, etc.

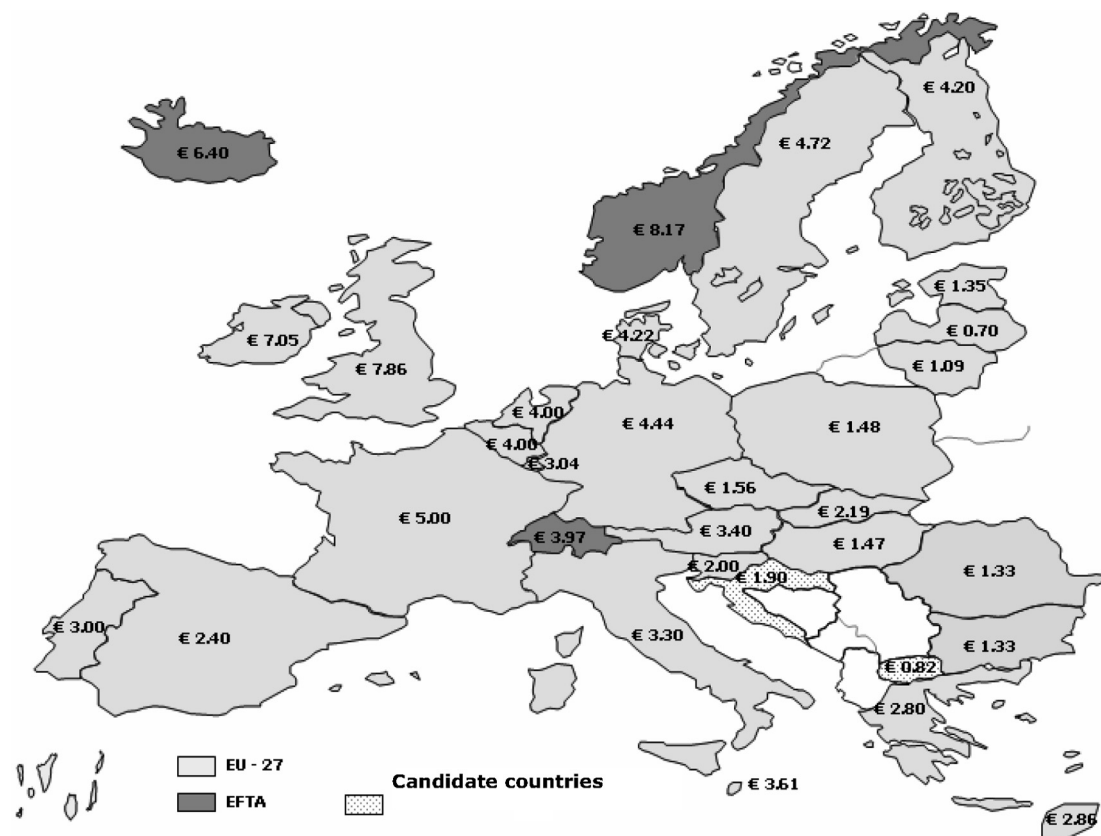
average price is calculated by dividing the product of the number and price of cigarettes sold by the total number of cigarettes sold. Thus, effect on the size of the excise duty may be twofold. If relatively expensive cigarettes are more popular in a certain country, then the minimum excise duty calculated using weighted average price as a benchmark would be smaller than excise duty calculated using MPPC. And vice versa: if relatively cheaper cigarettes are more popular, excise duty calculated based on weighted price average would be larger compared to the one calculated based on MPPC. If the most popular cigarettes are in the middle range price category, excise duty would be the same with either method.

5.3 For all the reasons described above, the European Commission proposes to replace MPPC with weighted price average (WAP) as the benchmark for proportional minimum requirement. Also as a result of this change, minimum excise duty rate requirement set out in the European Union directive will apply not only to MPPC cigarettes (as is currently provisioned), but to all the cigarettes sold in the country. Weighted

5.4 For the government tax planning, both the MPPC and WAP are quite complicated because they change from year to year and cannot be easily predicted. In the absence of a clear and uniform methodology for calculating WAP there is a risk that it becomes another complex non transparent measure. The question whether the Commission proposals could not be further simplified thus arises.

Picture 1

Different prices of the MPPC across Europe (as of January 1, 2008)



Source: <http://europa.eu> - Excise duty tables: Manufactured Tobacco

## 6. Possible impacts and policies to be considered

### 6.1 Health policy goals

6.1.1 After the meeting of its member countries in 2003, the World Health Organisation published the Framework Convention of Tobacco Control (FCTC) that describes potential ways of decreasing the consumption of tobacco products. The FCTC was formally adopted by the EU on 30 June 2005, and the European Commission included it to the legislation effective for all Member States.

6.1.2 The EU strategy of fighting tobacco consumption is described in the Commission's document 'Tobacco or Health in the European Union'. This document considers the tobacco excise duty to be the main tool of the fight against tobacco consumption. The document clearly says that the health policy objectives should be superior to the fiscal policy objectives in the case of tobacco excise duty. Among other measures, the Commission also proposes to exclude tobacco from the Index of Consumer Prices.

6.1.3 The European Commission proposes a gradual, but sharp, increase in tobacco excise duty rates, with an emphasis on harmonisation of the excise duty rates among Member States. In case of the fine cut tobacco, the sharp increase in its taxation is proposed, as the hand-rolled cigarettes are currently gaining a significant market share. The Commission underlines that Member States should put stress on the control of smuggling and other illegal activities connected to tobacco products.

6.1.4 The costs of tobacco production in the EU are estimated to some EUR 100 billion. Some 650 000 European

citizens are estimated to die every year as a consequence of tobacco consumption, and some 13 million are estimated to suffer chronic diseases connected to smoking.

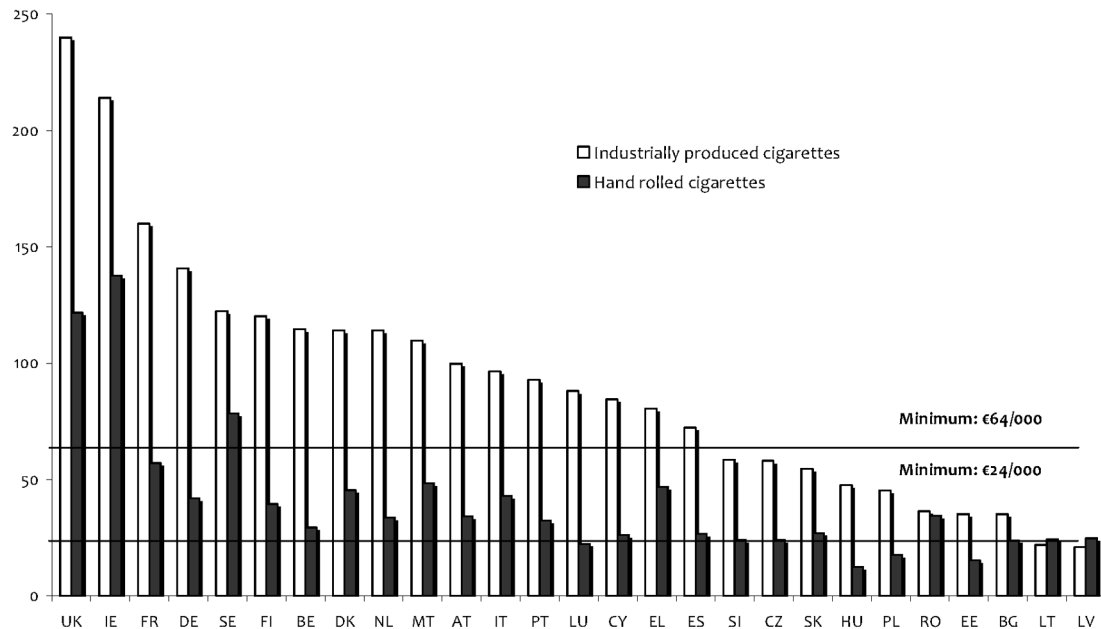
6.1.5 One other aspect should be pointed to in regard to tobacco taxation – the difference in taxation of cigarettes and smoking tobacco, which influences consumer behaviour to a large extent. WHO studies<sup>(1)</sup> dealing with this issue claim that until all tobacco products will not be taxed the same, smokers will substitute one form of tobacco products for another. Therefore, WHO recommends to tax all tobacco products – cigarettes, tobacco, cigars, and other product by equivalent tax rates.

6.1.6 In addition to increasing taxes, some countries have also introduced minimum prices for cigarettes, as tax increases alone did not always lead to the desired price increases to reduce tobacco consumption. Currently, four countries (Italy, Ireland, Austria and France; moreover, an optionality is offered by the Portuguese law) have introduced such price measures, and all four are being sued for this at the European Court of Justice by the Commission, which views such regulation as violating the freedom of prices guaranteed under EU Tax Directives and Treaty. Another common practice among the EU countries governments is the effort to regulate the number of cigarettes in one cigarette box. As of May 1, 2006, regulations on the minimum number of cigarettes in one box exists in 17 countries of the European Union. In most of them, such regulation was adopted over the course of the last five years. Hence, we observe that Member States are complementing their fiscal framework with price and minimum pack content measures as additional tools to strike the right balance between fiscal and public health policy objectives. This review offers a possibility to regulate such national measures now at EU level in order to drive EU harmonisation.

<sup>(1)</sup> World Health Organisation, Guidelines for Controlling and Monitoring The Tobacco Epidemic, 1998.

Chart 1:

Comparison of excise duty on cigarettes (min. EUR 64 per 1 000) and hand rolled cigarettes (fine cut, min. EUR 24 per 1 000 hand rolled cigarettes) as of 1 January 2007 <sup>(1)</sup>



Source: Excise Duty Tables – Part III – Manufactured Tobacco – TIRSP 2007 for fine cut as per the EU Commission Impact Assessment, accompanying document to the Proposal for a Council Directive – SEC(2008) 2266.

## 6.2 Social Policy goals

6.2.1 The European Commission estimates that a 25 % increase in cigarette tax is needed in order to decrease the consumption of cigarettes by 10 % in the 22 Member States, given the experience from the previous years. However, these effects could differ given the different levels of taxation among Member States; impacts in particular countries may be different, especially in the case of the new member countries.

6.2.2 Cigarette price rises due to higher excise duty would decrease consumers' purchasing power. This effect might be stronger in the poorer countries, especially in some of the new EU Member States. Compared to the older EU Member States, standard of living in some countries of Central and Eastern Europe is still low, people spend a larger part of their income on primary commodities. Although cigarette prices in those countries are much lower than in old EU Member States, when assessed at purchasing power, cigarettes as well as other products are not more affordable. Moreover, it is more common that in countries with lower standard of living a larger part of income is spent on alcohol and tobacco products. Thus higher

prices would have more effect on consumers in the EU newcomer countries compared to consumers in EU Member States with higher standard of living.

6.2.3 Cigarette demand is relatively inelastic. This means that an increase in cigarette prices does not cause a large drop in consumption. For this reason, once cigarette prices rise consumers may respond in two ways. Some may be forced to spend less money on other goods, so their purchasing power would decrease. Others would begin purchasing either lower price cigarettes and tobacco products (a situation called "down-grading") or purchase cigarettes from illegal trade channels.

6.2.4 According to a medical research, although smoking may generally decline as a result of higher cigarette prices, the income-related smoking disparities may not disappear. In fact, the research published in the American Journal of Public Health proves that the gaps in smoking participation among different income groups have widened with the increasing price of a pack of cigarette, when the proportion of lower-income persons smoking increased. The research concludes that increasing

<sup>(1)</sup> 1 piece of hand rolled cigarette = 0.75 g.



cigarette prices may impose a disproportionate burden on poor smokers <sup>(1)</sup>.

6.2.5 The proposed EUR 90 minimum excise duty for all retail prices constitutes an increase of 41 % in a period of 4 years and is at least 300 % higher than the expected consumer prices increase in the EU. Such a raising of the excise duty would increase inflation. A sharp increase in excise duty for cigarettes could raise cigarette prices, contributing to a rise in consumer price index. The exclusion of cigarette prices out of the Harmonised Index of Consumer Prices (as proposed in the "Tobacco or Health in the European Union" study) would eliminate this effect *de iure*, however, it could still have social impacts *de facto* as it would imply a wrongly calculated inflation index which could have a negative effect on wage adjustments.

### 6.3 Fiscal Policy Goals

6.3.1 Considering the revenues of the tobacco excise duty and the ways of how these revenues are spent, it is clear that in reality, the main goal of the excise duty is to raise funding for the general spending of national governments.

6.3.2 The linkage between tax and health policy is, to a large extent, conditioned by linking the tobacco excise tax revenues to activities aimed on elimination of the negative consequences of tobacco consumption. However, given the total funding of such activities today, it is quite clear that most of the tobacco excise duty revenues is being spent on activities and policies with no connection to such health policy goals.

6.3.3 It is thus quite clear that the fiscal goals are still the primary objectives of the excise duties on tobacco products. However, achieving the fiscal goals in this case is complicated by the existence of public health insurance. Would the health insurance schemes, and especially the health insurance premiums, reflect the risks connected to smoking, smokers would be forced to bear the costs of their habit. This would basically fulfil most of the anti-tobacco and anti-smoking strategies of international organisations and national governments.

6.3.4 It should be noted, when considering the fiscal aspects of tobacco taxation, that raising excise duty might, but does not

necessarily increase budget revenue. Due to a possible rise in smuggling and illegal trade, and also due to the possible popularity of cheaper cigarettes, it is possible that instead of increasing budget revenue, raising excise duty would have an opposite effect. Once excise duty taxation grows, followed by growth of the illegal market, a decrease in budget revenue due to the growing illegal market may actually be larger than the increase due to higher excise duty.

### 6.4 Security policy goals (illicit trade)

6.4.1 Tax collectors do always have to cope with tax avoidance. Two main illegal activities are linked to tobacco products: counterfeiting and smuggling.

6.4.2 From an economist's perspective, raising excise duty increases incentives for cigarette smuggling and for the illegal market. Smuggling is an economic activity to which laws of supply and demand apply. Raising excise duty increases the price difference between legal and smuggled cigarettes and as a result, demand for smuggled cigarettes rises. When their demand rises, the prices of smuggled cigarettes increase, making smuggling more profitable and leading to a rise in smuggling. This is true for the intra-EU illicit trade with cigarettes, as well as for the smuggling coming from other countries. Especially in the new Member States price and other factors are favourable to the expansion of smuggling from outside of the common market: prices in neighbouring countries to the East are becoming relatively cheaper, new Member States have few border patrol resources, and sometime the amount of shadow economic activities is considerable. For example, according to an opinion poll carried out in Lithuania in 2008 <sup>(2)</sup>, as many as 38.9 % of surveyed people justify or tend to justify smuggling. Also, when investigating the conditions for the development of an illegal market it is important to consider the amount of shadow economy not only in the EU, but also in the potential sources of smuggling – the neighbouring states.

6.4.3 The above-mentioned situation could be described by the case of Lithuania. Seeking to harmonise the tax system with the EU, tobacco excise duty has been sharply increased between 2002 – 2004 in Lithuania (between 2001 and 2004, excise duty burden increased by 121 %). This has led to a sharp increase in cigarette prices. Raising excise duties reshaped the tobacco market. Sales of legal cigarettes decreased, while smuggling and the illegal market grew in size. The amount of smuggled products detained rose almost 13 times between 2001 and 2004. In 2004 market share of legal and illegal market (counting units sold) almost equalled.

<sup>(1)</sup> Franks et al.: Cigarette Prices, Smoking, and the Poor: Implications of Recent Trends, published in the American Journal of Public Health, October 2007, Vol. 97, No. 10.

<sup>(2)</sup> [http://www.freema.org/index.php/research/opinion\\_poll\\_public\\_perceptions\\_of\\_smuggling/4656](http://www.freema.org/index.php/research/opinion_poll_public_perceptions_of_smuggling/4656).

6.4.4 When evaluating excise duty effectiveness it is crucial to consider changes in total consumption of cigarettes (that is both legal and illegal consumption). International experience shows that aggressive tax and subsequently price rises tend to decrease legal sales rather than change total consumption, and this effect is due to expansion of the illegal market. This is what happened in Lithuania as well: when excise duty was increased in 2002 – 2004, gross consumption decreased but this change was not as vivid as the decrease in legal cigarette sales.

6.4.5 The fact that the high price and tax differentials are indeed one of the main reasons behind the substantial amounts of smuggling, in particular of cigarettes, from certain neighbouring countries into the European Union, was admitted by the European Commissioner Laszlo Kovacs in the European Parliament in September 2008. It would thus be ill-advised to adopt decisions and increases of the EU minimum excise requirements that would further deepen this problem.

## 6.5 Internal Market Goals (Harmonisation)

6.5.1 In spite of the thirty years of harmonisation of the tobacco excise duty in the European Union, the differences in tobacco products taxation within the EU – given both the structure of tax and the total tax burden – still remain high.

6.5.2 While some countries chose the health policy as their first priority, traditions and social situation still cause deep divergence in the total tobacco taxation. The difference in excise tax yields across the EU is from EUR 242 per 1 000 cigarettes in the UK to EUR 19 per 1 000 cigarettes in Latvia (data as of 1 January 2007). This might actually be the main reason for the fact that the illicit trade within the European community (in terms of volume of cigarettes) is estimated to be double that smuggling coming from other countries.

6.5.3 It has to be noted that few of the proposed actions will lead to a closer harmonisation of tax rates within the European Union. It is very likely that, given the proposed actions, the absolute and relative differences in taxation among Member States will not disappear.

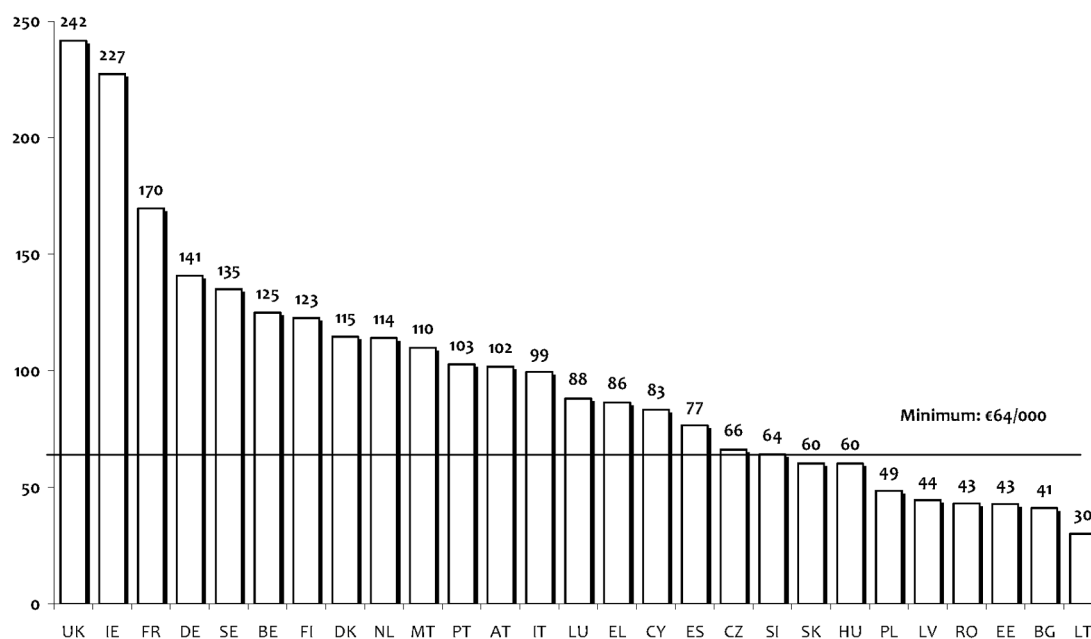
6.5.4 For example, the historic reason for proportional requirement is harmonisation of excise duty in EU, yet it has not led to any harmonisation in the past and may well bring the opposite results. For example, Slovenia and Italy have similar excise tax incidence on MPPC of about 58 %, but the excise tax yield on MPPC for Italy is 80 % higher than for Slovenia, EUR 102.38 to EUR 57.6 per 1 000 cigarettes. The proposed increasing of the excise tax incidence from 57 % to 63 % would lead to further divergence of excise duties in absolute terms and could have serious inflationary impacts, as is shown in the Commission Impact Assessment Report. Given these questionable effects of this proportional minimum requirement, not only its proposed increase, but the reasons for its very existence should be again seriously analyzed and re-considered.

6.5.5 Even the proposed increase of the minimum excise tax on cigarettes from EUR 64 to EUR 90 per 1 000 pieces would lead to harmonisation only if the higher-tax countries do not further raise taxes. From this point of view, it might be interesting to consider a maximum tax level to supplement the existing minimum tax rate.

6.5.6 In the view of the fact that several member states until now have not been able to adjust the minimum rate of EUR 64 per thousand of cigarettes even for the MPPC, the proposed increase to EUR 90 should be re-examined and for many reasons either reduced, or a longer period to comply with the increase should be provided, by January 1, 2018.

Chart 2:

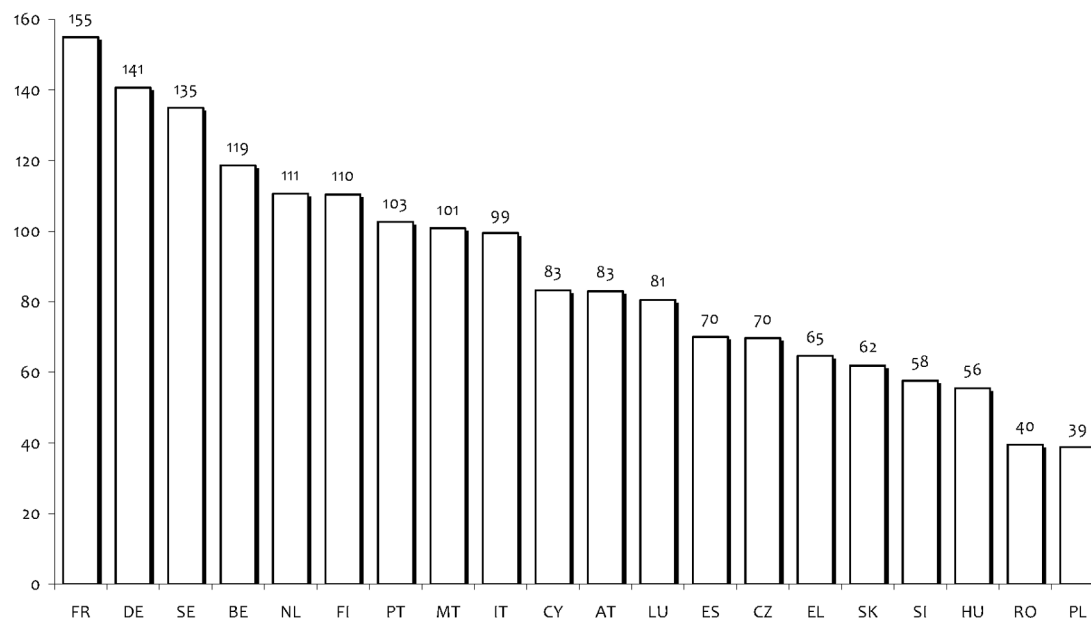
Excise tax yield in EU countries as of January 1, 2008 (EUR per 1 000 cigarettes)



Source: Excise Duty Tables – Part III – Manufactured Tobacco

Chart 3:

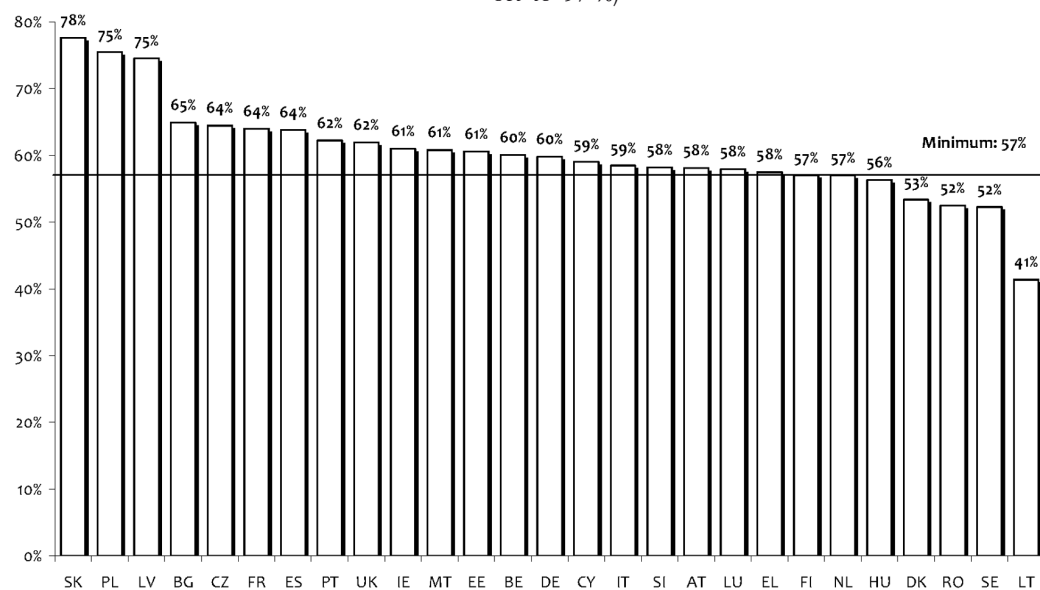
Minimum Excise Tax in EU countries as of January 1, 2008 (EUR per 1 000 cigarettes)



Source: Excise Duty Tables – Part III – Manufactured Tobacco

Chart 4:

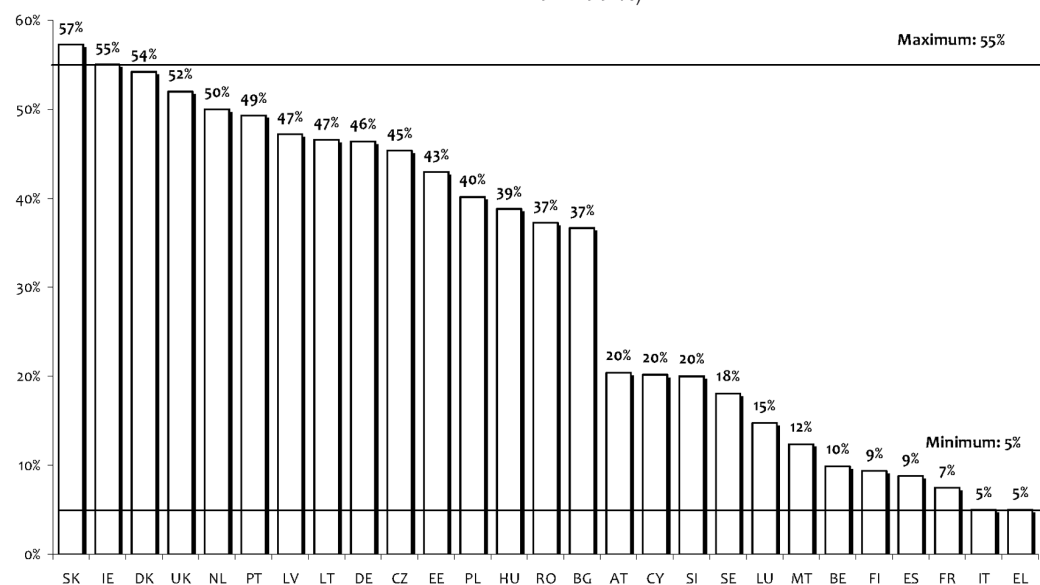
Total excise tax in EU countries as of January 1, 2008 (percentage of the MPPC, minimum set to 57 %)



Source: Excise Duty Tables – Part III – Manufactured Tobacco

Chart 5:

Specific ratio in EU countries as of January 1, 2008 (percentage specific to total tax on MPPC; set to 5 – 55 %)



Source: Excise Duty Tables – Part III – Manufactured Tobacco

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

**Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the results of the negotiations concerning cohesion policy strategies and programmes for the programming period 2007-2013**

(COM(2008) 301 final)

(2009/C 228/26)

On 14 May 2008, the European Commission decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the

*'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the results of the negotiations concerning cohesion policy strategies and programmes for the programming period 2007-2013'*

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 5 March 2009. The rapporteur was Mr CEDRONE.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March 2009), the European Economic and Social Committee adopted the following opinion by 40 votes with one abstention.

## **1. Conclusions and recommendations**

1.1 *Lisbon Strategy:* The European Economic and Social Committee (EESC) welcomes the link between the structural funds and the Lisbon strategy, including the funding of policies planned under that strategy, but under the conditions set out in point 5.1.2. However, it is important to avoid Lisbon ending up being deprived of independent funding.

1.2 *Timing:* everything should be done to meet the deadlines for implementing the programmes, avoiding overlaps and delays that end up acting as impediments to achieving the objectives. Moreover, it is important to take account of the different deadlines for Community programmes.

1.3 *Deadlines and instruments:* it is worth looking at whether the deadlines should be brought into line with each other, bringing them to 10 years. On this subject, the EESC once again emphasises the difficulties with and the obstacles to combined and coordinated use of the instruments that are available at various levels to individual operators. These should therefore be clarified (legal basis, thematic specialisation, geographical areas, implementing procedures), in particular whether or not projects are transnational; whether they start, receive funding and are implemented at the same time; and whether an overarching project can be broken down into sub-projects.

1.4 *Parameters:* provision should be made for others alongside GDP so as to have a more objective set of criteria relating to the needs of each locality (point 5.9).

1.5 *Integrated approach:* the EESC considers it necessary to assess the EU's financial prospects – with a view to expanding the funds – and to focus more attention on co-financing by the Member States, together with that by other European bodies. The dedicated sums now seem derisory when compared with the billions of euros earmarked for bank bailouts. The EESC believes that the integrated approach should be strengthened

and made compulsory so as to bring back the strategic approach to cohesion policy.

1.6 *Coordination:* the EESC recommends better coordination between the strategies and programmes of cohesion policy and the Community framework programmes for research and development (FP7), innovation and competitiveness (CIP). It also recommends that their transnational and international network mechanisms be strengthened so as to promote competitiveness, innovation and employment. It is essential that the objectives and procedures of cohesion policy be constantly matched with those of research and innovation policy.

1.7 *Results:* the EESC believes that more attention should be paid not only to financial control, but also to the quality of the results achieved, particularly as regards the growth and employment generated by the programmes, based on those from the period 2000-2006.

1.8 *Evaluation:* in order to make cohesion policy work even better and more effectively, the EESC believes that measures should be applied more selectively so as to achieve better results on the ground in terms of development, and that the process of monitoring and evaluation should be strengthened, for example by setting up appropriate independent, supranational committees where these do not yet exist. The evaluation and control mechanisms for the various phases that make up cohesion policy should be more transparent and accessible to economic and social stakeholders.

1.9 *Transparency and communication:* the EESC believes the issue of transparency to be fundamental – in funding, in information, in local public support for the choices made and the results. This is the best way to raise the EU's profile and make it more relevant to ordinary people. Transparency must be a priority objective of the EU and must apply to all phases relating to cohesion policy.



1.10 *Consistency*: it is essential to maintain a relationship and a consistent vision throughout the various phases of the funds: preparation, implementation, use, monitoring and evaluation.

1.11 *Simplification*: serious consideration needs to be given to simplifying procedures, which often cause programmes to be implemented late or not at all. Attention should be focused instead on evaluating results by means of clear and effective systems, bringing into play the possibility of introducing **penalties** for those who do not abide by the method, content and time frames, starting, for example, with not returning unused allocations to Member States, given the limited size of the EU budget.

1.12 *Multiplier*: cohesion policy, together with EU and Member States' economic policy, must not be limited to simply redistributing resources, but must be aimed at creating a multiplier effect on the ground by attracting other investments so as to boost growth, competitiveness and jobs and promoting research and innovation. The primary aim must be to improve the so-called 'public goods' (water, refuse collection and disposal, services to elderly people, training, pre-school facilities, etc.) as policies of excellence to make the regions in question more attractive.

1.13 Given the international financial crisis and its ongoing consequences, and in the light of the plan approved by the European Council of 11 and 12 December 2008 to tackle the economic recession, including the proposals to modify the Community fund regulations, the EESC judges that the moment has come to carry out, at last, a thorough-going review of the mechanisms governing the use of resources earmarked for cohesion policy, in order to make them more consonant with growth and a reinvigorated European economic policy.

1.14 *Financial set-up*: Scattering subsidies around must be avoided. Instead, what is needed are root and branch changes to the financial set-up of the funds, more specifically in order to ensure that credit lines are re-opened, especially for SMEs <sup>(1)</sup> and local authorities, by choosing more appropriate policies, and adding contributions from the European Investment Fund (EIF) and the EIB.

1.15 *Patronage*: the Commission must adopt appropriate instruments to eliminate the forms of patronage that impact on cohesion policy. In particular, the various forms of sub-contracting should be eliminated or at least reduced so as to avoid waste and abuses.

1.16 *Social and cohesion policy*: it is also necessary to put social policy back at the heart of cohesion policy as one of its main objectives. This is all the more necessary at a time when the economic and social crisis that has followed on from the financial crisis is having a severe impact on the most vulnerable sections of the population.

1.17 *Labour market*: cohesion policy must promote greater integration of the European labour market, with particular reference to women, including by experimenting with new forms of employment relationship that promote growth and employment.

1.18 *Good practices*: the Commission should facilitate the proliferation of those programmes that have achieved the best results across Europe's various regions. It would also be helpful to draw attention to those programmes that did not achieve the expected results so as to avoid them being repeated.

1.19 *Small and medium-sized enterprises*: SMEs must always be at the centre, as the main beneficiaries, of cohesion policies, with a view to developing and increasing competitiveness, including that of the social economy. SMEs are central to growth and employment, and it is therefore vital to facilitate their access to credit during this period of recession.

1.20 *Partnership*: The Commission should pay more attention to the issue of social partnership. It should not limit itself to the formal interpretation of Article 11 of the regulation, but should get back to the spirit of the idea of partnership, which is at the heart of European social culture. Partnership should not therefore be practiced as a concession, as a mere formality, but as genuine agreement on procedures, on the substance, on the implementation and on the evaluation of programmes and on their transparency.

1.21 *Political Europe*: there is one recommendation in addition to those already made, but it is the most important one: the Commission, the Member States, the regions and the social partners can and must do much more to improve cohesion policy; indeed, they are seeking to do so.

1.22 *The EESC* must help the European Union to decide its future, to identify the legal and political instruments that will give it decision-making powers for certain policies, make its action more effective, and put an end to the illusion of being able to remain immune from everything, whilst watching passively from the window.

## 2. Proposals

2.1 Produce rules for improving institutional governance, drawing up procedures to facilitate the creation of effective partnerships for reaching agreement with the social partners, establishing guidelines for agreement on procedures, not least on the basis of prior experience, for the purpose of discussing and negotiating programmes, content, procedures, etc.

2.2 Introduce new evaluation criteria, valid for all countries, to help the relevant stakeholders by facilitating objective evaluation by appropriate committees of the results and the quality of actions, making **effectiveness** a means of measuring the impact of cohesion policy.

<sup>(1)</sup> See the Commission's JEREMIE programme.

2.3 Promote, to this end, a common European training programme for the purpose of creating actors for cohesion who are capable of using the same method to work throughout all the phases of operations involved in the use of the funds. In addition, the mechanisms for technical assistance such as JASPER should be made available to all the convergence regions and all the interested stakeholders.

2.4 Simplify and streamline the procedures throughout all phases involved in the funds, as the EESC has asked on several occasions, almost always in vain.

2.5 Provide for penalties in the event of non-compliance and/or failure to achieve results, so as to avoid waste, the repetition of mistakes and various types of patronage.

2.6 Put in place a safeguard clause for the poorest and least structured regions to ensure that the best use is made of the resources that are targeted at them.

2.7 Promote more inclusive citizenship and greater economic and social cohesion for all, using cohesion policy complemented by national policies.

2.8 The EESC asks that the institutional partnership between the Commission, Member States, and regions be distinguished from the partnership with the social and civil partners. This latter partnership should be actively pursued at all levels: European, national and regional, through the partners' actual, rather than formal, participation.

2.9 Set up a commission (working group) made up of representatives of the different Community institutions (EC, EP, EESC, CoR) to examine and propose a radical overhaul of the mechanisms that currently govern cohesion policy.

### 3. Introduction

3.1 The principle of social cohesion is one of the pillars of EU policy, Treaty Article 158, which Lisbon extended to include territorial policies. This brings together economic cohesion and social cohesion in a way that represents the essence of the basis on which the EU is founded. This principle should apply at all times, in all places, across all policies, but is often forgotten. Cohesion and political solidarity should be a defining characteristic of everything the EU does. All too often this is not the case, as has been shown by the events of recent days in connection with the financial crisis.

3.2 Cohesion policy, as it is presented, still looks like a policy of mere redistribution and not like something that adds value to economic policy, monetary policy and the single market, reducing the gap between regions and countries and militating against destructive competition.

3.3 The limits of cohesion policy, which are clear from the communication, depend not only on budget constraints, but also on the lack of coordination between cohesion policies and other economic policies, which are still in the hands of the Member States, who are often unwilling to go beyond coordinating action between European and national policies. The communication reflects these weaknesses, which, sadly, are inherent to the decision-making system and therefore to the European Commission's own ability to act.

3.4 The Commission is currently limiting itself to acting as a guardian of the procedural mechanisms and to making them work, to representing the formal aspects (mere compliance), whereas what is needed is a guiding role that is more relevant to and more targeted towards, the achievement of tangible, effective results. A role, in other words, in which it is able to reinterpret the original spirit of cohesion policy, whereas the Commission has been fulfilling a guiding role aimed at improving the professionalism of those who should use the funds.

3.5 The communication, together with the Fifth Cohesion Report, is emblematic of this. The EESC must therefore make an effort to put the strategic approach back into cohesion policy by making concrete suggestions and proposals; more importantly, it must ensure that these are taken up.

3.6 In this opinion, we would like to avoid covering every aspect of cohesion, which has already been done many times in the past. We would like to limit it to a few basic comments and a few practical proposals.

### 4. Communication from the Commission: summary

4.1 At the end of the consultation and negotiation process that has taken place at various levels on the programmes relating to the 2007-2013 plan, the Commission has presented a report highlighting the 'successes' arising from the negotiations, with not a word of criticism.

4.2 The report emphasises the quantitative (EUR 347 billion in investment) and 'qualitative' aspects of the choices made, in a very formal way, with 'perfect' tables and diagrams. Cohesion policy for 2007-2013 is based on four areas aimed at achieving the following objectives:

- cohesion policy and the Lisbon agenda;
- globalisation and structural change;
- demographic change and more inclusive labour markets, societies and economies;
- sustainable development, climate change and energy.

It also talks of governance and the negotiations that have taken place (the method).

4.3 The specific objectives of the programme are mentioned, along with the numerical data, the allocation of funds <sup>(1)</sup>, etc. In summary:

- priority is given to research and innovation (86 billion), equivalent to 25 % of the available resources;
- 15 billion to services and infrastructure;
- 27 billion (8 %) to SMEs;
- 26 billion to education and training;
- policies to support employment, particularly of young people, women, migrants, etc.;
- help for people below the poverty line who are unable to enter the jobs market;
- environment and sustainable development, with an expenditure allocation of 102 billion.

## 5. Comments

### 5.1 Policies

5.1.1 The first part of the Commission communication refers to the Lisbon strategy, which is considered as a key aspect of cohesion policy. The EESC considers that it would be difficult these days to find a national or international institution that did not fully support an economic policy strategy aimed at bringing about a satisfactory rate of economic growth combined with a high employment rate. However, the document in question does not at any point go into the question of how to implement that strategy in an economic situation involving 27 countries that are very different in terms of their economic, financial and social resources, and above all in terms of territorial development – even though no provision was made for doing so.

5.1.2 If it is to attract public support, the Lisbon strategy must be appropriate to the different situations on the ground in relation to cohesion policy and, for each different situation, economic policy measures need to be identified that, drawing on the (human, infrastructure etc.) resources available in the areas, are able to promote growth in income and employment. This means not only having a vision for development of these territories in the short to medium term (for diversification and retraining, for strengthening the local institutions, for identifying and training the human capital necessary for managing change, for attracting new investment, etc.), but also the ability to use economic policy measures, in terms of both regulation

and action, that are capable of having the desired effect on the local economy.

5.1.3 In addition, the communication speaks, in very general terms, of the successes, and limits itself to listing the financial resources provided by cohesion policy for each sector of activity (accessibility of the European market, expenditure on R & D and innovation, entrepreneurship, labour market, environment, etc.). It would have been appropriate to make a reference, on the basis of past experience and more recent experience in the 12 new Member States, to the effective spending power demonstrated by individual territories and on the measurable impact of the use of Community resources on the main macroeconomic variables (growth in income and investment, increase in employment, falling inflation).

5.1.3.1 The availability of resources set aside for a specific objective is the necessary prerequisite for ensuring change, but is not in itself sufficient to guarantee that it happens in practice. It would also have been helpful to mention the key issues arising from the management of cohesion policy, including the complexity of the procedures involved in managing Community programmes, and also to refer to the deterioration in the international macroeconomic climate, which certainly did not help the development of the most disadvantaged European regions.

5.1.4 In addition, one simple piece of data calls into question the emphasis placed on the successes of cohesion policy. In recent years, notwithstanding the significant resources invested by the Structural Funds in the years 2000-2006 (260 billion euro), the pace of development in European countries has been considerably lower than that in the main competitor countries (United States, Canada and, to a lesser extent, Japan). This phenomenon has been particularly noticeable in the regions that are furthest from the Community average. The first two years of the new programme cycle (2007-2013), thanks to the recent worsening of the economic and financial crisis, confirm that many of Europe's regional economies continue to suffer a significant slowdown in growth, if not stagnation.

5.1.5 On the basis of these observations, the EESC believes that cohesion policy for the period 2007-2013 should not have offered a single 'one size fits all' strategy for all Member States targeted towards the three objectives set out in the Community programme (convergence, regional competitiveness and European territorial cooperation), but a twin-track strategy, the first aimed mainly towards the European regions that are furthest below the Community average (meaning the regions of the 12 new enlargement countries), the second aimed at those regions which, whilst remaining some way below the average, have made significant progress in recent years towards convergence with the most developed regions of the EU.

5.1.5.1 The reason for proposing a strategy tailored to the state of development of the 27 Member States is based on the idea that those regions that are well below the 75 % threshold need a very different kind of intervention and measures from those that have drawn closer to the Community average. Lumping them all together as 'Convergence regions' is not helpful to understanding the different **intensity, direction and flexibility** that needs to apply to the proposed policy measures.

<sup>(1)</sup> See appendix.

5.1.5.2 The same could be said about the Competitiveness regions and the Territorial Cooperation regions. An analysis tailored to each region, based on more representative indicators than those taken into consideration by cohesion policy (as has already been highlighted in the EESC opinion on the fourth report on economic and social cohesion) might lead to a major review of the distribution of resources under each objective, and thus give a different complexion to the development policies selected for each region. We believe that more attention should be paid to this matter in the debate the Commission has opened on the priorities, organisation and governance of cohesion policy.

5.1.6 With a view to ensuring the best and most effective use of Community resources, it would have been useful to make provision, particularly for those regions which have been unable to make best use of the resources made available under cohesion policy or are still in a period of transition, for some form of substitute and/or integration measures to be taken by the Commission itself in compliance with the subsidiarity principle.

5.1.6.1 The issue here is the risk that the poorest and least (institutionally, politically, culturally) structured regions may run, both in terms of inefficient use of resources and of repaying resources that were allocated but not spent, to the severe economic and social detriment of the people concerned by those funds.

5.1.6.2 For the regions in such a position, a 'safeguard clause', to be activated with the support of the Commission to ensure more efficient use of Community resources, would be socially and economically much more helpful than risking seeing those resources wasted through poor management or simply returned.

5.1.7 Another comment relates to funding provided for under the ESF for improving the quality and provision of education and training. The EESC believes that improved skills, better integrated Community instruments and greater participation in the labour market are required in order to ensure greater competitiveness and productivity of local economies.

5.1.7.1 The results achieved in this area have been below expectations, as has been stated many times in EU documents. In this sector, too, training and skills schemes operating in many European regions should be rethought.

5.1.7.2 The resources earmarked for that sector by the new programme are numerous, and the risks arising from their sub-optimal use mean that provision should be made for corrective measures capable of preserving the autonomy of local authorities where the level of professionalism and administrative organisation is sufficient. Moreover, it is essential to make good use of the available resources, but also to come forward with

alternative proposals (less local training and more centralised training at the EU institutions, to create better and greater links with domestic and foreign academic institutions, and to take joint initiatives with qualified partners to spread best practice, etc.) wherever the basic conditions necessary to ensure efficient management of the training programmes are not fulfilled.

5.2 Moreover, the plan changes course compared to the original principles of cohesion set out in the Treaty – a course that should have been maintained. With the connivance of national governments, we are seeing the legitimacy of those principles being undermined under the pretext of pursuing the 'new', as the 'challenges' require.

5.3 This risks reducing cohesion to being a cash source for other European agendas or policies without funds, like a menu that varies in accordance with the requirements of the moment. Cohesion is thus becoming a redistributive policy devoid of any strategic approach.

5.4 Thus, the philosophy has been to scatter subsidies around when it in fact it was and is necessary to make root and branch changes to the financial set-up of the funds, to boost their multiplier effect by choosing more appropriate policies, adding contributions from the European Investment Fund (EIF) and the EIB in order to ensure access to credit for businesses.

5.5 Cohesion policy should be put in a position to help boost the growth and competitiveness of the regions involved, by all means investing in research and innovation, but first and foremost aiming to improve the so-called 'public goods' (water, refuse collection and disposal, services to elderly people, training, pre-school facilities, etc.) as policies of excellence to make the regions in question more attractive.

5.6 The identification of choices to be made at national or regional level cannot be passed down from on high through top-down mechanisms with no regard to the needs and the situation on the ground, often using simplifications that risk being severely detrimental to the situation in many regions, leading to a widening of the development gap and undermining the Community's financial strength. The defining characteristic of cohesion policy is precisely that it adapts to real local needs without losing sight of innovative actions and coordination with other Community programmes.

5.7 The Commission played an important role in the early phase of cohesion policy. It helped the Member States and the regions to improve their approach and their action in terms of choices and objectives. This approach now seems to have been reversed: style prevails over substance, with a disproportionate amount of energy and money being expended to the detriment of investment.



5.8 The EESC believes that control is important, but not at the expense of content. A distinction needs to be made (not least by the Court of Auditors) between irregularities and fraud, and the impression that this is the Commission's sole concern should be avoided; the Commission is often seen, along with the other institutions, as an investigator. Moreover, the EU cannot use different weights and measures depending on which policy area it is dealing with.

5.9 GDP cannot be the only criterion for determining whether or not a region is underdeveloped or not; this is especially true since the eastward enlargement; it would be helpful to take account of other parameters, such as the growth trend, competitiveness, employment rates, the state of public services, universities and schools, the rate of population ageing, the situation of young people and women, activity and inactivity rates, the general condition of the Member States, etc.

## 6. The method: governance and partnership

6.1 The EESC thinks that it would be more appropriate to draw a clear distinction between institutional partnership or governance, which still remains weak, and negotiations with the social partners per se and civil society. As described in the communication, they appear to be one and the same!

6.2 Just as much confusion arises over the participation of the partners, stakeholders in cohesion policy: it is as if participatory 'democracy' depends on the number of initials involved in meetings, which are often reduced to a sort of 'assembly listing'. In short the current procedure of governance and partnership is quite inadequate. It needs a thorough overhaul. It is essential that the requirement for a broad partnership in the planning, implementation and evaluation of Structural Funds Programmes, as laid down in Article 11 of Regulation (EC) No 1083/2006 on the Structural Funds, be applied effectively. The procedure for governance and partnership should therefore be reviewed with a view to enabling greater and real participation by organised civil society.

6.3 Socio-economic partnership is 'a value', an opportunity, a necessity; it is not a concession or a favour granted to partners. If partnership, including negotiation, is respected and practised in an active way at all levels and during the different stages, this almost always leads to better choices, programmes, plans and results. It also helps provide more information for the public and bring about greater support for cohesion policies from local and national communities.

6.4 Unfortunately up to now, leaving aside formal procedures, the impression one gets from the communication is that this has not been the case, apart from a few exceptions. Often there have only been hearings, fact-finding meetings, and not actual agreement for developing negotiations. On many occasions the social and civil partners have not been involved either because the preference has been to 'refer back' to national

practices, which are often non-existent or not applied. For instance, national ESCs could be involved, as is the case in France and Portugal, to guarantee and reinforce the negotiating process. Good examples of the involvement of the social partners and civil society organisations are also to be found in other countries, such as Sweden.

6.5 It is also necessary to mention the huge disparities which exist or have emerged between various countries, particularly those in the last wave of enlargement where trade unions and entrepreneurs have been practically left out altogether. The EESC thinks that the negotiating machinery must be adapted to the different national realities which exist and made more flexible, provided, however, that it is real, concrete and made up of representative organisations. Things cannot be limited, therefore, simply to 'dialogue' or consultation, even if there are real difficulties, or to so-called 'forums' of partners. The EU 'must' promote partnership, conduct real negotiations with the social and civil partners at all levels, starting at European level for reasons that are well known.

6.6 The preparations for the Operational Plans could have been an opportunity to assess the validity of consultation with the partners, but instead it is here that serious problems have been found:

- inconsistency between the short periods for consulting partners and the long deadlines for implementing programmes;
- lack of checks on the consultation process without giving the reasons for the changes made;
- lack of formal partnership agreements, especially at regional level;
- rusted-up consultation (negotiation) system and widespread feeling that points made have not been properly taken into consideration; insufficient involvement in the implementation of programmes, especially at regional level;
- need for capacity building and improving the expertise of social partners (in various countries) to a point where it can compare properly with that of institutions.

6.7 Here too the issue of representative parties' and stakeholders' involvement in negotiations re-emerges. The EESC thinks that account should be taken of the social (employers' associations and trade unions) and the civil partners, who should be involved in accordance with the specifics of their interests and how representative they are. For their part, the Member States should be required to practice genuine and proper partnership among all the interested parties.



6.8 Partnership must also be practised at different levels, whether they be European, national or regional, both horizontally and vertically and at all the stages of the plan (preparation, implementation, verification of programmes, projects and results). The method adopted for the ESF, with appropriate adjustments, could also be used as an example, for regional policies and other funds.

6.9 The Commission, as was the case in the past, should promote training for the social partners and interested NGOs so as to get the best out of their involvement, in particular in the regions and in the new Member States.

Brussels, 25 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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**Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports**

COM(2009) 121 final — 2009/0042 (COD)

(2009/C 228/27)

On 19 March 2009 the Council decided to consult the European Economic and Social Committee, under Articles 156 and 175 of the Treaty establishing the European Community, on the

*'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports'*

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 452<sup>nd</sup> plenary session of 24 and 25 March 2009 (meeting of 24 March 2009), by 140 votes to 8 with 14 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 24 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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## Opinion of the European Economic and Social Committee on the European Economic Recovery Plan (additional opinion)

(2009/C 228/28)

On 15 January 2009, the European Economic and Social Committee, acting under Rule 29(A) of the Implementing Provisions of its Rules of Procedure, decided to draw up an additional opinion on the

*'European Economic Recovery Plan.'*

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 5 March 2009. The rapporteur was Mr DELAPINA.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 24 March), the European Economic and Social Committee adopted the following opinion by 138 votes to 8, with 13 abstentions.

### 1. Summary

1.1 A key role in surmounting the current crisis falls to the representatives of the associations of civil society, and in particular the social partners. A strengthened social dialogue is needed, on the one hand to draw up and implement a policy likely to put an end to the crisis as soon as possible and, on the other hand, to mitigate as far as possible the economic and social fallout of the crisis. Thanks to the European social model, the European Union has a better baseline than other regions of the world from which to contain the impact of the crisis. Even within the EU, it is becoming apparent that the policies pursued by countries that have more consensus-based systems are meeting with greater success.

1.2 The European Economic and Social Committee has shown in various ways that it is fulfilling its institutional remit of supporting the other European institutions in the current financial, economic and social crisis. Thus, at a conference held on 22 - 23 January 2009, the Committee established the institutional framework for a dialogue with the various stakeholders: banks, companies, trade unions, institutions and other civil society actors. Instruments for combating the crisis were discussed from an institutional, legal, economic and political, social and academic point of view.

1.3 Moreover, at its plenary session held on 15 January 2009, the EESC adopted an opinion on the European Economic Recovery Plan<sup>(1)</sup>. The key points of this opinion can be found in section 2 and the full text of the opinion is appended.

1.4 A final assessment could not be made in that opinion, as no information was available at the time on the most important issue: actual implementation in the Member States, which has to be the driving force. Implementation has to be closely analysed, as does the proportion of the measures and resources proposed in the recovery plan which is actually new and additional, as opposed to that which was already planned or adopted before the recovery plan.

1.5 The Committee calls on all stakeholders, particularly the Member States and the European Commission, to make a start on implementing the recovery plan without further ado. The Commission is also asked: (a) to provide an overview of the state of implementation of the national programs, (b) to list the instruments available for accelerating the progress of these measures and (c) to assess the extent to which the necessary coordination of national policies is functioning properly or whether there are undesirable developments.

1.6 On 17 March 2009 the Committee held a conference, at which ways of surmounting the crisis were discussed with representatives of the national economic and social councils, the European institutions, the social partners and representatives of other civil society associations. In particular there was an exchange of experience on implementation of the European economic recovery plan at national level and on the contribution which organised civil society can make to economic recovery.

1.7 The purpose of drawing up this additional opinion on the European Economic Recovery Plan is to develop key points of the previous opinion, to flesh out or update certain aspects and to raise questions for discussion with the national economic and social councils.

1.8 The discussion will be continued at the EESC in the course of drawing up the Programme for Europe, with the aim of presenting the European institutions with a coherent and effective package of proposals.

### 2. Brief overview of the Committee's previous opinion on the European Economic Recovery Plan

2.1 The Committee wholeheartedly supports the European Economic Recovery Plan of the Commission and the Council. It considers it to be the right economic policy reaction to the coming challenges. Rapid, decisive, ambitious, targeted and coordinated action is required to stabilise the confidence of consumers and investors and boost demand.

<sup>(1)</sup> See EESC opinion of 15 January 2009 on the European Economic Recovery Plan, rapporteur: Mr Delapina- ECO/244 – CESE 50/2009.

2.2 *The Committee highlights the following aspects as particularly positive:*

2.2.1 Economic policy-makers seem to have learned from experience. Whilst in previous downturns policy was mainly passive, policy-makers now seem to have recognised the need for an active, counter-cyclical macroeconomic policy to complement past reliance on supply-side measures, in order to stimulate domestic demand.

2.2.2 The Committee attaches particular importance to the statement that full use must be made of the flexibility of the reformed Stability and Growth Pact. In an extraordinary situation like the current one this means temporarily allowing the 3 % budget deficit ceiling to be exceeded. The stress placed on the ECB's monetary-policy responsibility for the development of the real economy and the reference to further scope for interest rate cuts also appear significant to the Committee.

2.2.3 The Committee welcomes the commitment to a coordinated approach. An international crisis requires internationally coordinated responses. Freeloading and 'beggar-thy-neighbour' policies also need to be prevented.

2.2.4 Another positive feature is the fact that the objectives of the Lisbon strategy play a key role in the current short-term crisis management measures:

- The impact of the crisis on individuals has to be mitigated in line with the principle of social cohesion. The labour market must be supported and the weakest members of society must in particular be better protected.
- Companies' competitiveness must be strengthened, so that by investing, producing and exporting they can contribute to the recovery and emerge strengthened from the crisis. Forward-looking public-sector investment in innovation, education and research must, in addition to strengthening demand, also serve the purpose of structural improvement.
- SMEs may be a key driving force on the path out of the crisis. Support measures are thus needed to again secure unhindered access for SMEs to funding and to strengthen their competitiveness and innovativeness.
- It is also important that public and private stimulus measures serve the objectives of the Union regarding environmental protection, energy saving and climate change, by aiding the transition to a low-carbon economy.

2.3 *The Committee opinion also contains some critical comments:*

2.3.1 At 1.5 % of GDP over two years (an average of 0.75 % of GDP per annum), the scale of the EU's economic recovery plan is relatively small compared with packages adopted in other regions of the world. A further concern is the fact that the package actually includes much less 'new money' than the headline amount of EUR 200 bn. In the case of both European and national-level measures, the plan in many cases does no more than list or bring forward measures which had already been adopted, even before the recovery plan.

2.3.2 Care should be taken to ensure that the structural improvement measures do not counteract the objective of stimulating demand and employment. They must be designed to be socially acceptable and conducive to growth and employment.

2.3.3 It will be possible to evaluate the success of the broad range of measures for the Member States only when it becomes clear whether the most appropriate policy mix is being used in each case. Not least for psychological reasons, it is, however, particularly important that all stakeholders take concrete action as soon as possible, as otherwise there is a danger of pessimistic expectations becoming entrenched.

2.3.4 Following on from the initial policy steps, in the form of various rescue packages to restore the operation of the financial sector, there is now a need for a globally coordinated reorganisation of the financial markets aimed at building confidence. The critical mass of the euro area, which has grown with the enlargements, must be used in order to ensure that greater weight is given to European ways of doing things, strengths and experience. The European Economic Recovery Plan does not set out any detailed proposals in this area, however.

### 3. Further general comments

3.1 The greatest immediate challenge facing economic policy is to restore the confidence of consumers and investors by means of an effective demand stimulus. Demand needs to be created in order to encourage growth and keep unemployment down, so that the kind of downward spiral which occurred in the 1930s can be prevented. In so doing, the failures of the past, which contributed to the current crisis, must be avoided.

3.2 It appears that the economic-policy toolkit of the European Union, and particularly that of the monetary union, were designed for smooth economic development and crisis prevention. They are not, however, adequate for rescue measures in times of crisis. What is needed, therefore, is a new direction in economic policy, new paths and European-level governance which offer appropriate reactions to crises like the current one.

3.3 We have learned to our cost that the market cannot solve all problems<sup>(1)</sup>. The exaggerated belief in the market mechanism as a panacea, short-term thinking and planning and chasing after ever higher returns must be replaced by a realistic, less ideological policy.

3.4 The fact that the market has failed in the financial sector does not, however, mean that it does not function at all any more but it does show the need to avoid or correct adverse market developments through targeted legislation and supervision. The new policy must therefore build on the foundations of a market economy which encourages and rewards initiative and risk-taking. However, the 'all-powerful market' must once again be subjected to stricter rules, in order to ensure that it functions as smoothly as possible. Free markets need crash barriers, if only because in reality perfect market conditions do not exist. In the case of the European Union, a further factor is that the European economic and social model is based on principles which require the correction of market results. A renewed focus on a longer-term objectives and values is also part of this model.

3.5 Economic policy, both at European and national level, has – admittedly rather late – taken some important steps in the right direction. Interest rates have been cut, although scope for further cuts still remains. State intervention, aid, guarantees and assumption of risk have once again been recognised as useful and necessary. In particular cases, even nationalisation is not ruled out as an ultimate rescue measure. Public-sector budgets are being used through tax cuts and increased public expenditure to support demand. The macroeconomic policy mix has thus become more balanced.

3.6 The Committee reiterates its concern that the scope of the European Economic Recovery Plan is likely to be too small (see point 2.3.1). This may in part be because, at the time the package was put together, official growth forecasts seriously underestimated the depth of recession. Thus, at the time its autumn forecast was published on 3 November 2008, the Commission was still expecting minimal growth of the euro area economy of 0.1 % in 2009, whereas the interim forecast of 19 January 2009 (-1.9 %) was already two whole percentage points lower. Current forecasts for the end of the first quarter indicate that a contraction of some 4 % is now expected. The impact on growth and employment is thus much graver than was realised only a short time ago. While it is plain that the first thing to do is implement the measures already in place as quickly as possible, the change in the economic situation and outlook over the past few weeks has been so acute that there is clearly a much greater need for countermeasures at various levels, as argued in section 4 of this opinion.

<sup>(1)</sup> Even the CEO of the Deutsche Bank, Josef Ackermann, went so far as to say that: 'I do not believe in the ability of the market to heal itself.' (www.faz.net – 17 March 2008).

3.7 The economic stimulus measures will cost a great deal of money. Most EU countries will exceed the 3 % budget deficit threshold. In the framework of the more flexible, reformed Stability and Growth Pact this can under certain circumstances be considered sensible, necessary, and therefore as something to be tolerated without penalty. Naturally the same flexibility must thereby be applied to euro-area candidate countries as to existing members of the monetary union. The conditions of the Pact should not be an obstacle to forward-looking investment in research, development and education aimed at creating the potential for future growth, because this growth will provide the basis for putting public finances back onto a sustainable course rapidly once the crisis has been overcome.

3.8 We need to start thinking now about how we can return to a long-term sustainable path after the crisis. In any case, to return to such a path, credible national strategies are needed. The urgency of this task is already highlighted by the worrying widening of spreads on certain euro area government bonds, which suggests that investors are growing increasingly doubtful about the solvency of individual national governments. Intelligent solutions are needed to stabilise public finances, which avoid the 'kill or cure' methods of the 1930s which were carried out at the expense of workers and the weaker members of society. At that time a combination of wage and social dumping together with protectionist measures contributed to the catastrophe.

3.9 It will be essential for government to tap new sources of revenue. Member States' tax base will have to be broadened, not least by the closure of tax havens, an end to tax competition and measures to tackle tax evasion and tax fraud. A general re-think of the entire tax system is needed, with due regard for questions of distributive justice between different kinds of income and assets. This means in particular demanding a contribution from those who made notable gains from the very mistakes made on the financial markets that are now having to be corrected at taxpayers' expense using public money.

3.10 Clearly, the fiscal moves to stimulate the economy cannot be budget-neutral in the short term, but will need to be funded by borrowing to avoid any conflict with the goal of boosting demand. Consideration must thereby be given to a number of short- and long-term impacts – pros as well as cons – of increased public debt. On the negative side, as capital utilisation increases, a crowding-out effect may push up capital costs for businesses. Since assets are even more highly concentrated than income, increased debt financing will also make for wider income disparities.



3.11 On the other hand, debt financing need not mean a corresponding rise in the budget deficit, since stimulating economic activity also increases public revenue. Nor must taking on new debt be seen exclusively as a burden on future generations who will have to pay the interest on it. After all, future generations benefit from 'smart' investments in areas such as education and infrastructure – and they are also the heirs to today's government bonds. It must also be remembered that equally high costs are incurred if less money is used to combat the crisis as this would make for an even bigger fall in economic performance and employment. And, under that scenario, the monetary costs would also be accompanied by much higher social costs and human suffering caused by unemployment, down-skilling and heightened social tensions

#### 4. Further comments on the toolkit for national measures

4.1 The first step involved the implementation of rescue plans for the financial sector which, although impressive, varied in their effectiveness. The process of recapitalisation is not yet complete and confidence has not yet been restored, with the result that serious liquidity shortfalls remain. Further efforts are therefore needed to provide businesses and households with sufficient financial resources. Clearly public support - not only that given to financial institutions - will have to be contingent on a series of criteria and conditions, which will ensure that it benefits the economy and that appropriate corporate governance is in place.

4.2 Rapid and effective help is needed for those hardest hit, i.e. for the socially disadvantaged and the labour market, as it is those in the weakest position, those with insecure employment conditions, such as temporary and contract workers, who experience unemployment first. Only if the recession persists will permanent staff be put on short-time working or laid off - at least temporarily. In the light of expected demographic trends, intelligent restructuring of the economy is needed, with employees being kept on and trained rather than made redundant, so that sufficient skilled workers will be available once the economy begins to recover. Support for the unemployed should be linked with skills acquisition and retraining programmes. It should also be borne in mind that the official unemployment statistics do not reflect the full extent of the problem. In times of recession many people disappear from the employment statistics, for example because they are not entitled to unemployment benefits or because they have given up hope of finding a job. Bringing young people into the labour market should have the highest priority during the recession.

4.3 Support for the business sector should also aim to provide companies - particularly SMEs - with unfettered access to finance once again, and ensure that the product markets function smoothly. Measures to support the economy should also be aimed at ensuring that the economy emerges strengthened from the recession. The aim should be to benefit from a 'double dividend', with smart, structural investment not only giving the economy a short-term boost but at the same

time increasing its competitiveness and future growth potential in line with the Lisbon strategy. This will require investment in innovation and modernisation of infrastructure (such as trans-European energy networks and broadband infrastructure) and investment in research and education. Assistance is needed – for instance on the tax front or through government guarantees – to strengthen the competitiveness and innovativeness of SMEs and thus harness their potential as supports for economic recovery.

4.4 The Committee also notes that, in addition to stimulating demand, a range of other measures can also help boost confidence among economic stakeholders. Simpler legislation, quicker procedures and less red tape can also help stimulate economic activity.

4.5 Economic recovery does not mean that everything goes back to the way it was before the crisis. There must be emphasis on energy-saving and environment-friendly projects in order to accelerate the transition to a low-carbon green economy.

4.6 Measures aimed at improving structures must be socially acceptable and must stimulate growth and employment in order not to counteract efforts to promote demand and cushion social impacts. Particular importance is attached to wages policy, which must take due account of the dual role of wages within the economy. While, at a micro-economic level, wages are a cost-factor for businesses and thus affect price competitiveness, they are, in macro-economic terms, the key factor determining domestic demand. As companies will only invest and create jobs if they expect strong demand, a medium-term strategy of keeping wage rises in step with productivity growth in the national economy as a whole will, from a macro-economic viewpoint, make sure a proper balance is struck between sufficient growth in demand and price competitiveness. The social partners must therefore work to avoid wage restraints along the lines of a *beggar-thy-neighbour* policy.

4.7 The impact on growth of the individual budgetary measures will also depend on the multiplier effect, which in turn depends on the propensity to consume and import penetration. There is thus a risk that, as a result of uncertainty, general tax cuts will only lead to increased savings. There will be a greater impact on demand if cuts are targeted at people on lower incomes, as they tend to have a greater propensity to consume. But people on the lowest incomes often pay no tax and will therefore not benefit. Particular solutions must

therefore be sought for this group. A time limit could also be put on certain tax cuts to create an incentive to bring forward purchases. Certain targeted direct transfers, such as the temporary increase in unemployment benefit proposed by the Commission, would also be likely to be relatively effective. Earmarking of transfer payments, e.g. education or climate vouchers, could also increase the impact on demand. The latter could for example be used when buying low-energy goods, solar-energy equipment or season tickets for public transport.

4.8 When allocating resources from various funds (the Structural and Cohesion Funds, the Rural Development Fund, the European Social Fund, the Globalisation Fund) there should, in addition to efficiency, be emphasis on a flexible, pragmatic approach with a view to accelerating the impact of spending.

## 5. Strengthening the European dimension

5.1 Member States' differing economic structures mean that the current crisis is affecting different countries in different ways – hence the need for different national packages of measures. There is thus a risk of growing disparities both within Europe and within the euro area. National policies are limited in their effect here. A European policy is therefore needed, with better economic coordination and governance at European level. The European level must also have adequate tools on which to draw to implement its policy effectively.

5.2 The packages of measures need to be implemented quickly. This requires coordination, harmonisation and proper orchestration, as, without a coherent approach, the danger is that individual countries may adopt measures that favour their own domestic businesses, upsetting the fundamentals of a level playing field and ultimately resulting in a race for subsidies. Broad harmonisation is also needed on the tax front, not just in terms of measures to revive the economy but encompassing the entire taxation system. Protectionist trends are also a risk where countries attempt to boost their international competitiveness through cost-side measures and try to get out of recession by drawing on foreign demand. This is true both within the individual EU countries and also between the major global trade blocs (as witnessed by the ominous slogan headlined under the US economic recovery plan: 'buy American').

5.3 The EESC would ask the Commission to provide a rapid overview of the implementation of the national economic recovery plans and to show which tools are available to speed up any progress under these measures. This is needed to assess the scale of the measures actually implemented, to facilitate mutual learning and to determine whether any undesirable developments are in evidence. Such undesirable developments – veering towards protectionism – might include, for instance, distortions of competition, dumping (not least on the tax front), freeloading and, outside the euro area, currency

devaluations. The Committee therefore calls on the Council and the Commission to strictly prohibit – or where necessary to abandon – any action tantamount to a *beggar-thy-neighbour* policy.

5.4 Strengthening the European dimension also requires that increasing consideration be given to joint European projects, for instance in energy supply infrastructure. Greater flexibility between the various EU budget headings would make it possible for such projects to be part-funded from unused resources. Thought should also be given to the idea of a European bond from a European sovereign wealth fund.

5.5 EU solidarity must also be shown to non-euro-area countries experiencing balance of payments difficulties (e.g. Hungary and Latvia) and to banks and financial institutions in non-euro-area countries, with due allowances made for these countries' position in the catch-up process.

## 6. Financial market reform

6.1 As with other issues of global importance, the EU is, in particular, also called upon to show a united and cohesive front – and to speak with one voice – on the 're-regulation' of the financial architecture. In the interests of all stakeholders and to help secure overall stability, Europe must lay the groundwork and put a European stamp on any new arrangements. At all events, a paradigm shift is needed to promote a long-term, sustainable approach, underpinned by appropriate incentives and bonuses. A re-ordered global financial system must be conducive to the development of sound financial innovations that do not compete with genuine economic investments but support the real economy.

6.2 The new system must be underpinned by principles such as transparency, risk limitation, realistic risk mapping in financial statements, and the inclusion of hedge funds and private equity in the regulatory arrangements. Any new regulation must also help prevent pro-cyclical impacts and excessive leverage. The reform proposals must not be a piecemeal affair, made up of individual disconnected measures, but must present a comprehensive, coherent package of measures covering all the relevant areas. There must be no competition for regulation or deregulation between countries or trade blocs. At the very least, that also requires coordinated, cross-border monitoring and control and independent European rating agencies.

6.3 Particular attention must also again be paid to how pension systems are funded<sup>(1)</sup>. Over the past few years, driven by a belief in the infallibility of the markets, pensions have increasingly been funded via the capital markets, resulting, contrary to original indications, in major financial losses for the bulk of current and future pensioners.

<sup>(1)</sup> Attention should be drawn here to the opinion on the Proposal for a Directive of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance: SOLVENCY II (OJ. C 224, 3.8.2008, p. 11).

## 7. The role of organised civil society

7.1 The public will have to bear the brunt of the crisis – hence the particular need to involve the economic and social players in framing future policy. The European Economic and Social Committee has shown in various ways that it is fulfilling its institutional remit of supporting the other European institutions in the current financial, economic and social crisis. Thus, at a conference held in January 2009, the Committee established the institutional framework for a dialogue with the various stakeholders: banks, companies, trade unions, institutions and other civil society actors.

7.2 Employees and businesses have a key role to play in tackling a crisis that was not of their making and is not their responsibility. A strengthened social dialogue is needed, on the one hand to draw up and implement a policy to put an end to the crisis as soon as possible and, on the other hand, to mitigate as far as possible the economic and social fallout of the crisis on ordinary citizens.

7.3 In the Member States, appropriate measures should be developed in conjunction with the social partners to avoid excessively low wage increases that would fail to give adequate support to demand and growth. Enhanced macro-economic growth also helps improve coordination by aligning wage growth more closely with macroeconomic policy.

7.4 In the current crisis, it is vital not to compound injustice and inequality. A ‘new social deal’ is needed – not least in the light of the upcoming European Parliament elections – to demonstrate clearly to the public and, in particular, to the weaker members of society that they are not being abandoned by the political players. Legal and financial measures are essential to prevent the crisis spilling over to the European social model.

7.5 Social dialogue is also vital to tackling the economic and social impact of the crisis<sup>(1)</sup>. History shows that economic crises can be either beneficial or detrimental to social dialogue. Such dialogue benefits where the need for closer coop-

eration is recognised. However, compromises are more easily reached in a growing economy – a fact that, in times of crisis, may result in increasingly uncooperative and self-serving behaviour that benefits one particular group alone. Were that to happen, the way out of the current crisis would be considerably more painful than it is already set to be.

7.6 In seeking to boost demand, the aim is to make intelligent use of the additional resources so as to secure greater economic competitiveness once the crisis is over. Similarly, moves to tackle the crisis must also be used as a conduit to a stronger system of social dialogue at all levels. The most recent joint analysis by the European social partners of the challenges facing labour markets is a good base from which to explore the scope of flexicurity. Instead of structural reforms designed to relax the rules on protection against dismissal and extend working hours, measures should be developed under internal flexicurity to foster permanent jobs. This would mean that staff could be kept on during the downturn, working shorter hours and using the remaining time for further training, thereby ensuring that an upskilled workforce is once again in place when the economy recovers. The recent moves in that direction in the Netherlands can be seen as best practice here. Even the most flexible workers need greater security, giving them the opportunity to stay on the labour market and improve their skills.

7.7 What characterises the social economy, which provides an authentic expression of organised civil society, through its different social and organisational models, is the innovative way in which it meets social needs, combining profit with solidarity, creating high-quality jobs, strengthening social and territorial cohesion, linking production and sustainable development and, lastly, encouraging active citizenship and corporate social responsibility. All of these features, which are today crucial to overcoming the current systemic crisis, mean, on the one hand, that social economy actors should be given a key role in managing the crisis and, on the other, that the Commission should include a real boost for this social model of public enterprise in its policies and programmes<sup>(2)</sup>.

Brussels, 24 March 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

<sup>(1)</sup> The *Industrial Relations in Europe* report published by the European Commission in February 2009 also highlights the key role of the social partners.

<sup>(2)</sup> See too, on this same subject, EESC Opinion 50/2009 adopted on 15 January 2009, not yet published in the OJ.



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