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OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

455TH PLENARY SESSION HELD ON 15 AND 16 JULY 2009

Opinion of the European Economic and Social Committee on 'Integrating transport and land-use policies for more sustainable city transport'

(Exploratory opinion)

(2009/C 317/01)

Rapporteur: **Mr OSBORN**

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

Integrating Transport and Land-use Policies for More Sustainable City Transport.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 26 June 2009. The rapporteur was Mr Osborn.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 16 July), the European Economic and Social Committee adopted the following opinion by 114 votes to 1 vote against.

1. **Summary**

1.1 People need transport to obtain access to work, to shops, to schools, and to all the other destinations of modern life. The development and maintenance of transport systems of all kinds is a major task of public policy. But transport also has downsides. It causes pollution, congestion and accidents. Transport links (or their absence) can divide and isolate communities as well as supporting them. Transport is also a major contributor to emissions of CO_2 and the growing threat of climate change.

1.2 There is therefore a growing need for public authorities at all levels to establish more sustainable patterns of transport which will meet peoples' travel needs while minimising the adverse impacts. The problems are most severe in urban areas, and it is in these areas that more sustainable transport strategies are particularly needed.

1.3 The pattern of transport movements in urban areas is intimately related to patterns of land-use. To achieve more sustainable transport therefore requires the adoption of integrated land-use and transport strategies and policies.

1.4 The primary responsibilities for developing and implementing integrated strategies lie at local and national level. Some progress towards sustainability in this field has already been made in a number of individual towns and cities and countries in Europe. But progress so far has been patchy. There is scope and a need for a European level initiative to promote and accelerate the adoption and implementation of more sustainable integrated land-use and transport strategies in towns and cities throughout Europe.

1.5 The key elements of the initiative should be:

— Launch a new research initiative to identify more precisely the main points of best practice in this field

— Develop a reliable set of indicators of progress towards sustainable transport

— Review national and local experience and systems of legislative and financial support with regard to their transport and carbon impacts

— Develop a new European framework for Sustainable Urban Transport and Land Use

— Review the balance of other European policies and programmes so as to make the overall impact of European policy more supportive of sustainable transport

— Develop intelligent transport systems (ITS).

2. **General reflections**

2.1 Modern societies are heavily dependent on transport. As individuals we rely on transport to get us to work, to shops, to leisure activities and almost everywhere else we want to go. Businesses also need transport to create and deliver their goods and services throughout the world.

2.2 Over the last two centuries technological development in transport has enormously increased the distances that can be travelled conveniently at affordable prices and enlarged the range of goods and services and of lifestyles available to individuals. It has also transformed the way in which urban settlements evolve. They no longer need to be tightly clustered around small centres with facilities accessed mainly on foot. They can spread at lower densities over large areas connected by networks of roads and transportation systems.

2.3 These changes have brought many benefits. But they have also caused significant problems. Continuing growth of demand for transport leads to congestion and delays. Local communities lose their cohesion as local facilities are replaced by more distant ones, and people lose touch with their neighbours. Most powered forms of transportation cause noise and pollution. Most also produce CO_2 emissions, and the continuing growth of transport demand is one of the major causes of climate change.

2.4 For many years Governments saw the expansion of opportunities for travel as a public good. Public policy and investment in the transport field were directed to enlarging transport networks and making them more widely accessible to all.

2.5 Many other public policies and programmes have also had an impact in driving the demand for more and longer journeys and trips. Many new housing developments are built at lower densities unsuitable for supporting public transport and assume that the occupants will rely on private transport to get where they need. Reorganisations of schools, hospitals and other public services have tended to create bigger but more distant establishments. Developers of shopping facilities have similarly favoured large new out-of-town sites.

2.6 Gradually perceptions are changing. People are beginning to recognise the downsides of transport as well as its advantages. Public policy is also adapting. Transport policy and programmes still have to provide for basic transport needs to be met satisfactorily. But at the same time it is increasingly seen that transport, land-use and other policies need to include measures designed to reduce or contain the overall demand for transport, and to encourage people to use more sustainable transport modes such as public transport, walking and cycling in preference to the private car.

2.7 The growing threats of climate change and insecurity of oil supplies adds a new urgency to these dilemmas, and to the need to take stronger action to reduce the demand for transport, and to constrain it into more sustainable modes. This may imply substantial changes in the patterns of urban land use and mobility.

2.8 Four key new policy goals for sustainable transport and land-use can be identified:

— Encourage people to choose residential locations closer to their places of work, education and recreation, and/or ensure that jobs and educational establishments are provided closer to residential areas, in order to reduce congestion, pollution and greenhouse gas emissions, and to restore viability to local communities.

— Encourage people who have the possibility, to use public transport or walk or cycle where possible and discourage car use.

— Encourage businesses to use more local sources of supply and of labour so as limit the transport movements they create.

— Reawaken interest in more local destinations for holidays so as to reduce or limit the ever-growing demand for air transport and the damage this causes to the environment.

2.9 There is an enormous social and economic momentum behind the ever-growing demand for transport, and it is no easy task to arrest or divert it. Experience shows that the task can only be successfully tackled if policy is developed in a well-integrated way, linking transport, land-use and other policies to reinforce one another, and developing them in an open, transparent and democratic way so as to secure sufficient political and popular support for them at all levels of government. Particular attention needs to be given to the needs of the elderly, people with disabilities and households with low incomes in the development of new strategies and policies.

3. **Elements of co-ordinated transport and land-use and sustainable transport policies**

3.1 Land use and related policies that can encourage more sustainable urban transport include:

— promoting greater densities of development;

— promoting compact forms of urban development with short routes to all major services;

— promoting the development or expansion of smaller and medium sized towns in preference to the further development of already over-stretched major cities;

— restricting further encroachment of cities on their surrounding green areas and establishing green areas within and around cities, etc.;

— encouraging the provision of smaller more local facilities (shops, schools, churches, hospitals, civic offices etc) with small catchment areas and discouraging larger and more distant ones with large more dispersed catchments;

— encouraging mixed use developments rather than segregating different functions in zones that can only be reached by car or public transport;

— encouraging people to live closer to their places of work or other regular destinations;

— encouraging home working by making full use of the internet;

— steering the location of major facilities (public or private) to places that are readily accessible by public transport and restricting the provision of parking space for cars at such facilities or mandating significant charges for it;

— encouraging businesses to locate their operations conveniently for local workers, suppliers and consumers and accessible to public transport;

— encouraging businesses to source supplies and labour locally and to serve local markets, to avoid distance selling and to reduce the impact of globalisation;

— introducing the technically sound internalisation of external costs.

3.2 Transport policies that can encourage more sustainable urban transport include:

— promoting good, clean, accessible and energy efficient public transport;

— reallocation of road investment to public transport investment;

— promoting dedicated routes or lanes for public transport;

— restricting space and time for private parking in inner-city areas;

— promoting pedestrianisation schemes, footpaths, walkways and cycle routes;

— promoting mobility management schemes;

— promoting awareness raising by travel information;

— promoting charging for use of road space;

— making vehicle and fuel taxation include all the externalities that such modes impose on society including carbon emissions and other pollution;

— encouraging public authorities to locate themselves in compact building complexes, and officials to travel to work by public transport and to use flexitime.

3.3 Experience shows however that policies of this kind cannot be introduced piecemeal. They are only effective and politically acceptable when they are introduced as part of a comprehensive strategy, integrating land-use and transport objectives, and involving several parts of the public sector and many private sector actors.

3.4 For example restrictions on the use of private transport in cities, such as restriction of parking spaces, road user charges or parking fees, are only acceptable and effective when the public transport alternatives are made sufficiently attractive – i.e. clean, safe, frequent, reliable and affordable. In addition the needs of elderly people, people with disabilities and households with low incomes need to be specially considered.

3.5 Similarly the encouragement of cycling requires a range of measures including the provision of dedicated cycling routes, the supply of adequate and secure parking spaces both in public and private spaces, and the incentivisation of cycling as against driving for those who are able, employer support for commuting costs, and the development of a pro-cycling culture.

3.6 Again the encouragement of local shops and other facilities requires appropriate zoning requirements, both to encourage small local facilities and to discourage large out of town facilities that can only be reached by car, sympathetic local taxation policies, programmes of urban regeneration that enhance the attractiveness of small local facilities and local neighbourhood centres that serve as catalysts.

3.7 It will not be easy to halt and reverse the trends that have dominated the evolution of cities and urban transport over the last 100 years. Most of the actions that have been taken so far have been taken at local level and have been piecemeal and tentative. Conflicts between different bodies and different levels of Government have hampered progress. Many public and private vested interests need to be overcome.

3.8 The growing threat of climate change and the fact that the contribution of transport to the Europe's overall greenhouse gas emissions keeps increasing gives a new urgency to these problems. We cannot afford to allow the present inertia to continue. A much faster transition towards more sustainable urban transport and land use patterns is needed.

4. **Action at local and national levels**

4.1 The key role at local level has to be played by the local planning authorities working together with the local transport and highways authorities and other public bodies. The planning authorities need to establish land-use plans that will guide the pattern of development and the transport linkages between them in a way that will enable transport patterns to become more sustainable over time (through the development of ITS systems). The transport authorities need to complement these planning measures with measures to ensure that public transport systems are sufficiently frequent, reliable and affordable to represent an acceptable alternative to private transport. Together they need to create Integrated Strategies for Sustainable Transport and Land Use. Other public bodies and major developers need to be involved and required to take transport impacts fully into account in their own future strategies.

4.2 It will of course take time to evolve towards a more sustainable pattern of urban transport and land use. The purpose of the integrated strategies must be to ensure that every time that transport networks are modified or that physical development and redevelopment take place, each successive step represents a move in the right direction. Some European cities have already made progress in this direction and have introduced significant innovatory policies to promote more sustainable transport. But in general most cities are still held back by lack of powers and financial resources, by lack of political will and by a lack of sufficient understanding and support from citizens. They also feel under pressure to compete to attract new development of an unsustainable kind. A new pattern of co-operation to work towards a more polycentric from of compact and sustainable towns of the future is needed. The transition town movement needs support and encouragement.

4.3 National (and regional) government has a key role to play in encouraging and enabling the right kind of action at local level. National governments may sometimes need to restructure local bodies and institutions or redraw their boundaries so as to facilitate the creation of truly integrated strategies. Or they may require or encourage the different local bodies and government departments involved to work together as partners for the development of integrated strategies. They may also need to provide incentives, consolidate knowledge and experience and ensure policy coordination at all levels.

4.4 National government are usually responsible for the basic statutory framework for the creation of land-use plans, and for the regulation of new developments, and provide the means whereby local authorities can regulate such developments in ways that will support an integrated strategy.

4.5 National governments are usually responsible for establishing the basic financial framework for the operation of public transport undertakings, and frequently may need to provide sources of funding for some of the larger investments that will be needed. They also control the fiscal frameworks and the patterns of taxation, charging and subsidy that have a crucial impact on individual and collective decisions about land-use, development and transport.

4.6 Above all national governments have a key role to play in awakening the public to the dangers ahead from the threat of climate change and resource depletion, and the need for much more urgent and vigorous action to change patterns of transport and travel. We see a need for all governments in Europe to develop comprehensive strategies or frameworks for integrating land-use and transport in their towns and cities.

5. **Action at European Level**

5.1 Up to now European policy and action in the transport field has concentrated on the creation and expansion of major transport networks linking the different parts of Europe. Regional and cohesion funds have played a major part in the development of these networks, particularly the expansion of major road networks. In so doing European influence has tended to encourage the further expansion and dispersion of many major European cities, and to make evolution towards a more sustainable pattern of urban transport and land-use more difficult.

5.2 More recently the Commission has taken up the challenge of promoting more sustainable patterns of urban transport. It identified many of the key issues in the Green paper on Urban Transport and in the supporting technical report on sustainable urban transport plans. The EU has provided investment funds through the Structural and Cohesion Funds and through the European Investment Bank. The EU has encouraged the exchange of best practice, and offered small grant support for research, development and demonstration projects, for example under the CIVITAS programme. These have been useful activities, and could usefully be continued and expanded. But they are in no way transformative.

5.3 The new challenges of climate change and the urgent need to take action in all fields to limit CO_2 emissions now point to a growing need for a new collective European effort. Only a major European initiative can give the necessary acceleration of the process of transformation to better coordinated sustainable transport and land use patterns for the future.

5.4 The EU has of course limited competence in this field, and application of the principle of subsidiarity means that most of the primary responsibilities for local transport and land use planning will remain at local and national levels. Nevertheless the Committee believes that there is room for a significant strengthening of European activity to catalyse and encourage action at local and national level, and particularly bearing in mind the leading European role in combating climate change and promoting the reduction of carbon emissions.

5.5 **The Committee supports the recent recommendations from the European parliament and from the Committee of the Regions for developing the European role in this area. The Committee recommends that the Commission should now adopt a five-pronged approach in a new Action Plan:**

5.6 *A. Undertake a major new research effort in urban land-use transport interactions*

There has been a long and distinguished tradition of research projects on urban transport and land-use interaction in the EU's 4th and 5th RTD Framework Programmes (as documented e.g. in Marshall and Banister, eds.: Land Use and Transport: European Research: Towards Integrated Policies. London/Amsterdam: Elseviers, 2007). This research tradition has been discontinued in the 6th and 7th RTD Framework Programmes. Climate change and possible future energy scarcity present new challenges for urban planning and require policy-oriented research to provide decision makers with reliable information on the likely impacts of possible integrated strategies to cope with rising energy costs and to achieve the greenhouse gas emission targets of the EU. It is therefore necessary to review and update the results of the earlier studies in the light of these possibly fundamentally different conditions. In particular the following policy questions require urgent investigation:

— *Adaptation to climate change*: Which combinations of transport and land use policies are necessary and feasible to reduce the foreseeable risks of climate change, such as floods, land slides, storm surges, heat waves, etc?

— *Mitigation of climate change*: Which combinations of transport and land use policies are most likely to achieve the transport sector's contribution to the greenhouse gas emission targets of the EU and Member States for 2020 and 2050 with the least negative impacts in terms of costs to the economy, social equity and quality of life?

— *Access to basic services and social life*: Which combinations of transport and land use policies are best to achieve minimum standards of access by public transport to basic services (health, retail, education) and social life (including in particular the needs of elderly people, people with disabilities and households with low incomes) in the light of ageing/declining populations and high energy prices?

5.7 *B. Develop an agreed set of indicators demonstrating how far an urban area has progressed in the direction of sustainable transport*

Such indicators might for example include the proportion of all trips undertaken by sustainable modes (walking, cycling and public transport) as against private transport. They might also include data on the size of the catchment areas of all facilities (schools, hospitals, public offices, shopping centres), and how over time these could be reduced by encouraging smaller more local facilities, whilst maintaining decentralised public service units, that reduce the length of journeys to them.

5.8 *C. Initiate a Europe-wide review of current practice on urban transport and land-use*

The main object should be to identify the institutional, legislative and financial systems that are most helpful to the transition to sustainable transport and land-use. The review might in particular cover some of the newer and more controversial ideas such as:

— systems for road pricing and for charging for parking space or restricting it in urban centres;

— systems for financing the development of satisfactory public transport systems and supporting its operations;

— systems for requiring the developers of major public access facilities to provide adequate linkages to public transport systems and to restrict their provision of parking space for private vehicles;

— systems for requiring public and private developers to take account of transport impacts in preparing their own forward plans, and perhaps for charging or taxing developers and operators of large facilities for the additional travel and carbon impacts their decisions impose on their communities.

5.9 *D. Develop a European Framework for Sustainable Urban Transport and Land Use*

Such a framework might include:

— Guidelines for Member States' national strategies for the promotion of sustainable urban transport and land use. Each national strategy should itself mandate local planning, transport and highway authorities (and other relevant public bodies) to work together to produce local land-use and sustainable transport plans for each city and major urban settlement.

— Guidelines for good practice and benchmarking in the development of local strategies, including arrangements for systematic and extensive consultation with the public and all stakeholder interests involved so as to build strong public awareness of the changes needed and as much consensus as possible about the way forward.

— Indicators for measuring progress towards sustainability, and for evaluating the contribution being made by different cities and regions towards reducing carbon emissions by the more sustainable plans.

— Provisions for providing financial support either on a European or a national level for the investments needed to implement the strategies over time. The CIVITAS programme has supported some excellent initiatives and in the Committee's view needs to be expanded.

5.10 *E. Review other European legislation and spending programmes that affect transport and land use*

Most European expenditure in the transport field has been directed towards the expansion of road, rail and air infrastructure in the interests of economic growth with limited assessment of their impact on carbon emissions and sustainability. It would now be appropriate to reassess the balance of these programmes, to introduce a systematic assessment of the carbon impact of such investments, and to reorient programmes so that they give more support for public transport, rail networks and sustainable urban transport and less to the promotion of further expansion of long-distance heavy carbon-emitting traffic.

Brussels, 16 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on 'The competitiveness of the European glass and ceramics industry, with particular reference to the EU climate and energy package'

(Exploratory opinion requested by the Czech Presidency)

(2009/C 317/02)

Rapporteur: **Mr ZBOŘIL**
Co-rapporteur: **Mr CHRUSZCZOW**

In a letter dated 10 December 2008, pursuant to Article 262 of the Treaty establishing the European Community, Marek Mora, Deputy Vice Prime Minister for European Affairs, asked the European Economic and Social Committee, on behalf of the future Czech Presidency, to draw up an exploratory opinion on

The competitiveness of the European glass and ceramics industry, with particular reference to the EU climate and energy package.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 June 2009. The rapporteur was Mr Zbořil and the co-rapporteur was Mr Chruszczow.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 16 July), the European Economic and Social Committee adopted the following opinion unanimously.

1. **Conclusions and recommendations**

1.1 The EU glass and ceramics industry is an integral part of the Community's economic structure, and is perhaps one of the area's oldest industries, with a history dating back some 4 000 years. It is currently facing a number of challenges to its competitiveness, many of which have been driven by globalisation, increased environmental regulation and rising energy costs.

1.2 Both sectors are energy-intensive. Both use indigenous raw materials and their products are sold primarily within the EU (however, the container glass and tableware sub-sectors have a large export market, with tableware exported globally and glass packaging used for a major part of the EU's high end exports). Between them, they have directly created almost half a million jobs and have led indirectly to a far greater number both in the raw material supply sector and in those sectors (notably construction) which use such products.

1.3 The products are absolutely vital at this stage of the Community's development and there are not many competitive replacement materials readily available. Both sectors are exposed to competition from developing countries, which have profited from the more difficult business environment in the EU.

1.4 In terms of renewable energy generation and energy savings, glass products, if properly recycled, outweigh the energy used and the CO_2 emissions released in production. The use of these products is therefore essential in meeting European environmental objectives for housing, transportation and renewable energy over a service life which can last twenty years or more. Final disposal, after repeated recycling, is always emission free.

1.5 The EESC considers it important to address the key aspects which affect the competitiveness of the glass and ceramics sectors and to make the business environment in the EU more supportive, as has been recommended by both sector analyses [1]. The specifics of both sectors should be taken into account, namely: the different applications and uses and the diverse range of products; environmental benefits; levels of energy intensity; the level of concentration in the sectors, together with their regional dimension; the share of SMEs in both sectors.

1.6 Experienced and dedicated labour resulting from the long tradition of the industries and crafts and from good quality education and training, as well as from the cultural and societal heritage in the respective areas and communities, is the most valuable and irreplaceable asset of the glass and ceramics industry. All policies should take into account this simple fact. Unfortunately, the impact certain policies may have on this valuable cultural and historical asset is often underestimated, if not overlooked.

[1] See footnotes 4 and 5.

1.7 Irrespective of the current economic downturn, there is a need to address the key issues of maintaining and enhancing the competitiveness of both sectors since they are systematic, not crisis-related.

1.8 First of all, the sectors should be supported in their drive for innovation as this will help the EU glass and ceramics industry to strengthen its position on the market, to improve its environmental performance and, naturally, to play a greater role in the efforts to mitigate the effects of climate change throughout society.

1.9 Thus, in the light of the sectors' environmental performance and their expected contribution to mitigating climate change, their inclusion in the EU ETS should ultimately be established in a fair manner, which takes into account the life cycle analyses of the entire sectors, the benefits of which far outweigh the related environmental burdens. In short, all process industries should be exempted for the entire trading period up to 2020 from the auctions of allowances, which would remove considerable investment uncertainties and obstacles. This could significantly enhance the sectors' competitive positions.

1.10 The impact of the EU energy and climate package on energy prices in the glass and ceramics industry – which also affects upstream supply chains – should be dampened as much as possible by well-functioning energy markets. In this regard, it is vital to promote competition in energy markets and the development of a pan-EU electricity grid that will lead to long-term security of energy supply.

1.11 Efforts geared towards increasing recovery ratios and subsequent use of recovered glass (which result in environmental performance gains due to improved energy efficiency and decreased carbon dioxide emission) should be supported extensively.

1.12 There is a need to enforce existing and, if necessary, new regulatory measures which are focused on eliminating unfair trading practices, such as counterfeiting of well-known designs or trademarks. The 'country of origin' could be also part of the solution. The EESC also welcomes the activities of consumers' organisations and believes that they are a natural ally of production with high added value. The support of consumers' organisations in the EU, but also in non-EU countries, is of the greatest benefit not just to customers, but also to companies producing high-quality goods.

1.13 Further political support and joint EU action could be helpful in terms of:

— removing import barriers in non-EU markets;

— improving access to proper market information for SMEs;

— facilitating access to public procurement exercises in emerging markets;

— removing trade barriers to raw materials from China;

— Promoting closed loop recycling of glass packaging in the EU.

1.14 The excellent environmental performance of many glass and ceramic products (insulation materials, double-glazed windows, etc.) should be promoted as an energy-saving benchmark for the EU construction industry. Furthermore, this technology should be included in any envisaged transfer of technology to those non-EU countries with high energy-saving potential. For example, a great potential exists in the post-Soviet countries in view of upcoming energy policy changes. Joint projects (such as CDM) can also help EU producers to offset their own CO_2 emissions.

1.15 Member State government incentives in the construction industry to favour optimum energy performance of buildings are the best instrument for supporting the glass industry and contributing to climate change policy.

1.16 The EESC recommends that EU authorities revive the Better Regulation concept that has become stranded without, in fact, any tangible (and badly needed) progress. In addition, any new regulatory act should be considered with much greater care, discussed with stakeholders involved and subjected to a far more rigorous impact assessment based on realistic data and not on unfounded assumptions. The business environment should be widened; any further restrictions run counter to sustainability principles.

2. **Introduction: competitiveness considerations**

2.1 The present Opinion, requested by the Czech presidency, examines the competitiveness of the glass and ceramics sectors as key examples of energy-intensive industries. Furthermore, this analysis, while concentrating on the impact of the EU climate and energy package, also takes into account other factors affecting the competitiveness of energy-intensive industries in general, and of glass and ceramics in particular.

2.2 On this basis, the EESC addresses a number of recommendations to policymakers as to how the glass and ceramics industry should be governed to maintain its competitive position and deliver all the beneficial effects it has to offer within the framework of the EU climate change policy (see previous section).

2.3 Ceramics and glass are basic materials such as steel, aluminium and other non-ferrous metals, chemicals, cement, lime and pulp and paper for instance, the production and transformation of which are energy-intensive and constitute an indispensable basis for industrial value chains ([2]).

2.4 *The competitiveness drivers of energy-intensive industries can be listed as follows:*

2.4.1 *Experienced and dedicated labour* resulting from the long tradition of the industries and crafts and from good quality education and training, as well as from the cultural and societal heritage in the respective areas and communities. Such values are often very difficult to transfer elsewhere.

2.4.2 *Sustainable technological innovation and product innovation*. This is vital to achieve efficient substance and energy consumption, quality, reliability, economic efficiency, durability, environmental effects, and so on.

2.4.3 *Availability of basic raw materials*, preferably within the EU. Nonetheless, materials imported from politically safe regions at reasonable freight cost are also highly desirable.

2.4.4 *Availability of energy*, including primary energy sources. Such availability cannot be assessed solely on the basis of a functional energy network and energy pricing: security of energy supplies also plays a crucial role. The energy-related footprint must be judged over the entire value chain.

2.4.5 *Competitive operations management and careful investment financing*. On the one hand, raw materials and safe energy supply are the major cost items in the energy-intensive industries and account for a rather high percentage of total costs. On the other hand, such industries usually operate at very low margins and are capital intensive. All of this requires an extremely competitive operations management and careful investment financing.

2.4.6 *Environmental sustainability and related energy and climate change regulatory framework*. In the EU, these are very stringent for such basic energy-intensive industries, even though the environmental performance of energy-intensive industries has dramatically improved in the past two decades and further gradual improvements can be expected as a result of the implemented IPPC directive.

2.4.6.1 Special attention must be paid to the recently adopted *EU climate and energy package* ([3]), which would severely affect the competitiveness of the energy-intensive industries, as has been generally acknowledged by the EESC, the European Commission, the Council and the EU Parliament in their relevant documents.

2.4.6.2 Numerous impact studies have recently been presented by both the authorities and the interested industries before and after the Package was adopted. These show clearly that energy-intensive industries are sensitive to carbon leakage and that the implementation of the Package must be carefully designed to take into account the economic downturn and the outcome of the COP15 negotiations to be held in Copenhagen in December 2009.

2.4.6.3 The basic material industries, including the glass and ceramics sectors, employ mostly fossil fuels and are affected by the costs of the various energy sources in a variety of ways. In addition to fossil fuels, they also have a rather high consumption of electricity.

2.4.6.4 So far, exposure to the cost impact of climate policy measures is one-sided – limited to EU countries and operations, while non-EU countries do not use instruments similar to the EU ETS on a compulsory basis. Even within the Community, the burden is limited to power-generation facilities and to energy-intensive industries alone.

2.4.6.5 In fact, the European energy-intensive industries have shown their positive attitude towards the climate-change policy and report an absolute reduction of the GHG emissions by 6 % based on 1990 emissions, even though production volumes have increased. This demonstrates a real de-coupling of emissions and economic growth. On the other hand, this has not been a cheap exercise and the physical limits of individual technologies within these sectors should be taken seriously into account when further targets and reduction mechanisms are set.

2.4.6.6 While the power-generation sector can transfer the costs of climate-change measures directly into energy pricing policy, the energy-intensive industries have no such option: due to the fierce international competition from countries outside the EU, these sectors can benefit neither from cost transfer nor any windfall profit.

2.4.6.7 Thus, energy-intensive industries are exposed to the impact of the EU ETS twice over: firstly, they have to cope indirectly with the rising prices of electric power; secondly, they have to absorb the direct costs of the EU ETS. It is possible that recent decisions adopted by the Council and by the European parliament may partly alleviate the expected cost burden related to allowance auctioning – though, then again, this is just shifting this auctioning burden mostly into the post 2020 period.

([2]) EESC opinion on the 'Impact of the ongoing development of energy markets on industrial value chains in Europe', OJ C 77, 31.3.2009, p. 88-95.

([3]) See the Commission's press release n° IP/08/1998 on http://europa.eu/rapid/.

2.4.6.8 The energy-intensive industries have undergone a profound technological change to stay competitive during the past twenty years and, as a result, the absolute reduction by 6 % mentioned above has been achieved at a time when there was even an increase in emissions from the power sector. Thus, setting the same base year (2005) and the same reduction targets for power-generation and energy-intensive industries further exacerbates the disadvantageous situation of the latter. This means that they have achieved, in real operations, an absolute reduction of as much as 50 % by the year 2005 on the Kyoto 1990 basis and the new emission trading scheme would force them to achieve a further 21 % reduction compared to emissions reported in 2005. Under this pressure, those good performers will be penalised and would be forced either to limit their economic growth or even to reduce their economic activities – ultimately moving outside the EU economic area.

2.4.6.9 There is no doubt that such unilateral exposure can lead towards delocalisation and hence also the feared carbon leakage. Neither the current downturn and ensuing potential banking of saved allowances from the present trading period, nor the postponement of auctioning allowances into the future period can change the industry's vulnerability if no **adequate** post-Kyoto deal is adopted internationally in 2009.

3. **The EU glass and ceramics industry - major competitiveness drivers**

3.1 *The glass sector* ([4]) broadly consists of manufacturing of flat glass, container glass, tableware (domestic glass), fibreglass and specialties. In 2007, the EU glass sector produced around 37 million tonnes (mt) of various types of glass worth about EUR 39 billion and accounting for 32 % of the world's output. Growth in output in the EU has been quite flat since 2000. In volume terms, container glass accounted for 58 % of production in 2007, with flat glass at 27 %. Tableware accounted for 4 %, while insulating and reinforcement fibres accounted for 6 % and 2 % respectively, while specialty glass accounts for 3 % of glass sector tonnage.

3.2 In terms of location, much is still located in the EU15 – in particular, in Germany, France, Italy, Spain and the UK, which together accounted for 68 % in 2007. The new EU Member States were responsible for 15 %, while the rest of the EU15 accounted for 17 %. Germany is the biggest producer overall, while production in the EU12 is concentrated in Poland and the Czech Republic. The glass sector in Germany, the Czech Republic and Poland represents part of the national heritage of these countries given its long history in these areas. Decorative glass and high quality crystal glass are also considered to be traditional art products.

([4]) FWC Sector Competitiveness Studies – Competitiveness of the Glass Sector, October 2008.

3.3 Employment in the EU glass sector has generally been on a downward trend since 2000, driven largely by a combination of productivity requirements, increased automation, sector consolidation and low-cost competition. In 2007, the EU glass sector employed 234 000 people. The EU12 accounted for almost 40 % of employment in 2007, indicative of the differences that exist between the EU12 and EU15 in capital and labour intensities. Most of the jobs in the EU12 lie within Poland and the Czech Republic, which together account for around 71 % of employment in the EU12. Productivity per job was 160,5 tonnes in the year 2007.

3.4 Production in the glass sector is relatively concentrated in the case of the main sub-sectors (flat, container glass) while concentration in other sub-sectors (domestic, crystal) is not very high. These sub-sectors are therefore exposed to higher risks (market, financing, etc.), since smaller manufacturers suffer from a lack of resources especially in the current more severe business environment

3.5 Overall, most sector output is sold within the Community; the figure was 90,7 % in 2007 (tonnage). 3,496 mt were exported, which represents approximately 9,3 % of total output. Domestic and crystal goods (25,4 %) and specialties (38,6 %) accounted for the vast majority of export tonnage. Export grew by 5,3 % in 2007. In contrast, import recorded annual growth of 35,8 % over the same period, exceeding exported tonnage (3,601 mt in 2007). The average price of exported glass was € 1 780,1/tonne which is significantly higher than the figure of € 1 159,5/tonne for imported glass. The largest importers by volume are China and Taiwan. Increasing volumes are also being imported by India, Turkey and Japan. Chinese flat glass imports have increased tenfold since 2004.

3.6 The EU glass sector faces a challenging period over 2007-2009 as economic activity slows in the wake of the credit crunch and demand slows. The construction sector looks to be especially vulnerable as household confidence and spending weakens and investment demand is curbed. Such development, of course, has a significant impact on the glass industry: approximately 90 % of glass products are destined for industrial sectors manufacturing consumer goods (cars and other vehicles industries, the electrical engineering industry, the chemicals industry, the food industry, etc.) and the construction sector. The glass sector is to a large degree dependent on the stability and development of the above sectors.

3.7 These challenging conditions will be exacerbated by the expansion of capacity in countries neighbouring the EU. Over 2004-2009, an estimated 7,3 mt of production capacity will be added across several countries, including Russia, Ukraine, Belarus, Qatar, UAE and Egypt. Most of this increase will come in flat glass and container glass. With such expansion, trade seems likely to continue to grow and this reinforces the need for policymakers to ensure that EU glass producers are operating on the same terms.

3.8 The EU glass sector is faced with a number of competitiveness challenges, many of which have been driven by globalisation, increased environmental regulation and rising energy costs. The gradual increase in the number of comparable low-cost glass products being imported from emerging economies is a sign that the EU glass sector's competitive advantage is diminishing, especially in the low-value product markets.

3.9 The glass sector faces environmental regulation concerning its energy use, CO_2 emissions, pollution prevention and waste, as well as other environmental regulations. Non-EU producers, especially from developing countries, have significantly less strict environmental legislation and thereby fewer production constraints and lower production costs. In addition to these issues, the EU glass sector faces the following competitiveness problems:

3.9.1 *Downstream cost-cutting demands*. The cost pressure resulting from intensified global competition in European industries, such as car production, consumer electronics, airline and retail, may affect the glass sector negatively. These industries are all direct or indirect customers of EU glass producers in one form or another; hence, globalisation has a knock-on effect on the demand profile of the EU glass sector.

3.9.2 *Global excess production capacity in the sector*. The European glass sector has excess capacity in several of its sub-sectors, including flat glass. This may adversely affect the European glass sector as it cuts profit margins; on the other hand, ramping up production to meet customer requirements after the crisis is over would be quicker.

3.9.3 *Upward pressure on energy (and inputs) prices*. Globally, increases in the demand for energy affect long-term supply and costs in the EU glass sector. This is a severe threat to the glass sector since it is one of the most energy-intensive industries and energy costs make up a high share of total production costs. It is important to draw attention to the domino effect of the EU energy-climate package: the glass and ceramics industry is expected to absorb the forecast energy price increase in its operations. This increase is due to a combination of factors, including emission trading, investments in generation capacities and transmission grid and the need to ensure a higher share of renewables in the energy mix in the power generation sector. In addition, the prices of basic raw materials, such as soda ash or sand, could also rise in line with the trend in energy prices.

3.9.4 *Working conditions regulations*. A number of regulations with respect to working conditions affect input materials and the way they are stored, handled and used in production. Many countries outside the EU have less strict regulation and consequently lower production costs. Nevertheless, EU industry operators accept their responsibility for care in this field.

3.9.5 *Trade restrictions and counterfeiting may hinder export to non-EU markets*. Many export markets impose tariffs on goods from the EU. A high rate of duty is imposed, for instance, on EU products sold in the United States. The competitiveness of many EU glass manufacturers has suffered due to the counterfeiting of EU-origin designs by non-EU firms. This is currently a severe problem for many producers and is expected to continue to be so in the future if not tackled properly and thoroughly. At the same time, design-related industries benefit from support in the form of initiatives such as the Commission's **China IPR SME Helpdesk**, customised training materials and workshops and individualised front-line advice on IPR problems.

3.10 In 2006, *the EU ceramics sector* ([5]) produced and sold around EUR 39bn worth of various ceramics products. Growth in output has been very modest in recent years. The two largest sub-sectors are the wall & floor tile sub-sector and the bricks & roof tiles sub-sector. Together with vitrified clay pipes, they constitute the group of building clay materials accounting jointly for 60 % of the ceramic industry in product value. Refractory products, table and ornamental ware, sanitary ware and technical ceramics represent respectively 13 %, 9 %, 10 % and 5 % in terms of product value. The major producing regions are Germany, the UK, Spain and Italy. Germany is a major producer across most of the sub-sectors, as is the UK; Italy and Spain are both major centres of production for ceramic tiles, bricks and roof tiles and, to a lesser extent, sanitary ware. Production in the new Member States (NMS) of the EU appears to be strongest in the Czech Republic, Poland, and Hungary, which all have strong ceramics sectors and have traditionally exported to other EU countries. However, the NMS' share in the EU ceramics sector is relatively low.

3.11 It is worth mentioning that while most of the factors characterising and affecting the glass sector also apply to the ceramics sector, one significant difference remains. Whereas the glass sector is quite highly concentrated, the ceramics sector has very few large concentrated and integrated production plants.

3.12 Employment in the EU ceramics sector has generally been on a downward trend since 2000. The level has been falling, driven largely by a combination of productivity requirements in the face of increasing low-cost competition. In 2006, the EU ceramics sector employed 330 000 people, down slightly from the 360 000 in 2005. The largest employers are the wall & floor tile and the bricks & roof tiles sub-sectors. In 2006, they together accounted for around 52 % of employment in the ceramic sector, followed by the table and ornamental ware sector with 22 %.

([5]) FWC Sector Competitiveness Studies – Competitiveness of the Ceramics Sector, October 2008; Eurostat 2006.

3.13 Typically, around 20-25 % of the EU ceramics output (more than 30 % for wall and floor tiles) is exported beyond the EU. Import penetration varies from 3-8 % in, for example, floor & wall tiles and refractory products to over 60 % in tableware and ornamental ware. The major export markets for the ceramics sector are the US, then Switzerland and Russia. The recent trend has been for a deterioration in the trade balance due to increased low-cost competition in EU markets from the likes of China and Turkey, continued restricted access to some non-EU markets and the gradual appreciation of the Euro against most currencies since 2000. Consequently, trade, and in particular the terms of trade for EU exporters, have become fundamental issues for the ceramics sector.

3.14 The EU ceramics sector is faced with a number of **competitiveness challenges**, many of which have been fuelled by globalisation and increased environmental regulation.

3.15 In some product categories, particularly in the tableware sub-sector, the EU's competitive advantage, based on innovation and design, is increasingly being eaten away as a result of low-priced exports from emerging countries to the EU and to other key markets. The EU is still nevertheless a major global player in many sub-sectors, especially in wall and floor tile manufacturing.

3.16 The second key competitiveness factor that the EU ceramics sector faces is increased environmental regulation and control in general, but more particularly the burden generated by the EU ETS. Although energy costs represent on average 30 % of production costs in the ceramic industry, CO_2 emissions per ton are low. The ceramic industry has accounted for more than 10 % of all industrial installations under the EU ETS but less than 1 % of CO_2 industrial emissions covered. As a result of the adopted revision of the ETS Directive, around 1 800 ceramic installations should be covered by the EU ETS in 2013. These installations will represent less than 1,5 % of CO_2 industrial emissions covered by the ETS. It is important to stress that ceramic plants are mainly small installations, with 40 % of installations emitting less than 25 000 tCO_2/year and 70 % less than 50 000 tCO_2/year.

3.17 The cost structures of energy-intensive ceramics producers are being disadvantaged by increasing input prices – a feature of some of the EU ceramics sub-sectors is that they are highly reliant on a range of virgin raw materials, an increasing proportion of which is being imported from non-EU countries. The review illustrates how the lack of competitiveness of inputs into the ceramics manufacturing process, especially in energy markets, is hindering the competitiveness of EU ceramics producers.

3.18 The main competitiveness problem that the EU ceramics sector faces is a sharp rise in the volume of ceramics imports from non-EU countries where environmental regulation is less stringent and health and safety laws are more relaxed. Relatively high levels of EU regulation have meant that EU ceramics producers are no longer competing on a level playing field in the global environment and this has created a number of competitiveness challenges, but also a diverse range of competitiveness prospects.

3.19 In this context, the cost structure of the ceramic industry (high energy and labour costs), the relatively low profitability of the sector and the growing competition both in the EU and on exports markets will make it extremely difficult for ceramic producers to pass on to the consumer the additional costs linked to CO_2 allowances. Moreover, the technologies and techniques used in ceramics production to minimise energy use by kilns are already advanced and major increases in efficiency are unlikely in the near future.

3.20 The ceramics sector needs a highly-skilled workforce and must have the necessary tools and skills to operate the technologies and cooperate across different departments, regardless of their location. This represents a challenge for both SMEs exploring global opportunities and large companies operating across several countries, as can be seen in the case of the brick sub-sector. The skills base can be improved by focusing on life-long learning, by making the sector more attractive and through targeted training programmes.

4. **How can the glass and ceramics industry contribute towards EU sustainability, including the Copenhagen Conference agenda?**

4.1 Bearing in mind sustainability in its entirety, we should assess the pros and cons of both the glass and ceramics industries. Both sectors are based on indigenous, domestic mineral resources abundant enough to secure their longevity in the EU economic area and also globally. These sectors have to a large extent managed their environmental impacts and do not pose any special risk to human health, either occupational or public.

4.2 We should not currently expect any breakthrough in innovation in the glass and ceramics production processes. Glass is melted and ceramics fired at very high temperatures, which means that there are physical limits to the reductions which can be made in terms of carbon dioxide emissions, limits which these sectors are fast approaching. Unfortunately, these physical limits were not taken into consideration when drawing up the revised EU ETS as they were not included in with other energy intensive industries with inherent emissions from their manufacturing technologies.

4.3 Technologies and processes used in these sectors are also advanced in terms of energy consumption and carbon intensity. They are not a climate problem, but rather an integral part of its solution. The glass sector, for instance:

— helps to reduce carbon dioxide emissions by saving energy, through its use as an insulator,

— helps to generate carbon-free power in renewable energy production,

— has associated carbon emissions which are far lower than the carbon benefits, and

— has diverse other societal benefits, such as medical and food preservation, which make them sustainable.

4.4 Glass belongs to a group of materials which have a very high recycling rate. Typically, there are recycling loops in the manufacturing process. It is, in certain respects, a waste-free technology. Recovered glass makes up a substantial part of the material used, primarily in the manufacture of container glass. Its recyclability does not have any physical limits in terms of this material's life cycle. Recycling systems have been organised throughout Europe achieving a recycling rate of 62 % in 2007 for container glass. Any efforts to increase the recovery ratio and use of recovered glass can improve the resulting environmental performance in three ways: (1) it can improve energy efficiency: 1 % increase of recovered glass ratio lowers energy consumption by 0,25 %; (2) it can lower carbon dioxide emissions: 1 % increase of recovered glass ratio reduces CO_2 emissions by 0,47 %, and (3) it can save raw materials: using 1 tonne of recycled glass to make new glass saves 1,2 tonnes of virgin raw materials.

4.5 In practical terms, glass products can help to reduce energy consumption and thereby the emissions of CO_2, e.g. in buildings by the use of insulation glass fibre or low-emissivity glazing. Roof and wall insulation could save 460 mt per annum (p.a.) (more than the EU's total Kyoto commitment). For instance, should all single/double glazing in the EU be replaced by low-emissivity double/triple glazing, this could avoid annual emissions of 97 million tonnes of CO_2. That is equal to 21 mt of oil equivalent or the annual energy consumption of buildings for 19 million inhabitants. Fibreglass used to reinforce plastics in wind turbines and glass materials employed in the automotive industry (e.g. to reduce energy demand through reduced air conditioning requirements) are other applications resulting in CO_2 emissions reduction.

4.6 Solar technologies are projected to expand enormously over the next ten years, with glass currently playing a key role in transparent materials for photo-voltaics and concentrating solar power systems including solar chimneys, solar biofuel generation, solar photo-catalysis, water purification and desalination. These applications have a short GHG payback time and environmental compatibility with sustainable energy principles. The various subsectors responsible have a key role to play in supporting and developing these applications and their continued location in the EU is of paramount importance both from an academic and a manufacturing viewpoint.

4.7 GHG emissions amount to 20 mt in the entire glass sector and to 27 mt p.a. in the ceramic sector. In both sectors the inherent reduction potential is very limited. This means that the inclusion of the glass and ceramics sectors in the EU ETS makes little physical or economic sense. What is more, it risks jeopardising the potential GHG savings. Similar estimates can be presented for nearly every basic, energy-intensive industry and any excessive costs should be avoided when taking decisions on the carbon leakage issue and benchmark-based allocation for the third trading period. Separate benchmarks are needed to take into account the diversity of the different sectors and subsectors. These should take account of the different production techniques, energy requirements and the physical potential for plants to reduce emissions.

4.8 Due to the low level of concentration, the wide variety of products and the low quality of publicly available statistics, fair implementation of the EU ETS will be very problematic for the ceramic industry. Concerning the assessment of the exposure of the ceramic industry to carbon leakage, the issue of data availability and consistency can only be solved by aggregating the relevant data at a 3-digits level (NACE rev. 2-2008). At such a level of aggregation, exposure to 'carbon leakage' can be demonstrated for three ceramic sub-sectors, namely 'refractory products' (NACE 23.2), 'clay building materials' (NACE 23.3) and 'other porcelain and ceramic products' (NACE 23.4).

4.9 The ceramics sector does not have the same potential in terms of GHG savings as the glass sector, although the thermal insulation properties of modern bricks and tiles and mineral fibre deserve to be mentioned. Nevertheless, the ceramics sector is a good example of sustainable consumption and production thanks to inherent product properties such as durability and hygiene, as well as aesthetic values. Once produced, most ceramics have a potentially long life and many require no further maintenance.

4.10 There is one very important sub-sector within the ceramics sector: the production of refractory materials. Such materials are vital for many industries which operate at high temperatures: iron and steel, glass, lime and cement. These chemicals could not exist without high-performance refractory materials that support and facilitate the use of the most efficient technologies in the above sectors.

4.11 The major requirement for progress in terms of general competitiveness and particularly of energy efficiency and environmental performance is extensive and efficient R&D. This is true for all sectors of both glass and ceramics but particularly for the special glass sub-sector which generally dedicates the highest proportion of its revenue to innovation due to the rapidly developing nature of the manufactured product. Though this is not a major one in terms of tonnage and employment, it is of the utmost importance for the evolution of this subsector that it remains located within the EU.

4.12 In the short term, the stringent environmental and energy regulations and, in addition, the absence of an international level playing field, will place immense pressure on EU SMEs and stifle the private funding of innovative investments and R&D. However, environmental regulations also provide an incentive to invest in R&D for the purpose of improving energy efficiency and limiting the dependency on traditional energy sources. As a consequence, the share of energy in total production costs can decrease. Yet, these are long-term effects which will require significant entrepreneurial action and risk taking.

4.13 To date, recent regulation requirements and tightened standards have led to increased innovations in energy efficiency and the optimisation of products in environmental and health and safety terms. New recycling techniques are also being developed. Nevertheless, further progress in ceramics recycling is somewhat limited due to the nature of the product.

4.14 With further research, ceramics can be made even more attractive as a cleaner alternative. One example of recent products is clay blocks with improved thermal insulation that are energy intensive in production and can also help save energy when used in construction. Another example would be the use of ceramics in automobiles. Here they can serve as the enabling technology for many critical components in engines of the future because of their unique heat, wear and corrosion resistance, light weight, and electrical and heat-insulating properties. Cars of the future may have ceramics integral to their engine structures as well as in wear-resistant applications in fuel systems and in additional components in valve trains, such as valves and valve seats. Cars of the future may use ceramic fuel cells for near-emission-free operation.

Brussels, 16 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on 'EU-Bosnia and Herzegovina relations: the role of civil society'

(Exploratory opinion)

(2009/C 317/03)

Rapporteur: **Mr Patrik ZOLTVÁNY**

In a letter dated 2 September 2008, Ms Margot Wallström, Vice-president of the European Commission, and Mr Olli Rehn, Commissioner for enlargement, asked the European Economic and Social Committee, in accordance with Article 9 of the cooperation protocol between the EESC and the European Commission, to draw up an exploratory opinion on

EU-Bosnia and Herzegovina relations: the role of civil society.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 June 2009. The rapporteur was Mr Patrik Zoltvány.

At its 455th plenary session, held on 15-16 July 2009 (meeting of 16 July 2009), the European Economic and Social Committee adopted the following opinion by 147 votes and 1 abstention.

1. Main recommendations of the opinion

1.1 The recommendations to European Union (EU) institutions and bodies:

— To encourage the government of Bosnia and Herzegovina in the elaboration of a strategy for the development of civil society ([1]).

— To increase support, also in financial terms, to civil society organisations in Bosnia and Herzegovina in order to maintain their independence from government and ensure the sustainability of the projects they run.

— To create more appropriate and efficient financial support schemes in order to shorten long application and decision-making procedures. This applies also to the new facility established by the European Commission (EC) to promote civil society development and dialogue. Support should be available for a broad range of interested organisations and be flexible in terms of responding to their needs.

— To speed up visa free regime negotiations and to actively support compliance with technical and other standards.

— To distinguish between NGOs and social partners in terms of the creation and adoption of support strategies.

— To support programmes focused on the capacity-building of social partners in order to strengthen their capability to an effective social dialogue.

— To actively support the social and civil dialogue in Bosnia and Herzegovina.

— To participate as an active intermediary in creation of new constitution.

— To insist on the implementation of ratified international texts and of Bosnia and Herzegovina's constitution, and to ensure trade union and employer organisations can register based on a designated legal basis, allowing them to operate effectively.

— To support systematically those projects run by civil society organisations and focusing on the promotion of the idea of European integration within the whole society. A systematic debate on the issues concerning European integration should encompass all parts of society, including civil society.

— To support projects aiming at transferring know-how and experience from the EU Member States to Bosnia and Herzegovina. The contribution of the 'new' Member States from Central and Eastern Europe might be of real added value. The importance of 'twinning projects' should be given greater recognition and support by the EU institutions. The newly established facility promoting civil society development and dialogue can provide support for such activities.

— To enable the representatives of civil society organisations from Bosnia and Herzegovina to visit the EU institutions and participate free of charge in conferences and events organised by the EU.

— To strengthen support to the regional networks of civil society organisations in the Western Balkans and to develop regional programmes.

([1]) According to the definition of the European Economic and Social Committee, the term 'civil society' encompasses the employers' organisations, employees' organisations, as well as other non-governmental organisations and interest groups.

— To maintain a systematic dialogue with other donors in order to provide civil society organisations in Bosnia and Herzegovina and the Western Balkans as a whole with a well targeted, efficient, effective and well-timed assistance.

— To organise regular meetings with the representatives of civil society organisations in order to react with greater flexibility to their expectations and needs.

1.2 The European Economic and Social Committee (EESC) will seek to:

— create a Joint Consultative Committee (JCC) between the EESC and Bosnia and Herzegovina civil society organisations in order to promote and support civil dialogue in Bosnia and Herzegovina;

— participate actively in the new People to People Dialogue Programme managed by the EC's Directorate-General for Enlargement: the EESC could prepare and organise study visits within the EU (especially in Brussels) for representatives of civil society organisations from Bosnia and Herzegovina;

— enable representatives of civil society organisations from Bosnia and Herzegovina to visit the EESC and to become acquainted with its activities.

1.3 The recommendations to authorities in Bosnia and Herzegovina:

— To develop a legal environment that supports civil society, including employer organisations and trade unions.

— To develop a strategy for the development of civil society: this would create the basis for a viable civil society as a necessary element of a mature democratic society. The strategy should be developed in close cooperation with civil society organisations.

— To maintain a systematic dialogue on the issues concerning civil society organisations with their representatives. The government's approach towards civil society should be more inclusive.

— To introduce various incentives to civil society organisations, including financial ones, in order to support their development and the sustainability of their activities. A transparent grant scheme that allows civil society organisations to apply for grants financed from the state budget should be developed.

— To increase the level of dialogue and cooperation with the public authorities, ensuring the recognition of CSOs.

— To solve the issue of the Confederation of Trade Unions of BiH's registration.

— To actively support the establishment of the Economic and Social Council at the state level in line with the progress in creating state level institutions related to these areas.

— To speed up work on meeting the conditions for Visas free regime.

— To introduce citizenship education in the areas of civil society activities.

1.4 The recommendations to civil society organisations in Bosnia and Herzegovina:

— To stimulate bottom-up approaches and self organisation of civil society, contributing to strengthening the societal ownership of CSOs.

— To raise awareness on the role of civil society in the political process.

— To facilitate networking and partnership building, i.e. exchange of information, know how and experience.

— To increase knowledge and understanding of EU integration, EU policies, and European Institutions.

— To increase education and training within CSOs.

— To stimulate interethnic and interreligious dialogue and increase the level of cooperation, networking and twinnings among CSOs.

2. **Background of the opinion**

2.1 *The European Union goals in the Western Balkans*

The Western Balkans is among the top regional priorities of the European Union's (EU) foreign policy. The main goal of the EU in the Western Balkans is to increase regional stability and prosperity. The preparation of the Western Balkan countries for EU membership can be mentioned as an equally important goal. To achieve the latter, the EU is using specific pre-accession instruments.

The Stabilisation and Association Process (SAP) was created in order to assist the countries of the region on their way to the EU. It includes political dialogue, significant trade preferences and financial assistance. It also includes the establishment of a comprehensive contractual relationship that should help the countries of the region to prepare their future accession. The development of civil society and democratisation are some of the objectives of the SAP and are expected to contribute to the political, economic and institutional stabilisation of the region. The signing of the Stabilisation and Association Agreement (SAA) is considered to be a significant step towards EU membership.

2.2 *The European Economic and Social Committee and the Western Balkans*

The European Economic and Social Committee (EESC) plays an important role in assisting the development of civil society in the Western Balkans. In 2004, it set up the Western Balkans Contact Group which is the only permanent and specific body of the EESC dealing with this particular region. It is part of a broad range of other EU bodies working on this area and concentrates on the added-value it can bring to the general EU works on this topic.

The main goal of the EESC in the Western Balkans is to monitor changes in the political, economic and social situation in the Western Balkan countries and in EU-Western Balkan relations, more specifically the implementation of the Thessaloniki Agenda and the evolution of the SAP; to promote cooperation between the EESC and Western Balkan civil society organisations, as well as national Economic and Social Councils or similar institutions, and to encourage and maximise exchange of best practices between EU civil society organisations and their counterparts in the Western Balkans.

3. **Political developments in Bosnia and Herzegovina**

3.1 *The current political situation*

The political process in Bosnia and Herzegovina continues to be affected by the legacy of the war and the Dayton Agreement, which established the independent state of BiH in its current form. Competing political forces strive to benefit from the Dayton constitutional set-up and at the same time to overcome the constraints inherent in it. The need for streamlining and modernising the government in BiH is increasingly recognised by the international community, as well as in BiH itself, although the support from the Entities' political establishment for this process, which is being largely internationally driven, is uneven.

The major political challenge for the country in the years to come will be constitutional reform, without which further progress towards a more democratic and efficient state, implementation of the comprehensive reform agenda, and EU approximation will be difficult to achieve. The reform of the Dayton constitutional set-up cannot be imposed from outside, even though the international community in general and the EU in particular, are ready to assist. It will have to be a result of consensus among the political stakeholders of Bosnia and Herzegovina and to have the wide support of citizens. This process, which may affect all areas, will be very sensitive, and may take quite some time to be completed. It should be noted that there are differing views on the future of the country among the politicians and that there is still some distrust among the citizens of different ethnicities. Overall, nationalist rhetoric has prevailed and Bosnia and Herzegovina's leaders have made no progress towards creating, through the reform of the constitutional framework, more functional and affordable State structures which support the process of European integration.

Due to the concerns over political stability in Bosnia and Herzegovina and in the region, the closure of the Office of the High Representative (OHR) has been postponed on several occasions. In February 2008, the Peace Implementation Council (PIC) decided to make the closure conditional on Bosnia and Herzegovina's progress on addressing five specific objectives and two specific conditions (signing of the SAA and a stable political situation). Apart from the Brčko final award issue, progress on addressing the five objectives ([2]), has been very limited.

3.2 *Political relations with the EU and the neighbouring countries*

3.2.1 Relations with the European Union

The negotiations on a SAA with Bosnia and Herzegovina (BiH) were launched in November 2005. The SAA was initialled on 4 December 2007 and signed on 16 June 2008, following progress in four key areas set out by the European Commission and the Council in 2005 ([3]). Pending the ratification of the SAA by all EU Member States, the trade-related measures of the SAA have been put into force through the Interim Agreement, applicable since 1 July 2008. Among other things, the SAA has formalised the trade preferences granted by the EU to Bosnian products since 2000 (on an autonomous basis) and has led BiH to the phasing-out of trade restrictions and the progressive reduction of its customs duties on EU products. So far, the implementation of the Interim Agreement has been satisfactory.

([2]) 1) Acceptable and sustainable resolution of the issue of apportionment of property between State and other levels of government; 2) Acceptable and sustainable resolution of defence property; 3) Completion of the Brčko final award; 4) Fiscal sustainability (promoted by an agreement on a permanent ITA coefficient methodology and establishment of a National Fiscal Council); and 5) Entrenchment of the rule of law (demonstrated by adoption of a National War Crimes Strategy, of a Law on aliens and asylum and of a National Justice Sector Reform Strategy).

([3]) 1) Implementation of police reform in compliance with the October 2005 agreement on police restructuring; 2) full co-operation with the ICTY; 3) adoption and implementation of all necessary public broadcasting legislation; and 4) development of the legislative framework and administrative capacity to allow for proper implementation of the SAA.

In parallel with the negotiations on the SAA, a Visa Facilitation Agreement was elaborated and signed on 17 September 2007: it entered into force in January 2008. This agreement reduced, and even eliminated for some categories of citizens, the visa processing fees. The agreement also simplified the conditions for granting visas to many groups of citizens, including students, businessmen, journalists, etc. Discussions about introducing a visa-free regime for Bosnian citizens were started by the European Union on 26 May 2008. In order to finalise the negotiations, BiH should progress in meeting all the criteria.

As regards pre-accession financial assistance, the 2008-2010 Multi-Annual Indicative Planning Document (MIPD) for Bosnia and Herzegovina was adopted in September 2008. The European Commission (EC) allocated a total of €74,8 millions to Bosnia and Herzegovina under the 2008 Instrument for Pre-accession Assistance (IPA) programme. The main areas of intervention are: strengthening the rule of law and public administration structures, economic and social development and democratic stabilisation. In the framework of the Civil Society Facility, €6,5 million were allocated to civil society development under IPA 2007/2008 national programmes. Civil society organisations from Bosnia and Herzegovina also benefit from regional activities and visitors programmes financed by the Multi-Beneficiary Programme. In addition, €5,7 millions have been provided from Community funds to support the budget of the OHR until June 2009.

IPA and remaining CARDS assistance is implemented by the EC Delegation in Sarajevo. Decentralised management of aid remains a medium-term objective for Bosnia and Herzegovina. Preparations for decentralised implementation have advanced slightly. The National Fund and the Central Financial and Contracting Unit (CFCU) in the Ministry of Finance and Treasury (MoFT) have been partly staffed and further recruitment is in progress. The complex institutional and political environment in BiH led to significant delays in ratifying the IPA Framework Agreement. The Agreement's proper implementation is not ensured yet. As a consequence, the implementation of the 2007 IPA programme is also delayed.

3.2.2 Relations with Croatia

The relations with Croatia have changed substantially since 2000. The two countries have reached further agreements on refugee return across the BiH/Croatia border and signed a Free Trade Agreement, which was implemented almost immediately. A double citizenship agreement with Croatia was approved by the Parliamentary Assembly of Bosnia and Herzegovina in February 2008. It is estimated that around 400 000 citizens of Bosnia and Herzegovina also have Croatian citizenship. There are still remaining border disputes to be settled, and there are still obstacles to the transfer of cases and extradition of suspects in cases of criminal offences and crimes against humanity between BiH and Croatia.

3.2.3 Relations with Serbia

Relations with Serbia have improved significantly since the collapse of the Milosevic regime, with diplomatic relations being established on 15 December 2000. During the BiH chairmanship of the South East European Co-operation Process (SEECP) in 2003-2004, the Foreign Ministers of the Former Yugoslavia met with their wider South East European counterparts to reinforce commitment to good-neighbourly relations, stability, security and co-operation in South Eastern Europe.

The October 2006 election campaign in BiH saw a public strengthening of ties between the Republika Srpska (RS) and Serbia, culminating in the signing of a revised Special Parallel Relations Agreement on 26 September 2007 in Banja Luka, although both sides stressed that the agreement in no way undermined the sovereignty, territorial integrity or political independence of BiH.

However, there remain potential tensions in BiH's relations with Serbia. Following Kosovo declaration of independence there has been an increase in anti-Dayton rhetoric and secessionist threats in the RS; on 21 February 2008 the Republika Srpska National Assembly (RSNA) passed a resolution linking the position of the RS in BiH to that of Kosovo in Serbia and describing the circumstances under which the RS would be entitled to secede.

3.2.4 Regional Cooperation

Relations with Montenegro are good and have further intensified. Agreements on cooperation in the area of defence, police cooperation, civil protection and cross-border cooperation have been signed.

Relations with the Former Yugoslav Republic of Macedonia are good, both in the bilateral and the regional context. Agreements on readmission, police cooperation and civil protection have been concluded.

Relations with Albania have intensified, and Bosnia and Herzegovina has decided to open an Embassy in Tirana.

Bosnia and Herzegovina actively participates in regional cooperation programs and initiatives, for example in CEFTA.

4. **Economic developments in Bosnia and Herzegovina**

4.1 *The current state of the economy in Bosnia and Herzegovina*

Despite the difficult political environment, BiH enjoyed four years of stable economic performance, with growth in GDP estimated at 5,5 % in 2008. Inflation in the first quarter of 2007 was just 1,5 % but started to pick up in the second half of 2007, driven by

an increase in food and transport prices and reached 4,9 % in December, further accelerating to 9,5 % in August 2008. The current account deficit dropped from 21,3 % of GDP in 2005 to 11,4 % of GDP in 2006, but widened again to 12,7 % of GDP in 2007. The trade deficit fell from 49,6 % of GDP in 2005 to around 37 % of GDP in 2006 and 2007. Further improvements are unlikely for the time-being as export expansion has slowed in 2007, imports have increased again and foreign direct investments (FDI) are likely to decrease following the global financial crisis. The total fiscal surplus was 3 % of GDP in 2006, which resulted mainly from a surge of revenues following the introduction of VAT. The surplus declined to 1.3 % of GDP in 2007 and may turn into a deficit in 2008 following, among other factors, an increase of VAT refunds.

Like other transition countries, BiH has a growing economy but faces widespread poverty and social hardship. Unemployment estimates range from 16 per cent to 44 percent. BiH is facing the consequences of the financial and economic crisis which constitutes a danger to the economic, social and ethnic situation, as well as to relations within the EU and the region.

The country's government structure is cumbersome and consumes over 50 per cent of GDP. Fragmented structures, limited resources, lack of experience and ad hoc approaches to supporting national capacities undermine the ability of Government in formulating and implementing policy.

The EU is Bosnia and Herzegovina's main trade partner (exchanges with the EU represent over 50 % of Bosnia and Herzegovina's total trade). The signing of the SAA and the entry into force of the Interim Agreement are likely to deepen this relationship and expand trade integration with the EU. Bosnia and Herzegovina exports mainly to Italy, Germany and Slovenia. Bosnia and Herzegovina imports originate from these EU countries and, to a lesser extent, from Austria. Bosnia and Herzegovina's exports are essentially based on metals, wood and wood products, mineral products and chemicals. Imports include, in particular, machinery, mineral products, foodstuffs and chemicals.

5. **The current state and role of civil society organisations**

5.1 *Social dialogue*

5.1.1 Legal environment

Social dialogue is not formally present at the level of Bosnia and Herzegovina. This is due to the fact the current constitution does not have provisions for setting up state level government institutions dealing with social policy or education.

All eight core conventions of the International Labour Organisation (ILO) have been ratified by Bosnia and Herzegovina (BiH). Freedom of association is guaranteed in the constitutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS). The two Entities have separate labour laws, and so has the district of Brčko.

The BiH Law on Associations and Foundations, adopted in December 2001, does not have provisions for registering a trade union federation at BiH level.

However, according to the 2008 Progress Report of the European Commission, no progress has been made in this area. The fact that there are no powers at State level in the field of employment and social policies remains an obstacle to the development of a countrywide strategy for employment. Based on constitutional arguments, Republika Srpska systematically objects to giving a role to the State level in internal labour market issues. Employment strategies and projects for active employment measures have been developed by the two Entities and Brčko District. However, there is little coordination between them.

The situation is similar in the area of social dialogue. The Trade Union Confederation has not been able to register at State level. Under current law, the registration of the trade unions is synonymous with their recognition – representativeness. Also, the legal basis and procedure for the social partners are the same as for all other civil society organisations, such as consumer groups or sports associations, which is disproportionate. The complex political and social organisation in the country continues to affect dialogue between social partners and solutions do not seem immediate. The lack of clarity regarding the legal registration of trade unions has blocked further progress towards establishing collective bargaining. A new law, replacing the above mentioned law on Associations and Foundations should be drafted, in order that the Government no longer get discretionary power as regard the decision to register or not a new organisation.

5.1.2 Social partners

5.1.2.1 Employers

In the case of Bosnia and Herzegovina it is difficult to speak about employer organisations active at state level. As there is no Ministry of Labour at state level and many of the economic issues are under the responsibility of entity governments there is no official coordination or cooperation among employer organisations at state level.

The two major organisations of employers are Association of Employers of Federation of Bosnia and Herzegovina and Association of Employers of Republika Srpska. Both of them participate in Economic and Social Councils at entity level. The main issue the employer organisations are facing both internally and externally is representativeness and effective representation of the interests of their members towards the public authorities.

5.1.2.2 Trade unions

Unionisation rates in the formal sector are quite high in the FBiH and in RS. While the Confederation of Independent Trade Unions (*Savez Samostalnih Sindikata Bosne i Hercegovine*, SSSBiH) organises workers in FBiH, the Confederation of Trade Unions of Republika Srpska (Savez Sindikata Republike Srpske, SSRS) does the same in RS. The trade union confederations of the two entities of Bosnia-Herzegovina, the FBiH and the RS, set up at a founding assembly held in Sarajevo on 24 June 2005 a common umbrella organisation for the trade unions of Bosnia-Herzegovina (KSBiH). KSBiH submitted a request for registration at the state level, but the issue has not been resolved to date.

5.1.3 Assessment of the existing mechanisms

No Economic and Social Council has been established at state level due mainly to unwillingness to bring the issue of social dialogue at a State level, notably from Republika Srpska ([4]) There are two labour codes – one in each entity and there is no Ministry of Labour at state level. The main issues for social partners such as: economic policies, labour law, or education fall under the responsibility of entity and local governments. A proper single market (including the labour market) within Bosnia and Herzegovina has not been established yet. Economic and Social Councils are functioning only at entity levels and they receive funding for their activities from the Government. The remaining formal obstacle for establishing the ESC at state level is the issue of non recognition of trade union umbrella organisation. It should also be noted that the capacities of social partners are still weak and further professionalisation of their work internally is required.

5.2 *Civil dialogue*

5.2.1 Legal environment

Bosnia and Herzegovina has a 'limited' history of development of civil society. Before the war, there was a range of public organisations with activities mainly in the areas of culture and sports. During and after the war, most of the non-governmental organisations (NGOs) focused their activities on the distribution of the humanitarian aid and only slowly changed their focus to more standard activities.

NGOs can register at State, Entity, cantonal (for FBiH) or municipal level. Since 2002, the Law on Associations and Foundations allows NGOs to register at the State Ministry of Civil Affairs and Communication and be active anywhere in the country. However, due to cumbersome procedures necessary to obtain State level registration and also non-recognition of state level registration at entity level (Republika Srpska), many NGOs prefer to register at entity level. A Memorandum of Understanding signed in 2004 for the establishment of a Joint Registry for Associations and Foundations in BiH, between the State, the Entity governments and the Brčko District promotes 'increasing freedom of movement of associations and foundations and establishes a system of fast access to information on all foundations and associations'.

The Law on Associations and Foundations has been amended and came into force in 2008. The 2002 Rulebook on Registration still applies, which complicates the registration process. The BiH authorities are seeking to amend it in order to reduce the number of forms required for registration. There is also a plan to introduce on-line registration.

According to a study prepared by the United Nations Country Team ([5]), one of the main issues for CSOs is the recently introduced system of VAT. The VAT Law, which came into force in BiH on 1 January 2006, introduced a unified tax rate of 17 %, which represents a tax increase. Various collections (social, health) additionally apply to CSOs when hiring staff. Additional taxes apply to donations. The general feeling is that tax exemptions for the civil society sector would be welcomed and would make their work easier.

Public financing of CSOs is another important issue. In most cases CSOs view public funds distribution as insufficiently transparent. Legislation on volunteerism is still not enforced. Resolving poor implementation of legislation and the need for harmonisation of laws remain critical. Some of the CSOs observe that the legislative drafting process in BiH is non-transparent and non-accessible.

The CSOs see weak support from the political authorities as some of them see the civil society sector as a rival. There is also a general misunderstanding among local authorities of values and advantages of partnership with civil society.

5.2.2 The situation within the various interest groups

The total number of registered NGOs in Bosnia and Herzegovina is now close to 8 000 ([6]) however the number of active ones is much smaller. The income of the third sector is estimated at 4,5 % of GDP while operating expenditures are 2,4 %. Staff employed in the sector represent 1,45 % of the economically active population ([7]).

([4]) The Prime Minister of Republika Srpska, Milorad Dodik, declared on 22nd August 2007 that 'the Government of RS will not support the creation of the social Council on the level of BiH, [evaluating that] the basic economic and social questions are tackled on the level of entities and that the creation of this Council is a political matter'.

([5]) Main Findings on the Level of Cooperation Between the UN Agencies and Civil Society Organisations in BiH, January 2007, Working Paper of UNCT in BiH.

([6]) Figure provided as of February 2005 – data included into the Report of the EU funded Project 'Mapping Study of Non-State Actors in Bosnia-Herzegovina', September 2005.

([7]) 'Employment, social service provision and the non-governmental organisation (NGO) sector. Status and prospects for Bosnia and Herzegovina. Analysis and policy implications', Qualitative Study #3, 2 April 2005; DFID Labour and Social Policy Project.

The predominant activity area of NGOs is that of human rights promotion. Other areas of significant NGOs involvement are education, gender issues, economic development, humanitarian relief, civil society development, health, youth and children, community development.

5.2.3 Assessment of the existing mechanisms

Some progress has been noticed regarding the institutionalisation of the relationship between the authorities and the non-governmental sector at the State level. The BiH Council of Ministers, together with the representatives of civil society signed on 7 May 2007 the Agreement on Cooperation between the Council of Ministers of BiH and the non-governmental sector in BiH.

A Civil Society Board was established in October 2007 in accordance with the Agreement. Even though the Board does not represent the whole of civil society, it has 31 sub-sectors, making it the strongest forum for NGOs in the country. However, more efforts by the authorities are needed in order to establish regular and systematic communication with civil society and to encourage its participation in policy-making.

6. **The role of civil society organisations in EU integration**

6.1 *Civil society organisations and the process of European integration*

The European Idea is not the one very much present in the work of civil society organisations. The citizens see the European integration of BiH as a distant project. Majority of CSOs have limited experience from working with their counterpartners from EU countries. The debate on EU has just started in BiH. The CSOs focus their projects on the priorities set by financial donors – international organisations and governments and local donors. The advocacy of the European integration of BiH in each sector is not really visible, with the exception of activities of international NGOs. In spite of this, there is 80 percent support for future membership of BiH in the EU among its citizens which is a good starting point for advocacy activities of CSOs concerning meeting the EU membership criteria.

Brussels, 16 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on 'Emissions from road transport — concrete measures to overcome stagnation'

(Own-initiative opinion)

(2009/C 317/04)

Rapporteur: **Mr IOZIA**

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

Emissions from road transport – concrete measures to overcome stagnation.

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 26 June 2009. The rapporteur was Mr Iozia.

At its 455th plenary session, held on 15 and 16 July (meeting of 16 July), the European Economic and Social Committee adopted the following opinion by 109 votes to seven.

1. **Conclusions and recommendations**

1.1 Combating air and noise pollution involves a range of institutions. A key role is played by the European Community institutions, which are responsible for promoting and updating legislation, by the Member States whose responsibility it is to put this legislation into practice by means of implementing provisions, and by local authorities, who are responsible for monitoring pollution and noise. The responsibility for the fact that progress has stagnated is a shared one, and every level of responsibility should step up its efforts to eliminate or minimise the risks to public health and wellbeing.

1.2 Emissions from private, public and goods road transport cause serious illness and erode quality of life, especially for urban populations, representing more than 75 % of European citizens. In spite of the Commission's initiatives, such as its recent Greening Transport package, to adjust European legislation, in the Member States progress in combating air and noise pollution caused by traffic is visibly stagnating.

1.3 Legislation – at least concerning the quality of ambient air – has over the years been adjusted and improved. In contrast, there has been a lack of progress regarding the quantity and quality of monitoring of motor vehicles, including two- and three-wheelers, and of the amounts of gas and particulates in the air. Recognition should be given to the strenuous efforts, including technical and scientific ones, made by the Commission with the TREMOVE programme and programmes to analyse the effects of the various transport sector policies, and with the development of the COPERT 4 system (COmputer Program for calculating Emissions from Road Transport) in the framework of the activities of the European Topic Centre on Air and Climate Change, further developed by the Joint Research Centre. This methodology is a part of the EMEP/CORINAIR Emission Inventory Guidebook, developed by the United Nations Economic Commission for Europe (UNECE) Task Force on Emissions Inventories and Projections.

1.4 The Greening Transport package contains a proposal to reduce noise pollution caused by rail traffic, while on 22 June 2009 the regulation on the general safety of motor vehicles (COM(2008) 316 final) was adopted, inclusions provisions to substantially reduce the level of noise from tyres.

1.5 The EESC recommends that the Commission, the Environment Council, the Employment, Social Policy, Health and Consumer Affairs Council, and the European Parliament take immediate steps to strengthen control measures, thereby protecting citizens' health. Off-cycle and on-road controls, particularly during use, would show that today's vehicles are noisier than those of 30 years ago, and their emissions are considerably higher than those recorded in the cycle tests.

1.6 The EESC emphasises the lack of a consolidated approach: the UN/ECE rules do not provide for effective control systems, like EU regulations and the self-certification model. Leaving checks to market control mechanisms has been shown to be inadequate.

1.7 The EESC points to a range of actions that various European Union, Member States and region authorities could take to lessen the effects of ambient air pollution:

— involving the general public, directing it towards patterns of behaviour conducive to the general good, increasing transparency and information through visual displays and websites;

— gearing education and training to environmental and ecological issues;

— disseminating best practices such as the mobility card giving free entitlement to public transport;

— using electric trams and trolleybuses for urban transport, which can now also be powered by batteries, enabling them to operate in areas without overhead wiring;

— restricting private traffic by improving and stepping up public transport;

— adopting differentiated taxation for vehicles and fuels, depending on their level of pollution, imposing charges to enter city centres graded to the ability to pay and the emissions produced;

— internalising external costs, particularly the costs to human health;

— developing integrated transport policies, establishing the degree of environmental sustainability of individual projects;

— helping to shift lifestyles in a less wasteful and more eco-friendly direction;

— supporting sustainability mobility by walking or cycling for short distances, enhancing the infrastructure provided for pedestrians and cyclists;

— avoiding unnecessary travel;

— reviewing logistics management and just-in-time production;

— promoting teleworking wherever possible;

— reducing traffic congestion by optimising use of all transport modes, with a preference for public transport;

— supporting research and innovative development of technological materials and solutions to reduce levels of polluting agents produced by traffic and road transport, such as hydrogen fuel cells for cars, electric cars and low-emission hydrocarbons such as synthetic gas, methane and LPG;

— carrying out regular, stricter controls especially in countries where the vehicle fleet is more obsolete and polluting (e.g. 60 % of motor vehicles in Poland are more than 10 years old).

1.8 In order to lessen the impact of noise pollution, the following could be introduced:

— restrictions on private traffic at night in residential areas;

— speed reduction devices on road surfaces;

— improved road surface quality;

— noise-absorbing panels in areas of high traffic density;

— penalties with real deterrent effect for vehicles that exceed noise emission limits, up to and including impounding vehicles, and focusing especially on two- and three-wheelers;

— noise tests that more closely reflect 'normal' vehicle operating conditions;

— more frequent medical checks for people most exposed to the risk of noise pollution;

— effective steps to reduce traffic congestion, and more particularly the widespread introduction of priority lanes and dedicated sites for public transport;

— specific provisions and appropriate arrangements for people who work on the roads at ground and who breathe polluted air and/or are exposed to continuous noise.

1.9 Life Cycle Assessment (LCA) methods should also be applied to indirect transport-related emissions:

— production and transport of fuel (extraction, transport to refinery and to the petrol pump; in the case of battery-powered vehicles, emissions caused by electricity generation);

— vehicle production (manufacturing industry emissions, including disposal of waste material);

— streets and car parks (if parks and green areas are used for their construction, air quality suffers through a reduction in photosynthesis).

1.10 The present opinion concentrates on the emission of pollutants and on the noise produced by road traffic. Discussions have revealed a need for other modes of transport and leisure vehicles to be examined, together with the pollution caused by agriculture. Trains, aircraft, ocean-going and inland navigation vessels, non-road mobile machinery, such as tractors or earth-moving equipment, construction machinery and mining machinery should also be controlled [1].

2. **Introduction**

2.1 The entire energy and climate package has been adopted by the European Council, albeit with some difficulty. The EU can now attend the Copenhagen conference in December with its house fully in order, and consolidate its position as world leader in its determination to combat GG (greenhouse gas) emissions.

[1] OJ C 220 of 16.9.2003, p. 16.

2.2 The same cannot be said of the results from initiatives to prevent emissions of pollutants and noise produced by transport vehicles.

2.3 Traffic has a harmful impact on public health in two main ways: the immission into the atmosphere of polluting substances, and noise. The main pollutants caused by traffic that have a directly harmful effect on health are: nitrogen oxide and dioxide (NO and NO_2), carbon monoxide (CO), sulphur dioxide (SO_2), ammonia (NH_3), volatile organic compounds (VOCs), and particles or aerosols. These substances are defined as primary pollutants, as they are emitted directly by motor vehicles, while other substances, described as secondary pollutants, are produced by reactions in the atmosphere. The latter include ozone, ammonium nitrate (NH_4NO_3), ammonium sulphate ([NH_4]2[SO_4]), and secondary organic aerosols.

2.4 Road transport is responsible for the bulk of emissions of NO_x (39,4 %), CO (36,4 %) and NMVOCs (17,9 %) (non-methane volatile organic compounds), and is the second-largest source of emissions of PM10 (17,8 %) and PM2,5 (15,9 %) (European Environment Agency (EEA), Technical report No 7/2008, 28 July 2008).

2.5 Natural primary particulates are caused by volcanic eruptions, forest fires, erosion and crumbling of rock, plants (pollens and vegetal residues), spores, sea spray and insect remains. Natural secondary particulates are made up of very fine particles produced by the oxidation of various substances such as sulphur dioxide and hydrogen sulphide emitted by fires and volcanoes; nitrogen oxides released from the ground; and terpenes (hydrocarbons) released by vegetation.

2.6 Primary particulates from anthropogenic activity are due to: the use of fossil fuels (domestic heating, thermal power stations, etc.); motor vehicle emissions; wear and tear on tyres, brakes and road surfaces; various industrial processes (foundries, mines, cement works, etc.). The huge amounts of dust that can be generated by various farming activities should also be pointed out. Secondary particulates from anthropogenic activity, in contrast, stem essentially from the oxidation of hydrocarbons and sulphur and nitrogen oxides emitted by a range of activities.

2.7 Particulate matter is classified by size, ranging from nanoparticles to fine particles and even visible dust. Particles with a diameter of less than 10 μm are defined as PM10 and those with a diameter of less than 1 μm as PM1, with the smallest being the most dangerous as they penetrate most deeply into the lungs.

2.8 Other substances emitted by motor vehicles are not directly harmful to health but, according to the EEA, seriously damage the environment. These include the greenhouse gases carbon dioxide (CO_2), methane (CH_4) and nitrous oxide (N_2O). They too are a source of considerable social concern, and their concentrations are limited by vehicle emissions standards.

2.9 At the same level of traffic emissions, concentrations of pollutants at ground level vary depending on weather conditions. Low ground temperatures, especially when thermal inversion occurs, prevent the convection currents that mix air in the atmosphere, and facilitate the accumulation of pollutants at lower levels. This is particularly frequent in mountain valley areas, where the effects of air pollution are especially worrying.

2.10 The effects of pollutants on health have been verified by epidemiological studies: chronic bronchitis and emphysema are short-term effects associated with high concentrations of particles, while there is also fragmentary evidence for association with allergic conditions such as asthma, rhinitis and dermatitis.

2.11 Noise has both auditory and non-auditory effects on health, and has prompted the European Community to introduce limits to the exposure of workers and resident populations to noise. The main rules for calculating exposure to noise are set out in standards ISO 1996-1:2003, ISO 1996-2:2006, ISO 9613-1:1993, ISO 9613-2:1996 and in Directive 2002/49/EC.

2.12 In order to take account of the varying sensitivity of the hearing system to the different frequencies of the acoustic spectrum (20 to 20 000 Hz) when calculating exposure to noise, weighting curves are used to determine spectral density measured according to the sensitivity of the hearing system. The most commonly used is weighting curve A, which provides a weighted measure of exposure expressed in dB(A).

3. **European legislation**

3.1 *Air quality*

3.1.1 Air quality is one of the areas in which Europe has made the greatest efforts in recent years to develop a comprehensive strategy, establishing long-term air quality objectives. Directives have been introduced to control the levels of some pollutants and to monitor their concentrations in the atmosphere.

3.1.2 In 1996, the Council of Environment Ministers adopted framework Directive 96/62/EC on ambient air quality assessment and management. The directive revises existing legislation and introduces new air quality standards for air pollutants that had not previously been regulated, laying down a timetable for drafting daughter directives on a series of pollutants. The list of pollutants covered by the directive includes sulphur dioxide (SO_2), nitrogen dioxide (NO_x), particulate matter (PM), lead (Pb) and ozone (pollutants governing by previously existing ambient air objectives), benzene, carbon monoxide, polyaromatic hydrocarbons, cadmium, arsenic, nickel and mercury.

3.2 *Daughter directives*

3.2.1 The framework directive was followed by a number of daughter directives laying down numerical limit values or, in the case of ozone, reference values for each pollutant identified. In addition to setting air quality limits and alert thresholds, the directives set out to harmonise air quality monitoring strategies and methods for measurement, calibration and assessment with a view to achieving comparable measurements throughout the EU and providing useful public information.

3.2.2 The first daughter directive (1999/30/EC), on limit values for NO_x, SO_2, Pb and PM in ambient air, came into force in July 1999. In order to make a harmonised and structured system of reports possible, the Commission laid down detailed measures enabling each Member State to supply information on its own plans and programmes. These measures are set out in Decision 2004/224/EC.

3.2.3 The second daughter directive (2000/69/EC), relating to limit values for benzene and carbon monoxide in ambient air, came into force on 13 December 2000. The annual reports to be submitted under the terms of the directive must comply with Commission Decision 2004/461/EC.

3.2.4 The third daughter directive, 2002/3/EC, relating to ozone in ambient air, was adopted on 12 February 2002 and lays down long-term objectives that correspond to the new guidelines and reference values stipulated by the World Health Organization for concentrations of ozone in ambient air, to be met by 2010. These objectives are in keeping with Directive 2001/81/EC on national emission ceilings.

3.2.5 The fourth daughter directive, 2004/107/EC of the European Parliament and of the Council, of 15 December 2004, concerns the reduction of concentrations of arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air.

3.2.6 Directive 2008/50/EC was recently adopted, concerning ambient air quality and cleaner air for Europe. It merges the framework directive and the first three daughter directives, postponing the incorporation of the fourth daughter directive until sufficient experience of implementation has been built up. This new directive establishes measurements for fine particulate matter (PM2,5), laying down national reduction targets, the average exposure indicator (AEI) and the limit value, set at 25 $\mu g/m^3$ and 20 $\mu g/m^3$ from 2020. The directive was adopted after taking on board the World Health Organisation (WHO) report on Air Quality Guidelines Global Update 2005, which demonstrated the dangerous nature of PM2.5, and also identified danger thresholds for NO_x, SO_x and O_3.

3.2.7 The major argument for using PM2,5 is that it is a better measure of anthropogenic activities, especially combustion sources (Report of the Scientific Committee on Health and Environmental Risks (SCHER), 2005).

3.3 *Noise pollution*

3.3.1 Directive 70/157/CE on the approximation of national laws relating to the permissible sound level of motor vehicles dates back to 1970.

3.3.2 It was however 1986 before Directive 86/188/EC, on the protection of workers from the risks related to exposure to noise, was adopted.

3.3.3 Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relates to the assessment and management of environmental noise, defined as all unwanted or harmful outdoor sound created by human activities, including noise emitted by means of transport.

3.3.4 Commission Directive 2007/34/EC of 14 June 2007 amending, for the purposes of its adaptation to technical progress, Council Directive 70/157/EEC concerning the permissible sound level and the exhaust system of motor vehicles, and Regulation No 117 of the Economic Commission for Europe of the United Nations (UN/ECE) – Uniform provisions concerning the approval of tyres with regard to rolling sound emissions and to adhesion on wet surfaces (OJ L 231 of 29.8.2008) have since been adopted. To this should be added the recent adoption of the regulation on the general safety of motor vehicles (COM(2008) 316 final), including provisions to substantially reduce the level of noise from tyres.

4. **Current situation**

4.1 According to an EEA study (Exceedence of air quality limit values in urban areas. Core set of indicators assessment – December 2008) based on the ten-year period from 1997 to 2006, the percentages of the urban population potentially exposed to ambient air concentrations in excess of the EU limit values laid down for the protection of human health were:

— for particulate matter (PM10), 18-50 % (50 $\mu g/m^3$ daily, not to be exceeded more than 35 days per calendar year);

— for nitrogen dioxide (NO_2), 18-42 % (40 $\mu g/m^3$ per calendar year), with a slight downward trend being recorded;

— for ozone (O_3), 14-61 % (120 $\mu g/m^3$ for a daily 8-hour maximum not to be exceeded more than 25 times per calendar year). A peak of 61 % was reached in 2003, but no discernible trend was detected;

— for sulphur dioxide (SO_2), less than 1 % of the population was exposed to the limit value set (125 $\mu g/m^3$ not to be exceeded for more than three days per calendar year).

5. **Harm caused by noise and air pollution**

5.1 Noise is today among the main causes of the deteriorating quality of life in cities. Although there has been a downward trend in the Community trend over the last 15 years regarding the highest noise levels in the worst black spots, at the same time the so-called ″grey areas″ have grown, meaning a larger population is exposed and the benefits of the former trend are wiped out.

5.2 Noise is generally defined as 'unwanted sound' or unpleasant and annoying sound.

5.3 There are three possible approaches to tackling noise:

— acting on the source of noise (reducing emissions at source or improving mobility conditions within a certain territorial area);

— acting on noise transmission (keeping residential areas as distant as possible from areas of greatest noise emission);

— adopting passive protection systems (noise barriers) for buildings most exposed to noise immission.

5.4 The most frequent illnesses caused by noise are of both auditory and extra-auditory types: impaired hearing, tinnitus (the ringing sometimes heard inside the ear, which can be caused by permanent damage to the cochlear hair cells), and problems connected with the cochlea-auditory nerve channel complex, and the Eustachian tube. Exposure to noise causes acute and chronic damage to the hearing system. Traffic noise does not reach levels capable of producing acute effects. The hearing system is capable of recovering from the negative effects of chronic exposure to noise if it has a sufficient period of rest. For this reason, chronic exposure limits often refer to total A-weighted exposure of workers measured over an 8–hour working day. In the EU, the personal daily exposure limit is set at Lex, 8h = 87 dB(A).

5.5 Extra-auditory illnesses may involve the emergence of cardiovascular pathologies, of disorders of the digestive system through stress, acute headaches or endocrine problems as a result of altered essential parameters. Recorded extra-auditory effects of noise include: annoyance, disturbed sleep, and complications of existing psychiatric pathologies. The link between high declared levels of annoyance (a subjective parameter) and traffic noise levels, including from rail transport, and especially at night, has been demonstrated in numerous studies. Disturbed sleep, directly caused by night-time traffic noise, is often accompanied by the appearance of other cardiovascular and endocrine pathologies, which typically do not diminish as exposure continues, unlike initial difficulty in falling asleep.

5.6 The picture concerning air pollution is very different. 500 000 people die worldwide each year as a result of ambient air pollution, and it has a downward effect on life expectancy (almost three million deaths due to indoor air pollution). According to research conducted by the Environmental Epidemiology and Tumour Registry Department of the Milan-based National Institute for the Study and Treatment of Tumours, if PM10 particles were to be reduced from 60 to 30 $\mu g/m^3$ there would be 1 575 fewer deaths than the 13 122 that actually occur. Obvious food for thought for the citizens of that city!

5.7 This long-term extrapolation is drawn from a study carried out by C. Arden Pope III (published in JAMA, 2002 – Vol. 287, No 9) on a sample of 1 200 000 individuals belonging to the Cancer Society over an observation period extending from 1982 to 1998 (*Lung Cancer, Cardiopulmonary Mortality and Long-term Exposure to fine Particulate Air Pollution*). The WHO has accepted the parameters resulting from this study, which identifies the increase in the mortality risk for the population of 30 years of age or more at 6 %.

5.8 Air pollution causes many illnesses such as acute and chronic bronchitis, disorders of the lungs and cardio-circulatory system, breathing difficulties such as dyspnoea, increased tumours, increased asthma attacks and acute inflammations of the eye.

6. **Workers exposed to noise and air pollution**

6.1 Many categories of workers are concerned by overexposure to a polluted urban environment. All those working on the roads are affected: maintenance workers, town and traffic police, petrol station workers, bus and commercial vehicle drivers. European and national legislation looks in detail at the potential risks to individual occupations, imposing suitable safety measures.

6.2 The legislation on air pollution at the workplace is particularly strict for industrial companies using hazardous materials. With regard to noise, all equipment or machines that cause noise emissions must comply with the limits laid down in the type-approval except in specific cases where the ceilings are exceeded; in such cases (pneumatic hammers, road drills) there is an obligation to use ear protectors.

6.3 There are no specific provisions for road-based workers who breathe polluted air or are subjected to continuous noise. With regard to bus drivers, for example, the on-board sources of noise and vibration should be reduced and driving cab soundproofing improved. Excessive noise has a negative impact on driver performance by generating stress, increasing muscle strain and jeopardising precision of movement. Noise acts on the vegetative nervous system and impairs certain functions that are crucial to driving, such as judgment of speed and distance.

6.4 Improving health and safety conditions for workers is a responsibility that needs to be assumed at every political and administrative level, stepping up inspections and severely penalising those who infringe the safety standards. Workers are often involved in accidents that could be prevented if safety rules were kept properly up-dated on the basis of the most recent studies and technological progress. These include the most recent epidemiological studies on polluting factors that, as a side-effect, can produce loss of attention, with the ensuing irreparable consequences.

7. **What initiatives should be taken against stagnating results?**

7.1 Reports from European agencies reveal that the fight against polluting factors is far from won. The legal protection of citizens needs to be strengthened through a robust system of inspections, which must be conducted independently of administrations or local authorities.

7.2 According to a very recent EEA study, the main cause for the increase in harmful emissions is the growth in demand for transport, outstripping the gains made through fuel and energy efficiency: demand is often created by factors outside transport (shopping, working and holiday trips). Decisions taken outside the transport sector influence its carbon footprint without considering the consequences. A detailed analysis of sectors of economic activity outside the transport sector is needed (EEA, *Beyond transport policy – exploring and managing the external drivers of transport demand*, Technical report No 12/2008).

7.3 In some towns, so as not to hamper trade as a result of traffic restrictions, distribution centres have simply been shifted from the more polluted areas of cities to quiet suburbs – or data is simply no longer collected from such areas.

7.4 The self-certification scheme applied by the tyre manufacturing industry, with controls that are influenced by specific road surface conditions (texture, intrinsic capacity to absorb noise) is heavily slanted towards reducing in-vehicle noise rather than external pass-by noise, i.e. the noise perceived by the general population.

7.5 Noise pollution means the introduction of noise into the indoor or outdoor environment that is annoying or disturbing to rest and to human activities, harmful to health, damaging to ecosystems, tangible goods, monuments and the indoor or outdoor environment, or prevents the lawful enjoyment of these environments. It should be combated by means of an intelligent approach that involves the general public, encouraging it to adopt patterns of behaviour that will bring about collective well-being.

7.6 As well as fostering such behaviour, particularly among the younger generations through educational interaction from primary school onwards, there is a need to push ahead with targeted initiatives in order to achieve the goal of a low CO_2- and pollutant-emitting society.

7.7 Sustainable urban public transport should be supported by incentives. The city of Basle has adopted an interesting initiative under which, in agreement with hotel operators, it distributes a free (i.e. included in the price of the hotel) mobility card to visitors allowing them to use public transport free of charge for the number of days of their hotel stay. In other words, an incentive to leave the car at home.

7.8 Limiting urban traffic by giving preference to public passenger transport ([2]), differentiated taxation of vehicles and fuels in line with the emissions they produce ([3]), thereby internalising the external costs ([4]), and charging to enter city centres: the latter however after an initially positive impact in terms of reducing urban traffic, tends over time to lose its effectiveness, as in the cases of London, Stockholm and Milan. SUVs should be used in open areas, not in Europe's small cities, which were designed for horse-drawn carts (although even they were a source of CH_4 emissions!).

7.8.1 The production and use of vehicles that comply more closely with air pollution limits are a key factor in any attempt to meet the goals set by the relevant European legislation.

7.9 The development of Intelligent Transportation Systems (ITS) ([5]). ITS vary in the technologies applied, from basic management systems such as satellite navigation, traffic signal control systems, speed cameras, and monitoring applications such as CCTV surveillance, together with advanced applications integrating live data from various external sources, such as weather information, bridge de-icing systems and so on.

7.10 Computational technologies, embedded in real-time operating systems and using the microprocessors pre-fitted in new cars; FCD (Floating Car Data/Floating Cellular Data) system using signals from the mobile phones of those drivers who have them; internal and external sensing technologies; inductive loop detectors placed in the roadbed; and video identification may all be used.

7.11 Even urban and non-urban toll payment problems can be resolved with electronics. In addition to charge collection, Electronic Toll Collection (ETC) is used to monitor congestion trends by measuring the number of vehicles passing between two points in time.

([2]) OJ C 168 of 20.7.2007, pp. 77-86.

([3]) OJ C 195 of 18.8.2006, pp. 26-28.

([4]) See page 80 of this Official Journal.

([5]) EESC opinion CESE 872/2009 TEN/382, *Deployment of intelligent transport systems*, rapporteur: Mr Zbořil (not yet published in the OJ)

7.12 There is a need for a debate on recreational vehicles (buggies, quads, off-road motorcycles, water scooters, snowmobiles, microlight aircraft). Noise and emissions with highly unpleasant smells are often an indissociable part of these vehicles. They generally do not have licence plates, but can be transported and parked legally. Their engines are usually subject to the general rules, but it may be questioned if these rules take sufficient account of the use of these vehicles in areas of great natural value. The rapidly spreading popularity of such vehicles not only raises environmental problems, but poses a technological challenge.

7.13 Internalisation of external costs, particularly the costs to human health, and integrated transport policies, establishing the degree of environmental sustainability of individual projects, the cost/benefit ratio, environmental improvement, job creation, impact on congestion.

7.14 Changing lifestyles. Supporting sustainable mobility by walking or cycling for short distances, enhancing the infrastructure provided for pedestrians and cyclists.

7.15 Reviewing logistics management and just-in-time production, which entails enormous expenditure on moving goods. Standardised designs, to rationalise spare parts.

7.16 Wherever possible, boosting teleworking.

7.17 Supporting research and innovative development of technological materials and solutions to reduce levels of polluting agents produced by traffic and road transport.

7.18 In order to lessen the impact of noise pollution, speed reduction devices could be installed on road surfaces, the quality of road surfaces themselves improved and noise absorbing panels erected in areas of high traffic density. Penalties with real deterrent effect for vehicles that exceed noise emission limits, up to and including impounding vehicles. Noise tests that more closely reflect 'normal' vehicle operating conditions.

7.19 Two- and three-wheel motorised vehicles are often the main cause of disturbing and harmful noise. Checks on their noise emissions should be stepped up, and they should be taken off the roads until a document formally certifying that they comply with existing legislation is produced.

Brussels, 16 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on 'The components and downstream markets of the automotive sector'

(Own-initiative opinion)

(2009/C 317/05)

Rapporteur: **Mr ZÖHRER**
Co-rapporteur: **Mr LEIRIÃO**

On 10 July 2008, the European Economic and Social Committee, acting under Article 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

The components and downstream markets of the automotive sector.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 June 2009. The rapporteur was Mr Zöhrer, the co-rapporteur Mr Leirião.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 16 July), the European Economic and Social Committee adopted the following opinion by 104 votes to 4 with 9 abstentions.

1. **Summary, conclusions and recommendations**

1.1 Automotive production is a key EU industry. It is a driving force for growth, jobs, exports and innovation. The components and services in its downstream markets are equally important. The players in the downstream market include vehicle manufacturers, their suppliers and independent or authorised market operators in services, spare parts and accessories, as well as in manufacturing, distribution and retailing. It involves a network of 834 700 companies (predominantly SMEs) with a total turnover of EUR 1 107 billion and around 4,6 million workers.

1.2 Vehicle manufacturers and vehicle dealers both face stiffer competition, leading to ever-diminishing profit margins. As a result, the downstream markets are becoming ever more important, with vehicle manufacturers playing a dominant role vis-à-vis independent operators.

1.3 The crisis in the financial markets hit the automotive manufacturing and supply industry, one of the first sectors of the real economy to be affected, particularly badly in the second half of 2008 and led to a painful collapse in sales. The associated drop in production is having serious consequences for companies and their staff. Businesses in the downstream market are also hit. For them in particular, more difficult access to funding represents a serious threat to their livelihood. The Committee therefore calls on the Commission and the Member States to take equal account of players in the downstream market when adopting any measures.

1.4 Leaving the current situation aside, medium- and long-term trends area are also in evidence in the automotive industry that will lead to considerable restructuring in the downstream market as well. Within a few years, this sector will be wholly restructured. On the one hand, a shift in market share in favour of independent operators is on the horizon, while, on the other, many companies, especially small and micro enterprises, will only survive if they develop new concepts and invest.

1.4.1 The EESC feels that the ongoing restructuring of the aftermarket sector will result in the emergence of a range of new partnerships (not least with other civil society players) and new forms of customer relationships. Given the automotive sector's close links with other sectors and the highly diversified nature of the supply industry and vehicle trade, any form of restructuring that involves major adverse impacts for SMEs also impacts on hundreds of thousands of workers in the Member States. The EESC thus feels that that the Commission should monitor restructuring developments on the aftermarket sector closely and act if necessary to safeguard competition.

1.4.2 In line with the Lisbon strategy, the Committee therefore recommends setting up a high-level group which, drawing on the CARS 21 findings, would be responsible for outlining future prospects once the crisis is over and determining areas for action. Given developments in the automotive industry as a whole, the following priorities should be set:

— ongoing development of the legal framework/access to free and fair competition,

— implementation of the Lisbon strategy,

— upskilling needs,

— innovation,

— consumer issues,

— trade policy,

— social aspects.

1.5 The EESC feels that, in the light of current economic and social parameters, any revision of the EU legislation should contribute to safeguarding free and fair competition by:

— avoiding any disruptive changes during this grave crisis,

— ensuring proper balance in any provisions that encourage over-concentration in the trade sector,

— putting in place an appropriate framework for safety, environmental protection and simplification of rules,

— bringing forward the aims of anticompetitive behaviour due to a new organisation of the market,

— promoting the 'Think Small First' principle as established under the Small Business Act to foster SME development and innovation, and to safeguard jobs.

1.6 To safeguard both the quantity and quality of jobs, increase worker mobility and generally boost the attractiveness of the sector, it is vital that the sector and the individual companies also address the social challenges involved. Above all, consideration must be given to demographic change, the development of lifelong training and further training models, and new workplace health and safety requirements. The Committee therefore calls on the relevant players and the Commission to press ahead with social dialogue at all levels (within the sector, nationally and in companies).

2. **Background**

2.1 The European automotive industry is one of the most important sectors in the EU. The CCMI produced an information report in November 2007 entitled *The automotive sector in Europe: current situation and prospects*. However, this report focused only on the hard-core segment of the industry, i.e. the manufacturing of vehicles and components (NACE code 29), whereas, as the document indicated, a number of automotive components and services and a whole range of related economic activities are not included in NACE 29.

2.2 The automotive components and downstream markets represent a large mix of activities some of which depend on industry (manufacturing of electrical equipment for engines and vehicles, manufacturing of paints for the automotive sector; tyre production; synthetic and textile products; air conditioning systems; batteries and measuring devices for cars). Some depend on the service sector, such as servicing and repair of motor vehicles.

2.3 Players in the European aftermarket are the vehicle manufacturers, their suppliers, and independent market operators dealing in vehicle servicing, spare parts and accessories, and in manufacturing, distribution and retailing. These economic activities play a key role for the European economy as they cover a large number of sectors (major industries as well as SMEs) and play an important role for employment.

2.3.1 The aftermarket can essentially be divided into three areas:

I. Distribution, customer services, repair and maintenance

This category includes manufacturers' own service structures (sales and after-sales service), contractual partners which are directly dependent on the manufacturer (general importers, authorised repair workshops, etc.), as well as independent workshops. This includes both general workshops as well as those specialising in specific areas. Workshops that specialise in specific components also act as suppliers to the automobile industry in some cases.

II. Spare parts

In the first instance, spare parts are manufactured and delivered by the vehicle manufacturers themselves, or their suppliers, as well as by dealers. A growing proportion of parts, however, are no longer sold in the form of original spare parts, but as replicas. There are also a number of generic spare parts not carrying the brand name of any particular automotive manufacturer (tyres, wheel rims, batteries, spark plugs, filters, lamps, etc.)

III. Accessories and tuning

This includes more or less all parts or components that improve the individual design, comfort or security of the vehicle and covers many disparate items, ranging from complex electronic or hydraulic components (such as GPS navigations systems or chassis) to simple plastic items (for example, cup holders).

2.3.2 Wracking and recycling are of growing importance in this market. On the one hand, parts from wracked cars are reprocessed and sold. On the other, this is also a source of raw materials such as steel, aluminium and plastics.

2.3.3 There are also a number of other market participants in the service sector, such as petrol stations, emergency breakdown services and technical inspectors/agencies and bodywork repairers

2.4 There is a lack of adequate statistical data. For these areas of industrial production or services, specific data exists only in exceptional cases; generally speaking, these are production and service areas which form part of different industry and service sectors.

2.4.1 The automotive aftermarket consists of approximately 834 700 companies, mostly small and medium size enterprises (SMEs), although structures differ between Member States. In some countries, especially in southern Europe, the dominant players are small and micro businesses (mostly family-owned), while in other countries, such as Germany and France, bigger companies tend to hold a larger sway. The sector has a turnover of EUR 1 107 billion and employs approximately 4,6 million people in the European Union ([1]).

3. **Economic background, international trends**

3.1 The crisis in the financial markets hit the automotive manufacturing and supply industry, one of the first sectors of the real economy to be affected, particularly badly in the second half of 2008. Two impacts of the financial-market problems are hitting the sector especially hard. The first is that cars, along with house building, are probably the largest investment private households make. During periods of economic difficulty, these types of investments are put off. This has led to an unforeseeable collapse in sales on the car market. Secondly, it has become more difficult to obtain credit, and SMEs in particular are having problems financing their activities. This is also having a detrimental impact on company investments resulting in a fall in sales of commercial vehicles too ([2]) ([3]).

3.1.1 In 2008, the number of newly registered private cars in Europe dropped by 7,8 % compared to the previous year. In the last quarter of 2008 alone, the margin of change was 19,3 % over the previous year. Sales of light-duty vans dropped by more than 10 %, and of heavy goods vehicles by 4 %. This trend also continued at the beginning of 2009, albeit, in the case of private cars, it has been attenuated somewhat by various measures adopted by the Members State (such as environmental and scrapping bonuses). In the case of commercial vehicles, however, the trend is set to worsen dramatically. The heavy commercial vehicles (HCV) sector in Europe is in a catastrophic condition in 2009, with registrations down by 38,9 % for the first quarter of the year.

3.1.2 The drop in production is having a serious impact not just on businesses, but also on the workforce. The main result is redundancies (mainly affecting temporary workers) and short-time working or similar measures that also involve loss of earnings.

([1]) Source: FIGIEFA/WOLK & PARTNER CAR CONSULT GmBH.

([2]) See EESC opinion of (not yet published in the OJ) 13 May 2009 - CCMI/067.

([3]) The European Automobile Manufacturers' Association (ACEA) has set up 3 categories for the commercial vehicles sector: Light commercial vehicles up to 3,5 t ('vans'); commercial vehicles over 3,5 – excluding buses & coaches over 3,5 t ('trucks'); and heavy commercial vehicles over 16 t -excluding buses & coaches- ('heavy trucks').

3.2 Independently of this current development, the CCMI made an in-depth analysis of major trends in the automotive industry in its November 2007 report ([4]). The current crisis will speed up many of these trends and lead to comprehensive restructuring in the industry. These trends have a direct impact on developments and changes in the aftermarket. Below, the CCMI highlights those trends that are most important for the suppliers and downstream markets of the automotive sector.

3.2.1 The main findings are:

— All current studies of trends and forecasts in the automotive industry point to the fact that, in the medium term, this will be a growth sector throughout the world but one which, however, will continue to be characterised by large-scale restructuring.

— Growth in added value and employment is concentrated primarily on the component-manufacturing sector and is being achieved by means of continuing outsourcing.

— Further outsourcing is, above all, expected by (US) mass production companies; European (and, in particular German) premium producers are less concerned by this phenomenon.

— Internationally, the main areas of growth in motor vehicle production (passenger car manufacturing) are to be found in the BRIC states (Brazil, Russia, India and China), in particular in China and India, and in Europe.

— Despite the general trend towards growth, it is not just regional shifts in focal points of growth that are on the cards:

  — there is a danger that some individual end-product manufacturers will have to contend with crises which threaten their very existence;

  — the possibility that the USA may witness a similar internal development to that which took place in the UK in the 1990s cannot be ruled out (comprehensive restructuring with regional relocation);

  — relations between vehicle manufacturers and component manufacturers will continue to undergo changes as a result of outsourcing processes;

  — the component-manufacturing industry is likely to undergo further large-scale concentration;

  — as a result of technological developments (in, for example, the automotive and engine technology field), considerable restructuring is likely to take place in the component manufacturing sector.

([4]) CCMI Information Report of 23 November 2007 on 'The automotive sector in Europe: current situation and prospects' (rapporteur Mr Zöhrer; co-rapporteur Mr. Glahe).

— A number of different factors will determine the extent to which individual component manufacturers are affected by these restructuring processes. These factors are:

  — the product portfolio of the companies involved and the extent to which they are the sole manufacturers of the products in question;

  — R&D activities and the distribution of their costs;

  — relations between the respective vehicle manufacturers and component manufacturers;

  — product-organisation efficiency;

  — the degree to which the companies concerned participate in value-added networks and relations between clusters;

  — the structure of the companies concerned and their ownership relations;

  — capital resources and the extent of free cash flow;

  — regional presence.

— The regional structure of the European automotive industry will continue to be characterised by a shift from west to east.

— It is also fair to assume that forced productivity increases in the automotive industry will continue to exceed predicted production increases. This will lead to sustained pressure on employment and working conditions (above all in the components industry).

— In the global – as well as the European – automotive industry, there is considerable overcapacity in passenger vehicle manufacturing. Pressure from surplus capacity will be further increased by the ongoing build-up in capacity.

— The market is being shaped by the ever-more varied and complex needs of consumers. Demographic trends play a major role here, as do trends in incomes and sales prices.

— Climate problems, scarcity of raw materials and security present massive challenges. This increases pressure to step up development in the areas of propulsion technology (and exhaust gas prevention and alternative fuels) and materials technology, and also with regard to integrated, intermodal transport systems. This will have the greatest impact on the sector in the near future, and also requires that we define the future role of road transport and the motor vehicle within the framework of such a system.

3.3 Vehicle manufacturers and vehicle dealers both face stiffer competition, with ever-diminishing profit margins as a result. With profit margins at around 0,3 %, dealers are particularly hard hit. Because of this, players are focusing more and more on the aftermarket (service, maintenance, spare parts). Vehicle manufacturers are in a dominant position here compared with independent market operators.

4. **EU regulatory framework**

4.1 In contrast to the primary market, competition problems have been identified in the aftermarket. Authorised traders hold a large share of the market (around 50 %) and car manufacturers hold a large share of the spare parts market. Moreover, there are captive parts which are only available through car manufacturers. The European Commission had to force through measures giving independent repair shops access to technical information. The different competitive environment as compared to the primary market is also reflected in the fact that car manufacturers tend to have significantly higher profit margins on spare parts and that authorised traders tend to make a large part of their profits through repair and maintenance rather than the sale of new cars.

4.2 In order to protect competition and consumer choice and to ensure a level playing field in the spare parts and repair sector, the European Commission in 2003 published the current Motor Vehicle Block Exemption Regulation (EC) 1400/2002 that sets out rules for market players and is scheduled to remain in force up to 2010.

The Block Exemption Regulation defines vertical agreements, which are exempted from the ban on uncompetitive agreements under Article 81 of the EU Treaty. They thus provide a safe harbour for market players. If their agreements meet the conditions laid down in the BER, it may definitely be taken that they are in line with EU competition law.

4.3 The sector-specific Motor Vehicle Block Exemption Regulation (MVBER) is much more detailed than the general BER and, because of its complexity, results in problems of interpretation for market players, particularly SMEs. This confusion was identified by Commission following many requests and complaints from market players unrelated to competition issues. On the aftermarkets, the MVBER provides *a priori* for a more generous approach, since, under certain conditions, the agreements are covered up to 100 % market share (in the general BER only up to 30 % market share), albeit this generous arrangement is to some extent cancelled out by specific rules.

As a result, the MVBER is still somewhat controversial as the authorised dealers mostly want to keep the status quo, while car manufacturers are calling for simpler, less restrictive rules. For their part, the independent sector (independent repair shops and spare parts producers) are calling for better harmonisation of the current legislation.

4.4 Better harmonisation of the current legislation framework would include:

— the Block Exemption Regulation,

— a provision whereby information on the technology used in new models and new tools would be released and made available to all operators,

— the updating of the inspection directive 96/96/EC,

— intellectual property rights of companies (design and patent protection),

— warranty provisions,

— training.

4.5 All the market players want legal certainty and would like to know what is to happen after 2010. The current uncertainty on the future content of the BER is causing great concern, particularly among SMEs – as is only too understandable given the duration of contracts and the volume of investment needed to keep all operators up to speed on new vehicles technologies and to ensure they have access to spare parts, information technologies, new tools and equipment and training.

4.6 The Commission has consolidated the legal framework thanks to the *Euro 5* Regulation 715/2007/EC, which entered into force in January 2009 and which regulates access to all technical information for newly type-approved vehicles.

4.7 The EESC feels that, in the light of current economic and social parameters, any revision of the EU legislation should contribute to safeguarding free and fair competition by:

— avoiding any disruptive changes during this grave crisis,

— ensuring proper balance in any provisions that encourage over-concentration in the trade sector,

— putting in place an appropriate framework for safety, environmental protection and simplification of rules,

— bringing forward the aims of anticompetitive behaviour due to a new organisation of the market,

— promoting the 'Think Small First' principle as established under Small Business Act to foster SME development and innovation, and to safeguard jobs.

5. **Current state of play in the European automotive aftermarket**

The European aftermarket is facing major structural change from new and more active regulatory intervention. Also technological and process changes are redrawing the successful business model for participants at all stages of the aftermarket manufacturing, marketing and distribution chain.

5.1 *Service and repair*

Technological innovations provide better emissions control and more safety and comfort, but these innovations have made it increasingly challenging to service or repair a vehicle. This market is highly competitive and is dominated by SMEs which provide competitive components and quality services and thus play a vital role in employment and growth in the European economy.

5.1.1 The multi-brand tools manufacturers in particular need special information (i.e. specific diagnostic information required for the production of generic diagnostic tools to ensure broad functionality). Without multi-brand or generic tools, small business are forced to buy a set of tools for each make of vehicle with which they might potentially be asked to deal. To this end, investments are necessary that would clearly exceed SMEs' financial capacities. To keep pace with the increasing number of electronic systems constantly being added to motor vehicles, tool manufacturers need reliable and accurate information and data from the vehicle manufacturers. Without that, scan tool manufacturers cannot produce the software needed to support independent repairers.

5.2 *Spare parts*

Original spare parts which are specific to certain makes of vehicle are primarily produced and sold by the OEM or their contractual suppliers. However, a substantial proportion of spare parts such as tyres, wheels, batteries, spark plugs, various types of filter etc. can be used on all makes of vehicle.

Global competition between tyre, battery and wheel producers in particular is growing. These industries underwent comprehensive structural change in the past. The various subsectors should be examined further.

5.2.1 Replication and copy of spare parts

Alternative, independent operators are becoming increasingly important in the spare parts market. Often the spare parts they supply offer consumers better value for money (for example, in the case of older vehicles, where product life is less important than a lower price). In such cases, finding an exact replacement of the original part matters less than making sure it actually works.

However, there is also a continual supply of illegal, substandard copies and forgeries. Ultimately, this is fraud perpetrated on the customer – a problem that can now be tackled evermore effectively through tools designed to protect patents and intellectual property and through trade policy.

5.2.2 Car tuning industry

Car tuning is a fast growing subsector in the automotive industry.

The tuning industry seeks to modify a car by increasing its performance, general visual appearance and safety. The tuning concept can be applied to all components of a car: wheels, tyres, suspensions, engines, interior, body, exhaust system, etc.

There are a significant number of enterprises dedicated entirely to the tuning business which trade their products in the global markets. In general they use innovative ideas and materials and also develop new engineering trends that in some cases are adopted by the vehicle manufacturers for use in the mass market.

The European Commission should draw up and adopt specific legislation to regulate the car tuning sector.

5.3 *Safety and sustainable benefits for the environment*

In order to ensure that vehicles conform to EU emission and safety standards not only when they leave the factory brand-new but throughout their lives, regular inspection, proper servicing and repair are required. Independent operators and authorised repairers play an important role in relation to both brand-new and older models to make sure that the vehicles remain safe and comply with the applicable environment rules. This level of service can only be provided, however, if the vehicle manufacturers grant continuous access to information, multi-brand tools and equipment, spare parts and training.

6. **Major restructuring of the aftermarket sector**

6.1 The whole car industry and the commercial and services sector has been severely hit by the economic and financial crisis. The main problems for businesses (especially SMEs) are the increasing difficulties in borrowing money and the dramatic drop in demand for new cars. On the other hand, the automotive aftermarket has been affected by many other factors, including:

— increased average vehicle age, coupled with lower annual mileage,

— fewer repairs because of the increased longevity of components and longer intervals between services,

— relative increase in the cost of repairs due to increased use of high-tech parts in vehicles,

— pressure on the cost of repairs due to lower household income and consumer price sensitivity,

— increased use of electronics in modern vehicles and the growing complexity of devices,

— increased number of spare parts and the dramatic rise in model and equipment variants,

— increasingly complex repair and maintenance, parts identification and tool design,

— huge investment in IT systems, tools, parts and training,

— the practice of car manufacturers to tie in customers to maintenance contracts.

6.2 As a consequence, fundamental changes are occurring, leading to restructuring at various levels including:

— a growing trend – accelerated because of the crisis – towards market concentration due to mergers and acquisitions,

— a decrease in the number of independent repair shops and parts wholesalers,

— the growing trend for small and medium-sized repair shops and parts wholesalers to join independent full-service groups/chains to cope with the increasing demands on their profession,

— increased price pressure on parts producers and parts distributors,

— a situation whereby low profitability in sales of new vehicles will result in vehicle manufacturers increasing their activities in the aftermarket sector.

6.3 Over and above this, while there is some scope for an increase in spare parts sales on the aftermarket, suppliers are increasingly being required to deliver innovative aftermarket products that upgrade the performance or safety of a vehicle's original components in a bid to drive market demand. As a result, dealers who are authorised by manufacturers must struggle to maintain their market share, not least as a result of declining spare parts usage in cars in the 0-4 year range, which form their key customer base.

6.4 The EESC feels that the ongoing restructuring of the aftermarket sector will result in the emergence of a range of new partnerships and new forms of customer relationships. Given the automotive sector's close links with other sectors and the highly diversified nature of the supply industry and vehicle trade, any form of restructuring that involves major adverse impacts for SMEs also impacts on hundreds of thousands of workers in the Member States. The EESC thus feels that that the Commission should monitor restructuring developments on the aftermarket sector closely and act if necessary to safeguard competition.

7. **Social aspects**

7.1 *Training and further training*

Generally speaking, the training and further training systems in this sector are well developed. On the one hand, this is because of the efforts made by vehicle manufacturers, and on the other because technological change makes ongoing training a necessity. There is hardly any other sector where the proportion of employees undergoing further training each year is as high. There are differences depending on the type and size of company. Micro enterprises (mostly family-owned businesses) in particular find it very difficult to keep pace. Due to the way it is structured, training often focuses too much on the specific job or on a specific make. This reduces employees' mobility and makes a change of job more difficult. The Committee therefore supports the goal of developing a unified European system of certification.

7.2 *Health and safety*

The arduousness of jobs in the automotive sector differs between production sites, which are usually automated and have a great deal of technical equipment, and repair sites, where tasks are still usually performed manually. Repeatedly performing such tasks frequently results in workers suffering disabling pain or muscular and skeletal problems. Given the demographic challenges ahead, changes in work organisation will become unavoidable to keep a sufficiently skilled workforce in good health and enable workers to carry on working to retirement age. Otherwise, the sector may in future face a shortage of experienced skilled workers.

Occupational risk prevention plans and measures to adapt jobs must therefore not only take account of contaminants and toxic substances, but also protect workers from the arduous nature of their tasks.

New risks will emerge when new technologies appear on the market: electrical hazards from high-voltage systems and H2-related explosion risks will have to be tackled soon. We need to be prepared. For the moment, the possible changes to the typical workplace are not yet known. However, the various stakeholders need clear signals to begin developing the appropriate strategies. The occupational risks in the automotive industry are therefore at the centre of a debate being started between the social partners, in which connection provisions should be laid down to encourage preventative measures and support for workers.

The EESC is in favour of strengthening the initiatives and resources that the EU and the Member States devote to policies relating to health and safety and to the regrading of workers.

7.3 *Demographic change*

The ageing population also has consequences for the automotive sector's downstream market. The average age of the workforce will increase and health-related issues will have a higher impact on work organisation, training needs, and working conditions.

7.4 *Remuneration*

Remuneration and wages do not fall within the EU's remit. However, this issue does warrant being addressed given the particular situation of the downstream automotive sector. In almost all EU countries, wages are under even more pressure in this sector than for the average worker. Car manufacturers are largely at the source of this pressure. There is enormous dependency between car dealers/car repair shops and the car manufacturers that offer them their concessions. The manufacturers decide on investments and training standards, and they also have an indirect influence on end-user prices, for example through the setting of time limits, but it is the dealer/repairer who has to bear the financing burden and all economic risks. The social partners therefore have only limited room for manoeuvre for collective bargaining, which means that wages are relatively low in the sector. This, coupled with the difficult working conditions, reduces the attractiveness of the sector in the eyes of young workers. Future recruiting difficulties are likely to arise.

8. **Challenges and opportunities**

8.1 The downstream sectors are facing major changes – both positive and negative – in the years ahead. While its performance is to a large extent contingent on the results of the automobile manufacturing industry, there are also important areas where competition is impacted by other factors, such as distribution and sales rules, environmental impact, security risks (additional products), recycling activities, intellectual property rights (counterfeiting); etc. In such areas, innovation plays a fundamental role in all these downstream activities.

8.2 As an example, there are major drivers in the car components, car dealing and repair sectors to increase competition: new distribution and sale rules for new vehicles (Block Exemption Regulation) and a new European regulation for vehicle spare parts distribution, sales and repair, including, for instance, the new ″repairs clause″ to be introduced into the designs directive (Directive 98/71/EC).

8.3 As a reaction to the political, legal and technological challenges, a wide range of multi-brand market operators and motoring organisations have come together to defend their right to repair and the consumers right to have their vehicles serviced, maintained and repaired at a workshop of their choice. The current rules expire in 2010 and whether they will be renewed or not is the subject of controversial discussions ([5]).

8.4 SMEs are the backbone of the EU economy and employment, representing the largest proportion of automotive aftermarket enterprises. Clear and specific legislation is of crucial importance to guarantee free and fair competition in the aftermarket automotive sector ([6]).

8.5 In the current crisis, it is crucial, in the short term, to introduce effective support measures, which allow the automotive industry as a whole and the workforce employed there to survive the recession. In the medium and long term, small and micro enterprises in particular will only be able to compete if they develop new concepts and invest. Given that many small businesses are unable to do so on their own, a growing number of mergers and cooperative ventures are to be expected, as well as new partnerships between a wide variety of civil society players together with the emergence of specialist independent networks or networks of specialists in the new technologies (electric and hybrid vehicles).

Brussels, 16 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([5]) The Right to Repair Campaign original supporters are:
AIRC – Association Internationale des Réparateurs en Carrosserie
CECRA – European Council for Motor Traders and Repairs
EGEA – European Garage Equipment Association
FIA – Fédération Internationale de l'Automobile
FIGIEFA – International Federation of Automotive Aftermarket Distributors.

([6]) EESC opinion on the *Commission Communication – 'Think Small First': A 'Small Business Act for Europe'*. – COM(2008) 394 final, OJ C 182, 4.8.2009, p. 30.

Opinion of the European Economic and Social Committee on 'Urban areas and youth violence'

(2009/C 317/06)

Rapporteur: **Mr ZUFIAUR NARVAIZA**

On 10 July 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

Urban areas and youth violence.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 June 2009. The rapporteur was Mr Zufiaur Narvaiza.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 15 July), the European Economic and Social Committee adopted the following opinion by 174 votes to 3, with 7 abstentions.

1. Summary and recommendations

1.1 European society today is concerned at the phenomenon of violence and crime committed by minors and young adults. At the same time, however, Europe also wants to promote the full development of its young people and encourage their integration into society and the world of employment. Whilst youth violence is a subject that receives wide coverage in the media, it should be stated that, on the whole, statistics [1] do not point to a significant increase in juvenile crime. In fact, it can even be said to be stabilising. The aim of this own-initiative opinion is to shed some light on youth violence and make some recommendations on the matter without seeking to incriminate young people or tar them all with the same brush.

1.2 Historically, each European State's legal system has developed its own model of youth justice, thus providing different legal standards and responses to violence carried out by minors and young people. This means that the youth justice systems in the EU Member States differ considerably in aspects such as social protection and prevention policies, the age of criminal responsibility, the procedures that can be used, the measures or penalties that can be imposed, the resources available, etc. It should be pointed out, however, that these differences occur in societies that are all committed to European integration but which have been hard-hit by the crisis, and consequently have even fewer resources to fund policies promoting youth integration.

1.3 The recommendations made in this opinion adhere to two guidelines. Firstly, a preventive approach to such violence. The causes of violent or antisocial behaviour often lie in issues such as urban design and structure, and poverty and marginalisation. Furthermore, whilst young people are undoubtedly the main culprits in this type of violence, they are also the victims of the world around them. All of these factors suggest that any discussion of collective violence perpetrated by minors and young people and its prevention must provide more of a response than mere crackdowns and punishment. Secondly, in an area as closely interlinked as Europe, not only economically but also in terms of values, social behaviour and communication, this is a phenomenon that should not be addressed from a purely national standpoint.

1.4 Youth violence and juvenile delinquency have existed in European countries for a number of years and in recurring forms. Initially, they were viewed broadly as a social pathology, whereas they are now more commonly defined as aspects of insecurity, as stated in the Peyrefitte report [2], which drew a distinction between crime and the fear of crime.

1.5 At a time when the issue of youth violence was particularly topical in Europe, the **European Economic and Social Committee** adopted an opinion on 15 March 2006 entitled ***The prevention of juvenile delinquency. Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union*** [3]. That opinion, which highlighted the importance of the preventive approach, was taken up by the European institutions [4] and has also been referred to in a number of European and international fora dealing with the legal, criminal justice and social aspects of youth crime.

1.6 The opinion argued that it would be useful to carry out a study of the phenomenon of juvenile delinquency. The phenomenon of violence committed by minors and young people (including adolescents aged 13–18 and young adults aged 18–21 or even 25, depending on the country, which is still sometimes dealt with

(1) As demonstrated in the report by the Crown Prosecution Service in Spain, for example, where crime in 2007 was nearly 2 % down on the 2006 figures.

(2) Report by the French Comité d'Etudes sur la Violence, la Criminalité et la Délinquance, [Committee for the Study of Violence, Crime and Delinquency], entitled *Réponses à la Violence* [*Responses to Violence*], Paris, Presse Pocket 1977, p. 41.

(3) EESC opinion of 15 March 2006 on 'The prevention of juvenile delinquency. Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union'; rapporteur: Mr Zufiaur Narvaiza (OJ C 110, 9.5.2006).

(4) European Parliament resolution of 21 June 2007, on juvenile delinquency, the role of women, the family and society. http://www.europarl.europa.eu/oeil/DownloadSP.do?id=13705&num_rep=6729&language=en.

by the system of criminal responsibilityfor minors) is attracting increasing attention in European society. Nevertheless, juvenile violence takes a number of quite different forms. In urban areas, it can occur at school, particularly in the form of bullying, in a domestic setting, in gangs, at sporting events, or through the new communications technologies such as the Internet etc. Although all of these forms of violence are worthy of study, the present own-initiative opinion confines itself to the collective violence perpetrated by young people in urban areas.

1.7 For around 20 years, the issue of collective violence has dominated the headlines and the most disadvantaged neighbourhoods have been observed and studied by researchers (sociologists, ethnologists, geographers, legal experts, political scientists, etc.). The factors underpinning this urban unrest are well known: unemployment, job instability, family breakdown, dropping out of school, failure at school, discrimination. However, the situation has grown more serious in recent years and the responses adopted have hardened. The crisis has aggravated economic and social problems and disadvantaged young people in comparison to their parents, with the breakdown of the 'social lift' and the rise of individualism. This results in situations of keenly-felt injustice and withdrawal which, when expressed collectively, become the most visible form of opposition to the authorities.

1.8 The term 'collective violence' has no official or legal definition but is often applied to different types of violent event that take place in public in the form either of clashes based on issues of ethnic or racial discrimination between communities, also involving conflicts between rival gangs, or which arise from communities' relations with the institutions, typified by relations between young people and the police.

1.9 Whilst these phenomena have worsened in recent years in Europe, occurring in France, the United Kingdom, Spain, the Netherlands, Denmark, Belgium, Greece, etc., they have never been viewed or addressed as a global problem by national governments or by the European institutions. Instead, they have been treated as individual and isolated epiphenomena.

1.10 This opinion therefore recommends that measures be coordinated at the local, national and European levels, thus requiring Community responses in the form of specific programmes in the fields of family and youth policy, education and training, employment, crime prevention and judicial coordination. These practical responses should strive to complement strategies for urban renewal, improving public services, combating all forms of discrimination and giving a new boost to relations between the State and its citizens, especially as regards the police, by teaching civic-mindedness, ethical and social values and use of the media, and providing parents with educational support.

2. Characteristics and causes of collective youth violence in urban areas

2.1 **Proposed definition**: no generally accepted definition of collective violence perpetrated by minors and young adults in urban areas currently exists. Belgian legislation contains the concept of the urban 'riot', while others view it as a series of crimes committed by criminals who are known and identified. In order to sketch out a broad initial definition, the remainder of this document will address such violence as a concentration of violent behaviour in an urban setting that also serves as a means of expression for certain categories of the population. Participants' motives vary: social discrimination, conflict with the police, racial hatred, religious conflict, etc. thus in some way highlighting the shortcomings and inadequacies of the social services which are supposed, through their welfare work, to prevent this type of violence. The definition used in this opinion focuses on collective violence perpetrated in public spaces, taking the form of attacks against local inhabitants belonging to a particular ethnic group or against the police, as well as the destruction that accompanies looting, such as setting fire to public buildings, cars, etc.

2.2 It should be pointed out that the increase in violent acts (destruction and vandalism, physical attacks and aggression, violent robberies, rape, etc.) are not perpetrated exclusively by young people: violence in general is on the increase. Nevertheless the age of individuals perpetrating urban violence is an important factor in understanding the phenomenon and any solution should take account of the proportion of minors involved in urban criminal activity. Thus in the events that took place in France in 2005, police statistics show that out of 640 people arrested, 100 were minors. As part of a preventive approach, particular attention should be paid to permanent solutions targeting the younger generations, who are the driving force of change and development.

2.3 **Current studies and classification**: Each Member State has developed its own methodology for assessing and classifying collective violence in urban areas. Complex systems, such as the Bui-Trong scale ([5]), which grades the degrees of intensity of the different forms of collective violence according to the number of people involved, the degree of organisation, its aims, etc, help to conceptualise the phenomenon. For a number of years and most notably in the wake of the 2005 events, France has been developing Urban Violence Indicators (UVI) based on an assessment of the levels of violence in sensitive neighbourhoods, making use of quantitative and qualitative surveys and victim statements. These indicators, and their equivalents in other European countries, are still too recent to give a clear picture of the intensity of urban violence and can also always be skewed by problems relating to data sources and data collection methods.

([5]) *Résurgence de la violence en France* [Resurgence of violence in France], Lucienne Bui-Trong, Futuribles February 1996 p. 17-18.

2.4 As already pointed out in the definition of the phenomenon, whilst the expression of collective violence reflects a specific national situation, it nevertheless has common features in Europe. In light of the events that have taken place in a number of European countries in recent years, therefore, it is possible to classify the way in which events unfold.

— **Social and political conflicts**: these forms of collective violence occur as a reaction to discrimination and social, economic and geographical exclusion and take the form of violent reactions to the police or the representatives of the State deemed responsible for these social ills. The aspect of fighting the system and protesting against situations perceived to be unfair leads the people involved to clash with the police and public institutions representing the State and a society labelled as 'repressive'; France has been hit particularly hard by social conflict, in what has been called the 'crisis of the suburbs' where the lack of any social mixing and several decades of fruitless town-planning policies have led to these urban areas being stigmatised. These popular uprisings ([6]) consist of a three-stage cycle, comprising a starting point, often linked to a tragic or unfair event, euphoria combined with the group effect and lastly, exhaustion ([7]).

— **Breakdown of public order**: this concerns mass events of a political, sporting or cultural nature that degenerate into a loss of control of public order, not only on the part of the event's organisers but also the police. Examples include violence at football matches or 'raves' or the breakdown of public order at a political demonstration. Another factor that should be added to the general breakdown of order is the involvement of 'rioters', who bring people together for the purpose of causing even more material damage. The EU must not forget that in some cases, this uncontrollable violence can in turn provoke more organised violence, representing an even more serious threat to democracy.

— **Disputes between gangs**: far from being by definition violent, gangs form a substitute for young people's family and close community, providing a sense of belonging to a group and to a certain extent, a practical response to the insecurities arising in adolescence. In the specific case of violent gangs, this type of activity is characterised by its criminal nature related to the grouping together of adolescents or young adults quick to use force and intimidation and who orchestrate, with a degree of frequency, clashes or violent criminal acts. Such gangs confront each other in urban areas, on the street or in shopping centres, to exert control over a territory or illegal business, or the authorities, through their representatives: the police and security guards or night watchmen, as happens in North Paris or South London, where regular clashes pit rival gangs against one another. Spain has witnessed the emergence of Latino gangs (known as 'maras' or 'pandillas' such as the Latin Kings and the Ñetas). The gang phenomenon enables young people to protect themselves in a hostile world, against 'other' youths from the next street or neighbourhood. These gangs today represent some of the most disenfranchised members of society in certain suburbs and their violence can be linked to failure, lack of job security, etc. An appropriate response to violent gangs is also crucial to avoid their being taken over by organised crime.

— **Ethnic and religious clashes**: this type of violence is characterised firstly by its ethnic nature; in other words, the perpetrators or victims of the violent acts have their origins in a particular ethnic, religious or similar community. A number of European countries, such as the United Kingdom, Spain (the Alcorcón riots of October 2007 between young Spaniards and Latinos), Italy, the Netherlands (October 2007 in Amsterdam), Denmark (February 2008), Belgium (Anderlecht in May 2008), etc. have experienced this type of clash, in which issues of migration and religion, in addition to a wide range of other factors, play a major role.

2.5 Outbreaks of violence in urban areas have inter-related causes that play a smaller or greater role, depending on the type of event:

— Poverty, lack of job security, unemployment: the expressions of collective violence in Europe have taken place primarily in the most deprived neighbourhoods, appearing to be a consequence of marginalisation and social exclusion. Family breakdown, youth unemployment and lack of job security, combined with poor education and the consequent difficulty of achieving socio-economic integration, make these neighbourhoods particularly vulnerable to economic change, especially financial crises, as demonstrated by the current situation.

— Access to weapons and illegal substances: In most of Europe's national and regional capitals, trafficking in hard drugs is largely the domain of adults rather than minors, and encourages violence linked to the illegal trade in these substances and to the spread of guns. Children and adolescents, who feel at the mercy of a world beyond their grasp, can be targeted by dealers, who exploit some young people for their own ends.

— Town planning: the neighbourhoods of European towns deemed to be at risk share a number of features and are often viewed as suburban ghettos that no longer meet the criteria of social mix and current urban planning. Whether they are located in city centres (the United Kingdom, Belgium) or on the outskirts (France, Germany, etc.), these neighbourhoods and buildings have been poorly maintained and have gradually become so run-down that they are becoming unhealthy and dangerous.

([6]) Le Goaziou(V.), Mucchielli (L.) 2006, *Quand les banlieues brulent. Retour sur les émeutes de 2005* [The suburbs on fire: the 2005 riots revisited], Paris, La Découverte.

([7]) Bachmann(C.), Le Guennec (N.), 1997, *Autopsie d'une émeute. Histoire exemplaire du soulèvement d'un quartier* [Autopsy of a riot: the exemplary tale of a neighbourhood uprising], Paris, Albin Michel.

— Relations with the police: much collective violence is fuelled by resentment towards the perceived targeting of visible minorities or excessive use of force by the police ([8]). To quote the French Strategic Analysis Centre, *'The inhabitants' hostility towards the presence of the police in their neighbourhood is palpable, as is their lack of confidence in the State and the authorities generally'* ([9]).

— The media: the media frequently focus on the negative aspects, which are likely to further stigmatise the residents of 'sensitive' neighbourhoods and to fuel violence by sensationalising events. In France in 2005 the media provided daily coverage of events, whilst in Belgium and Germany the governments endeavoured to limit public information in order to avoid copycat crimes.

3. **Different types of response to a transnational problem**

3.1 Whether sporadic or ongoing, urban violence in Europe is particularly serious. It is serious from the political point of view, because it calls into question the State's ability to ensure that the social pact is respected and to protect its citizens, and it is serious from the social point of view, because such violence reflects social divisions and integration problems. Against this backdrop, States should provide clear responses to the problem of collective urban violence. It should be borne in mind, however, that these responses differ considerably from one country to another; in some cases they take a more punitive form and in others focus more on prevention. This means that there is a need in Europe for the ongoing assessment of public policies aimed at finding solutions to this phenomenon and an attempt to make statistics on the matter more efficient and comparable (crime figures cannot be analysed solely on the basis of the number of incidents reported but should also include the clear-up rate). Common indications should be developed to encourage the national use of police and court records rather than somewhat subjective studies of the impact on victims.

3.2 Broadly speaking, State responses take the following forms:

— Positive discrimination schemes for sensitive neighbourhoods, such as those in France with its Priority Education Areas and initial job preparation, or in Berlin, where young volunteers and police officers regularly patrol together to prevent situations that might lead to urban violence. Since these joint police patrols have been in place (having persuaded former street gang leaders to become involved), crime has fallen by some 20 % in the areas where police and volunteers patrol together ([10]).

— Increasing police presence and video surveillance in sensitive areas such as schools or recreational spaces. Such measures cannot be effective on their own, and at the same time may stigmatise the areas in question and make young people feel that they are being constantly monitored and clamped down on.

— Urban renewal policies, the scale of which varies from country to country. In France, inter alia through the creation of the Urban Renewal Agency ([11]); in Germany, through the urban renewal carried out during the country's reunification.

3.3 An effective **territorial cohesion policy** can also help prevent the build-up in urban areas of factors that can foster violent attitudes amongst young people. This would require renovating urban areas and making them decent places to live. Renovating urban areas requires a long-term discussion of urban renewal work as part of a strategic and comprehensive land-use planning scheme, in consultation with all of the parties concerned, including young people. The aim is to reintegrate certain neighbourhoods into cities and regenerate them in order to help the local community develop and to promote the social, economic and cultural functions of these public spaces. In turn, the concept of making neighbourhoods better places to live, which is a specific method of urban regeneration, aims to solve the specific problems of residential areas by making the city a place of integration and crime prevention, in order to combat contemporary urban problems such as drug-dealing, squatters, violence and damage to the environment. The basic aim is to avert the phenomenon of exclusion in relation to the rest of the population by prioritising transport, to enable these neighbourhoods to open up to the city, thus raising the profile of the urban population as a whole and helping them to integrate. This urban renewal should, however, go hand in hand with solid strategies for education, vocational training and access to jobs, without which sustainable improvements will not be achieved.

3.4 At the root of youth violence is a lack of social cohesion linked to a crisis of citizenship in cities. Public spaces, the main feature of which is to enable very different people to live together, require adherence to common rules in order to ensure that individual freedoms are protected. Cities also have to address the delicate balance that exists between communities that are unfamiliar with one another as a result of having a multitude of codes and cultures, which can lead to a weakening of social bonds and solidarity ([12]). An interinstitutional and multi-faceted approach is needed, to provide effective crime prevention measures that are useful to all direct or indirect stakeholders such as the police, the courts, the social services, housing authorities, employers and schools. Nevertheless, local authorities have a particularly important role to play, since they are responsible for defining urban areas and public services.

([8]) The Politics of Protest. Extra-Parliamentary Politics in Britain since 1970. Peter Joyce. Palgrave Macmillan, 2002.

([9]) French Strategic Analysis Centre. *Lesviolences urbaines: une exception française? Enseignements d'une comparaison internationale, note de veille n° 31*, [*Urban violence: a French exception? Lessons from an international comparison*], Newsletter No. 31, 23 October 2006 (http://www.strategie.gouv.fr/IMG/pdf/NoteExterneDeVeille31.pdf).

([10]) Jeunes et policiers font cause commune à Berlin [Young people and police work together in Berlin] http://www.oijj.org/news_ficha.php?cod=54117&home=SI&idioma=es.

([11]) ANRU.fr.

([12]) 'La dynamique de la disqualification sociale' [The dynamics of social exclusion] in Sciences Humaines No 28, May 1993.

3.5 In Europe, although urban violence perpetrated by the young varies in context and intensity, the process of analysing it and studying the responses to it forms part of a broader legal framework - that of the European Union. Currently, studies and assessments of juvenile crime prevention require multi-disciplinary and inter-institutional cooperation between government agencies and, at a more grassroots level, between the professionals most directly involved (social workers, police, courts, employers, etc.). European countries, regions and cities that have experienced episodes of collective violence are finding it hard to restore social harmony between communities and to win back respect for institutions. Urban violence also entails very high material, social and political costs ([13]).

3.6 In a climate in which youth crime in Europe is largely stable, but in which crimes are becoming increasingly violent, a number of **local programmes** set up in different EU countries demonstrate the importance of prevention as well as integrated social strategies for young people in urban areas ([14]). The basic aims of the *Safer Neighbourhood* programme in Birmingham (winner of the 2004 European Crime Prevention Award), were to reduce the different forms of violence and crime, improve people's quality of life and actively promote communities' involvement in ensuring their own social integration ([15]).

3.7 Strengthening an organised and mutually supportive European society through EU support for innovative social and integration-based projects will guarantee improvements in security and sustainable urban development. By way of example, the Urban Programmes are a Community initiative set up under the European Regional Development Fund (ERDF) to promote the sustainable development of cities and neighbourhoods in crisis, thereby helping to prevent youth violence and crime in general.

3.8 Furthermore, increasing public participation in the local decision-making process and in exchanging experiences and good practice promotes the concept of 'urban governance', which is defined by conducting studies on reorganising and improving public services, designing and establishing new urban management bodies, introducing reliable indicators for assessing local management and running information campaigns and improving access to public information, without resorting to stigmatisation or excessive pessimism.

3.9 There are also other initiatives, such as the European Pact for Youth, aimed at improving young Europeans' education/training, mobility, career development and social inclusion, whilst at the same time making it easier to reconcile working life and home life.

3.10 In more general terms, young people's active civic involvement is boosted by the magnificent work done by youth organisations, which day after day carry out their work on the ground, supporting European, national or local strategies to boost development and combat social exclusion.

4. Some proposals for a European policy on youth violence in urban areas

4.1 The above points in this own-initiative opinion lead on to the following guidelines or suggestions:

— There needs to be a variety of responses to collective violence involving delinquency and anti-social and offensive behaviour by young people. These responses should be assessed on an ongoing basis in order to constantly improve them, continually developing the educational aspects and boosting young people's involvement in their own development and future.

— The different preventive and alternative strategies should be promoted through a clear and sustainable European policy based on priorities set at EU level and which help to solve the problems of youth violence in urban areas, obviating where possible the need for judicial measures.

— Young people's organisations must be given special recognition at both the European and national levels. Many of these institutions, whether private or public, play a major role in young people's lives, in particular by offering activities that keep young people busy and thus prevent them from potentially falling into crime. The role of schools and youth organisations, therefore, warrants particular attention and support in terms of public funding.

— European and international principles concerning youth violence and delinquency should be harmonised through minimum standards to be respected in national legislation and used as indicators to ensure respect for minors' rights. Given the multidisciplinary nature of the government agencies and bodies involved in managing urban areas in Europe, initiatives must be developed and standards for good practice set - which could be assessed and analysed by a European Youth Justice Monitoring Centre, for example. This will ensure that statistical data on youth violence in urban areas are reliable and comparable.

([13]) For Clichy Sous-Bois in France, material costs in 2005 totalled EUR 150 million.

([14]) '*Urban Crime Prevention and Youth at Risk: Compendium of Promising Strategies and Programmes from around the World*'. International Centre for the Prevention of Crime, 2005 (www.crime-prevention-intl.org/publications/pub_113_1.pdf).

([15]) The result was to reduce youth crime by an average of 29 %, as opposed to 12 % in other comparable areas.

— The penalties and measures imposed by national courts should be based on the greater interest of the adolescent, in line with his age, psychological maturity, physical condition, level of development and abilities ([16]), whilst matching his personal circumstances (the principle of tailoring a measure to individual needs).

— The European institutions should encourage urban renewal strategies, in conjunction with sustainable social policies, with a view to improving land-use and planning, in order to prevent exclusion and make it easier for the most vulnerable members of society to integrate into city life.

— The authorities should provide the bodies working to protect and rehabilitate young people with sufficient resources, giving them adequate funding and staff, to ensure that their work has a real impact on young people's lives.

— The appropriate choices and specific training, if possible in line with European benchmarks, of the social, legal and police stakeholders, should be ensured and continually updated on the basis of multi-institutional and multidisciplinary cooperation against a background of exchanges between countries, especially with a view to establishing dialogue and relations between the police and young people.

— The European institutions and the Member States should view the 2010 European Year of Combating Poverty and Social Exclusion as an opportunity to show their commitment to making the protection of the rights of young people in trouble with the law and preventing violence in urban areas priorities for combating social exclusion.

— The European institutions should establish a funding line to protect young people from social exclusion in the most marginalised urban areas in order to support innovative schemes to improve social cohesion in civil society, and thus even boost young people's initiative and entrepreneurship.

— Common criteria and good practices should be implemented with a view to preventing young people from committing crime and dealing with those that have and rehabilitating them.

Brussels, 15 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([16]) See the Valencia Joint Declaration of the International Juvenile Justice Observatory.

Opinion of the European Economic and Social Committee on 'Protection of children at risk from travelling sex offenders'

(2009/C 317/07)

Rapporteur: **Ms SHARMA**

On 10 July 2008 the European Economic and Social Committee, under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Protection of children at risk from travelling sex offenders.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's on the subject, adopted its opinion on 25 June 2009. The rapporteur was Ms Sharma.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 15 July 2009), the European Economic and Social Committee adopted the following opinion by 157 votes to 2 with 4 abstentions.

1. **Recommendations – 'Don't Let Child Abuse Travel'** [1]

1.1 *A European strategy for the protection of children at risk from travelling sex offenders needs to be adopted, enforced and recognised as a priority.*

Sex offenders MUST NOT remain the responsibility of foreign jurisdictions. Convictions outside the EU do not always result in custodial sentences. Repeat offenders often stay in the same country or travel to other countries to avoid detection. This means European authorities and national governments are unaware when an abuser comes into Europe. **This increases the risk to European children**.

A strengthened holistic, child focussed, approach must be adopted, covering:

— prevention of abuse. Research needs to be conducted into the background of travelling sex offenders [2];

— protection of those 'at risk' and victims, including the identification of vulnerable children [3] with the establishment of help lines and hotlines;

— prosecution of abusers, by enforcing the legal framework;

— partnership with NGOs, and those not yet involved;

— participation of young people and civil society to create awareness raising.

The EESC endorses the recommendations of the EC Communication 'Towards an EU Strategy on the Rights of the Child', the EP Recommendation [4] and the CoE Convention [5], all centred around the protection of children from exploitation. However, the EESC requests remaining Member States [6] to urgently sign and ratify the UN CRC Protocol [7] and CoE Convention in order for Europe to effectively review the management of Europeans who abuse children while working overseas or as tourists.

1.2 *Necessary measures to have an effective proactive strategy must include:*

— effective international partnerships with better information sharing, including cooperation between police forces and IT tools for tracking travelling sex offenders;

— stronger bi-lateral cooperation agreements with relevant countries;

— joint investigation teams with other law enforcement agencies;

(1) World Tourism Organisation Campaign Slogan.

(2) Save the Children, Denmark. 'Sex Offenders without Borders' Report, May 2009.

(3) The Rio de Janeiro Declaration and Call for Action to Prevent and Stop the Sexual Exploitation of Children and Adolescence, Nov. 2008.

(4) EP recommendation of 3.2.09 to 'Council on combating the sexual exploitation of children and child pornography' (2008/2144(INI)).

(5) 'Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse', 25.10.07, In: http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm.

(6) http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=&DF=&CL=ENG Member States not having yet ratified the UN CRC Optional Protocol: Germany, Hungary, Ireland, Luxembourg, Malta, UK. Member States not having yet signed the CoE Convention: Czech Republic, Hungary, Latvia, Luxembourg, Malta, Slovakia. Only Greece has ratified it.

(7) 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child prostitution and Child Pornography' Adoption: May 2000. Entry into force: Jan. 2002. In: http://www.unhchr.ch/html/menu2/6/crc/treaties/opsc.htm.

— agreements with foreign governments to deport and chaperone convicted offenders; consideration of the use of Foreign Travel Orders (FTO) to restrict travel for high risk sex offenders;

— use of vetting and barring of sex offenders to work overseas ([8]);

— implementation of a European, and if possible, global public awareness campaign on the reporting of sex offenders. This should be supported by a free international telephone hotline with a 'real-time' online reporting mechanism ([9]);

— involvement of civil society actors and social partners in raising awareness;

— provide mechanisms for education, counselling and therapy/medical services for victims and training for those specialising in the field.

1.3 The key challenge is to raise public awareness of the scope of the problem. This could be done by putting into place a European project: '*Europe Against the Sexual Exploitation of Children*' ([10]). The EU institutions could lead the way by highlighting their ethical and anti child sexual abuse travel policy on all travel reimbursement forms.

1.4 This opinion does not cover trafficking or abduction, which requires separate legislation and measures, and should be accommodated in a paper of its own.

2. **Background**

2.1 This opinion covers travel and the sexual abuse of children within and outside of Europe.

2.2 **The majority of people who sexually abuse or exploit children for sexual purposes are local people**. This is the case everywhere in the world. Nonetheless, today the sexual abuse of children through travel is part of a well established lucrative global sex industry.

2.3 Cheaper travel, visa free travel and new technologies allow offenders to target the world's, including Europe's, most vulnerable children, especially where poverty, deprivation, emotional deficiency and social conditions are at their worst. The abusive acts are often captured digitally and transmitted globally. Many NGOs, ECPAT ([11]) being the most well known, work with police and the travel and tourism industry to safeguard these children.

2.4 The First World Congress Against the Commercial Sexual Exploitation of Children was held in Stockholm in 1996. 122 countries committed themselves to a *'global partnership against the commercial sexual exploitation of children'*. Today local ([12]) and International conferences ([13]) cite and reiterate the existence of the same barriers to effective prevention.

2.5 Within the EU many additional reports and commitments have been made ([14]). However, as noted in the recent European Parliament report ([15]), many Member States have still not signed or ratified these conventions.

2.6 This means that sadly, whilst there is some excellent work being undertaken ([16]) with many practical steps at the EU level ([17]), Europe has failed to protect the most vulnerable children, prevent abuse by European citizens or honour its commitments made in Stockholm. **It is only through practical implementation that children will be protected at home and abroad**.

2.7 It is impossible to estimate how many children have been affected by travelling sex offenders. The covert and criminal nature of child sex crimes and the vulnerability of children, especially those living in poverty, make data collection a difficult task. Child sex abuse is part of the global phenomenon of commercial sexual exploitation of children. It includes:

— buying and selling children for prostitution;

— paedophilia-related child sexual abuse;

— the production of child abuse images and other forms of pornography involving children.

([8]) 'The End of the Line for Child Exploitation'. See ECPAT 2006 report.

([9]) See Childwise ECPAT Australia.

([10]) See Appendix 1.

([11]) ECPAT – End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes - has special consultative status with the Economic and Social Council of the UN (ECOSOC).

([12]) 'When Travelling, Put a Stop to Indifference'; Stopchildprostitution.be, 'Travelling abusers in Europe', May 2007.

([13]) World Congress III Against Sexual Exploitation of Children and Adolescents, Nov 2008.

([14]) See footnotes 4 and 5. See also: http://www.nspcc.org.uk/Inform/policyandpublicaffairs/Europe/Briefings/councilofeurope_wdf51232.pdf and http://www.unhchr.ch/html/menu2/6/crc/treaties/opsc.htm.

([15]) See footnote 4.

([16]) PE 410.671 Jan. 2009.

([17]) COM(1996) 547 final; COM(1999) 262 final; Council Framework Decision 2000/375/JHA (OJ L 138 of 9.6.2000); Council Framework Decision 2004/68/JHA (OJ L 13 of 20.1.2004)) plus COM(2009) 135 final.

2.8 Typically, the abusers go to places where they think they will not get caught, often locations of low levels of education, poverty, ignorance, corruption, apathy, lack of law enforcement or government policy. Abuse of children is committed by people who have deliberately established orphanages ([18]), children's projects and schools in vulnerable communities for the sole purpose of feeding their abuse behaviour, and that of their associates. Repeat offenders travel from country to country and avoid detection by sex offenders' management mechanisms. Further research into the mindset of sexual abuse of children needs to be conducted. Finkelhors identifies four pre-conditions, depending on which sex offences against children may or may not occur ([19]):

— motivation to abuse;

— internal inhibitors relating to personal ethics;

— external inhibitors;

— victim's resistance.

2.9 Knowledge about overseas offending is low amongst child protection professionals and the general public. The media only cover the most sensational stories. Little is spoken about the risk to European children when the offenders finally return.

2.10 CEOP ([20]) uses the apt term 'travelling sex offenders' to describe those who travel abroad and abuse children. There is an assumption amongst the public that if someone commits a crime abroad that person is automatically put on a sex offenders register. However this is rarely the case as due to a series of complex issues, registers may not exist, information is not transferred or data protection regulations do not permit monitoring.

2.11 **Sexual tourism must be considered beyond the relation of tourism in the context of 'holidays'**. Today many businesses relocate or have offices and negotiations around the world. Clear terms must be set by employers, employee unions and organisations, that the sexual abuse of children will not be tolerated under any conditions.

3. **Global Responsibility**

3.1 Governments globally have a responsibility to their citizens for the protection of vulnerable children wherever they may be. The expansion of tourism over the past half-century has more recently been accompanied by an increase in child travelling sex offenders. The main perpetrators are often people who take advantage of being in another country to ignore the social taboos which would normally govern their behaviour.

3.2 The Global Code of Ethics for Tourism ([21]) sets a frame of reference for the responsible and sustainable development of world tourism. For Europe, it should be a Community shame that Europeans are amongst those who sexually exploit children within the EU and around the world. European citizens are Europe's responsibility and the fact that offenders can be prosecuted at home and then be allowed to travel freely to other countries without monitoring, is wholly unacceptable. Europe has to address the legal dichotomy which allows the free movement of its citizens but which also allows abusers to travel without restriction.

3.3 A principle of justice exists on an international basis preventing a person from being sentenced twice for the same offence. Where an offender is coming back to his host country, the same sentence must be continued in the host country, or, on the identification of new evidence, a new judgment can be ruled. International cooperation is therefore paramount. The Committee praises the new Framework Decision of the Commission for addressing this issue ([22]).

3.4 There is a need to set up a coordination framework for activities, and to monitor and evaluate statistics and make practical and timely recommendations. However, within the European Union, since this is a field where any decisions taken could lead to deprivation of liberty and therefore affect fundamental human rights, only Member States have decision-making authority, in compliance with the laws that frame their police and judicial practices. European and international NGOs perform excellent work in the field of child protection but they cannot replace the police or justice systems.

Development cooperation and aid, in terms of poverty elevation ([23]), education, health and social development, must greater support the protection of children from sexual abuse. Consideration and support must be given to NGOs and social partners in terms of training and emotional/psychological support. It is essential to enhance education and training for those working in the field and in the wider service provision (i.e. the media, hospitality industry, teachers, carers and police), so that barriers to reporting can be understood and removed. As highlighted in the Danish Save the Children report ([24]), guidance must be offered to children, especially those most at risk, so they are aware of the situation and know how to deal with it. In developed and developing countries, children have to be taught how to use the internet safely, in order to ensure that they are warned against the practices of offenders, who are very adept at using this tool to find their victims.

([18]) Perpetrators use the official term 'orphanages' to hide their activities. These are children's homes set up for the purpose of abusing children.

([19]) 'Sex Offenders Without Borders' – Save the Children. Denmark, May 2009.

([20]) UK CEOP - Child Exploitation and Online Centre.

([21]) Adopted by resolution A/RES/406(XIII) at the 13th General Assembly of the UN World Tourism Organisation (UNWTO) (27 Sept. - 1 Oct. 1999).

([22]) COM(2009) 135 final.

([23]) Thematic study on policy measures on child poverty.

([24]) Idem.

3.5 Provision must be made for therapy and counselling services for abusers to support their rehabilitation ([25]).

4. **Civil Society Responsibility**

4.1 European civil society has a responsibility to speak out against crimes and to act when there is a potential threat to others - whether that is at home or abroad, especially in cases of child abuse. It is estimated that between 10 % and 20 % of children are sexually assaulted during their childhood in Europe today, with increasing activity and geographical expansion. Some European citizens are travelling sex offenders inside and outside Europe.

4.2 Hence, there is a need to develop joint-strategies and further actions focussing on prevention and penalties to fight this scourge. For European employers, fighting against child prostitution and child pornography should now be perceived as a corporate society responsibility matter.

4.3 **4,5 % of 842 Million** (2006) travellers are sex offenders and **10** % of them are paedophiles ([26]). **Since 2003, travel** companies can subscribe to the 'Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism' ([27]). Today, more than 600 companies in over 30 countries have signed this code of conduct. However, the sexual abuse of children through travel is not the sole responsibility of the travel industry. All sectors of business must prevent such activities.

4.4 ITUC encourages its members to establish structures of officers, committees and working groups to endorse strategies. To gain access to the grassroots, ITUC has adopted a sectoral approach and formed valuable partnerships to implement International Framework Agreements. As the sexual exploitation of children constitutes a severe violation of core labour and human rights, it is an integral part of their work to combat the worst forms of child labour ([28]). Trade unions therefore continue to take up their role in promotion of ratification of relevant international standards and in monitoring effective implementation of policies and regulations both by governments and employers ([29]), in awareness raising of their members and the general public ([30]), and in addressing the issue through collective bargaining ([31]).

4.5 In its Convention adopted by the Committee of Ministers on 12 July 2007, the CoE states '*each party shall encourage* **the private sector as well as civil society**, *to participate in the elaboration and implementation of policies to prevent sexual exploitation and sexual abuse of children and to implement internal norms through self-regulation or co-regulation*'. **Therefore a common European project is feasible**.

5. **Specific measures**

5.1 The sole objective of any activity must be to STOP the abuse of children and protect the vulnerable. If child abuse can be stopped there would be no victims. This must be a priority and a primary objective with all policies being child focussed.

5.2 EU institutions can lead the way by introducing their condemnation of the sexual abuse of children as part of their ethical travel policy and include this on all travel expense reimbursement forms.

5.3 The measures and examples below can only be related in summary form here, and have been produced in consultation with ECPAT ([32]) a leading global children's rights organisation campaigning to protect children from commercial sexual exploitation. ECPAT works in over 70 countries at the highest levels of government whilst also reaching out to practitioners and those working directly with children through research, training and capacity building.

5.3.1 **Vetting & Barring**: Currently schools abroad have no mechanism for checking the backgrounds of applicants or their suitability to work with children. This is a major gap in the protection of vulnerable children. Mechanisms must be put in place to allow registered international organisations or police forces access to this information.

([25]) Sarah Macgregor: 'Sex offenders treatment programs: effectiveness of prison and community based programs in Australia and New Zealand' in: http://www.indigenousjustice.gov.au/briefs/brief003.pdf; Dario Dosio, Friedemann Pfaefflin, Reinhard Eher (Eds.): 'Preventing Sexual Violence Through Effective Sexual Offender Treatment and Public Policy', 10th Conference of the International Association for the Treatment of Sexual Offenders (IATSO) in: www.iatso.org.

([26]) Source: ACPE - Association against child prostitution.

([27]) This code was initiated in 1998 by ECPAT Sweden. It is acknowledged by UNICEF and the WTO. Also see: www.thecode.org.

([28]) ILO Convention 182.

([29]) http://www.ituc-csi.org/IMG/pdf/FINAL_EU_CLS_2009_report__2_.pdf.

([30]) http://www.itfglobal.org/campaigns/traffickingstate.cfm.

([31]) http://www.iiicongressomundial.net/congresso/arquivos/thematic_paper_csr_eng.pdf.

([32]) ECPAT - End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes.

5.3.2 **Bi-lateral Cooperation Agreements**: NGOs around the globe are increasingly sharing vital information on the concerns about ex-offenders. This results in quick and timely action. Ironically governments bogged down in bureaucracy and data protection rules cannot act swiftly and are relying on NGOs to do the work where international policing fails. **Child protection should take precedence above data protection rules at all times**. The building of trust and knowledge between countries with a cooperation framework develops a proactive response to combating sexual abuse. This must go over and above training or capacity building to be effective.

5.3.3 **Provision must be made for international reporting hotlines and help lines** to avoid the scenario of a culture of silence or turning a blind eye. The mechanisms must support 'real-time' activity. There must be an integrated child protection system of professional bodies and service providers which could work with NGOs to support the protection and identification of victims or those at risk.

5.3.4 **Joint investigation teams and national law enforcement agencies**: Europe needs dedicated agencies with child protection priorities which extend overseas, with adequate resources to investigate known sex offenders travelling abroad or collect evidence for those carrying out activities overseas

5.3.5 **Agreements to deport and chaperone convicted offenders**: The systems of reporting prosecutions or convictions between countries is not mandatory. Hence sex offenders can be convicted abroad and it is not know at home. It falls to the responsibilities of embassies or missions to inform the home country if they become aware of the conviction. Once convicted and having paid sentence abroad, many offenders stay in the same country or move countries but do not return home, avoiding being put on a sex offenders' register. In the case of those who are convicted and sent back to their home country, as this implies long haul flights with a stop over, there is the risk of them absconding. Hence the need for bilateral cooperation agreements and law enforcement chaperones.

5.3.6 **The Multi-Agency Public Protection Arrangements (MAPPA) Model**: This is a model used in the UK for the assessment and management of sexual offenders in the community. It involves multiple agencies (criminal justice, social care, housing, health) to minimise serious harm to the public and assist in the detection of repeat offenders. The framework comprises four core functions, but does not currently cover UK citizens travelling abroad:

— identification of offenders;

— sharing of relevant information involved in the assessment of risk;

— assessment of risk and serious harm;

— management of risk.

5.3.7 **The use and effectiveness of Foreign Travel Orders (FTO)**: These can be used by the courts to prohibit persons from travelling abroad either to a named country or anywhere in the world. This can be made in respect of protection of a certain child, or to protect children in general. These orders are for a fixed period of time. In 2005, the Australian Government amended the 'Australian Passport Act' to allow police to request the cancellation of the passport of high risk sex offenders.

5.4 A very specific measure: The European project 'Europe Against the Sexual Exploitation of Children – SAY NO!'

A European project can be built which pulls together all the work and charters already produced and raises awareness by engaging organisations to commit to the fight against the sexual exploitation of children by just highlighting the basic facts. A 'code' or 'charter' already adopted globally could accompany the 'value statement' proposed in Appendix I. Endorsed or new legislation, if effectively implemented, would also support this cause.

Brussels, 15 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Appendix I

Europe Against the Sexual Exploitation of Children

The sexual abuse of a person under 18 is a CRIME anywhere in the world

European Institutions and Social Partners will not accept it!

Everywhere in the world, children have the right to grow in peace and be protected from any form of sexual exploitation, physical or on the Internet.

Value statement of 'Organisation Name':

— We contribute to the development of ethical and responsible economic growth.

— We respect and protect the Rights of Children.

— We condemn the sexual exploitation of children in any form, physical or on the Internet.

— We reserve the right to report any persons suspected of pursuing any activities leading to the loss of dignity or sexual abuse of a person below the age of 18.

'Organisation Name' employees are committed:

— To adhere to the company principles listed above and respect the fundamental rights of child protection.

— To contribute to ethical and responsible business growth.

— To respect and protect the Rights of Children.

— To not supply information or material leading to the potential sexual exploitation of children.

— To inform those in authority, including the Police, of suspected activity which could lead to the endangering or sexual exploitation of a child.

Expectations of 'Organisation name' customers and suppliers:

We appreciate and respect the laws globally in place to protect children from sexual exploitation. Our commitment is not to engage in such practices either physically or via the Internet, at home, away on business or whilst on holiday.

Opinion of the European Economic and Social Committee on 'What future for non-urban areas in the knowledge society?'

(Own-initiative opinion)

(2009/C 317/08)

Rapporteur: **Mr SANTILLÁN CABEZA**

On 10 July 2008, the European Economic and Social Committee, in accordance with Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion with the title:

What future for non-urban areas in the knowledge society?

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for the preparatory work, adopted its opinion on 24 June 2009. The rapporteur was Mr Santillán Cabeza.

At its 455th plenary session held on 15 and 16 July 2009 (meeting of 16 July), the European Economic and Social Committee adopted the following opinion unanimously.

1. **Europe's enormous diversity**

1.1 The EU harbours an incredibly rich territorial diversity and its settlement pattern is unique. This settlement pattern contributes to the quality of life in the EU, both for city dwellers living close to rural areas and those rural residents within easy reach of services. It is also more resource-efficient because it avoids the difficulties inherent in very large agglomerations and the high levels of energy and land use typical of urban sprawl, which will become more important as climate change, and the action to adapt or to combat it, proceeds ([1]).

1.2 In order to distinguish rural from non-rural areas, the OECD distinguishes local administrative units (LAU 1 or 2) and regions (NUTS 3). A local area unit is a rural community if it has a population density below 150 inhabitants per km^2. The regions (NUTS 3) are distinguished by their degree of rurality, i.e. by their share of population living in rural local area units.

1.2.1 According to the OECD, there are also three types of region:

— predominantly rural: more than 50 % of the population living in rural communities;

— significantly rural: between 15 and 50 % of the population living in rural communities;

— predominantly urban: less than 15 % of the population living in rural communities.

More than 50 % of the EU-25's territory is considered to be a rural area.

1.2.2 **Eurostat's** definition of the degree of urbanisation distinguishes three types of area:

— *densely populated areas*: groups of contiguous municipalities, each with a population density greater than 500 inhabitants per square km, and a total population for the area of more than 50 000 inhabitants;

— *intermediate areas*: groups of contiguous municipalities, each with a population density greater than 100 inhabitants per square km, but not belonging to a densely populated area. The area's total population must be at least 50 000 or the area must be adjacent to a densely populated one;

([1]) There are about 5 000 towns and almost 1 000 cities spread across Europe, acting as focal points for economic, social and cultural activity. This relatively dense urban network contains very few large cities. In the EU, only 7 % of people live in cities of over 5 million as against 25 % in the US, and only 5 EU cities appear among the 100 largest in the world. Green Paper on Territorial Cohesion, COM(2008) 616 final.

— *sparsely populated*: groups of contiguous municipalities belonging neither to a densely populated area nor to an intermediate area ([2]).

— In most Member States, a 'local unit' corresponds to a local authority or municipality. Sparsely populated areas cover almost 84 % of the EU-25's total territory ([3]).

2. **Urban and rural areas: contrasting development**

2.1 For years, it has been accepted that an increased effort in the field of R&D will enable the EU to meet the challenge of globalisation. Indeed, the Lisbon Strategy includes the explicit objective of increasing such investments to 3 % of GDP.

2.2 Further study should be made of the potential of regions that are different because of their demographic features (different rate of ageing of the population), their sociological features (human capital), their economic factors (mobility of capital and skilled workers, and thus the mobility of part of the tax base) and their production structure (heritage of the past, attractiveness for investments).

2.3 Although rural areas cannot automatically be associated with decline or intermediate areas with expansion ([4]), broadly speaking, predominantly rural areas (17,9 % of the European population) and intermediate areas (37,8 %, in other words, a total of 55,7 %) are in a less advantageous situation. Moreover, in the lower income Member States, urban-non-urban differences tend to be greater ([5]).

2.4 In recent years, many tools have been created or developed to stimulate innovation (FP7, PIC, JEREMIE, joint technology initiatives, 'lead markets' …). This activity, which must be commended, contrasts with the relative lack of interest shown in regions that do not have the potential to mobilise such possibilities with the hope of a positive return.

2.5 Since most economic activity is concentrated in cities, there is a need to achieve greater balance in the development of the knowledge society.

([2]) A group of municipalities with an area of less than 100 square kms, not reaching the required density but fully contained in a dense or intermediate area, should be considered to form part of that area. If contained by a mixture of dense and intermediate areas, it is considered intermediate.

([3]) Regions: Statistical yearbook 2006 (2000-2004 data - page 162).

([4]) In the 1995-2004 period, GDP growth surpassed the average in 43 % of predominantly rural areas, in contrast with 36 % in urban regions and 39 % in intermediate regions.

([5]) Fourth Report on Economic and Social Cohesion, COM(2007) 273 final

3. **Proposals for redressing the balance in favour of non-urban areas**

3.1 *High quality services of general interest (SGIs) to guarantee social and territorial cohesion*

3.1.1 In its communication on SGIs ([6]), the European Commission undertook to 'present to Parliament a comprehensive analysis of the effects of "liberalisation" to date, (…) [to] also review progress with the application of the Protocol, once the new Treaty has entered into force [and to issue] a dedicated report on social services every two years to serve as an exchange tool with stakeholders'. The EESC feels that it would be of particular importance if the Commission were to analyse any impact of liberalisation on territorial cohesion. Its analysis should provide data according to the urban or rural nature of the local authorities concerned and the perceptions of their populations.

3.1.2 Access to the health care recognised in the Charter on Fundamental Rights (Article 35) may be particularly difficult in non-urban areas because of the lack of qualified staff, adequate infrastructure and budgetary resources. The Commission should, therefore, start a discussion with the local authorities and the European employers' and trade union federations concerned, to see how instruments such as agreements between social partners, state aids and Community initiatives can be designed so as to give this sector a new impetus.

3.2 *Information society/knowledge society*

3.2.1 Although these are sometimes confused with one another, the concept of the knowledge society (an ideal or evolutionary stage for humankind) should be distinguished from the concept of the information society (the widespread use of information and communication technologies). Information is only one tool for acquiring knowledge.

3.2.2 Education is a key factor in moving towards a knowledge society. In non-urban areas, one influence is demographic change (emigration, a high rate of dependency, ageing of the population, etc.). Each year, small schools in less dynamic areas are having to close because they do not have a sufficient number of pupils. This can feed the trend to leave the school, with parents preferring to move to more lively areas in terms of available activities, jobs, schools and reception infrastructure ([7]).

([6]) 'Services of general interest, including social services of general interest: a new European commitment', COM(2007) 725 final.

([7]) The EESC has proposed a demographic fund to address all of these problems.

3.2.3 With regard to the percentage of adults attaining a medium or high level of education, the trend in the EU is for a steadily-narrowing gap between predominantly rural and intermediate areas in relation to predominantly urban areas. The situation in Northern Europe and in some new Member States (FR, NL, FI, IE, BE, PL, CZ, HU) is better (< 10 points difference) and in some countries levels of education are higher in rural areas than in urban ones (UK, DE, AT). The widest gaps (> 20 points difference) are found in the Mediterranean countries (GR, ES, IT, PT).

3.2.4 The percentage of adults participating in education and training (life-long learning) is relatively modest (around 12 % in the EU-25) and does not show significant gaps between rural and urban areas. Some countries broadly support adult training (DK, ES, NL, AT, SL, SK, SE, UK) and some do so more modestly. Trends indicate a slightly greater increase in participation in rural areas than in urban ones ([8]).

3.2.5 Although proximity increases access by students living in rural areas, distance to universities (mostly located in urban areas) does not appear to be a major barrier to higher education. It may however, limit the range of course options.

3.2.6 The European Commission has pointed out that a number of Member States are not making sufficient efforts to combat early school-leaving and promote lifelong learning to meet the objectives set by the Lisbon Agenda.

3.3 *E-learning and the importance of broadband connections* ([9])

3.3.1 The concentration of high levels of R&D expenditure in a fairly limited number of EU regions raises concern: 70 % of R&D is located in Germany, France and the United Kingdom. Estimates of R&D expenditure by region5 suggest that 35 regions have R&D intensities exceeding the Lisbon target ([10]).

3.3.2 The Committee stresses that the key condition for using ICT in lifelong learning, particularly in the Community's rural areas and small towns, is support from the EU and governments of the Member States for broadband internet connections ([11]) that provide access to e-learning systems.

3.3.3 In December 2007 broadband (DSL) coverage reached an average of 98 % of the population in urban areas, while coverage of rural areas was limited to just 70 % of the EU-27 rural population ([12]).

3.3.4 Access to broadband forms part of a wider strategy aimed at ensuring that eAccess is accorded the status of public utility service ([13]). Particular attention should be paid to the cost of the service, which in some Member Status is extremely high.

3.4 *Employment and geographical location*

3.4.1 At present 10 % of the European road network suffers from congestion, especially major roads linking outlying regions, which are residential areas, and urban centres which provide jobs for their population. The cost of this each year amounts to 0,5 % of GDP. To reduce this problem, the Commission could seek to promote working from home more, after consulting the social partners. In this way this element of flexicurity would be used to help territorial cohesion, because it would favour local businesses and would reduce the environmental cost ([14]).

3.4.2 The efficiency of job-seeking may decrease as the distance to jobs increases (measured in travelling time and the costs involved) because individuals have less information about job opportunities far from their homes ([15]).

([8]) 'Delivering quality education to rural regions' by Elena Saraceno. Innovative Service Delivery: Meeting the Challenges of Rural Regions. Cologne, 3-4 April 2008.

([9]) See the EESC opinion entitled Competitive European Regions through Research and Innovation - A contribution to more growth and more and better jobs, OJ C 211, 19 August 2008, p. 1.

([10]) These 35 regions account for 46 % of total R&D expenditure in the EU27 – which is twice their share in GDP. At the higher end, R&D expenditure is 7 % of GDP in Braunschweig (DE), and it exceeds 4 % in another 12 regions. – Fourth mid-term report on cohesion COM(2006) 281 final.

([11]) Broadband Internet access: Communications channel with high capacity enabling quick, easy access to information and e-learning systems (source – http://www.elearningeuropa.info/).

([12]) Commission Communication entitled: *'Better access for rural areas to modern ICT'* COM(2009) 103 final. Rural coverage remains poor in Slovakia (39 %), Poland (43 %), Greece (50 %) and Latvia (65 %) as well as in Bulgaria and Romania.

([13]) See the EESC own-initiative opinion entitled *'The contribution of IT-supported lifelong learning to European competitiveness, industrial change and social capital development'*, OJ C 318, 23 December 2006, p. 20.

([14]) More than 50 % of fuel consumption is due to traffic congestion or unsuitable driving. The total environmental cost (air pollution, noise, global warning) of the transport sector is estimated at 1,1 %. (see European Commission, Mid-term review of the White Paper on transport published in 2001, COM(2006) 314 final, 22 June 2006).

([15]) Y. Zenou, *Les inégalités dans la ville* in Villes et économie, La documentation française, 2004.

Housing, water, electricity, gas and other fuels, as % of total spending (2005)

	Workers	Employees	Self-employed	Unemployed	Retired pensioners	Other non-active	Difference between minimum and maximum values	Difference between average non-active and active
be Belgium	26,3	22,5		36,3	29,9	23,7	13,8	5,6
dk Denmark	27,8	25,6	28,7			33,1	7,5	5,7
de Germany	29,9	27	27,6	35,8	32,5	35,5	8,8	6,4
ie Ireland	20,3	21,1	22,3	25	30,4	28,3	10,1	6,7
gr Greece	22,1	22,1	20,6	24,7	29	31,5	10,9	6,8
es Spain	26,3	28,9	26,9	29,5	35	34,9	8,7	5,8
fr France	25,8	23,2	22	30,9	31,1	33,4	11,4	8,1
it Italy	25,8	27,2	26,6	28,1	34,2	35,3	9,5	6,0
lu Luxembourg	29,6	27,4	30,9	32,9	34,9	34,2	7,5	4,7
nl Netherlands	23,6	22,3	24,3	32	32,8	28,8	10,5	7,8
at Austria	22,2	20,7	21,5	27,1	24,3	23,4	6,4	3,5
pt Portugal			26,3	27,1	30,6	31,7	5,4	3,5
fi Finland	25	23	26,6	34,4	35,6	27,1	12,6	7,5
se Sweden	28,4	27,5		32,9	35,5	30,8	8	5,1
uk United Kingdom	27,9	25,4	25,4	39,5	39,7	34,8	14,3	11,8

Source: Eurostat; own calculations

3.4.3 The location of outlying areas, however, may confer some advantages in terms of housing and the quality of life. There is still great potential for development, particularly in the cohesion countries, for when income rises by 1 %, households also increase their consumption of residential space by 0,7-0,8 %, once the price effect is taken into account.

3.4.4 Reference should be made to the phenomenon known as *urban sprawl*, which is particularly marked in countries/regions with a high population density a dynamic economy and/or which have benefited from the structural funds. Between 1990 and 2000 urban areas grew by a total of more than 8 000 km^2, an area more than three times the size of Luxembourg ([16]). This has not been without consequences for biodiversity, among other things.

3.5 *Cultural tourism as a factor in development*

3.5.1 Tourism accounts for 3 to 8 % of Member States' GDP. The sector employs 9 million people in the EU. It 'is also a powerful driving force for other sectors of the economy, including industry (particularly fashion-related sectors), transport, trade and other types of services' ([17]).

3.5.2 Promoting art heritage, exhibitions, shows and other events, food and wine and agri-tourism, film tourism and cultural theme parks can be major sources of investment and employment. The EESC would refer to the suggestions it has made in the recent past to encourage this sector.

3.5.3 In this field, it is worth highlighting the initiatives implemented under Natura 2000 ([18]).

4. **Urban networking helps expand ITC usage**

4.1 The Lisbon Treaty provides for a new aspect of economic and social cohesion, namely, territorial cohesion. A comprehensive vision of economic and social development can only succeed if complemented by a form of land-use planning — the main instrument supporting territorial cohesion — that takes account of the impact of Information and Communication Technologies.

4.2 Public initiatives should cover all geographical areas. The rural world needs stronger links with small and medium-sized cities in order to achieve the new objective of territorial cohesion. Networks of small and medium-sized cities can and must contribute to territorial cohesion, by acting as stepping-stones in the process of introducing ITC to the rural world.

([16]) European Environment Agency, *Urban Sprawl in Europe: the ignored challenge*, 2006.

([17]) See the EESC own-initiative opinion entitled '*Tourism and culture: two factors for growth*', OJ C 110, 9 May 2006, p. 1.

([18]) Council Directive 92/43/EEC of 21 May 1992, on the Conservation of natural habitats and of wild fauna and flora.

5. **Conclusions and recommendations**

5.1 **'No' to fatalism: non-urban areas do have a future**. The EU has many rural areas where the quality of life is high. In poorer regions, thave a futurehe provision of adequate infrastructure, the efforts to improve education and the effective use of ICT, amongst other factors, can make a considerable contribution to promoting entrepreneurship ([19]), boosting progress and improving the quality of life in rural and intermediate areas.

5.2 **Links between rural and urban areas must be strengthened**. For decades, urban and rural development have been viewed as two separate entities. Traditionally, rural policy focused solely on farm production, but times change, and the greater interaction and communication between countryside and town make the 'traditional' distinction less obvious, and the border between them more blurred. What is needed, therefore, is an integrated approach to development policies ([20]).

5.3 **The potential of ICT in rural areas**. Specific policies to promote ICT in the rural world do currently exist under the Structural Funds and the EAFRD, but bridging today's divide requires more intensive measures targeting farms, small and medium-sized enterprises and micro-businesses, young people, women (especially to promote rural businesswomen, elderly workers and disadvantaged groups ([21]). Networks of small and medium-sized towns contribute to territorial cohesion and to technological innovation in the rural world.

5.4 **The Structural Funds are all-purpose tools**. An in-depth discussion of the future of these regions as part of a forward-looking measure would help to better calibrate the Structural Funds in order to maximise its impact and, where needed, to suggest new approaches.

5.5 **Civil society participation** The great diversity of the EU-27 hampers the effectiveness of development targets in rural areas, if they are set centrally. It is therefore crucial that civil society in rural areas is involved in drafting policies that concern their future ([22]).

5.6 **Adequate indicators** As the EESC has already stressed, it would make sense to establish 'a more representative indicator of cohesion which should include, in addition to GDP, parameters such employment and unemployment levels, the extent of social protection, the level of access to general interest services, etc ([23]). These indicators should also be complemented by indicators of income inequality (Gini coefficient or inter-quintile ratio) and of CO_2 emissions (per inhabitant or change since 1990). In general terms, it is vital to build up the EU's statistical tools, particularly at NUTS level, and to forge closer links between Eurostat and national statistics offices in order to gain access as soon as possible to the most comprehensive and accurate data available' ([24]) ([25]).

Brussels, 16 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([19]) By way of example, the production of renewable energies, including wind power, can provide an important source of income in rural areas.

([20]) In January 2009, DG REGIO organised a seminar on this matter, which highlighted examples of successful urban-rural linkages, including the Skane-Blekinge programme in Sweden. See 'Urban-Rural linkages fostering sustainable development in Europe'. Inforegio.

([21]) Commission Communication entitled *'Better access for rural areas to modern ICT'*, COM(2009) 103 final.

([22]) See the EESC own-initiative opinion entitled *'The need for concerted action at EU level to strengthen civil society in rural areas, with particular regard to new Member States'* OJ C 175, 28.7.2009, p. 37.

([23]) See the EESC own-initiative opinion entitled: *"Beyond GDP – measurements for sustainable development"*, OJ C 100, 30 April 2009, p. 53.

([24]) When the Lisbon Strategy was relaunched in March 2005, the European Council stated that the strategy was to be seen in the wider context of the sustainable development requirement that present needs should be met without compromising the ability of future generations to meet theirs. The European Council reiterated its attachment to sustainable development as a key principle governing all the Union's policies and actions. See the conclusions of the European Council of June 2005.

([25]) See the EESC opinion entitled the *'Fourth Report on Economic and Social Cohesion'*, OJ C 120, 16 May 2008, p. 73.

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

455TH PLENARY SESSION HELD ON 15 AND 16 JULY 2009

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on consumer rights'

COM(2008) 614 — 2008/0196 (COD)

(2009/C 317/09)

Rapporteur: **Mr Hernández BATALLER**
Co-rapporteur: **Mr MULEWICZ**

On 6 November 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 consumer rights

COM(2008) 614 final — 2008/0196 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 June 2009. The rapporteur was Mr Hernández Bataller and the co-rapporteur was Mr Mulewicz.

At its 455th plenary session, held on 15 and 16 July (meeting of 16 July), the European Economic and Social Committee adopted the following opinion by 68 votes, with none against and one abstention.

1. **Conclusions**

1.1 The EESC recommends that the Commission proposal on consumer rights be reworded in the terms set out in this opinion and should thus deal only with horizontal harmonisation on distance and off-premises sales, rather than attempting to achieve full harmonisation because these are the areas most affected by cross-border trade.

1.2 The sections of the proposal for a Directive on unfair terms and on the sale of goods and associated guarantees should be removed, as these sections deal with issues that cannot be dealt with appropriately through full harmonisation with Community law at its current stage of development.

1.2.1 The proposal breaks no new ground on a number of relevant aspects such as after-sales assistance and spare parts, or the direct liability of the producer and the distribution networks.

1.3 The EESC believes that establishing 'common' definitions would provide a greater level of legal certainty to commercial players and consumers. The Commission should therefore iron out the inconsistencies which currently exist in this area of the proposal.

1.3.1 The EESC calls on the Commission, for the sake of legal certainty, to ensure that its proposal clarifies whether or not the definitions it provides are to be fully harmonised or whether the Member States will have some discretion to elaborate on these concepts.

1.3.2 European consumers should not be seen solely in terms of the internal market or be viewed as rational market players, aware and well-informed, taking decisions purely on the basis of competition, with consumer protection amounting simply to providing more and better information.

1.4 The EESC wishes to note that the serious shortcomings in dispute settlement and compensation for damages are a key factor 'if not the most important' factor in the lack of progress on cross-border trade. The Commission proposal, however, omits this concern, which is reflected in the Eurobarometer.

2. **Introduction**

2.1 This proposal originated in a process of wide-ranging discussion at the Community level on the possibilities of unifying legislation in the field of contracts on the basis of a 'common frame of reference' for contracts, on which the Commission has adopted a Communication on European Contract Law ([1]). Discussions have also taken place in the field of consumer protection policy, with regard to reviewing the consumer *acquis* covering both horizontal ([2]) and vertical ([3]) aspects, with regard to the existing consumer protection directives on contractual matters.

2.2 In its opinion on the review of the consumer *acquis* ([4]), the EESC stated that 'Consumer policy is not only an integral part of the EU internal market strategy but is also an important and affirming element of citizenship'. Furthermore, as regards Community-level harmonisation, the author of this opinion considers that the guiding principle should be to adopt the highest and most effective level of protection that currently exists in the different Member States.

3. **Gist of the proposal**

3.1 The direct predecessor of the Commission proposal is the Commission Green Paper on the Review of the Consumer Acquis, COM(2006) 744 final, of 8 February 2007, the grounds for and objectives of which were to simplify and complete the existing legal framework. The Green Paper covers eight directives on consumer protection ([5]). The responses to the Green Paper are analysed in the detailed report requested by the European Commission and it should be pointed out that half of all the contributions received come from the commercial sector (150), with the other half being divided amongst consumer organisations (53), legal and other professionals (33), public authorities (39) academic bodies (32) ([6]).

3.2 The proposal contains fifty articles divided into seven chapters concerning: 1) subject matter, definitions and scope (Articles 1 to 4); II) consumer information (Articles 5 to 7); III) consumer information and withdrawal right for distance and off-premises contracts (Articles 8 to 20); IV) other consumer rights specific to sales contracts (Articles 21 to 29); V) consumer rights concerning contract terms (Articles 30 to 39); VI) general provisions (Articles 40 to 46) and final provisions (Articles 47 to 50). The document also contains five annexes, two of which concern terms in contracts.

3.3 The Commission would like the following Community directives to be fully repealed (see Article 47): (i) Directive 85/577/EEC, of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises; (ii) Directive 1993/13/EEC on unfair terms in consumer contracts; (iii) Directive 1997/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts and (iv) Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees.

4. **General comments**

4.1 *Full harmonisation*: The reception given to the Commission proposal varies considerably amongst the different stakeholders in organised civil society:

4.1.1 Employers' associations support the proposal because it will, in their view, help to improve the workings of the internal market and could make it more competitive by reducing the reluctance to carry out cross-border transactions as well as the administrative burden and compliance costs for traders. This could be of particular relevance to SMEs.

([1]) OJ C 241, 7.10.2002.
([2]) OJ C 256, 27.10.2007.
([3]) OJ C 175, 27.7.2007 and OJ C 44, 16.2.2008.
([4]) Idem footnote No 2.
([5]) The review process was described in the Communication entitled European Contract Law and the revision of the *acquis*: the way forward COM(2004) 651 final, OJ C 14, 20.1.2005.
([6]) Preparatory Impact Assessment on the review of the consumer acquis/GP analytical report of 6.11.2007, produced by GHK/CIVIC Consulting/Bureau Van Dijk, available on the European Commission website.

4.1.2 Consumer organisations consider that the proposal affects previously acquired rights that form part of the Community *acquis*, which makes any reduction of consumer rights unacceptable. The general view is that the proposal would lead to a reduction in consumer rights, because the effects of full harmonisation would be excessive and disproportionate to the proposal's stated aims and would hamper future developments.

4.1.3 In order to rise above the differing positions adopted, the Committee proposes:

a) limiting the proposal's scope exclusively to off-premises sales and distance sales, because it is in these areas of cross-border transactions that the proposal aims to overcome barriers and where full harmonisation would appear to be most logical. Total harmonisation would be excluded for unfair terms and sales guarantees.

b) that the proposal establish common definitions and that existing inconsistencies should be ironed out.

c) introducing other changes as suggested in this opinion.

4.2 *The proposal's lack of internal coherence*

4.2.1 Given the expectation arising from the many discussions, documents and studies produced in the last twenty-plus years on European contract law, well before or in tandem with the Green Paper and also against the backdrop of the parallel Common Frame of Reference project ([7]), the EESC considers that the Commission proposal falls short of what is expected and desirable.

4.2.2 Firstly, the aim of revising the *acquis* identifies eight directives, whereas the Commission proposal for revision and incorporation confines itself to four of these. Secondly, the work carried out under the CFR sought to eliminate inconsistencies and consolidate the rules of what is known as European contract law into an optional instrument that would be a useful tool for professionals, consumers, those that implement the law and legislators.

4.2.3 Against this backdrop, whilst there are some positive aspects to the practical content now being proposed, this does little more than bring together in a single text rules from four directives, under a set of common definitions, and is ultimately lacking in innovation and structure and fails to take account of the concerns for consolidation, clarification and refinement required by the high level of consumer protection that the EU must provide. Moreover, by leaving essential aspects of the legal provisions of the amended directives to Member States' legislation and by deciding to use a 'directive' rather than a 'regulation', the proposal is not even in line with the proposed aim of full harmonisation. It does not achieve this aim to any satisfactory degree and instead creates further uncertainties and differences in the Member States' systems.

4.2.4 The EESC plays an active role in the field of consumer protection, regularly delivering opinions, at its own initiative, in which it states its views and it is on the basis of the texts it has adopted that the EESC is now considering the proposal presented by the Commission.

4.2.5 The completion of a single market for businesses and consumers is an aim shared by the EESC, which acknowledges that there are transaction costs arising from implementing the consumer protection rules in each Member State, which could form a barrier to a more varied range of goods and products on the internal market - something that would benefit consumers. Experience shows, however, that other, more significant obstacles do exist. These are detailed by Eurobarometer ([8]) and include the lack of confidence in e-commerce.

4.3 *Cross-border barriers*

4.3.1 The Commission appears to consider the main barrier to the completion of the internal market and especially to cross-border sales to be traders' costs and reservations on the supply side and where demand is concerned, the lack of consumer confidence. It identifies the causes of the problems detected as fragmentation and the differences in laws resulting from minimum harmonisation.

4.3.1.1 Although the directives on minimum harmonisation have been the most frequently used tool in Community consumer law, the example of Directive 2005/29/EC on Unfair Commercial Practices shows that full harmonisation is a regulatory option that could be detrimental to the consumers' rights acquired to date, which it would be flouting, in clear breach of Article 153 of the Treaty ([9]).

([7]) See COM(2007) 447 final, of 25.7.2007: Second Progress Report on The Common Frame of Reference; see also the European Parliament resolution of 3 September 2008 on the Common Frame of Reference in the field of European contract law. Council Resolution 2863, 18 April 2008, p. 18.

([8]) See Special EB No 298 (Consumer Protection in the Internal Market – 2008); Flash EB No 224 (Business attitudes towards cross –border sales and consumer protection – 2008); Flash EB No 250 – Confidence in the Information Society, from May 2009, as well as the Report on cross-border e-commerce in the EU SEC (2009)283 final from 5.03.2009.

([9]) As demonstrated in the ECJ ruling of 23 April 2009 (Joined Cases C-261/07 and C-299/07).

4.4 *Community-level competences*

4.4.1 The EESC wishes to point out that Community consumer protection policies and policies aimed at protecting competition have completely different origins.

4.4.2 Whereas the Treaty of Rome stated that the Community had *exclusive competence* in the field of *competition policy*, it did not include consumer protection as a distinct policy objective. In fact, although a number of measures had been adopted ([10]), the framework for this Community policy was a Council Resolution such as the European Economic Community's preliminary programme for consumer protection and information policy, which dates back no further than 14 April 1975.

4.4.3 The adoption of a Community consumer protection policy is, therefore, the result of a number of systematic steps by consumer organisations, which compelled their own Member States to adopt this type of protection policy, which the EU ultimately also recognised.

4.4.4 This explains why, in the field of consumer protection, the Community is now torn between the duty to ensure a high level of protection for consumers and a *shared and subsidiary competence of the Member States* ([11]).

4.4.5 Consumer protection policies have been adopted by the Member States, providing higher levels of protection and upholding measures already in place, and with a view to intervention and ensuring social concord.

4.4.6 European consumers should not, therefore, be seen solely in terms of the internal market or be viewed as rational market players, aware and well-informed, taking decisions purely on the basis of competition, with consumer protection amounting simply to providing more and better information.

4.4.7 As the EESC has stated on previous occasions, any proposal seeking to achieve maximum harmonisation in the field of consumer protection should focus on highly practical aspects and go hand in hand with special precautions in order to comply with the high level of consumer protection guaranteed by the Treaty, whilst observing the principle of subsidiarity. Otherwise, the consequence would be to delay and hamper the development of consumer rights in each Member State.

4.5 *Legal base*

4.5.1 The EESC also questions the legal base proposed for the directive: Article 95 and not Article 153.

4.5.2 The Committee has repeatedly stated its support for using Article 153 of the Treaty as the legal base for legislative proposals for consumer protection instead of Article 95 TEC, which concerns the internal market. In all of its recent proposals, however, the Commission uses Article 95 TEC, deeming it appropriate because of the internal market focus of the proposal for a directive.

5. **Specific comments**

5.1 Broadly speaking, the proposal is quite complex, making an excessive use of referrals, (see, for example, Art. 3(2) and (4), Art. 6(9)(a), Art. 10, Art. 21(1) and (3), Art. 28, Art. 32(2), Art. 35) which make it harder to read and understand and is frequently written in vague or uncertain expressions that would make the proposal difficult to transpose. It should be added that its classification is not always easy to understand (see Art. 45 on unsolicited supply in Chapter VI – General Provisions). If the these opacities remain in the Directive, a clause must be included in it and in national rules to the effect that in the event of disputes arising due to ambiguities, the text should be interpreted in favour of the consumer as the weaker party.

5.2 Furthermore, the proposal fails to address laws on procedures and penalties which, because they are a logical consequence of maximum harmonisation, are still being referred to the Member States (See recital (58) and Art. 42). This aspect is likely to create significant inconsistencies in harmonisation. By way of example, see the cases of: (i) information requirements (Article 5) in which the task of setting consequences for non-compliance is referred to Member States but in a strange wording — 'in the field of contract law' —, leaving it unclear as to whether imposing administrative or criminal penalties would be considered to breach a directive; (ii) the consequences of classifying a contractual term as unfair when the text merely states that these are not binding on the consumer, since Member States are free to use any concept of national contract law that complies with the stated aims (see recital 54 and Article 37), the right of withdrawal system.

5.3 The contrasting rules covering the right of withdrawal in the different national legal systems. The legal nature of this right, which appears to exclude the concept of *pacta sunt servanda* from the law of obligations, differs from one Member State to another, ranging from unilateral withdrawal to settlement and termination of the contract, which have different legal implications. The Commission should consider this matter and its proposal should include a coherent system to cover this aspect of contracts.

5.4 *Definitions and scope*

In the EESC's view, the Commission proposal should clarify whether or not its definitions would allow the Member States to make their own, complementary contributions to the legislation.

([10]) See the examples of the creation of a consumer protection service, which only became independent from other subject areas in 1989, or the Consumers' Consultative Committee.

([11]) A shared competence in the European Constitution and in Article 169 of the Lisbon Treaty. See OJ C 115/51, 9.05.2008.

5.4.1 **'Consumer'** (Art. 2(1) – whilst the definition proposed tallies with the definition given in most Community texts, it fails to state a position on the possibility of extending the concept to cases where the natural person has mixed uses ([12]), a concept recognised in many Member States ([13]), or to certain collective legal persons. This rigid definition of a consumer, interpreted in line with ECJ case-law and Directive 2005/29/EC on Unfair Commercial Practices, in conjunction with the rules of Article 4, which prohibits more stringent provisions to ensure a different level of consumer protection, hampers the protection of vulnerable consumers, a category that contracts covered by the proposal could affect. It should be pointed out that Directive 2005/29/EC itself recognises (Article 5(3)) the existence of vulnerable consumers, who should also be exempted here.

5.4.2 '**Trader**' (Article 2(2)) The Commission proposal does not clarify the position of not-for-profit organisations or public bodies exceeding the bounds of their public-service remit (iure imperium).

5.4.3 **'Goods' and 'products'** (Article 2(4) and (12) – the adoption of two different definitions for goods and products (the latter matching the definition given in Directive 2005/29/EC) is confusing and difficult to understand. This applies in particular to the case of electricity, which will become either a good or a service depending on whether it gives rise to contractual or extra-contractual liability; this clearly does not help improve the consistency of Community legislation. The fact that electricity has been left out of the Directive is inconsistent, as the Directive does apply to items which store electricity such as batteries, as is the case in many Member States.

5.4.4 **'Distance contracts'** (Article 2(6)). This definition is broader than the definition set out in the current Directive on distance sales. And this causes difficulties. For the new definition to apply, distance communication must be used exclusively 'for the conclusion of the contract', which means that many more contracts than before will fall into the distance contract category. Here are two examples. First example: consumer X goes into a shop and talks about the possibility of buying something, goes home and then telephones the shop to confirm he will make the purchase. It is not clear why it is necessary to broaden the definition to include this example. Second example: a salesman visits consumer Y's house and during the salesman's visit, consumer Y makes him an offer on his products. This offer is made verbally or by filling in an order form. Later, the salesman confirms that he accepts consumer Y's offer by telephone or email. In the second example, the contract seems to be both a distance contract and an off-premises contract: which is it? Does consumer Y have 14 days to change his mind from the date the order form was signed (the withdrawal period for off-premises contracts) or 14 days from the day on which he acquires material possession of the goods (the withdrawal period for distance contracts)? The definitions 'distance contract' and 'off-premises contract' should not overlap.

5.4.5 **'Business premises'** (Article 2(9)). This is another definition whose real scope is hard to discern. When interpreted in line with recital 15, this point raises the following question: would sales on board aircraft or ships be considered to be sales on or off business premises?

5.4.6 **Commercial guarantee**. The proposal appropriates the term 'commercial guarantee' (see Article 2(18)) from the Green Paper on guarantees for consumer goods and after-sales services, but now does not distinguish it from the legal guarantee, which is only covered by Directive 99/44/EC (see Article 1(2)(e)). This replacement is likely to confuse consumers as to the true effectiveness of one type of guarantee or another. It should be made clear that a commercial guarantee requires the trader to fulfil his obligations voluntarily, whereas a 'legal guarantee' is binding in nature.

5.4.7 **Intermediary**. Both the definition of intermediary (Article 2(19)) and the special information requirements that apply (Article 7) are difficult to understand. Indeed, this is either a professional activity and thus subject to the directive or it is not, and there is thus no need for regulation. The EESC therefore suggests clarification.

5.4.8 **Consumer information**. (Article 5). The general information requirements that apply before a contract is concluded clearly allow for the possibility that information will not be provided (1. Prior to the conclusion of any sales or service contract, the trader shall provide the consumer with the following information, *'if not already apparent from the context'*). In the EESC's view, the wording gives rise to a number of doubts and creates considerable uncertainty and consequently cannot support it.

5.4.9 Nor, in terms of international private law, is it clear whether the applicable legislation would be the 'Rome I' Regulation (as suggested in Article 5(3) or, where a breach of the duty of disclosure is deemed to have taken place, Article 12 of the 'Rome II' Regulation (Recital 30 of the 'Rome II' Regulation).

5.4.10 The provision set out in Article 6(2) of the proposal on determining the consequences of the duty to provide information in accordance with the applicable national law does not appear reasonable, might result in divergent solutions and should thus be harmonised.

([12]) 'A consumer means any natural person who is acting primarily for purposes which are not related to his or her trade, business or profession'. In Draft Common Group of Reference (DCFR) Outline Edition December 2008.

([13]) For example, Austria, Belgium, Denmark, Greece, Finland, Sweden, Spain and Portugal have broadened the concept of the consumer.

5.4.11 **Auctions**. It should be made clear that compulsory auctions held by public authorities would always fall outside the proposal's scope, which does, however, include the concepts of 'auction' and 'public auction', but only where these are held voluntarily by the trader.

5.5 *Distance and off-premises contracts*

5.5.1 Directive 85/577/EEC, one of the first European legislative initiatives in the field of consumer protection, reveals a lower level of distortion in the national transposition of legislation, mainly involving the use of options to exclude certain types of contract (below a certain value or for certain types of goods) or involving extending protection to consumers as made possible by the minimum harmonisation clause (see Article 8). As a consequence, the maximum harmonisation which is generally provided for is not problematic and has proven to be balanced and positive. Directive 85/577/CEE only applies when the trader's visit to the consumer's home or workplace is unsolicited. The proposal to broaden the scope of this Directive to include solicited visits is acceptable, as long as the number of exceptions set out in Article 19(2) is increased. The following should be added to the list of contracts where the right of withdrawal will not apply (as for distance contracts for example):

a) services where performance has begun, with the consumer's prior express consent, before the end of the withdrawal period, and

b) the supply of goods made to the consumer's specifications or clearly personalised or which are liable to deteriorate or expire rapidly.

5.5.1.1 If the first of these exceptions is not included in Article 19(2), the service providers could ask consumers who would like the work done quickly (kitchen improvements or a haircut at home for example) to wait at least fourteen days. If the second exception is not included, a trader who makes tailored products (kitchen units or a suit for example) could refuse to begin the contracted work until at least 14 days have passed. Otherwise the consumer could withdraw from the contract, leaving the trader with goods he is unable to sell.

5.5.2 With regard to distance contracts, although a comparative study ([14]) found no major discrepancies in the transposition of Directive 1997/7/EC, it should also be noted that the Member States have used the options and the minimum harmonisation clause to establish schemes that are more favourable to consumers. Providing for consumer protection options for distance selling involving non-Member States would be a positive development.

5.5.3 It is, however, possible to discern potential barriers in the internal market linked to the different lists of exemptions or the different information requirements imposed on traders.

5.5.4 The EESC accepts that there is room for improvement as regards the **range of exceptions** regarding application of the rules, such as the inclusion of lower value goods ([15]) or services or goods or services likely to be included on the grounds of health, hygiene or safety. This applies in particular to food safety (see Article 20(1)(d)), where referral to Article 2 of Regulation (EC) 178/2002 must be expressly included ([16]). As regards the exception for lower value goods (and services), there is scope to considerably increase the amount of EUR 60 (in Directive 85/577/CEE).

5.5.5 With regard to the **right of withdrawal** from such contracts, which the proposal standardises as a single time limit of 14 days, the EESC welcomes the way in which these time limits are calculated. Nevertheless, as stated above, the concept underpinning this right and its effects should be harmonised.

5.5.6 The EESC also wonders how appropriate it is to establish the rule of **consumer liability** set out in Article 17(2) (under which the consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to ascertain the nature and functioning of the goods) because it considers that this will create uncertainty and potential problems of proof for consumers.

5.5.7 Without prejudice to the much-needed improvement to the rules now being proposed, the EESC ([17]) would welcome the proposed maximum harmonisation being limited to these two directives alone, regulating sales methods and thus giving them greater potential to be cross-border in nature.

([14]) Cf. EC Consumer Law Compendium – Comparative Analysis edited by Prof. Hans Schulte-Nolke in co-operation with Dr. Christian Twingg-Flesner and Dr. Martin Ebers dated February 2008, prepared for the European Commission under Service Contract N° 17.020100/04/389299: 'Annotated Compendium including a comparative analysis of the Community consumer aquis'

([15]) Cf. Art. 3(1) of Directive 85/577/EC, an option taken by 18 Member States.

([16]) Regulation (EC) No 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

([17]) OJ C 175, 27.7.2007 and OJ C 162, 25.6.2008

6. **Unfair terms in contracts concluded with consumers**

6.1 This issue, which is currently governed by Directive 1993/13/EEC, is concentrated in Chapter V and Annexes II and III. However the EESC considers – in line with studies carried out by the Commission – that this issue should not be dealt with in the current proposal and should be removed, as full harmonisation of this issue will most certainly give rise to problems in the national legal systems of the different Member States, given the current state of Community law.

6.1.1 However, if the Commission does not withdraw in their entirety the rules on unfair terms in consumer contracts, the EESC would like to make the following observations:

6.1.1.1 As is widely known, this is a core aspect of contract law which, prior to the directive's adoption, was in part regulated by the Member States.

6.1.1.2 The comparative study of its transposition shows that the vast majority of Member States have made use of the minimum harmonisation clause (Article 8), and now have rules that are more favourable to consumers than those provided for in the directive. Further, the current state of affairs makes this an issue for which full harmonisation would not be advisable ([18]).

6.1.1.3 It is to be hoped, therefore, that the proposal that has been presented, which calls for the directive currently in force to be definitively repealed, is also transposed to the highest levels but also clarifies the various points of ambiguity that have divided doctrine and case-law.

6.1.1.4 This applies, of course, to the relationship between the principle of good faith and the criterion of imbalance in performance, set out in Article 3(1) of the current directive and retained almost unchanged in Article 32(1) of the proposal concerning the consequences of breaching the transparency requirements now regulated by Article 31.

6.1.1.5 With regard to scope, it is worth noting the introduction of one particular restriction that would be damaging to consumers. Indeed, whereas the proposal under consideration addresses only the terms contained in written contracts (*'drafted in advance'* as stated in Article 30(1), obliging Member States to *'refrain from imposing any presentational requirements as to the way the contract terms are expressed or made available to the consumer'*, the current directive also applies to verbal contracts (see the effect of Article 5 of Directive 93/13/CEE), as also applies in some Member States.

6.1.1.6 The EESC considers that upholding the present system in addition to setting up a committee and a system for registering terms deemed unfair by the national authorities would be a sufficient step forwards for information on unfair terms, and would be extremely useful to traders, given the reduction in compliance costs, to those implementing the law and to consumers.

6.1.1.7 The issue of unfair terms in contracts is horizontally applicable to all contracts concluded with consumers and also often to those concluded between traders. The EESC considers that the Commission proposal will on this point have a highly significant and detrimental impact on contract law in general and on consumer protection in particular, in all Member States.

7. **Certain aspects of the sale of consumer goods and associated guarantees**

7.1 The EESC believes that it is inappropriate to include this issue in the Directive and suggests that it is withdrawn from the proposal as it does not add any value or provide a greater level of protection for consumers.

7.2 Directive 1999/44/EC enabled Member States to adopt or maintain in force measures offering consumers greater protection, which has led to divergent national legislation.

7.3 This case demonstrates the lack of any kind of significant trend in transposition ([18]) because all Member States, without exception, already had regulation in place applicable to the aspects of sales contracts and the sale of consumer goods regulated by the directive.

7.4 With regard to the passing of risk (Article 23), the proposal aims to settle disputes relating to the concept of delivery, and the trader is thus liable to the consumer from the time the risk passes to the consumer (Article 25), which could represent an improvement and a clarification.

7.5 The EESC considers that setting a universal time limit for the delivery of goods would be inconsistent, except for certain types of sale (distance and off-premises sales), because Article 22 of the proposal, which states that the trader shall deliver the goods within thirty days from the day of the conclusion of the contract, is disproportionate.

7.6 Nevertheless, by removing Member States' option to set a time limit for the presumption of conformity with the provisions of the current directive and now setting a single time limit of 6 months, the proposal reduces consumers' rights, by placing on them the burden of proving the existence of defects appearing at a later date.

([18]) Cf. EC Consumer Law Compendium – Comparative Analysis edited by Prof. Hans Schulte-Nolke in co-operation with Dr. Christian Twingg-Flesner and Dr. Martin Ebers dated February 2008, prepared for the European Commission under Service Contract N° 17.020100/04/389299: 'Annotated Compendium including a comparative analysis of the Community consumer aquis'

7.7 Similarly, as regards the time limit and the burden of proof concerning non-conformity when adopting the proposal for a directive as a rule the requirement to submit a complaint will in practice shorten the time limit for submitting a complaint in all Member States that have not opted for this mechanism, as inferred in Article 28(4) and (5).

8. **Procedural shortcomings**

8.1 The proposal contains a set of procedural rules, such as the burden of proof and the entitlement to bring proceedings, which should be more clearly defined in order to ensure coherent procedural arrangements. What is needed is regulation for the possibility of adopting precautionary measures, providing both for suspensive action and compensation or the publication of rulings.

8.2 With regard to collective actions, the reader is referred to the EESC's recent statements on the matter ([19]).

Brussels, 16 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([19]) OJ C 162, 25.6.2008.

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 2001/83/EC as regards the prevention of the entry into the legal supply chain of medicinal products which are falsified in relation to their identity, history or source'

COM(2008) 668 final — 2008/0261 (COD)

(2009/C 317/10)

Rapporteur: **Mr MORGAN**

On 12 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 Directive of the European Parliament and of the Council amending Directive 2001/83/EC as regards the prevention of the entry into the legal supply chain of medicinal products which are falsified in relation to their identity, history or source

COM(2008) 668 final — 2008/0261 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 June 2009 The rapporteur was Mr Morgan.

At its 455th plenary session, held on 15/16 July (meeting of 15 July, the European Economic and Social Committee adopted the following opinion by 150 votes to 2.

1. **Conclusions and Recommendations**

1.1 The EESC welcomes this initiative. Public health is a central concern of all the Committee's members. Nevertheless, we are fully conscious of the fact that, on its own, this Directive will not be effective. It forms one part of a multi-faceted effort involving criminal law, law enforcement, IPR protection, customs surveillance and international cooperation. The EESC urges Member States to strengthen enforcement measures.

1.2 The EESC proposes that more effort be made to harmonise the names and brands used for medicines in the EU as well as packaging [1] and identification coding for medicinal products throughout the EU. There are at least ten different coding systems in the EU and they have no particular focus on security issues in terms of batch and date of manufacture or expiry. A harmonised European standard should be introduced for the identification of medicinal products to allow tracking throughout the distribution chain up to the patient. Harmonisation will advance the internal market by opening the door to the secure free movement of medicinal products in the EU. It will also make it easier to authenticate medicinal products directly at the manufacturers at any time and in any place, at least in the EU internal market initially. Ultimately this could lead to a global initiative.

1.3 Technology can facilitate a significant advance in codes, identification and the authentication of medicinal products. Authentication and tracking are the central issues. These strategies should not exceed their set purposes, giving priority to direct checks (avoiding middlemen) in the official registers of manufacturers, the only parties able to certify the authenticity of their products. There are a number of identification systems including Radio Frequency Identification (RFID) and 2-dimensional bar code labelling (Data Matrix). Belgium has an individual registration system for packaging, using a sequence number and 1-dimensional bar code, introduced by the health insurance system to prevent multiple claims for one package under the third-party payment system. However, the Belgian system does not include either a batch number or an expiry date. Moving from the Belgian single bar code (Code Barres Unique - CBU) to DataMatrix labelling would fill the existing gaps with regard to tracking and authentication, as required by the Community code on medicinal products. Although these techniques could be applied readily and rapidly for a minimal cost, the Commission's position, paradoxically, is that it is too early to make a decision on identification coding and that more trials are needed. The longer the introduction of identification coding is put off, the more confused and fragmented the situation will become. Therefore the EESC proposes that an identification coding task force be put in place to assess the introduction of existing harmonised procedures, at least in the EU Internal Market initially. Ultimately this could lead to a global leadership opportunity.

1.4 The focus on the legal supply chain is not enough. If the Internet issue is not addressed, public health will be increasingly threatened. There is an important social dimension because illegal low cost medicines on the internet create a 2-tier health care system. The EESC urges the Commission to act.

[1] Change does not apply to English text.

1.5 The EESC supports a relentless attack on any actors who allow counterfeit drugs into the legal drug chain. The penalties should be draconian, ranging from fines to confiscation of the affected business. The EESC urges the Commission to publish sentencing guidelines for Member States.

1.6 The extent of counterfeiting and the sources of counterfeit medicines do not seem to be well understood. The draft directive should include plans to address these shortcomings in the systems of surveillance and supervision.

1.7 Following the WHO, the EESC would prefer that the Directive refer to 'counterfeit' products rather than 'falsified' products.

1.8 The complexity of the text, with so many past and present amendments, makes it difficult to comprehend. The EESC recommends that a subset of the base text together with the amendments be published so the text relating to counterfeit products can be read and understood.

2. **Introduction**

2.1 In November 2001 the EU introduced its Directive 2001/83/EC on the subject of The Community Code Relating to Medicinal Products for Human Use. This is an encyclopaedic compendium covering every aspect of the topic. It has subsequently been amended by one Regulation and five further Directives. It now runs to 70 pages comprising 130 Articles. There are another 44 pages of annexes.

2.2 The subject of this opinion is another amending Directive. It is concerned with the entry into the legal supply chain of medicinal products which are falsified in relation to their identity, history or source. This amending Directive is one of three such Directives being introduced at the same time to deal with different facets of the Community Code. In the view of the EESC it would have made more sense, at least for this Directive, if a relevant subset of the base Directive could have been produced, together with the amendments proposed in the current Directive, so that a short integrated, coherent and relevant text could have been available to interested parties. The present text is opaque and difficult to comprehend.

2.3 Counterfeit medicines are deliberately and fraudulently mislabelled with respect to identity or source; their quality is unpredictable as they may contain the wrong amount of active ingredients, wrong ingredients or no active ingredients. In all cases counterfeit medicines are manufactured in clandestine laboratories with no possibility of control.

2.4 Counterfeit medicines pose a major threat to public health. They undermine EU pharmaceutical legislation and the EU pharmaceutical industry. The number of falsifications of innovative and life-saving medicines is increasing. Moreover, in order to increase the volume, these products are channelled towards the patient through the lawful supply chain.

2.5 According to the World Health Organisation (WHO), the scale of the problem is as follows:

— less than 1 % in most industrialized countries and most of the EU;

— more than 20 % in much of the former Soviet Union;

— more than 30 % in parts of Asia, Africa and Latin America;

— more than 50 % from illegal internet sites.

With respect to the Internet, the Commission has stated that 'addressing illegal supply chains requires a separate problem definition, with separate underlying causes, separate objectives and separate policy options'. These are not addressed in the Directive being considered.

2.6 According to the Commission, the underlying causes for counterfeit medicinal products remaining undetected in the lawful supply chain are manifold, but can be reduced to four aspects:

— counterfeit medicinal products can not always be easily distinguished from the originals due to problems of *tracking and identification*;

— *the distribution chain* has become very complex and is only as 'strong as its weakest link';

— there are *legal uncertainties* as to the regime applicable to products introduced into the EU while allegedly not being placed on the market; and

— already the active pharmaceutical ingredients (API) entering the manufacturing process may be a *falsification of the original API*.

3. **Gist of the Draft Directive**

3.1 The aim of the base Directive, 2001/83/EC, as well as this proposed amendment, is to establish a functioning Internal Market for medicinal products in the EU while ensuring a high level of protection for public health. The main provisions of the amendment are detailed in the following paragraphs. Article references are to Article 1 of the amending directive.

Tracking and Identification

3.2 Audits of manufacturers of API. (4)

3.3 A legal basis for the Commission to make specific safety features such as an identification code or fixed seal obligatory on the packaging of prescription medicines in order to make it possible to identify, authenticate and trace medicinal products. (6), (8), (9)

3.4 A prohibition in principle of manipulating (i.e. removing, tampering with or over-labelling) safety features on the packaging by participants situated 'in between' the original manufacturer and the last point in the distribution chain – usually the pharmacist – or end user – the doctor/patient. Any actor in the supply chain who packages medicinal products has to be a holder of a manufacturing authorisation and be liable for any damage caused by falsified products (9), (10)

The Distribution Chain

3.5 Certain obligations for participants other than wholesale distributors who are involved in the distribution chain. Typical participants, such as brokers and auctioneers, can be involved without actually handling the products. (1), (14)

3.6 Rules supplementing existing good practice for distributors. (13)

3.7 Wholesale distributors will continue to require authorisation. (12), (13), (14)

3.8 Obligatory audits of wholesale distributors of medicinal products in order to ensure reliability of business partners. (15)

Legal Uncertainties

3.9 Elimination of legal uncertainties relative to import of medicinal products for re-export. (2), (7)

Falsification of the Original API

3.10 Certification by manufacturers of that their API suppliers are compliant. (3), (5), (7)

3.11 Strengthened control of API imports from third countries when it cannot be established that the regulatory framework in the respective third country ensures a sufficient level of protection of human health for products exported to the EU. (4), (16)

General Provisions

3.12 Strengthened rules for inspections including increased transparency of inspection results through publication in the EudraGMP database. (12), (15)

3.13 Supervision will be carried out, and any necessary sanctions applied, by the competent authorities of the Member States. New guidelines will be issued by the Commission. (16), (17)

4. **EESC Perspective**

4.1 The EESC welcomes this initiative. Public health is a fundamental concern of the Committee.

4.2 The Committee notes that the World Health Organisation (WHO) describes 'falsified' products as 'counterfeit' products. We recommend that the Commission follow the lead of the WHO. 'Counterfeit' better communicates the criminality of this activity. In the words of the WHO, 'ounterfeiting medicines, including the entire range of activities from manufacturing to providing them to patients, is a vile and serious criminal offence that puts human life at risk and undermines the credibility of health systems' ([2]).

4.3 In the legal supply chain, blocking the entry of counterfeit medical products relies on collaboration between trusted and reliable business partners. To improve collaboration there should be compulsory certification of all supply chain participants with the details available on a publicly accessible data base.

Tracking and Identification

4.4 The EESC believes that the Commission understates the problem of tracking and identification. 'Counterfeit medicinal products can *never* be easily distinguished from the originals in *the absence of harmonised identification coding* which leads to problems of tracking.'

4.5 The EESC proposes that more effort be made to harmonise the names and brands used for medicines in the EU as well as packaging ([3]) and identification coding for medicinal products throughout the EU. There are at least ten different coding systems in the EU and they have no particular focus on security issues in terms of batch and date of manufacture or expiry. A harmonised European standard should be introduced for the identification of medicinal products to allow tracking throughout the distribution chain up to the patient. Harmonisation will advance the internal market by opening the door to the secure free movement of medicinal products in the EU. It will also make it easier to authenticate medicinal products directly at the manufacturers at any time and in any place, at least in the EU internal market initially. Ultimately this could lead to a global initiative.

([2]) See the IMPACT (International Medical Products Anti-Counterfeiting Taskforce) Report of the WHO updated in May 2008.

([3]) Change does not apply to English text.

4.6 The EESC believes that it would reduce fraud if authentic packaging could be readily identified. The EESC recommends that the Commission take the initiative to cause a visual data base of medicinal product packaging to be established.

4.7 The text of paragraph 3.4 appears to cut out parallel distributors. It could be more explicit to prohibit manipulation of safety features on packaging by any participant who does not hold a manufacturing authorisation. Parallel distributors need to repackage. They must not replace safety features in a way which could break the tracking chain.

4.8 Technology can facilitate a significant advance in codes, identification and the authentication of medicinal products. Authentication and tracking are the central issues. These strategies should not exceed their set purposes, giving priority to direct checks (avoiding middlemen) in the official registers of manufacturers, the only parties able to certify the authenticity of their products. There are a number of identification systems, including Radio Frequency Identification (RFID) and 2-dimensional bar code labelling (Data Matrix). Belgium has an individual registration system for packaging, using a sequence number and 1-dimensional bar code, introduced by the health insurance system to prevent multiple claims for one package under the third-party payment system. However, the Belgian system does not include either a batch number or an expiry date. Moving from the Belgian single bar code (Code Barres Unique - CBU) to DataMatrix labelling would fill the existing gaps with regard to tracking and authentication, as required by the Community code on medicinal products. Although these techniques could be applied readily and rapidly for a minimal cost, the Commission's position, paradoxically, is that it is too early to make a decision on identification coding and that more trials are needed. The longer the introduction of identification coding is put off, the more confused and fragmented the situation will become. Therefore the EESC proposes that an identification coding task force be put in place to assess whether the existing harmonised procedures can be introduced, at least in the EU internal market initially. Ultimately this could lead to a global leadership opportunity.

The Distribution Chain

4.9 Once medicine is packaged, it must be a criminal offence to repackage it without the proper safeguards. Counterfeit packaging is the way in which counterfeit medicines enter the legal distribution chain. Packaging of medicines offered by legitimate internet pharmacies should be subject to inspection.

4.10 The EESC notes that the Directive proposes heavy penalties for failures to prevent the entry of falsified products into the distribution chain. The EESC recommends that sanctions be very severe. Businesses in default should be closed down.

Legal Uncertainties

4.11 The EESC is satisfied that legal uncertainties concerning import for export have been addressed in the draft Directive.

Falsification of Original API

4.12 As discussed in relation to the distribution chain, businesses complicit in falsification should be closed down.

The Illegal Supply Chain

4.13 The introduction of counterfeit products through the illegal supply chain is not addressed in this Directive. Yet the threat to public health is very serious, especially with respect to the Internet. The WHO statistics were given in paragraph 2.5. It was recently reported that in the UK one in four doctors had treated patients for the side effects caused by drugs bought online. Eight percent more may have done so, but were uncertain. In the Commission's recent Communication [4] there is reference to a 'Report on Community Customs Activities on Counterfeiting and Piracy' for 2007. Medicines seized by customs authorities increased by 628 % between 2005 and 2007. They relate not only to 'lifestyle' products, but also to treatments against life threatening diseases.

4.14 The focus should be on the internet. Internet pharmacies are only legitimate if they are registered and approved in each Member State, with the registration easily accessible on a public data base as is already the case for traditional pharmacies. While, in this domain, there is an obvious need for European and international cooperation, each country makes its own rules for the internet. Furthermore, the retail trade is not presently regulated by the EU, so the scope for Community action is limited and should be extended in this domain as is already the case for wholesalers and wholesale distributors.

4.15 The reasons why patients turn to the internet rather than their doctors are easily understood. A given medicine may not be available in a particular jurisdiction, the price of a medicine, particularly a counterfeit medicine, may be less on the internet and, finally, it may be less embarrassing to buy some medicines directly on the internet rather than face a potentially difficult interview with the doctor. Furthermore, a patient cannot be prosecuted for buying medicines on the internet.

[4] COM(2008) 666 final.

4.16 A communications campaign is needed in each Member State to direct the public towards registered internet pharmacies and away from criminal establishments. The campaign should highlight the potentially life threatening danger of products bought on the internet from unregistered sources. There should be publicity in every pharmacy, every doctor's surgery, every hospital and every authorised web site.

4.17 Severe financial and criminal sanctions should be applied to anyone found to be engaged in the business of counterfeit medicines. Rather in the same way that sex is policed on the internet, collaboration could be envisaged between public authorities (as described in paragraph 4.3) and various stakeholders such as ISPs, search engines, freight services and credit card companies to better identify illegal participants in the counterfeit medicine trade. As the Commission has emphasised, its Directives are only one piece of a multi-faceted enforcement effort.

General Provisions

4.18 The extent of counterfeiting and the sources of counterfeit medicines do not seem to be well understood. The draft directive should include plans to address these shortcomings in the systems of surveillance and supervision.

Brussels, 15 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities'

COM(2009) 83 final/2 — 2009/0035 (COD)

(2009/C 317/11)

Rapporteur: **Mr PEZZINI**

On 20 March 2009 the Council decided to consult the European Economic and Social Committee, under Article 44(1) of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities

COM(2009) 83 final/2 — 2009/0035 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 June 2009. The rapporteur was Mr Pezzini.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 15 July 2009), the European Economic and Social Committee adopted the following opinion by 144 votes to 10, with 17 abstentions.

1. **Conclusions and recommendations**

1.1 The EESC stresses the necessity of meeting the needs of small and medium-sized businesses and the craft sector to enable them to take up the wide variety of structural challenges presented by a complex society, fully implementing the European Charter for Small Enterprises ([1]), in a process which is consistent with the Lisbon Strategy.

1.2 The EESC notes the Commission's initiative to exempt micro-entities from administrative and accounting requirements, which are often burdensome and disproportionate to these businesses' structure, and draws attention to the positions previously adopted in EESC opinions 1187/2008 ([2]) and 1506/2008 ([3]).

1.3 The EESC considers it important that the initiative should be:

— **obligatory**: each State is required to introduce exemption criteria for micro-entities;

— **flexible**: Member States should be left the option of adapting the exemption criteria to their own specific situations, within common bounds;

— **simple**: changes should be easy to implement;

— **transparent**: sufficient transparency within the single market must, at all events, be secured.

1.4 While the EESC is aware that the Community does not have sole competence in this area, it feels that in order to preserve the integrity of the Single Market and avoid discrimination between entities operating therein, the concessions granted in future measures revising the 4th and 7th Company Law Directives should automatically apply to all micro-enterprises in the EU, in accordance with criteria clearly defined by each Member State.

1.5 In this regard, the EESC calls for an interinstitutional agreement with the same legal basis as the *Better Regulation* agreement ([4]), applying the guiding principle 'Think small first' and laying down a set of clear, transparent commitments at Community and national level to eliminate/cut red tape, to ensure that the principle is systematically applied in both legislative and implementing processes, especially when it comes to micro and small businesses.

1.6 Moreover, the EESC believes the Commission should submit a report to Parliament, the Council and the EESC three years after this proposal has entered into force, assessing the impact and operation of the exemption for micro-entities throughout the EU Member States and the savings actually made by European micro-entities.

([1]) Called for by the 2000 Lisbon European Council.

([2]) OJ C 27 of 3.2.2009, p. 7.

([3]) OJ C 77 of 31.3.2009, p. 37.

([4]) See EESC opinion in OJ C 182 of 4.8.2009, p. 30, Recommendation No 1, rapporteur: Mr Malosse, co-rapporteur: Mr Cappellini.

2. **Introduction**

2.1 Since the European Year of Small and Medium-sized Enterprises and the Craft Industry ([5]), which led to the creation of DG XXIII ([6]) and a number of European conferences ([7]), the Commission has made considerable endeavours to meet the needs of small and medium-sized businesses and the craft industry, enabling them to tackle the numerous economic and structural challenges facing them. Moreover, numerous EESC opinions have pointed this out ([8]).

2.2 Small and medium-sized businesses are often subject to the same rules as large businesses. Rarely have their specific accounting needs have been analysed, and the rules on financial information are a considerable financial burden as well as barriers to the effective use of capital, which would be better invested in production and jobs.

2.3 Although the aim of improving the quality of limited liability companies' accounts and increasing transparency is fundamentally important, the stricter obligations imposed on businesses are often particularly burdensome for micro- and small enterprises.

2.4 For this very reason, the Commission recently launched a proposal to exempt medium-sized companies from certain disclosure requirements and the requirement to draw up consolidated accounts ([9]); the proposal was welcomed by the EESC ([10]).

2.5 The high administrative costs arising from Community legislation limit European businesses' competitiveness. In addition, legislation on company law, accounting and auditing has not kept pace with the environment in which businesses operate. In practice, the directives ensuring the quality of financial reporting and auditing in the EU place high administrative burdens on businesses, especially smaller businesses.

2.6 According to the estimates made for the Commission, which do not seem to have a scientific or methodological structure, there are around 5,4 million micro-entities likely to be concerned by the exemption measure, and the overall administrative burden of complying with the administrative and accounting requirements laid down by the Directive is around EUR 6,3 billion per year.

2.7 The EESC underscores the Commission's undertaking to reduce administrative burdens for businesses by 25 % ([11]); it has unreservedly endorsed this commitment ([12]).

2.8 The EESC believes that 'The necessary steps should be taken to ensure that all Member States implement all directives in time and with a high level of quality, and to convince the national and regional governments and legislators to start their own simplification project targeting regulation, where "gold-plating" has happened by implementing European law' ([13]).

3. **The context**

3.1 As part of the fourth stage of the Simplification of the Legislation on the Internal Market (SLIM) initiative, the 1st and 2nd Company Law Directives were amended.

3.2 The European Council of 8-9 March 2007 stressed that reducing administrative burdens is important for boosting the European economy, especially considering the impact of this on small businesses. It stressed that a strong joint effort is necessary to reduce administrative burdens within the EU.

3.3 The European Council of 13-14 March 2008 called on the Commission to identify new 'fast track' legislative proposals ([14]) in order to reduce administrative burdens. Accounting and auditing were identified as key areas.

3.4 The European Small Business Act ([15]) presented by the Commission in June 2008, on which the EESC commented ([16]), also stressed the need for simplification for smaller businesses.

([5]) 1983.

([6]) Initially a Task Force was set up, headed by Ms Cresson, which then became the new DG XXIII.

([7]) Avignon, 1990; Berlin, 1994; Milan, 1997.

([8]) See, *inter alia*: OJ C 161 of 14.6.1993, p. 6; OJ C 388 of 31.12.1994, p. 14 and OJ C 295 of 7.10.1996, p. 6; OJ C 56 of 24.2.1997, p. 7; OJ C 89 of 19.3.1997, p. 27; OJ C 235 of 27.7.1998, p. 13; OJ C 221 of 7.8.2001, p. 1; OJ C 374 of 3.12.1998, p. 4; OJ C 116 of 20.4.2001, p. 20.

([9]) COM(2008) 195 of 18.9.2008.

([10]) OJ C 77 of 31.3.2009, p. 37, rapporteur: Mr Cappellini.

([11]) COM(2006) 689, 690 and 691 final of 14.11.2006.

([12]) OJ C 256 of 27.10.2007, p. 8.

([13]) OJ C 256 of 27.10.2007, p. 8, point 4.3.6 and OJ C 204 of 9.8.2008, p. 9, point 6.2.

([14]) Presidency Conclusions of the Brussels European Council of 13-14 March 2008, point 9.

([15]) COM(2008) 394 final of 25.6.2008.

([16]) OJ C 182 of 4.8.2009 p. 30, rapporteur: Mr Malosse, co-rapporteur: Mr Cappellini.

3.5 Moreover, one of the key measures included in the European Economic Recovery Plan presented in late November 2008 was reducing the burden on small and medium-sized enterprises (SMEs) and micro-entities by, *inter alia*, 'removing the requirement on micro-enterprises to prepare annual accounts' ([17]).

3.6 For its part, the European Parliament, in its Resolution of 8 December 2008 ([18]), advocated removing financial reporting requirements for micro-entities in order to enhance their competitiveness and release their growth potential, calling on the Commission to come forward with a legislative proposal that allowed Member States to exempt local and regional undertakings from the scope of the 4th Directive (78/660/EEC).

3.7 Directive 78/660/EEC has been amended several times over the past 20 to 30 years ([19]).

4. **Gist of the Commission proposal**

4.1 The Commission proposes to introduce the concept of **micro-entities**, already existing in some Member States, and to exclude them from the scope of the 4th (Accounting) Directive (78/660/EEC). To be granted the exemption micro-entities have to meet two of the following three criteria:

— maximum of 10 employees,

— balance sheet total less than EUR 500 000,

— turnover less than EUR 1 000 000.

4.2 For these very small businesses, accounting costs are particularly burdensome. Moreover, there is limited interest in their financial status as they mainly operate at local or regional level.

4.3 Including an exemption in the Accounting Directives would give Member States the option of determining which rules should be observed by micro-entities.

4.4 That is why the Commission has decided to amend the current Community legislation. Various measures have been proposed for **micro-entities**:

— relieving these businesses of the requirement to publish their accounts,

— giving micro-entities the option of still drawing up annual accounts on a voluntary basis, having them audited and sending them to the national register,

— giving Member States the option of removing micro-entities from the scope of the 4th Company Law Directive.

5. **General comments**

5.1 The EESC supports the aims of the Commission's initiative – exempting micro-entities from administrative and accounting requirements, which are burdensome and wholly disproportionate to the needs of micro-entities and the main users of financial information.

5.2 Particularly in the current economic crisis, the EESC considers that more effective action is urgently needed to help very small businesses all over Europe. The exemption measures for micro-entities should be applied promptly ('fast-track' system) ([20]) throughout the European Economic Area. These measures should be flexible and geared to individual national situations, and should be applied in a transparent manner with regard to physical and legal persons.

5.3 The Commission proposal should also provide a powerful incentive in the fight against undeclared work, as highlighted by the EESC on a number of occasions. The EESC has thus stressed 'the very negative impact of undeclared work on public finances, both in terms of social security funding and the loss of tax revenue' ([21]), while noting that 'the price of honesty must not be too high, otherwise the black economy could spread like wildfire' ([22]).

5.4 The EESC welcomes the Commission's simplification proposal, which aims to ensure that the regulatory framework helps to stimulate entrepreneurship and innovation in micro- and small businesses to make them more competitive and enable them to fully exploit the potential of the internal market.

([17]) Communication from the Commission to the European Council – A European Economic Recovery Plan (COM(2008) 800 final of 26.11.2008, point 4).

([18]) European Parliament resolution of 18 December 2008 on accounting requirements as regards small and medium-sized companies, particularly micro-entities.

([19]) It has been amended a dozen times, by: Directive 83/349/EEC, Directive 84/569/ECC, Directive 89/666/ECC, Directive 90/604/EEC, Directive 90/605/EEC, Directive 94/8/EC, Directive 1999/60/EC, Directive 2001/65/EC, Directive 2003/38/EC, Directive 2003/51/EC, Directive 2006/43/EC and Directive 2006/46/EC.

([20]) Fast-track: in order to achieve first results rapidly, three 'fast-track' proposals were tabled by the Commission. The first one, which aimed at aligning certain rules on expert reports in the case of domestic mergers and divisions with the rules contained in the Cross-border Mergers Directive (Directive 2005/56/EC), was approved by the Council and the European Parliament in November 2007 (Directive 2007/63/EC). In April 2008 the Commission also tabled two proposals to amend the First and Eleventh Company Law Directives and the Accounting Directives.

([21]) OJ C 101 of 12.4.1999, p. 30, rapporteur: Mr Giron.

([22]) OJ C 255 of 14.10.2005, p. 61.

5.5 The EESC is aware that the Community does not have sole competence in this area, and is mindful of the need to apply Article 5 of the Treaty on the subsidiarity principle. However, it feels that, to preserve the integrity of the Single Market and avoid discrimination between entities operating therein, future overhauls of the 4th and 7th Company Law Directives should not leave concessions to micro-entities to the discretion of individual Member States but ensure that these automatically apply to all micro-enterprises in the EU.

5.6 The EESC calls on the Commission, the European Parliament and the Council to ensure that, in the forthcoming overhaul of the 4th and 7th Company Law Directives, the guiding principle 'Think small first' is applied by means of an interinstitutional agreement which has the same legal basis as the *Better Regulation* agreement ([23]) and lays down a set of clear requirements to eliminate/cut red tape.

5.7 In addition, the EESC calls on the Commission to submit a report to Parliament, the Council and the EESC three years after this proposal has entered into force, assessing the impact and operation of the exemption for micro-entities throughout the EU Member States and the savings actually made by European micro-entities.

Brussels, 15 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([23]) See OJ C 182 of 4.8.2009 p. 30 (rapporteur: Mr Malosse, co-rapporteur: Mr Cappellini), Recommendation No. 1 and especially point 3.2: 'With regard to the *Think Small First* principle, the Committee reaffirms its previous position (OJ C 27 of 3.2.2009, p. 27) and calls for it to be made a binding rule in a form yet to be determined (e.g. code of conduct, interinstitutional agreement or Council decision) but which would be binding on the European Parliament, Commission and Council. An interinstitutional agreement on the same legal basis as the *Better regulation* agreement of 2003 would seem one interesting avenue …'

APPENDIX

to the opinion of the European Economic and Social Committee

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

'2.6 According to the estimates made for the Commission, there are around 5,4 million micro-entities likely to be concerned by the exemption measure, and the overall administrative burden of complying with the administrative and accounting requirements laid down by the Directive is around EUR 6,3 billion per year.'

Outcome of the vote on the amendment: 89 votes in favour, 40 votes against and 30 abstentions.

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part Five'

COM(2009) 0048 (COD)

(2009/C 317/12)

Rapporteur-General: **Mr RETUREAU**

On 14 May 2009 the Council decided to consult the European Economic and Social Committee, under Article 152 of the Treaty establishing the European Community, on the

Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, with regard to the regulatory procedure with scrutiny – Adaptation to the regulatory procedure with scrutiny – Part Five

COM(2009) 0048 (COD).

On 12 May 2009 the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

In accordance with Rule 20 of the Rules of Procedure, the European Economic and Social Committee appointed Mr Retureau as rapporteur-general at its 455th plenary session, held on 15 and 16 July 2009 (meeting of 16 July), and adopted the following opinion by 122 votes to two.

1. Conclusions

1.1 The EESC accepts the Commission's proposals concerning the regulatory procedure with scrutiny, although it wonders whether there may be a need for a specific procedure in the case of amendments which, without altering the scope and purpose of the instrument concerned, extend somewhat beyond the 'non-essential' criterion and have quite a significant social, economic or health-related impact.

1.2 However, it considers that scrutiny is difficult to put in place because of the way parliamentary work is organised.

1.3 The added value of the new procedure is not yet clear to the public, as the civil society organisations interested in the 'supplementary' rules introduced by the comitology procedure may find it difficult to keep track of the successive regulatory amendments to the original instrument.

2. Recap of the procedures for adaptation to the regulatory procedure with scrutiny in 2007 and 2008

2.1 The regulatory procedure with scrutiny by the Parliament has gathered pace in the last two years with the 'omnibus' adaptation of legal instruments previously adopted using the 'normal' comitology procedure. This latter procedure remains valid when the conditions for the procedure with scrutiny do not apply.

2.2 Council Decision 2006/512/EC of 17 July 2006 amended the Council Decision of 28 June 1999 laying down the procedures for the exercise of the implementing powers conferred on the Commission (1999/468/EC), notably by adding an Article 5a which introduces a new type of procedure known as the 'regulatory procedure with scrutiny'. This gives Parliament the 'right to scrutiny' of amendments made to the relevant legislative instruments under the comitology procedure, insofar as these amendments are 'non-essential' or concern the addition or deletion of provisions or elements deemed non-essential.

2.3 The comitology procedures which handle the follow-up to legislative instruments thus now include a new option that strengthens Parliament's scrutiny of the exercise of the implementing powers conferred on the Commission. The instruments concerned are covered by the co-decision procedure (Article 251 of the Treaty) or, in the financial sphere, the Lamfalussy process [1].

2.4 In a joint statement, the Commission, Council and Parliament listed a number of instruments that they felt should be adjusted as a matter of urgency in order to replace the initial procedure by the regulatory procedure with scrutiny. The joint statement also recognises that 'the principles of good legislation require that implementing powers be conferred on the Commission without time-limit'.

[1] Article 5a of the amended Decision 1999/468/EC introduces a new regulatory procedure with scrutiny for measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, *inter alia* by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements.

2.4.1 The Commission has opted to align the existing instruments covered by the new procedure by proposing 'omnibus' regulations, each of which aligns a set of instruments, rather than adopting a separate regulation for each instrument.

2.4.2 The first three sets were adopted at the end of 2007 and the fourth was adopted on 11 February 2008 ([2]). The Commission has thus proposed retroactive amendment of all the instruments which it considered were covered by the new comitology procedure with scrutiny, so as to incorporate the new procedure and, where appropriate, remove the time limitations on the implementing powers they confer.

2.5 For its part, in a resolution of 23 September 2008 the Parliament called on the Commission to review 14 listed instruments which it considered should be subject to the new procedure with scrutiny rather than the original comitology procedure. The present opinion concerns the Commission's proposed response to the resolution.

2.6 The Parliament also considered that 'the procedures for implementing Council Decision 1999/468/EC were highly unsatisfactory and that, with the exception of the procedures for the new regulatory procedure with scrutiny, still are, due *inter alia* to the way in which the comitology database has operated'. It noted that 'documents are often sent in bits and pieces and without a clear explanation of their status, and sometimes under misleading headings, e.g. draft implementing measures that have not yet been voted on in committee are sent under the heading "right to scrutiny", when they should be sent under the heading "right to information", which makes it unclear which deadlines apply' ([3]).

3. **The Commission proposals**

3.1 The present Commission proposal is designed to adapt to the regulatory procedure with scrutiny (known by its French acronym of 'PRAC') two of the instruments listed by the Parliament. The Commission also explains why it does not consider that the other 12 instruments need to be aligned, citing legal reasons relating to the nature of the instruments concerned.

3.2 The instruments are listed below:

Instruments for which alignment has already been carried out or proposed

— Directive 2000/25/EC of the European Parliament and of the Council of 22 May 2000 amending Council Directive 74/150/EEC ([4]).

— Directive 2001/43/EC of the European Parliament and of the Council of 27 June 2001 amending Council Directive 92/23/EEC ([5]).

— Directive 2004/3/EC of the European Parliament and of the Council of 11 February 2004 amending Council Directives 70/156/EEC and 80/1268/EEC. The Commission considers that these two directives became automatically subject to the regulatory procedure with scrutiny ([6]).

— Directive 2005/64/EC of the European Parliament and of the Council of 26 October 2005 amending Council Directive 70/156/EEC ([7]).

— Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 amending Council Directive 70/156/EEC ([8]).

— Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 amending Directive 1999/32/EC ([9]).

Instrument not covered by co-decision

— Council Regulation (EC) No 1083/2006 of 11 July 2006 repealing Regulation (EC) No 1260/1999 ([10]).

Instrument adopted after entry into force of the 2006 reform

— Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006. As this regulation was adopted after 23 July 2006, i.e. after the entry into force of the rules establishing the PRAC, it does not require any adaptation ([11]).

Instruments containing no provisions covered by the PRAC

— Directive 2001/46/EC of the European Parliament and of the Council of 23 July 2001 amending Council Directive 95/53/EC and Council Directives 70/524/EEC, 96/25/EC and 1999/29/EC ([12]).

— Directive 2002/33/EC of the European Parliament and of the Council of 21 October 2002 amending Council Directives 90/425/EEC and 92/118/EEC ([13]).

— Directive 2004/41/EC of the European Parliament and of the Council of 21 April 2004 repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC ([14]).

([2]) COM(2008) 71 final; COM(2007) 740 final; COM(2007) 741 final; COM(2007) 822 final and COM(2007) 824 final; OJ C 224 of 30.8.2008.

([3]) EP Committee on Constitutional Affairs, Rapporteur: Monica Frassoni A6-0107/2008. Proposal for a Decision, recital B.

([4]) OJ L 173 of 12.7.2000.

([5]) OJ L 211 of 4.8.2001.

([6]) OJ L 49 of 19.2.2004.

([7]) OJ L 310 of 25.11.2005.

([8]) OJ L 161 of 14.6.2006.

([9]) OJ L 191 of 22.7.2005.

([10]) OJ L 210 of 31.7.2006.

([11]) OJ L 378 of 27.12.2006.

([12]) OJ L 234 of 1.9.2001.

([13]) OJ L 315 of 19.11.2002.

([14]) OJ L 157 of 30.4.2004.

— Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 ([15]).

3.3 Lastly, the Commission acknowledges that the following instruments contain provisions which do have to be adapted to the PRAC:

— Directive 2000/15/EC of the European Parliament and of the Council of 10 April 2000 amending Council Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine ([16]), and

— Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 ([17]).

3.4 The purpose of the proposal is to adapt these two instruments to the regulatory procedure with scrutiny.

4. **General comments**

4.1 The EESC has followed with interest the introduction of a new comitology procedure: the regulatory procedure with scrutiny.

4.2 The EESC accepts the Commission's proposals, although it wonders whether there may be a need for a specific procedure in the case of amendments which, without altering the scope and purpose of the instrument concerned, extend somewhat beyond the 'non-essential' criterion and have quite a significant social, economic or health-related impact. The WEEE Regulation is a case in point.

4.3 The EESC considers that scrutiny makes the comitology procedure more democratic as regards monitoring the management of certain instruments that are subject to amendment, as it dispenses with more cumbersome procedures such as revision, which would involve needless work for the institutions. However, scrutiny remains difficult for Parliament to organise, because of the scheduling of its work.

4.4 The added value of the new procedure is not yet clear to the public, as the civil society organisations interested in the 'supplementary' rules introduced by the comitology procedure may find it difficult to keep track of the successive regulatory amendments to the original instrument.

4.5 The situation becomes even more complicated when regulatory amendments actually extend well beyond the 'non-essential' criterion – a concept which in some cases remains imprecise. The new rules on toxic products in waste electrical and electronic equipment are a case in point. The addition or deletion of hazardous substances from the list is to be subject to the procedure with scrutiny, but the EESC requested in its opinion ([18]) that the relevant businesses, workers and consumer organisations should be consulted when the list is amended, and that an impact study should be conducted, as in this specific instance the amendments appear 'essential'.

4.6 Subject to this remark, which may concern certain specific cases and can be applied in practice without having to amend the current rules, the EESC is able to accept the Commission's proposals.

Brussels, 16 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([15]) OJ L 108 of 24.4.2002.
([16]) OJ L 105 of 3.5.2000.
([17]) OJ L 204 of 11.8.2000.

([18]) COM (2008).809 final and CESE 1032/2009 of 10.6.2009.

Opinion of the European Economic and Social Committee on the 'Mid-term assessment of implementing the EC Biodiversity Action Plan'

COM(2008) 864 final

(2009/C 317/13)

Rapporteur: **Mr RIBBE**

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

Mid-term assessment of implementing the EC Biodiversity Action Plan

COM(2008) 864 final.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 June 2009. The rapporteur was Mr Ribbe.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 15 July), the European Economic and Social Committee adopted the following opinion by 162 votes to 3 with 7 abstentions.

1. **Conclusions and recommendations**

1.1 The EESC is very disappointed that the goal of halting the loss of biodiversity by 2010 will not be achieved.

1.2 However, it is encouraging that the Habitats and Birds Directives have resulted in positive developments for some habitats and species. This shows that European legislation on nature conservation works if it is properly applied.

1.3 All the same, it is unable to halt the continuing serious biodiversity loss outside protected areas resulting from economic practices which are completely legal. The EESC agrees with the Commission that the mainstreaming of biodiversity considerations has not yet gone nearly far enough.

1.4 Nevertheless, the EESC feels that no fundamental changes are needed to the objectives. Rather, the Commission and Member States must themselves show greater commitment to the existing appropriate objective of stopping biodiversity loss and restoring natural habitats, which was already defined in 2001, and defend it more energetically in future.

1.5 From the perspective of economic policy, nature conservation is often seen as an obstacle or a threat. The argument that biodiversity has economic value has yet to be taken on board in political practice. We would like to ask the Commission to explain how it intends to resolve this problem, for example in relation to the discussion on stronger internalisation of the external costs.

1.6 More publicity should be given to examples of positive developments showing the close correlation between regional economic development and biodiversity (e.g. tourism).

1.7 The Council decision to fund Natura 2000 from Structural Fund resources and the second pillar of the CAP has not worked; Member States are simply not giving nature conservation and biodiversity protection enough priority in the relevant programmes. For the 2014-2020 funding period, the EESC is in favour of giving biodiversity its own budget line. The incentive component of agro-environmental programmes must be reinstated.

1.8 In numerous regions and on many sites, such as moorland, mountains, coastal areas, grasslands and river basins, protecting and restoring natural habitats also helps significantly to combat climate change. Although there are clearly many other reasons for preserving biodiversity than combating climate change, climate and biodiversity policies should still be linked even more closely.

1.9 To enable species to adapt to changing climate conditions, their habitats need to be more closely inter-connected. We should consider creating a 'trans-European nature network'.

1.10 One major nature conservation problem is that more and more land is being built on or used for roads and thus 'closed off' to nature. This type of land use must be reduced in Europe.

1.11 Nature conservation enjoys extensive support in civil society, but people do not know nearly enough about it. The EESC is pleased that greater attention is finally to be given to raising awareness of the need for understanding of the reasons for biodiversity loss, and to promoting the necessary counter-measures. Such measures include improved information to consumers on the impact of various production processes and the development of sustainable production practices.

2. **The European Commission communication**

2.1 In its communication, the Commission comes to the worrying conclusion that, despite the Biodiversity Action Plan presented in 2006 and the 160 measures which it envisages, *'it is highly unlikely … that the overall goal of halting biodiversity loss in the EU by 2010 will be achieved. This will require significant additional commitment by the European Community and the EU Member States over the next two years, if we are even to come close to our objective'*. Since then, European environment Commissioner Dimas has admitted that the goal of halting biodiversity loss by 2010 will not be achieved!

2.2 Biodiversity loss at global level is described as *'disastrous'*. Not only are natural processes disrupted, but there are also severe economic and social impacts. The Commission notes that Europe shares the blame, not least for negative developments at global level. For example, *'new issues, such as expansion of the agricultural sector to meet increasing demand for food, and the emergence of alternative market outlets such as biofuels, have emerged as major challenges'*.

2.3 Although there are many reasons for the general lack of results achieved by biodiversity policy so far, the Commission sums it up in its mid-term review: *'Integration of biodiversity considerations into other sectoral policies remains a key challenge'*. One decisive factor in the sobering picture painted by the mid-term review is that no real progress has been achieved over the past few years on mainstreaming biodiversity concerns into other policy areas.

2.4 Results from the first major 'health check' of the Biodiversity Action Plan show that 50 % of species, and possibly up to 80 % of habitat types which are protected under the Habitats Directive ([1]) and are of European conservation interest *'have an unfavourable conservation status'*.

2.5 However, a few species protected under the Habitats Directive or the Birds Directive are also showing some incipient positive trends. The decline of some protected species has been halted: *'the Directive has clearly helped these species, especially through the designation of Special Protection Areas'*.

2.6 The Commission notes that the Natura 2000 network now comprises more than 25 000 sites, covering around 17 % of the total land area of the European Union. Trends are particularly negative outside protected areas.

2.7 The Commission discusses the initial findings of the study on *The Economics of Ecosystems and Biodiversity* (TEEB) ([2]) (the Sukhdev Report). On similar lines to the Stern report on climate change, this report concludes that biodiversity should be preserved not only in view of moral considerations but also economic ones. *'This loss of biodiversity and ecosystems is a threat to the functioning of the planet, our economy and human society. The annual welfare loss generated by the loss of ecosystem services by 2050 in a "business-as–usual" scenario has been estimated at 6 % of global GDP'*.

3. **General comments**

3.1 For the first time, the EU is now publicly admitting that one of the key environmental promises made to the public by both heads of states and governments and by the European Commission concerning the halting of biodiversity loss by 2010 will not be kept.

3.2 For the EESC this admission comes as no surprise, given that its opinion on the Action Plan the Committee agreed with the Commission's critical analyses and felt that all of the 160 proposed measures were fundamentally correct and necessary, while at the same time expressing serious doubts as to whether government departments, policies and politicians not directly involved in biodiversity policy were ready and committed to making the requisite efforts. Unfortunately, these doubts have now been borne out.

3.3 Unfortunately, the EESC's views on the biodiversity action plan remain just as true as at the time of their adoption two years ago at its plenary session. At the time, the Committee's exact words were as follows ([3]):

— The EESC and the Commission agree in their assessment of the situation: maintaining biodiversity is an essential, key task which does not only represent an ethical and moral obligation. There are also sufficient economic reasons why it is necessary to act more quickly and more effectively. The cost of the economic losses brought about by the decline in ecosystem services is already at the present time estimated at several hundred billion euros. This constitutes a waste of resources which our economies simply cannot afford to bear.

— Species decline in Europe is the result of millions of individual value judgements which have been taken in recent decades; the absolutely overriding majority of these decisions have been taken in accordance with existing laws. The share of responsibility for species decline in Europe which can be attributed to illegal measures is marginal.

— Despite the political promises which have been made, the trend as regards biodiversity regrettably continues to be negative; this cannot, however, be put down to a lack of knowledge about how to tackle species decline. What has been missing up to now is the political will to effectively implement the measures which have long been acknowledged to be necessary. The experience gained with the Natura 2000 network speaks for itself.

— The reasons which lie behind this situation are rightly identified by the Commission in its Communication and include *'governance failures and the failure of conventional economics to recognise the economic values of natural capital and ecosystem services'*.

— What happens in future will thus demonstrate whether, with the presentation of this action programme, the world of politics will now really find the strength to bring about the 'substantial changes' which are recognised as being necessary or whether, on the other hand, the fears of many nature conservationists will turn out to be true, namely that politicians are indeed once again discussing a highly-charged area of social policy but they go no further than paying lip service to the issues involved.

— The EESC therefore attaches particular importance to prioritising policy area 4, namely 'Improving the knowledge base', so as to ensure that both the general public and politicians are aware of the real consequences of their actions.

([1]) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive).

([2]) http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf.

([3]) OJ C 97, 28.4.2007, p. 6.

3.4 In its current communication, the Commission confirms many of the factors previously noted, which are continuing to impact on biodiversity loss. In view of this, no fundamentally new EESC opinion is needed; instead, we shall discuss aspects which are new or have changed over the past two years.

4. **Specific comments**

Legislative framework and governance

4.1 Recent years have clearly shown that EU nature conservation directives can be used to encourage positive developments, provided they are properly applied and that the concerns of landowners are properly dealt with ([4]). However, the EESC also notes that there are still many problems within the N2000 areas which need to be addressed. Besides, 'only' 17 % of the EU's land area is under the protection of the relevant EU directives.

4.2 Now that establishment of the NATURA 2000 network is, after considerable delays, finally nearing completion, European nature conservation is entering a new stage. Appropriate management plans must be drawn up for the designated areas. The EESC doubts whether sufficient human and financial resources are in place in the Member States to ensure that their development is planned and implemented at national level. It is vital that such plans be drawn up in close coordination with all social groups concerned, as this is the only way to secure acceptance for them.

4.3 Given the enormous pressure on land, which the Commission rightly notes, the question of whether extensive regeneration of destroyed biotopes is feasible remains unanswered. The EESC points out that at the Gothenburg summit, the heads of state and government promised to take steps not only to halt biodiversity loss by 2010, but also to restore habitats and natural systems. The mid-term review does not comment on this.

4.4 The NATURA 2000 network has only just been established, and already people are discussing how to withdraw individual sites or parts of sites from the network, mostly for infrastructure projects, many of which are co-financed by the EU. The Commission's communication actually mentions the best-known example – the Rospuda Valley in north-east Poland. Although the new Polish government is now looking for alternative Via Baltica routes, it is very clear that we are not even close to resolving the conflict between nature conservation and economic development.

4.5 In view of this, we can hardly doubt that EU departments will be faced over the next few years with a flood of applications for similar 'exemptions'. At present, the EESC does not feel that the Commission has the necessary human resources to process these requests or to find appropriate solutions.

4.6 In its opinion on the biodiversity action plan, the EESC itself pointed out that biodiversity is clearly still being lost from our man-made landscapes, notwithstanding good practices and what are described in EU legislation as good agricultural and environmental conditions - not as a result of illegal activity but in compliance with legislation, which is unacceptable.

4.7 For this very reason, there is also considerable controversy surrounding the 'cross-compliance criteria'. Together with good agricultural and environmental conditions and best practices, these should ensure that biodiversity issues are taken into account. However, given that much of the damage to biodiversity takes place in compliance with existing laws, one can easily understand the controversy surrounding these criteria. This point is backed up by the European Court of Auditors in its special report on cross compliance. The Member States, together with the Commission, must finally take action.

4.8 This also applies to many proposed laws which at first sight are of no direct relevance to biodiversity. In order to combat BSE/TSE, Regulation 1774/2002 prohibited leaving dead animals in the open countryside. This has resulted in a severe lack of food for scavengers such as wolves, bears or vultures. Sightings of vultures far from their few habitats is by no means a positive sign, but simply reflects the fact that hunger is forcing these rare animals to travel large distances. It was environmental groups and a Spanish MEP who drew attention to this problem in EU legislation – the Commission only responded after a very lengthy delay. It would seem that preliminary biodiversity impact assessments are not being carried out.

Political implications/funding

4.9 Especially outside protected areas, the conflict between economic land use and nature conservation/biodiversity remains unresolved. The Commission also points out that it has made various proposals in this respect as part of the health check on agricultural policy, for example making available *'additional rural development funding for inter alia biodiversity, via an increased transfer of money from the first to the second pillar of the CAP (i.e. modulation)'*. Unfortunately, the Council did not decide to adopt all of these proposals. The Member States are not taking enough of the steps which the EU acknowledges as necessary.

4.10 One such problem is the funding of the N2000 network, including compensation for special requirements. The EESC is very concerned that after programming by the Member States not nearly enough money has been made available to Natura 2000, resulting in extreme conflicts. It is therefore in favour of giving biodiversity its own budget line for the 2014-2020 period.

([4]) OJ C 97, 28.4.2007, p. 6.

4.11 Overall, the Committee strongly advocates better and more target-oriented financing of nature conservation. In its opinion on the biodiversity action plan, the EESC has already pointed out that:

— direct payments to farmers, which comprise the greater part of the agricultural budget, are not geared to promoting biodiversity, but are designed rather to prepare farmers to meet the challenges of world markets;

— *'as long as world-market conditions tend to hinder the widespread adoption of farming practices which are in line with the goals of nature conservation, special policy measures will be required'* which could, for example, mean that *'agri-environmental aid should be increased to a level where all farmers in the EU are prompted to switch to "green" production methods'* ([5]). Here, too, what has been achieved in reality lags behind the goals which have been announced.

4.12 We would ask the Commission to finally clarify the situation with regard to forthcoming CAP reforms and the budget. Agri-environmental programmes can only succeed when they offer economic incentives to farmers. Getting rid of the incentive component was a mistake, which must be reconsidered. The political message to farmers (and society) must be that we as a society appreciate when farmers go over and above legal requirements to preserve biodiversity.

4.13 Discussions are beginning in the Member States on how to develop agricultural policy, and these are – not least in view of the need to make more extensive use of renewable energy sources, including bio-energy – relevant to biodiversity, at both national, European and international level. The European Commission notes that *'a key challenge will be to ensure that the recommendations made in Sustainability Impact Assessments (SIAs) are acted upon and to enhance our understanding of the impact of EU consumption of food and non-food commodities (e.g. meat, soy beans, palm oil, metal ores) that are likely to contribute to biodiversity loss. This could lead to considering policy options to reduce this impact'*. The EESC calls on the Commission to work intensively on the relevant studies.

4.14 The post-2013 CAP reform will therefore show whether we can succeed in bringing more biodiversity protection and sustainability into agricultural policy.

Overarching and economic aspects

4.15 The EESC notes that consistent nature conservation efforts can also support climate policy objectives. For example, protecting and restoring moorlands and wetlands helps to combat climate change. The same applies to the use of European grasslands in all their various forms (such as the Dehesas on the Iberian peninsula). However, many of the agricultural activities needed to maintain such habitats have become less and less viable for farmers over the last few years – biodiversity has no marketable value! Prices do not reflect the environmental impact of manufacturing a product. European and national policies have not found an adequate solution to this problem yet.

4.16 For example, in May 2006, the very same month in which the Commission launched its biodiversity action plan, 15 of the 16 German Länder called for an amendment – i.e. watering down – of the EU's Nature Directives. The *Land* of Hesse in particular has continued to advocate such changes, invoking, among other things, the (economic) argument that industrialised countries cannot afford to comply with such rigorous nature conservation requirements. This shows that many politicians are unaware of the economic significance of biodiversity.

4.17 What is striking is the almost complete indifference of the public and politicians in response to the estimate in the TEEB Report that biodiversity loss could cost up to 6 % of global GDP, whereas the current financial and economic crisis – which has cost a far smaller percentage of GDP – has triggered crisis summits and billion dollar recovery programmes. One of the Commission's main tasks will be to raise awareness of the economic value of biodiversity together with its moral and ethical significance, and to translate this into actual policies.

4.18 Biodiversity in the Member States remains under intense pressure; one major nature conservation problem is that more and more land is being built on or used for roads and thus 'closed off' to nature. Land is still far too heavily used for such purposes, and the pressure on the countryside is constantly rising. Nature conservation concerns are at risk of being marginalised.

Awareness/Communication

4.19 In Section E. 4 of its communication ('Building public education, awareness and participation'), the Commission observes that *'only a minority of EU citizens considered that they were well informed on the subject of biodiversity loss'*. The same might be said of politicians and civil servants. These are the worst possible conditions for achieving political success. If the Commission and Member States are considering *'priority actions for a public communication campaign to be launched in support of national and other campaigns'*, they can count on the EESC's full support.

4.20 There are already many positive awareness-raising initiatives, including in cities, where people often have less direct access to nature. Such initiatives should be given more government support. For example, there is an annual 'Long Urban Nature Day' event in Berlin, attracting several hundred thousand people.

4.21 The Committee feels that it is important for the public to be made aware in as concrete and direct a way as possible of specific nature conservation issues, for example, by explaining locally where – and why – areas are designated as part of the NATURA 2000 network, which species occur there, how they can be protected, and by whom. The public must be able to truly experience and understand nature conservation. Not many people understand the concept of 'biodiversity', and it conveys very little to them.

([5]) 'The situation of nature and nature conservation in Europe' (OJ C 221 of 7.8.2001, pp. 130-137).

4.22 In the interest of consumer information, the EESC urges that producers be given the option of stating on product labels whether particular production processes favouring nature conservation have been used.

Active public involvement in environmental protection and biodiversity preservation is vital. Commission campaigns to promote more sustainable lifestyles are not enough. We also need strategies to equip consumers with practical tools enabling them to assess the impact of their daily actions, thus bringing about the necessary change in consumption patterns.

Such measures could include:

— including lessons with practical information on environmental protection and biodiversity in school curricula; and

— devising instruments to measure the impact of consuming particular foodstuffs on biodiversity (based on a shopping basket of selected daily products and possible alternatives) on a methodological basis of lifecycle analysis.

Brussels, 15 July 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 — Strategy for the internalisation of external costs'

COM(2008) 435 final/2

(2009/C 317/14)

Rapporteur: **Mr SIMONS**

On 8 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

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Strategy for the internalisation of external costs

COM(2008) 435 final/2.

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 20 May 2009. The rapporteur was Mr Simons.

At its 455th plenary session, held on 15 and 16 July (meeting of 15 July), the European Economic and Social Committee adopted the following opinion by 133 votes to six with three abstentions.

1. **Conclusions**

1.1 The Committee notes that the Commission has done a great deal of work on developing internalisation of the external costs of all modes of transport. The Committee acknowledges this, particularly given the difficulty of the task, but nonetheless points out that a number of hurdles remain in relation to practical application, it being particularly important to retain the existing broad base of support.

1.2 The internalisation of external costs must reduce pollution and nuisances caused by all existing modes of transport.

1.3 The Committee urges the Commission to ensure from the outset that transport undertakings from third countries are effectively included in the internalisation of external costs, so as to prevent them from occupying a more advantageous position.

1.4 The current situation, whereby the external costs of the individual modes of transport and users are not passed on, confers a competitive advantage on those modes of transport which have high societal costs. With internalisation on the other hand, these distortions of competition will be eliminated, causing a shift to more environmentally-friendly modes. The Committee considers it important to communicate this principle much more effectively, because it may also be associated with changes in supplier and user structures in transport.

1.5 The Committee agrees with the Commission that a framework needs to be established at Community level. The Committee feels that no Member State should be able to opt out of this.

1.5.1 The Committee feels that the framework should lay down conditions, such as the level of charges, which would be based on the standard of living, with a high degree of differentiation by area rather than by country, and with different timing arrangements; charges aimed at internalising external costs should comply with this framework, within a certain margin of tolerance.

1.5.2 Authorities responsible for levying charges, e.g. Member States or regional or local authorities, should then set the charges more exactly on the basis of their detailed knowledge of the location, within the margin allowed.

1.6 The Committee believes there is an urgent need for the Commission to submit specific proposals for the introduction of a European framework for internalisation for all modes of transport, and to arrange for further development and implementation by the Member States together with the European Commission, even during the crisis. The proposals should of course command the support of society and the transport modes and should take account of environmental concerns. Payments or levies should also be related to use and not to ownership of means of transport.

1.7 If the internalisation of external costs is put into practice, the Committee considers that revenue should be used, subject to compliance with national budgetary rules, for measures to reduce the external effects, such as directly related environmental damage or necessary medical treatment arising from modes of transport.

2. **Introduction**

2.1 The question of internalising external costs is not new. The British economists Pigou (1924) and Coase (1960) developed theories of the way in which the costs of positive and negative external effects could be incorporated via pricing into the market mechanism; Pigou's mechanism involved subsidies and charges; Coase suggested tradable property rights, albeit on strict conditions (transaction costs should be negligible or non-existent; damage should be measurable and the number of actors limited).

2.2 External effects also occur in transport, the guided movement of vehicles along transport infrastructure. Where there is a large number of actors, as in inland transport, Pigou's approach is to be preferred, particularly as, when it is applied to marginal external costs, efficient allocation takes place.

2.3 This subject was raised in an EC context from as early as the late 1960s. But given the state of economic theory at that time it was not possible to assess how accurately these effects could be measured and priced in practice. The aim at that time was to correct the supposed unequal conditions of competition for the various modes of transport.

2.4 But things did not stand still. Reference could be made to the 1995 Green Paper on transport pricing, the 1998 White Paper on A phased approach to a common transport infrastructure charging framework in the EU, the 2001 White Paper on European transport policy for 2010 and the 2006 mid-term review of the White Paper.

2.5 In 2006 the Commission was asked ([1]) to present, no later than 10 June 2008, and after examining all options including environment, noise, congestion and health-related costs, a generally applicable, transparent and comprehensible model for the assessment of all external costs and their allocation to the various modes of transport. This model was to serve as the basis for future calculations of infrastructure charges. The model was to be accompanied by an impact analysis of the internalisation of external costs for all modes of transport and a strategy for a stepwise implementation of the model for all modes of transport.

2.6 The aim was to internalise external costs for all modes of transport and thus set a fair price, so that users would bear the real costs they caused. Users would thus become more aware of the consequences of their action and would be able to modify their behaviour in order to reduce external costs.

2.7 The Committee has already looked at the internalisation of external costs in some of its past opinions. In a 1996 opinion the Committee pointed out that 'the different infrastructure and external costs of different modes of transport can lead to unfair competition if they are not imputed fully'. Thus, its opinion on the 2001 White Paper, the Committee states that it shares the Commission's view that 'the thrust of Community action should (therefore) be gradually to replace existing transport system taxes with more effective instruments for integrating infrastructure costs and external costs'.

2.8 In its opinion on the Mid-term review of the 2001 Transport White Paper the Committee expresses its agreement with the Commission's changed approach of moving from a policy of forced modal shift to 'co-modality' ([2]), a policy of optimising all modes of transport, making them more competitive, sustainable, socially beneficial, environmentally-friendly and safe, with more and better combinations.

2.9 In the light of this, the Committee considers it right that each mode of transport ([3]) should pay its total costs.

2.10 The Committee has issued a number of opinions on sustainable urban transport, including that on the Green Paper Towards a new culture for urban mobility ([4]) and its exploratory opinion on an Energy mix in transport ([5]). An extra dimension is added to the Committee's approach to the issue: the principle that the user pays becomes the polluter, or where appropriate the user, pays.

2.11 The essence of the proposed strategy is that the principle of the marginal societal cost price should be used as the general principle for the internalisation of external costs.

2.12 The principle requires that the transport price should be equal to the additional cost caused by one extra infrastructure user. In principle the additional costs should cover the costs of the user and external costs and lead to the efficient use of infrastructure and a direct link between the use of public resources and transport services. A charge based on marginal social costs would in this way lead to efficient use of existing infrastructure ([6]).

2.13 The Committee considers that the internalisation of external societal costs could have consequences. Therefore the social partners need to be involved in the discussion at the earliest possible stage to discuss how implementation is to take place in the various sectors.

3. **Summary of the Commission communication and Council conclusions**

3.1 With its Greening Transport package, comprising a general communication, a proposed amendment to the Eurovignette directive, a communication on limiting noise emissions from existing rolling stock on the railways and a strategy communication, the Commission aims to incorporate external costs (CO_2, air pollution, noise and congestion) into the price of transport, so that users will bear the costs they create.

([1]) Article 11 of Directive 2006/38/EC.

([2]) Section 1.2, final paragraph and section 9, fourth paragraph of the mid-term review.

([3]) All modes of transport coming under European Community rules, i.e. not military vehicles etc.

([4]) OJ C 224 of 30.8.2009, p. 39.

([5]) OJ C 162 of 25.6.2008, p. 52.

([6]) Based on Commission document COM(2008) 435 final on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Strategy for the internalisation of external costs.

3.2 Additional policies continue to be needed, such as a policy on energy sources, internal market policy and a policy to stimulate a technological innovation. Revenue should be invested in the reduction of external costs, e.g. by investing in research and innovation, green infrastructure and the development of public transport. A review should be carried out in 2013.

3.3 At its meeting of 8 and 9 December 2008 the Council stated that a gradual, fair, efficient and balanced approach should be adopted as regards the various modes of transport that would also be neutral from a technological point of view. It also notes that the Commission has proposed 2013 as the year in which the review of the implementation of the strategy will take place. The Council goes on to say that 'compliance with these principles is a precondition for ensuring public support for the internalisation of external costs'.

4. **General comments**

4.1 The Committee notes that the Commission has been taking action since 2006. It has held public consultations and workshops with stakeholders, submitted a proposal for a common framework for the internalisation of external costs, carried out an impact assessment and drawn up a strategy for the phased internalisation of the external costs of every mode of transport.

4.2 In short, the Commission has in a short space of time done a great deal of work on the internalisation of external costs, a dossier which can certainly not be described as straightforward. The Committee considers the Commission's working documents SEC(2008) 2209, SEC(2008) 2208 and SEC(2008) 2207 to be very sensible, apart from the conclusions they draw. It is a pity that the formal Commission communication does not make greater use of these documents, e.g. the best solutions arising from the analysis. The Committee considers that it would be worthwhile looking at the possibility of further developing the basic data from the Handbook on estimation of external costs in the transport sector.

4.3 The Commission and the Council consider that the most important thing is to maintain the support which exists in society at large, but more particularly in the modes of transport, for an objective, generally applicable, transparent and easily understandable system.

4.4 The Committee considers that account will have to be taken of a number of important conditions, such as technological developments, the societal impact of the introduction of the system, the effects on the Community's island, landlocked and outlying regions, the amount of investment in the sector and the contribution to the objectives of a sustainable transport policy.

4.5 The Committee agrees with the Commission that it is essential that revenue from the internalisation of external costs be earmarked for measures which, in order to promote the sustainable operation of transport modes in line with efforts to combine and optimise them, should preferably in the first instance be applied to transport modes where the contribution to combating pollution, noise and congestion is greatest.

4.6 Revenue should be used to prevent and/or mitigate undesirable external effects, e.g. for measures on the ground or to offset the cost of medical treatment directly related to transport use, or else for carbon sinks.

4.7 The Committee also considers it essential that the breakdown of external costs for each mode be known and duly recognised.

4.8 In the interests of fairness, the congestion costs of road transport should, for example, be allocated to both goods and passenger transportation.

4.9 In the context of the sustainable development of transport modes, the Committee calls for more emphasis on social issues when the internalisation of external costs is being discussed.

4.10 The Committee would also like to stress that the internalisation of external costs must not impact on employees' wages; the costs should be borne by the users of the transport mode.

4.11 The Committee therefore in principle endorses the Commission's philosophy of internalising all external costs ([7]). However, the desired effect will be achieved only if this philosophy is applied on the same scale wherever external costs arise.

4.12 The current situation, whereby the external costs of the individual modes of transport and users are not passed on, confers a competitive advantage on those modes of transport which have high societal costs. With internalisation on the other hand, these distortions of competition will be eliminated, causing a shift to more environmentally-friendly modes. The Committee considers it important to communicate this principle much more effectively, because it may also be associated with changes in supplier and user structures in transport.

4.13 The Committee agrees with the Commission that a framework needs to be established at Community level.

4.13.1 But the Committee believes that internalisation charges should have to comply, within a certain margin of tolerance, with a number of conditions. Points to consider here include the various types of external cost, the level of charges, which would be based on the standard of living, and a high degree of differentiation by area rather than by country, with different timing arrangements.

4.13.2 Authorities responsible for levying charges, e.g. Member States or regional or local authorities, should then set the charges more exactly on the basis of their detailed knowledge of the location, within the margin allowed, taking account of differences in the standard of living between areas.

([7]) The Committee points out that historic road vehicles, vessels and aircraft should be excluded.

4.13.3 In sea and air transport, internalisation of external costs will need to take account of the reality of global competition facing these transport sectors.

4.13.3.1 From a competition point of view, on the other hand, a single strategy and methodology should be applied simultaneously to the classic inland transport sectors operating within Europe – roads, the railways and inland waterways - with scope for differentiation in line with the characteristics of individual sectors.

4.13.3.2 This kind of internalisation is consistent with co-modality policy and the policy set out in the communication, and it brings '1992' (!), i.e. the completion of the internal market, closer.

5. **Specific comments**

5.1 In connection with inland waterways the Commission correctly refers to the Mannheim Convention as a regulatory framework worthy of consideration. This treaty applies on the Rhine, including the Swiss section of the river, and its tributaries. It is older than the Union treaties and, with a third country involved, therefore has priority ([8]). It prohibits charges on traffic.

5.2 The Committee, while aware of the constraints imposed by the deep world crisis, remains sympathetic to the mainly environmentally inspired idea of internalising external costs and feels that we should not allow ourselves to abandon this aim.

5.3 On the contrary, the Committee would like to see positive steps being taking even during the crisis, with the further development and refinement of the internalisation framework, as described in point 4.13.1. The Committee considers this a task which should be carried out in close cooperation between the European institutions, the Member States and business.

Brussels, 15 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([8]) Article 307 TEC.

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 telemedicine for the benefit of patients, healthcare systems and society'

COM(2008) 689 final

(2009/C 317/15)

Rapporteur: **Mr BOUIS**

On 4 November 2008 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on telemedicine for the benefit of patients, healthcare systems and society

COM(2008) 689 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 26 June 2009. The rapporteur was Mr Bouis.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 15 July), the European Economic and Social Committee adopted the following opinion by 160 votes, with three abstentions.

1. **Comments and recommendations**

1.1 The Committee welcomes the Commission communication which supports and encourages Member States in integrating telemedicine into their health policies.

1.2 The Committee endorses this move by the Commission aimed at building confidence in and acceptance of telemedicine, enhancing legal clarity in this area, solving technical issues and facilitating market development, while respecting the subsidiarity principle. Member States remain responsible for their own public health policy and for the deployment of telemedicine, as determined by their investment capacity.

1.3 In the Committee's view, more awareness should be raised among health authorities, professionals and patients, to whom consistent evidence of cost-effectiveness should be provided.

1.4 The Committee will keep an eye on research and development in this area as to whether it provides full assurances in respect of safety of use, simplified ergonomics and lower acquisition and usage costs. It notes the Commission's wish to support a large-scale pilot project on telemonitoring.

1.5 The Committee notes the difficulties in deploying telemedicine, despite the fact that under certain clearly defined conditions it can help improve the healthcare system for the benefit of patients, health professionals and social security bodies. It therefore thinks that its scope should be defined and that it should be given a sound legal basis.

1.6 The Committee would advocate sticking to simpler definitions of telemedicine procedures to ensure that confidentiality is guaranteed and the highest level of patient safety is sought.

1.7 The Committee welcomes the intention to establish a European platform in 2009 to support Member States in sharing information on national legal frameworks.

1.8 In the Committee's view, a medical act involving telemedicine – as a complementary technique – should comply with the rights and obligations attached to any medical act, and also take account of the obligations linked to its specific nature, such as providing information on the technical means of transmitting and securing data.

1.9 In the Committee's view, it is clear that broadband access [1] – of the same quality in all countries – and full connectivity are prerequisites to the development of telemedicine. Digital services in the regions, particularly in rural and outermost areas, must be bolstered to ensure equal public access to healthcare.

[1] OJ C 175, 28.7.2009, p. 8.

1.10 The Committee supports the Commission's intention to issue a policy strategy paper based on existing or emerging standards, aimed at ensuring the interoperability, quality and security of telemedicine systems.

1.11 The Committee would maintain that beyond the technical and organisational aspects, there is a need to develop exchanges on good clinical practice in the field of telemedicine.

1.12 The Committee welcomes the proposed three levels of action for the years ahead.

1.13 At Member State level, specific attention should be given to classifying the medical acts concerned and to their cost and levels of reimbursement.

1.14 As regards the countries that will be supported by the EU, piloting and assessment tools should be put in place in respect of the technical aspects and efficiency of telemedicine.

1.15 As for the actions to be undertaken by the Commission, the Committee would call on it to foster information and training programmes on the use of the new technologies, aimed at health professionals and the general public, to address the fears of users and build their confidence in these technologies.

1.16 The Committee regrets that specific attention is not given to the aspect of training health professionals. A structured programme of university-based and in-service training is crucial. Such training should not, however, produce *teledoctors*; rather, it should train all doctors in telemedicine.

1.17 The Committee urges the Commission and the Member States to fully comply with the recommendations in this communication and the proposed timetable of actions.

1.18 The Committee thinks that patient, consumer and health professional representative organisations should be involved in shaping the process of developing these new technologies. It deems it important to be involved in periodic progress assessments on the commitments made.

1.19 The Committee thinks that the deployment of telemedicine for the benefit of patients, healthcare systems and society should be seen in the context of the general development of health systems and policies.

2. **Gist of the communication**

2.1 *Background*

2.1.1 Telemedicine [2], i.e. the provision of healthcare services at a distance, can help improve the lives of patients and health professionals, whilst also tackling the challenges faced by healthcare systems (ageing populations, increasing prevalence of chronic diseases, older people remaining at home, patients in remote areas or with limited mobility, medical demography, disparities in the geographical distribution of healthcare, etc.)

2.1.2 Beyond improving patient care and healthcare system efficiency, telemedicine can also make a contribution to the EU economy given that this is a dynamic sector (in which SMEs are prevalent). However, the use of telemedicine is still limited and the market remains fragmented.

2.2 *The communication's approach*

2.2.1 The communication supports and encourages Member States in integrating telemedicine into their health policies, by identifying and helping to address the barriers hindering its use as well as by providing evidence aimed at raising interest in such services so as to win the acceptance of the medical community and patients.

2.2.2 Bearing in mind that the Member States are primarily responsible for the organisation, financing and delivery of healthcare and that they alone have the ability to make telemedicine a reality, while respecting the subsidiarity principle, the Commission has defined a set of actions to be taken by the Member States, the Commission itself and the relevant stakeholders.

3. **General comments**

3.1 While the Committee notes the scope of the Commission communication, it would highlight the benefit of computerising medical files, and point out that this issue ties in closely with the development of telemedicine.

3.2 The Committee supports the development of telemedicine as a way of meeting the overriding objective of universal equal access to quality healthcare. It notes its likely impact on the healthcare system and the practices of health professionals and feels that more care should be taken to guard against the risk of healthcare becoming a commercial commodity.

[2] Telemedicine encompasses a variety of services including teleradiology, telepathology, teledermatology, teleconsultation, telemonitoring and teleophthalmology, with the exception of telesurgery. However, for the purpose of the communication, health information portals, electronic health record systems and electronic transmission of prescriptions or referrals are not regarded as telemedicine services.

3.2.1 The development of telemedicine is a lever for standardising the collegial practices of medical practitioners and the organisation of healthcare via networks, as well as a means of improving the quality and accessibility of healthcare. Nevertheless, these changes should be anticipated and accompanied by consideration of the organisation, prioritisation and delegation of tasks and of establishing protocols for telemedicine practices.

3.3 The Committee welcomes the **three levels of action** proposed, while making the following comments.

3.3.1 Building confidence in and acceptance of telemedicine services

3.3.1.1 In the Committee's view, more awareness should be raised among health authorities, professionals and patients and their respective organisations by creating forums for discussion and by highlighting evidence of the effectiveness of telemedicine. Evidence of cost-effectiveness is needed here. It should be borne in mind that developing sustained use of telemedicine hinges on the level of reimbursement of the cost of these services and the remaining cost to be borne by patients.

3.3.1.2 The Committee points out that SMEs in this sector do not have the financial wherewithal for research and development. Thus public sector intervention and public-private partnerships constitute a suitable instrument for the large-scale deployment of telemonitoring projects. As regards telemedicine equipment, the Committee will keep an eye on its technical development with a view to ensuring that it guarantees safety, simplified ergonomics and lower acquisition and usage costs. This technical development should not be the sole preserve of manufacturers.

3.3.1.3 The Committee emphasises that the deployment of telemedicine, and telemonitoring in particular, raises new ethical concerns because it affects the patient-doctor relationship. In order to win acceptance of these techniques, which cannot replace human contact, it considers it crucial that the relationship between healthcare provider and patient is clearly defined for patients seeking human warmth, as well as clear, precise and reassuring explanations.

3.3.1.4 The Committee considers it essential to democratise the use of the relevant technical tools to allow patients to keep control of their own lives and choices.

3.3.1.5 Moreover, medical personnel dealing with patients by phone or PC should have received training in psychology, with a view to humanising the remote relationship and mitigating the fact that the physical presence that until now has underpinned the doctor-patient bond is absent.

3.3.1.6 The Committee notes with interest the Commission's intention to support, via its Competitiveness and Innovation Programme, a large-scale telemonitoring pilot project, involving payers of healthcare services. It underlines the fact that it is up to Member States to assess their needs and priorities in telemedicine by the end of 2009.

3.3.1.7 The Committee also endorses the funding of programmes such as *Ambient Assisted Living* (AAL) ([3]), implemented under Article 169 of the EC Treaty, and encourages Member States to participate in such programmes.

3.3.2 Enhancing legal clarity

3.3.2.1 The Committee notes that the deployment of telemedicine is proving difficult. This is despite the fact that – under certain clearly defined conditions – it can help improve the healthcare system for the benefit of patients, healthcare professionals and social security bodies: it constitutes an effective means of optimising the quality of healthcare due to the speed of interaction and because it helps make more efficient use of medical time. The Committee thinks that its scope should be defined and that it should be given a satisfactory legal basis.

3.3.2.2 The Committee would advocate sticking to simplified definitions of telemedicine procedures such as:

— **teleconsultation**: medical act undertaken in contact with the patient who interacts remotely with the doctor. The diagnosis may result in a prescription for treatment or medication;

— **teleexpertise**: diagnosis and/or therapy, carried out in the absence of the patient. This involves an exchange between several medical practitioners who make their diagnosis on the basis of data in the patient's medical file;

— **teleassistance**: medical act whereby one doctor provides assistance to another health professional who is in the process of performing a medical or surgical act. This term is also used in relation to assisting ambulance staff in emergency situations.

In respect of these medical acts, it is crucial to enhance legal clarity and ensure that data protection systems are bolstered and that the highest level of patient safety is ensured as regards the collection, storage and use of the relevant data.

3.3.2.3 The Committee has noted that the definition of medical acts and their implications in legal and judicial terms, as well as in respect of reimbursement, varies across the Member States. In the light of this, it points out that patients are free to seek a consultation and medical treatment in a different Member State than their own, regardless of the manner in which the service is delivered ([4]), i.e. including via telemedicine.

3.3.2.4 The Committee reiterates its call for the establishment of complaints procedures in the case of harm and clear arrangements for dealing with legal disputes, including at trans-national level, which should lead to the widespread take-up of a compulsory liability insurance system for all health professionals.

([3]) OJ C 224, 20.8.2008.
([4]) OJ C 175, 28.7.2009, p. 116.

3.3.2.5 The Committee welcomes the Commission's intention to establish a European platform in 2009 to support Member States in sharing information on national legal frameworks and on any changes in respect of telemedicine.

3.3.2.6 The Committee believes that telemedicine cannot and should not replace conventional medicine. It is a complementary technique, limited by the absence of clinical examinations. It is subject to compliance with the same rights and obligations attached to any medical act. Furthermore, particular attention should be given to the following aspects:

— the status of the health practitioner should be clearly indicated;

— the patient must benefit from the latest medical knowledge, regardless of his/her age, financial situation and pathology;

— the patient must be informed of the purpose and scope of the medical act and the means used;

— the patient must be able to give his/her free consent;

— medical confidentiality must be ensured;

— consecutive prescription must be recognised;

— questions asked and answers given by health professionals must be understandable by the patient;

— resulting documents must be secure and recorded in the medical file;

— continuity of care must be ensured;

— the medical act must be of at least equivalent quality to a traditional act;

— the absence of clinical examination should not be compensated by a proliferation of x-ray examinations or biological tests; and

— strict confidentiality must be ensured as regards the technical means of transmitting data and the way in which they are processed by medical and paramedical staff.

More specifically, telemedicine must also include the provision of information on the technical means used to transmit the data concerned.

3.3.3 Solving technical issues and facilitating market development

3.3.3.1 In the Committee's view, broadband access ([5]) – required for ensuring maximum security – and full connectivity are a prerequisite for the development of telemedicine. Health professionals and patients need a guarantee that the technology used is secure and easy to use if they are to have confidence in telemedicine.

3.3.3.1.1 Digital services in the regions, particularly rural and outermost areas, must be consolidated, as telemedicine requires an efficient framework, especially as communities in such areas are particularly concerned.

3.3.3.1.2 Should health professionals lack broadband access, their response time would be unacceptable and they would be unable to transmit large files; poor quality information can create serious medical risks.

3.3.3.2 The Committee supports the Commission's intention to issue a policy strategy paper in cooperation with Member States on ensuring the interoperability, quality and security of telemonitoring systems based on existing or emerging standards at European level. In the Committee's view, given that these technologies are constantly evolving, only regular assessment of the reliability of the equipment is likely to instil confidence.

3.4 The Committee believes that while the deployment of these technologies represents an opportunity for the economy overall, its impact on the fragile funding of health systems should be assessed; moreover, EU aid for research and development would be useful. It feels that the programme *ICT for ageing* ([6]) should in future cover the specific features of telemedicine.

4. **Specific comments**

4.1 Given that telemedicine should not be considered merely in terms of the development of e-commerce – as it remains a fully-fledged medical act – the Committee welcomes the proposed **three levels of action** for the years ahead.

([5]) OJ C 175, 28.7.2009, p. 8.

([6]) Under FP7 (7th Framework programme).

4.1.1 At **Member State** level, the Committee points out that attention should be given to classifying the medical acts concerned and to reimbursement. Indeed, not all health insurance systems have included telemedicine as a medical act and are cautious as regards the conditions for its prescription.

4.1.1.1 Clearly, given the cost of investment, public health institutions and/or bodies responsible for health policy must seek possible means of sourcing and securing funding, via the platform for exchange between all the relevant stakeholders. Nevertheless, the Committee is concerned about the risk of patients' health insurance contributions rising considerably on the pretext of this development.

4.1.2 As regards the **Member States that are to be supported** by the EU, the Committee points out that given the varying regulations, practices and usage across these countries, an analysis of the Community legal framework that may be applied to telemedicine services should be published in 2009.

4.1.2.1 Beyond this analysis, the Committee would call for piloting and assessment tools to be set up with EU help. It would also be useful to identify strategic coherent objectives to achieve the visibility required by policymakers. This visibility requires a medical and economic assessment adapted to the challenges of demographics and of developing healthcare systems for the benefit of patients.

4.1.3 As for the actions to be undertaken by the **Commission**, the Committee would call on it to foster educational programmes aimed at familiarising patients with telemedicine practices and the new tools involved, in order to address the fears of users and the related issues of confidence. This is particularly important given that such patients are often older people.

4.1.3.1 The Committee regrets that the Commission does not devote specific attention to the aspect of training healthcare professionals for the purpose of familiarising them with the new conditions under which they will practise their profession. To achieve continuity and coordination of care, the new tools of doctor-patient dialogue also need to be mastered.

4.1.3.1.1 The Committee maintains that in the field of telemedicine, as in many others, training tailored to each category of health professional should be considered a major tool for change. There is a crucial need for a structured programme of university-based and in-service training aimed at optimising the use of telemedicine to enhance the quality of healthcare. A sustained public information campaign will also be required.

4.1.3.1.2 The Committee also notes that the interactive and inter-professional nature of the use of these new technologies constitutes in itself a teaching aid conducive to self-learning as part of a developing partnership.

4.1.4 The Committee considers it vital that telemedicine be considered a fully-fledged medical practice, rather than a fashion or a substitute, with regard to technological research, the development of equipment and software, the economic aspect of supplying equipment and of reimbursement, and acceptance of and confidence in telemedicine. Harmonisation and approval should be provided for to facilitate contacts between health professionals and the involvement of patients, by creating a convivial environment.

5. **Conclusions**

5.1 Telemedicine constitutes a cultural change and as such requires suitable communication. New professions may be spawned by this development.

5.2 The Committee thinks that the deployment of telemedicine should be seen in the context of the development of health systems and policies.

5.3 Health system users are set to become increasingly responsible for their own health. Patient and health-sector professional representative bodies will therefore need to be involved in shaping the process of developing and funding these new technologies.

5.4 It is important for the Committee to be involved in periodic progress assessments on the commitments made: beyond the operational development of telemedicine and the resources provided, this is a matter of equal access to healthcare.

Brussels, 15 July 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 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws'

COM(2008) 816 final — 2008/0246 (COD)

(2009/C 317/16)

Rapporteur: **Mr Hernández BATALLER**
Co-rapporteur: **Mr RUSCHE**

On 12 February 2009, the Council decided to consult the European Economic and Social Committee, under Article 71 of the Treaty establishing the European Community, on the

Proposal for a Regulation of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

COM(2008) 816 final — 2008/0246 COD.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 26 June 2009. The rapporteur was Mr Hernández Bataller and the co-rapporteur was Mr Rusche.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 16 July 2009), the European Economic and Social Committee adopted the following opinion by 65 votes to 0, with 2 abstentions.

1. **Conclusions and recommendations**

1.1 The EESC endorses the Commission proposal because the regulation's implementation would, in general terms, boost the internal market and passengers' rights, especially the rights of passengers with disabilities.

1.2 The Committee regrets, however that the proposal does not give specific and more detailed coverage to the situation of people with disabilities or to higher levels of protection for fundamental rights and consumers' economic rights.

1.3 With regard to people with disabilities, a framework should be established to guarantee accessibility in all circumstances, within the terms suggested by the EESC in this opinion.

1.4 Where safety is concerned, the highest possible level should always be applied, under the regulatory framework currently in force or under the framework that the EU Member States intend to apply in this field.

1.5 As regards other fundamental individual rights, such as the protection of privacy in databases, this should also be covered by a specific regulation that strengthens guarantees.

1.6 In the field of consumers' economic rights, substantial improvements need to be made to a number of aspects of the legislation under consideration, such as alternative transport services and reimbursement, compensation of the ticket price, passenger information and complaints.

2. **Background**

2.1 Article 38 of the Charter of Fundamental Rights of the European Union [1] stipulates that Union policies shall ensure a high level of consumer protection. Meanwhile, Article 3 TEC establishes the strengthening of consumer protection as one of the activities of the Community, and Article 153 calls for the Community to protect the interests of consumers and ensure a high level of consumer protection.

2.2 In its White Paper on *European transport policy for 2010: time to decide* [2], the Commission proposed to establish the rights of passengers on all modes of transport, setting common principles for all transport modes [3] and identifying the need to strengthen a number of rights, such as specific measures for people with reduced mobility, automatic and immediate solutions when travel is interrupted (long delays, cancellations or refusal of carriage), passenger information obligations, and treatment of complaints and means of redress.

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(1) OJ C 303, 14.12.2007, p. 1.

(2) COM(2001) 370, 12.9.2001.

(3) Similar to those set down in Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, OJ L 46, 17.2.2004.

2.3 In 2006, the European Commission launched a public consultation on maritime passenger rights, which partly focused on the protection of the rights of persons with reduced mobility during journeys by sea and inland waterway. The majority was in favour of a common minimum level of protection for passengers' rights throughout the EU, irrespective of the mode of transport or whether a journey takes place wholly within a single Member State or crosses an internal or external border.

2.4 Moreover, the overall conclusions of an independent study [4] were that the protection of passengers in the EU was not fully satisfactory owing, among other things, to a lack of uniformity regarding the extent and depth of protection of the rights of passengers, the lack of a framework of immediate and predefined solutions in cases of cancellations and delays, and the lack of information to passengers about their rights in the case of a critical event.

2.5 The impact assessment essentially covered principles of compensation and assistance in the event of cancellations and delays, rules of accessibility, non-discrimination and assistance to disabled persons and persons with reduced mobility, quality standards and information obligations, rules for handling complaints and for monitoring compliance.

3. **Commission proposal**

3.1 The proposed regulation establishes common minimum rules regarding non-discrimination between passengers with regard to transport conditions offered by carriers, non-discrimination and mandatory assistance for disabled persons and persons with reduced mobility, the obligations of carriers towards passengers in cases of cancellation or delay; minimum information to be provided to passengers, the handling of complaints, and the enforcement of passengers' rights.

3.2 The proposal will apply to commercial passenger maritime and inland waterway services, including cruises, between or at ports or any embarkation/disembarkation point situated in the territory of a Member State to which the Treaty applies.

3.3 It sets down obligations for carriers in the event that travel is disrupted, relating to the provision of information, right to assistance, re-routing or reimbursement, compensation of the ticket price and other measures to aid passengers.

3.4 The proposal stipulates that each Member State shall designate an independent body or bodies responsible for the enforcement of the regulation, which can take the measures necessary to ensure that the rights of passengers are respected, including compliance with the accessibility rules.

4. **General comments**

4.1 The EESC welcomes the minimum common rules contained in the proposal for a regulation, and hopes that the future will see a move towards greater, better protection for consumers, as stipulated by the EC Treaty. The Commission should expressly make clear that tourist excursions lasting less than one day are excluded from the scope of the proposal.

4.1.1 It is a bold proposal which, in line with the Commission's most recent approaches, places consumers at the heart of the internal market, seeing them as the end-recipients of the processes to open up national markets.

4.1.2 In addition to establishing a set of rules and principles guaranteeing the economic rights of maritime and river transport passengers at intra- and supra-national levels, the regulation sets down a system for recognising and protecting the rights of the public in general.

4.1.3 Moreover, the proposal supplements the legislation of many EU Member States which either does not deal with the issue or does so with a measure of uncertainty, meaning that the rights of disabled or elderly persons are not effectively protected. This affects systems for accessibility, information and assistance on the ship, as well as advance information, which could clearly be improved in many instances.

4.1.4 However, the EESC does not agree that Member States should be able to exclude services covered by public service contracts from the scope of the regulation: these are the services that are used most by citizens and potentially needed most by disabled persons. The Commission could include a subparagraph to follow points 19a) and b), calling on the responsible authorities to consider a scheme for automatic compensation in such cases.

Notwithstanding the existing legislation on maritime safety (Directives 1999/35/EC; 98/18/EEC and 98/41/EC), the EESC believes the regulation should expressly include passengers' specific, independent right to safety.

To this end, the concept of safety should cover accessibility in this area too; in other words, accessibility should be guaranteed not only during passengers' embarkation/disembarkation but also throughout the journey.

[4] Independent study commissioned by DG TREN in 2005-2006 on the Analysis and assessment of the level of protection of passenger rights in the EU maritime transport sector.

Guide-dogs, which are essential to their disabled owners, enabling them fully to exercise their right to free movement and mobility, must also be expressly permitted at all embarkation points and on all journeys falling within the scope of this regulation.

4.1.5 The EESC reminds the Commission of its duty to adopt and propose, at Community level, any measures needed to ensure that disabled persons and persons with reduced mobility have the same right as all other citizens to free movement, freedom of choice and non-discrimination. The 'social disability model', also covering obesity, should be implemented, so that transport modes can be used by everybody.

4.1.6 With regard to the legal basis (Articles 70 and 81 of the Treaty), the EESC believes that Article 153 of the Treaty should also be mentioned, as it calls for a high level of consumer protection in the activities of the Community.

4.1.7 The EESC considers it important that a regulation has been selected as the legal instrument, as the rules established by the proposal must be applied in a uniform and effective manner across the European Union to ensure both an adequate level of protection for maritime passengers and a level playing field for carriers.

4.1.8 The EESC agrees with the European legislators that co-regulation or self-regulation 'will not be applicable where fundamental rights or important political options are at stake or in situations where the rules must be applied in a uniform fashion in all Member States' ([5]). The proposal therefore complies with the principles of subsidiarity and proportionality.

4.1.9 However, with regard to Chapter III, the objective of guaranteeing uniform conditions for economic agents in the internal market can only be achieved in a restricted manner, as the regulation gives the Member States substantial leeway when it comes to rights in the event of delay or cancellation. The report to be drawn up by the Commission at the latest three years after the entry into force of the Regulation (Article 30) should specifically examine whether any disparity in legislation in this field affects competition or the proper running of the internal market.

4.1.10 The EESC acknowledges that transport primarily for the purposes of tourism, especially excursions and sightseeing, does not fall within the scope of the Regulation. Consideration should, however, be given to the situation of passengers who miss their connections due to problems at one stage of their journey.

4.2 The EESC stresses the importance of the ticket serving as proof of the conclusion of the transport contract, and considers it significant that the rules set down in the Regulation are considered imperative, unwaivable rights for passengers, without prejudice to the current body of protective legislation, particularly with regard to unfair terms ([6]) and unfair commercial practices ([7]).

A specific solution should be sought for derogating from the current, almost universal obligation for disabled travellers to inform carriers no less than 48 hours in advance of their intention to travel on a given route. Alternatively, and where appropriate, this obligation should be amended in a manner that is as favourable as possible to people with disabilities. This strict deadline for people with disabilities could clearly prevent them from fully benefiting from certain rights linked to the free movement of persons, such as the right to leisure, or the right to deal with any emergency situations in which they might be involved.

The EESC calls for some flexibility to be permitted in the notification system for on-board assistance. This mode of travel does not require passengers to book in advance, and imposes an obligation on persons with disabilities to notify their need of assistance in advance, which could breach their right to equal treatment. A distinction should, therefore, be made between long-distance and short-distance journeys, or the type of boat/ship used for transport. The European Commission should oblige carriers to provide the passenger with confirmation that notification has been received, to ensure that the passenger can prove that he or she did actually notify his or her assistance needs, in the event of a breakdown in the information transmission system.

4.2.1 In order to exercise the rights laid down in the United Nations Convention of the Rights of Persons with Disabilities, these people should have access to assistance at ports, at embarkation and disembarkation points, and on passenger ships. The EESC fully agrees that in the interests of social inclusion, this assistance should be free of charge, in line with Article 26 of the Charter of Fundamental Rights regarding the integration of disabled people.

4.2.2 The EESC therefore considers that the derogations for the refusal of carriage of persons with disabilities or reduced mobility should be based on objective, non-discriminatory, transparent, verifiable criteria.

([5]) European Parliament, Council and Commission Interinstitutional agreement on better law-making (2003/C 321/01), point 17.

([6]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. OJ L 95, 21.4.1993, p. 29.

([7]) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, OJ L 149, 11.6.2005, p. 22.

4.3 The EESC welcomes the provision in Article 8 of the regulation, on the basis of dialogue and consultation between civil society organisations and public authorities, under which carriers and organisations of disabled persons and persons with reduced mobility, and enforcement bodies, shall establish access rules. Quality standards should also be set in cooperation with associations of consumer organisations, in line with Article 22 of the proposal, taking into account the recommendations of the International Maritime Organisation and other international bodies with powers in this area.

4.4 The provision for a charge to be levied, as set down in Article 9.3 of the proposal, runs counter to the principle of not charging in the interests of inclusion, particularly when this is done unilaterally, as specified by the text. Nonetheless, the separation of accounts is a natural result of ensuring minimum transparency, although the audited annual overview should be made available to disabled people's organisations and consumer associations. However, the EESC recommends that an assessment be carried out to determine whether the burden involved in drawing up such an account should be shouldered by small and medium-sized enterprises.

4.5 The compensation in respect of wheelchairs and mobility equipment complies with the regulation's purpose of ensuring protection, as does the provision to make replacement equipment available to interested parties. Compensation should be full and should cover all damages incurred.

4.6 The obligations in the event of disruption to travel, as uniform minimum rules and given the lack of current legislation, are reasonable. The EESC can accept that, at Community level, there should be a degree of equivalence with rules protecting air transport passengers, but would like to see a recommendation to achieve the highest level of protection as soon as possible.

4.6.1 Automatic compensation of the ticket price, could prove to be a fair system, provided that it operates flexibly and efficiently. In the future, the system should move towards higher compensation percentages where delays are concerned.

4.6.2 The provision of Article 20 of the proposal, under which the legislation shall not apply if the delay has been caused by '*exceptional circumstances*', should be clarified. This should be clarified in line with ECJ case law ([8]), insofar as the provision does not apply to a technical problem occurring on the ship and causing the cancellation of travel, unless this problem derives from events which, by their nature or origin, are not inherent to the normal performance of the activity of carrier. Moreover, simple compliance by the carrier with the minimum maintenance requirements for a ship should not alone serve as proof that the carrier has taken all '*reasonable measures*' and is thus exempted from the obligation to pay compensation. The nautical conditions for each transport service should also be taken into account here.

4.6.3 In any event, the provision of Article 21, whereby nothing precludes passengers from seeking damages in respect of loss resulting from cancellation or delay of transport services before national courts, is fully in line with the fundamental right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights.

4.7 Information is important for passengers and should be accessible and in line with technological developments; the proposal is therefore relevant in this regard.

4.8 With regard to complaints, provided that they concern civil and/or commercial damages, reference should be made to the extrajudicial consumer organisations set up on the basis of Commission Recommendation 1998/257/EC of 30 March, or at least to bodies that meet the principles of independence, transparency, contradiction, effectiveness, legality, freedom and the possibility of representation.

4.9 National enforcement bodies should be empowered to fully enforce an effective, dissuasive and proportionate system of sanctions which, in all events, includes the possibility of ordering the payment of compensation to affected passengers as a result of having lodged a complaint.

The regulation should include the obligation to provide accessible, adequate and relevant information on any sanctions that might apply and on the passenger complaints procedure.

4.10 With regard to the protection of personal information and the free movement of data ([9]), the EESC shares the Commission's concern for strict application of existing legislation in order to guarantee passenger privacy, in line with Directive 95/46/EC and ECJ case law. This is particularly relevant in the case of personal data that could be transmitted to third countries in the context of transport services. At any time, those whose details are on file should be made aware of this fact and of their right to access the file and to request the rectification or removal of data concerning them.

([8]) Judgment of 22 December 2008, case C-549/07 (Friederike Wallentin-Hermann/Alitalia-Linee Aeree Italiane SpA).

([9]) Right to privacy, Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

4.11 The EESC reminds the Commission of the need to review Directive 90/314/EEC, so as to bring it more closely into line with this proposal and other secondary Community law, and to:

— update the definitions and explanations of terms such as 'inclusive price', 'package' and 'pre-arranged combination';

— define more clearly the exact responsibility of the operator and the agent in the event of breach of contract or defective performance thereof, irrespective of whether the operator or agent has provided the service in question directly or indirectly;

— establish clearer, more comprehensive compensation for consumers in the event that the organiser cancels the contract.

4.12 Furthermore, the EESC reminds the Commission of the need to make explicit reference in the Regulation to the directives on maritime and inland waterway transport, which seek to achieve a high level of protection specifically for people with reduced mobility, and to adjust their geographical scope of application where necessary.

Brussels, 16 July 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 concerning a European rail network for competitive freight'

COM(2008) 852 final — 2008/0247 (COD)

(2009/C 317/17)

Rapporteur: **Mr FORNEA**

On 19 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 Regulation of the European Parliament and of the Council concerning a European rail network for competitive freight

COM(2008) 852 final — 2008/0247 (COD).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 26 June 2009. The rapporteur was Mr Fornea.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 15 July 2009), the European Economic and Social Committee adopted the following opinion by 164 votes to2 with 1 abstention.

1. **Conclusions**

1.1 The EESC welcomes the Commission's Proposal for a Regulation as a step forward for supporting the setting up of international corridors for rail freight carriage and for the development of this mode of transport in Europe.

1.2 In order to mobilise energies around rail freight corridor development, **concrete political action is required at corridor level**, independently of any legislative process. Regulation alone is not sufficient to promote rail freight corridors. Securing **public and private investments to increase the overall quality, efficiency and capacity of the infrastructure** should be among the first priorities, as well as the full implementation of the 1st and 2nd railway package all over the EU.

1.3 **Efficient high-level coordination** is necessary on each relevant corridor for progress in rail infrastructure improvements, making it most essential to get all transport ministers along a certain corridor together. After intergovernmental discussions, terms and commitments from the Member States should be set up. The Transport Commissioner himself should play a more active role in mobilising ministers along individual corridors, in the framework of a coordinated EU level policy action.

1.4 The EESC agrees that advanced **capacity reserves should not be mandatory** but defined by the infrastructure managers, if such reserves are considered necessary. Forcing infrastructure managers to reserve capacity in advance may result in a waste of capacity rather than optimisation. Infrastructure managers should however retain the possibility to reserve capacity.

The EESC considers that flexibility should be given to infrastructure managers to **apply rules of priority in a pragmatic way**. Here it is important to 'minimise overall network delay', rather than giving priority to one type of traffic over the other. In fact what is needed is that, whatever rules apply, operators get transparency over the rules applied to delayed trains from infrastructure managers.

1.5 **All concerned parties should be compulsorily consulted or be part of the governance body of the rail freight corridors**: infrastructure managers, railway undertakings, representatives of the Member States, relevant trade unions, customers and environmental organisations. Rail operators should be fully represented in the governance of corridors, because they are closer to the market and as they likely to have to implement improvement decisions or be affected by them.

1.6 **The use of the one-stop-shops should not be mandatory for railway undertakings**, to allow competitions between various infrastructure entities. The traditional way of requesting a train path via each national infrastructure manager or via one lead-Infrastructure Manager should be kept at least as a fall-back solution in case the one-stop-shop fails.

1.7 **Authorised applicants should not be allowed on the whole corridor, if one country on the corridor does not allow them nationally**. The Commission needs to study in detail the issues related to the authorised applicants in order to provide the public with a full understanding of the economic and social consequences resulting from this provision. The EESC is not necessarily against the concept of non-discriminatory access to infrastructure, but considers that, in this particular case that more research and consultations with Member States governments, European and national social partners, rail service customers as other concerned civil society organisations are needed.

1.8 **Belonging to the TEN-T Network should not be an exclusive criterion for the choice of freight corridors**. The corridors should not be defined from the outside, only based on political and geographical criteria: a flexible and market-driven corridors choice should be guaranteed. The selection of corridors should be based on market objectives, covering important existing or potential freight flows. Market and cost/benefits should be the drivers.

1.9 **The possibility to extend the selection beyond the TEN-T network should be inserted in the regulation**. For example, if a non-TEN-T section is important for rail freight dynamism, possibility should be given to include it from the start in the corridor and later in TEN-T.

1.10 **The concept of strategic terminals is anti-competitive**. This concept may lead to a reinforcement of the strong position of the so-called strategic terminals to the detriment of the ones considered as 'non-strategic'. Reference to strategic terminals should be eliminated from the Regulation proposal in order to give a chance to the non-strategic terminals of today to develop and maybe become strategic in the future.

1.11 Any person working on these freight corridors should not be put in a position where the free movement of goods clashes with the exercise of their fundamental rights.

2. **The Commission's Proposal**

2.1 The European Commission has committed itself to speeding up the creation and organisation of a European rail network for competitive freight that is based on the international rail freight corridors. In order to achieve this goal, the Commission decided to introduce the present proposed Regulation, after an extended process of public consultation and options evaluation through an Impact Assessment (IA) study. The IA showed that a legislative approach would provide the best economic results, as compared to a voluntary approach, that involves a greater risk of not achieving the proposed targets.

2.2 In the Regulation, the provisions are mainly addressed to the relevant economic actors, the infrastructure managers and the railways undertakings, and relate in particular to:

— the procedures for the rail freight corridor selection;

— the governance of all the corridors;

— the characteristics that rail freight corridors must have.

2.3 The Regulation does not apply in the case of:

— stand-alone local and regional networks for passenger services using the railway infrastructure;

— networks intended only for the operation of urban or suburban passenger services;

— regional networks which are used for regional freight transport services solely by a railway undertaking that is not covered by Directive 91/440/EEC until capacity on that network is requested by another applicant;

— privately-owned railway infrastructure that exists solely for use by infrastructure owner for their own freight operations ([1]).

3. **General comments**

3.1 The optimum development of all means of transport within the Member States by having respect to environmental protection, safety, competition and energy efficiency, is the direction targeted by the European Transport Policy, as specified in COM (2006) 314, the Mid-term review of the European Commission's 2001 Transport White Paper.

3.2 The European Union is strongly committed to reducing greenhouse gas emissions by 20 % by 2020. It will not be possible to achieve this aim if the emissions from the transport sector are not drastically reduced. For this reason it is important to give high priority to the most energy efficient and 'green' transport modes, and here, everybody agrees on the fact that rail transport is environmentally friendly in terms of energy consumption and emissions ([2]).

3.3 The European Economic and Social Committee has already expressed its position regarding the concept **of a railway network giving priority to freight** ([3]). In the present opinion, we will not reiterate the general comments which apply also to the Proposal for a Regulation concerning a European rail network for competitive freight.

([1]) Article 1, point 2 from COM(2008) 852 final.

([2]) Approximately 80 % of the railway traffic in Europe travels over electrified lines.

([3]) OJ C 27, 3.2.2009, p. 41-44.

3.4 The current situation of the freight transport in the European Union requires efficient European and National legislative instruments and political mobilisation for identifying the necessary funds for investments in the rail infrastructure. In this context, the EESC welcomes the Commission's Proposal for a regulation as a step forward for supporting the setting up of international corridors for rail freight carriage and for the development of this mode of transport in Europe ([4]).

3.5 **Potential benefits from the creation of these corridors:**

— Environmentally friendly mode of transport – an overall reduction in the environmental impact of transportation activities in Europe;

— reduction in accidents occurring in the transport sector;

— the initiative meets the growth objectives of the Lisbon Agenda;

— strong contribution towards reducing road transport bottlenecks;

— encourages co-modality (rail-sea-inland waterways-road);

— the creations of the corridors will contribute to the security of supply of raw materials for EU industries by using one of the most ecological modes of transport for large bulk materials;

— supporting the construction of logistics centres that are connected to the railways. (Logistics terminals could increasingly serve as distribution warehouses, which are mostly an extension of production plants at the moment);

— enhances economic, social and territorial cohesion in the European Union.

3.6 **Environmental targets for the operations on rail freight corridors:**

— environmentally friendly infrastructure and vehicles for rail freight;

— low specific emissions;

— low operational noise level as a result of noise protection walls and by using quiet technologies for rolling stock and rail infrastructure;

— 100 % electric power on rail freight corridors;

— increase the share of renewable energies in the traction current mix.

([4]) The need for efficient legislative instruments, political mobilisation and investments has been once again emphasized at the Hearing on 'A European rail network for competitive freight' organised by the EESC on 28.4.2009, in Brno, Czech Republic, under the Czech Presidency of the European Union.

4. Specific comments on the proposed Regulation

4.1 *Investments in rail freight corridors infrastructure, the terminals and their equipment*

4.1.1 In the last decade, progress has been made through European policies towards market opening, but in the Member states limited results have been achieved with regards to the fair competition between transport modes and effective investments in modern interoperable infrastructure.

4.1.2 The financial capacity of the Member States appears to be insufficient compared to the Commission's ambitious targets. For this reason, the European institutions will have an important role to play in facilitating the deployment of the EU assistance instruments for the development of a European rail network for competitive freight by co-financing the creation of the rail freight corridors through the budget for the Trans-European Transport Networks (TEN-Ts), the European Regional Development Fund and the Cohesion Fund, as well as the EIB loans.

4.1.3 The EESC considers that investment needs (and their financing) should be more clearly underlined in the regulation ([5]). Between 1970 and 2004, the length of the motorways network in the EU 15 increased by 350 % whereas the length of the railway network decreased by 14 %. When roads are congested, decisions to upgrade or build new road infrastructure are rapidly implemented. The EESC is of the opinion that greater volumes cannot be absorbed by rail if the same investment policy applied to road over the last four decades is not applied also to rail.

4.1.4 In this respect the necessity to finance rail connections of industrial sites to the main rail network should not be neglected. Road connections of industrial zones to the main road network are usually financed out of public budgets. However, in most EU countries, rail connections of industrial sites to the main rail network are usually not treated in the same way. They are generally paid by the company operating the industrial site together with a rail freight operator contracting business with the company. Both European and national investment solutions are needed in order to facilitate rail freight transport (e.g. through instruments such as public funding schemes, as it is already the case in Germany, Austria and Switzerland).

([5]) According to a Community of European railways (CER) study on the rail freight corridors carried out by the consultancy firm McKinsey investments of EUR 145 billion by 2020 could increase the capacity of rail transport by 72 % on 6 major ERTMS –based rail freight corridors, representing 34 % of the volumes transported in Europe.

4.1.5 One of the objectives of the Commission is to enforce all the technical and legislative instruments for security of supply with raw materials for the European industries. The railway corridors will bring a strong contribution to achieving this strategic goal, and freight traffic between the European Union and the Eastern Partners is of great importance in this context. To this purpose, it is very important for the EU to invest in order to upgrade the West-East rail infrastructure and the related transhipment facilities. Additionally, the revision of the TEN – Ts will also contribute towards achieving this objective.

4.1.6 Special attention should be given to the Customs Services in order to simplify the procedures inside the EU ([6]), so as to ensure a rapid cross-border transit of rail freight. European financial support is necessary for anticipating an EDI ([7]) -based customs obligations system, and for securing the investments in the railways which today do not have automated systems to meet customs obligations.

4.1.7 The EESC considers important having clear state aid guidelines in order to make it easier to showcase which public financial support to the rail sector would be considered favourably by the Commission's services. At the same time, the Committee emphasises that the use of multi-annual contracts could contribute to a sustainable financing of the European rail network.

4.1.8 The concept of 'strategic terminals' as presented in Art. 9 of the proposed Regulation, the EESC draws attention that this may lead to a reinforcement of the strong position of the so-called strategic terminals to the detriment of the ones considered as 'non-strategic'.

4.1.9 Any person working on these freight corridors should not be put in a position where the free movement of goods clashes with the exercise of their fundamental rights.

4.2 *Selection of the rail freight corridors and governance of the network*

4.2.1 The revision of the TEN-T policy offers a chance for the rail sector to highlight the importance of further developing flexible long-distance rail freight corridors as a backbone of the EU transport network.

4.2.2 The EESC underlines that corridors should not be exclusively limited to TEN-Ts (as is stipulated in Chapter II, Art. 3, 1.a.) or to today's ERTMS corridors, as such an approach could exclude lines which are, or may become, important for freight but are not yet in the TEN-T or ERTMS corridors. On the contrary, the TEN-Ts should be adapted when new rail freight corridors are created.

4.2.3 All concerned parties should be compulsorily consulted or be part of the governance body including relevant trade unions, customers and environmental organisations. Railway undertakings should be part of the governance body at the same level as infrastructure managers, as they are the users of corridors, deal with the clients and are the closest to the market. They will be affected by the decisions taken by the governance body and they may also have to carry out some of these decisions. Therefore, it is fair that they be represented in the governance body itself.

4.2.4 Adequate representation of the railway undertakings using the corridor is possible without overloading the governance structure, e.g. as individual companies, as 'groups of companies' or as a mixture of both. However, to really be able to contribute to corridor improvement, only those undertakings 'using the corridor' are really relevant.

4.3 *Operational measures*

4.3.1 The EESC considers that it is a difficult and sensitive aspect to discuss rules of priority (train path location, capacity booking, priority in case of delays) generally for all freight corridors (Chapter IV, Articles 11, 12, 14). The rules should be formulated in such a way that pragmatic implementation can be taken at the level of each corridor, and that the allocation of paths is realised in the most fair and transparent way by infrastructure managers.

4.3.2 Reserving capacity should not be mandatory but defined by the infrastructure managers, if such reserves are deemed necessary. Forcing infrastructure managers to reserve capacity in advance may result in a waste rather than optimisation of capacity, especially when the certainty of trains running is not established several months in advance.

4.3.3 In the same way, changing priority rules may not be needed and in no way increases capacity. Changing rules of priority will simply transfer frustration from one category of users to another. The overriding rule should anyway be to minimise overall network delay and eliminate congestion in the fastest possible way.

4.3.4 Regarding the provisions from Chapter IV, Art. 10 about the use of the '**one-stop-shop**', the EESC's opinion is that this should be the choice of each corridor structure, taking into consideration the market requirements, or of those of the railway companies operating on the corridors.

4.3.5 Railway undertakings should retain the freedom to order paths as they wish (through a one-stop-shop or in the traditional way). The optional use of the one-stop-shop gives railway undertakings the opportunity to put different infrastructure entities (i.e. the one-stop-shop and the individual infrastructure managers along the corridor) in competition, giving them incentives to improve.

([6]) In this way it is important to have at EU level, an effective implementation of Commission Regulation (EC) No 1875/2006 establishing the Community Customs Code.

([7]) Electronic Data Interchange.

4.3.6 A compulsory use of the one-stop-shops might lead to the creation of a large infrastructure monopoly on the corridor, without any guarantee that the one-stop-shop will actually deliver better services than individual infrastructure managers. In addition, the 'one-stop-shop' traditional way is dysfunctional.

4.3.7 Allowing authorised applicants (e.g. shippers, forwarders, intermodal operators) to buy paths may deter railways companies (especially 'new entrant ones') from investing in drivers and locomotives, due to the high risk incurred on path availability. This could distort competition on domestic markets to the detriment of railway undertakings and the quality of jobs provided by these companies. Prices could increase, the capacities available would remain limited and speculation could develop.

4.3.8 However, in the European Union of today, it is a fact that companies other than railways undertakings (i.e. logistics services, traders, manufacturers) have a strong interest in increasing their use of rail ([8]). Some European railway undertakings have already bought logistic services companies in their attempt to attract onto rail freight which up to now was transported by road. In these conditions, it is possible that in the near future, through a socially responsible and innovative approach, the authorised applicants will play a significant role in the development of rail freight corridors.

Brussels, 15 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([8]) CLECAT Position Paper, Brussels, 19.1.2009.

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws'

COM(2008) 817 final — 2008/0237 (COD)

(2009/C 317/18)

Rapporteur: **Ms DARMANIN**

On 19 January 2009, the Council decided to consult the European Economic and Social Committee, under Article 71 of the Treaty establishing the European Community, on the

Proposal for a Regulation of the European Parliament and of the Council on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

COM(2008) 817 final — 2008/0237 (COD).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 26 June 2009. The rapporteur was Ms Darmanin.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 16 July), the European Economic and Social Committee adopted the following opinion by 75 votes and 3 votes against:

1. **Conclusions and recommendations**

1.1 The EESC welcomes the proposal of the Commission in relation to the rights of passengers in bus and coach transport, identifying that this is a means of transport, which is widely used, and which provides a cheaper alternative for travel for passengers.

1.2 The proposal outlines various fundamental rights that are recognised in the Charter of Fundamental Rights of the European Union, such as the free movement of people, non-discrimination on the grounds of disability, and consumer protection. The EESC therefore broadly supports the Commission's proposal for a Regulation, yet also has suggestions as to how it could be improved.

1.3 The EESC is concerned on some clarifications that ought to be made which currently give raise to misinterpretation in the text. Such clarifications consist in:

— The onus of the provision of service to disabled persons, whereby the text ought to be more understandable on the fact that the main drive of the Commission is to reduce discrimination in terms of information given to passengers (or lack thereof) of the services which are accessible to disabled people.

— The responsibility of the Operator in terms of the luggage loss should be clearly specified and some form of check-in system needs to be set up.

— It is very difficult to provide information at bus or coach stops once the journey has started and therefore practicality of the origination and communication of such information should be made.

— The use of the word terminal is inappropriate for Bus and Coach transportation as very often no terminals exist but merely bus stops and when the former do exist they are not under the jurisdiction of the Operator.

1.4 The EESC notes that the extension of the provisions on passenger rights to urban and sub-urban transport would improve the quality of service and the image of the sector. However the EESC does identify a number of differences between the service of urban buses and that of international bus transportation and hence recognises that it might be more practicable to separate passenger rights in respect to these two distinct modes of transportation and to draw up specific passenger rights for all urban and suburban transport. The EESC therefore believes that the provisions of the proposed regulation should not necessarily apply to urban and sub-urban transport.

1.5 Staff training is paramount for the provision of services to disabled people. To this effect the EESC strongly supports the inclusion of Article 18 specifying the training that ought to be provided to bus and coach drivers.

2. **Commission proposal**

2.1 The Commission started its consultation process for the provision of the rights of passengers using international coaches and buses in 2005. There has been extensive responses from specialised organisations, civil society, national agencies and Member States.

2.2 The Commission has also carried out an impact assessment for policy options which included:

— maintaining status quo;

— giving minimum protection;

— providing maximum protection;

— voluntary commitment and self regulation.

Following this assessment a mix of options has been used for the various protection aspects identified.

2.3 In essence the proposal aims at establishing rights of coach and bus passengers in order to improve the attractiveness of and confidence in coach and bus transport as well as to achieve a level playing field between carriers from different Member States and between other modes of transport.

2.4 In principle the proposal lays down provisions on:

— liability in the event of death or injury of passengers and loss or damage to their luggage;

— non-discrimination on grounds of nationality or place of residence with regard to transport conditions offered to passengers by bus or coach undertakings;

— assistance for disabled persons and persons with reduced mobility;

— obligations of bus and coach undertakings in the event of cancellation or delay of a journey;

— information obligations;

— handling of complaints;

— general rules on enforcement.

3. **General comments**

3.1 The EESC welcomes the proposal of the Commission on the rights of passengers in bus and coach transport, which to date vary considerably from one Member State to another. The EESC believes that clear guidelines are required to protect the rights of passengers using this mode of transportation, especially since in most countries bus and coach transport is the least regulated mode of transport.

3.2 The EESC welcomes the way in which the proposal strengthens the principle of non-discrimination and supports people with disabilities or reduced mobility. However the EESC calls for specific clarifications of the text of the Commission in order to diminish areas of vagueness whereby interpretation of such text may be misleading.

3.3 As some of the obligations are taken from the UN Convention on the Rights of Persons with Disabilities, Member States should set up a system of penalties to be applied to transport undertakings whenever these rights are infringed.

3.4 The rights of disabled passengers is an area for which the Committee firmly believes that the approach of the maximum protection is the adequate approach. Such approach ensures that respect, dignity and rights of the individual are truly maintained. The Committee is however concerned in relation to the correct implementation of such rules whereby it is imperative that such regulatory standards are put in practice at the earliest and are closely monitored.

3.5 It is appropriate that the proposal contains provisions on bus and coach services. Article 2.2 of the proposal for a Regulation guarantees a similar level of rights throughout the Union, which is in line with the principle of subsidiarity and takes account of the diversity of situations.

3.6 As regards the liability of bus and coach undertakings for their passengers and luggage, it should be made clear that the levels of compensation set out in the proposal should not preclude the consumers affected from seeking legal protection, if appropriate. A system of compensation should be set up which is similar to that used for other modes of transport.

3.7 The EESC points out that very often it is the most vulnerable sectors of the population which opt to use such means of cross border transportation, hence the Committee is pleased to see the new measures of protection which the Commission would like to enforce.

3.8 The EESC believes that action plans should be established to ensure people with reduced mobility are given the assistance they need at bus stations, bus stops and on board the vehicle itself, and that representatives of people with disabilities and representatives of bus or coach undertakings should play a key role in this process.

3.9 Whereas the Committee believes that the minimisation of the inconveniences to passengers should always be the primary goal, the considerations in relation to the compensation and reimbursement should cover the following aspects:

— injury or death as a result from the use of such transportation;

— cancellation, delays or diversions;

— loss of property by the operator; and

— lack of information.

3.10 However in all circumstances mentioned above it is imperative that the responsibility of the Operator is proved and that the burden of compensation is not such that it would make the operator go out of business. Hence compensations should be realistic and timely for the consumer but also for the Operator.

3.11 Redress should be easily accessible and regulations on the location of where such address can be sought ought to include whichever Member State the passenger has travelled to and also the country of residence.

3.12 Access to information is of great importance and hence the EESC welcomes the maximum protection approach taken in this respect particularly since information is a main tool at reducing inconveniences in transportation for consumers.

4. **Specific comments**

4.1 *Urban Transport*

4.1.1 The EESC supports the Commission proposal to the extent that, in general terms, application of the regulation will entail deepening of the internal market and of passengers' rights, especially the rights of those with disabilities.

The EESC welcomes the fact that Member States are able to exclude from the scope of this regulation the urban, suburban and regional transport services covered by Regulation 1370/2007 of 23 October 2007.

The EESC believes however that having to protect consumer rights to the extent advocated by this proposal for a regulation would involve having to amend a whole raft of public service contracts which were agreed under Regulation 1370/2007. Similarly, given the major difference between the conditions, infrastructure and equipment required for road transport services (covered by Regulation 1370/2007) and those required for the international carriage of passengers by bus and coach, they are not really comparable.

The EESC would rather that urban, suburban and regional transport services were completely excluded from this proposal and that the rights of users of these methods of public transport were dealt with in a separate regulation.

4.2 *Accessibility*

4.2.1 The EESC regrets that the proposal does not specifically and in a more detailed way recognise the situation of people with disabilities or lay down more advanced standards for the protection of the rights of people with disabilities and those with reduced mobility; it is essential that these groups be guaranteed access to transport.

The practical enforcement of the rights of people with disabilities would not entail new burdens on companies, as most of the obligations set out in the regulation derive from the provisions of other Community legislative instruments, such as Directive 2001/85/EC [1], the eleventh recital of which states that '*…it is also necessary to provide technical prescriptions to allow accessibility for persons of reduced mobility to the vehicles covered by the Directive, in accordance with the Community transport and social policies. Every effort must be made to improve access to these vehicles*'.

[1] OJ L 42, 13.2.2002, p. 1-102.

4.2.2 The Committee therefore believes that the new obligations for the Operator should be seen as public service obligations and financial compensation should therefore be provided, as established by Regulation (EC) No 1370/2007 on public passenger transport services by rail.

4.2.3 The aim is to give people with reduced mobility, including people suffering from obesity, opportunities for travelling by bus and coach which are comparable to those enjoyed by other members of the public. The EESC therefore supports the establishment of rules to prevent discrimination and require the provision of en route assistance to these groups of passengers along the lines proposed, albeit inadequately, in the draft regulation. To this end the EESC believes that it is imperative that Associations of Carriers and Associations of Disabled People get together to identify which are the accessibilities in a service.

4.2.4 Accessibility can be denied for valid reasons such as road safety however purely economic reasons ought not be the sole deterrent from providing such service. Access should be denied only for objective, non-discriminatory reasons, proportionate to the aim, which have been previously published and which are interpreted in a limited way, as they restrict the free movement of persons. These are inalienable rights, as Article 5 of the proposal correctly makes clear.

4.2.5 The EESC calls on the Commission to begin the process required to standardise the production of wheelchairs and wheelchair tie-down systems, so that they can be used safely on buses and coaches.

4.2.6 The EESC supports initiatives such as transportation on demand, which can often be a good alternative for transportation of disabled persons. To this end the Committee would encourage the inclusion of such a service when transport tenders are issued.

4.2.7 Chapter III of the proposal prohibits refusal of access and contains provisions on the right to assistance at terminals and on board, the conditions under which assistance is provided, the transmission of information and compensation in respect of wheelchairs and mobility equipment which are adequate but leave room for improvement. The EESC would recommend that an award be set up for those Operators who do go beyond what is required to truly offer disabled friendly transportation services.

4.3 *Training of staff*

4.3.1 The EESC believes that Training is paramount in providing a service to disabled. Hence the Committee fully supports Article 18. Furthermore the Committee believes that this would be an excellent opportunity for further cooperation between Associations of Transport Operators and Associations for Disabled People whereby the latter may the providers of such training.

4.4 *Payment of damages in the case of death*

4.4.1 The EESC recognises that currently advances on compensation to dependents who have lost a dear one in a transport accident may sometimes take too long to be disbursed. However on the other hand the EESC considers that fifteen days is a reasonable period for the payment of advances for immediate economic needs to the families of victims of fatal accidents, taking account of the damage they have suffered, or to the victims themselves who have suffered physical or mental injury as a result of an accident.

4.4.2 In this respect the EESC recommends that clarification of the text in Article 8 is made so as to define dependents specifically as minors who have lost the parent (on in the lack of that the guardian) who supports them.

4.5 *Loss of Luggage*

4.5.1 The EESC recognises passengers rights should be upheld when their luggage is stolen or lost and are hence entitled to compensation. Bus and coach operators should be liable for the loss of luggage actually entrusted to them. The Commission should therefore clarify the provisions of Article 9 of the proposal with a view to legal certainty, as the current wording is unclear and provides for different responses to a variety of circumstances.

4.5.2 To this effect the EESC specifies that it is not the obligation of the Operator to provide a check in service to the consumer.

4.5.3 The EESC also believes that particular provisions should be made in the event of loss or damage to equipment used by disabled people.

4.6 *Information in relation to interrupted service*

4.6.1 The EESC believes that all endeavours should be made so as to ensure that information is passed on to the passengers in a timely manner when a service is delayed or interrupted. To this effect the EESC however believes that such information is sometimes very difficult to pass on. Hence in this respect Article 21 is considered impracticable and very difficult to implement due to the nature of bus stops and how these are generally unmanned.

4.6.2 The EESC would propose that investment through research and development funds within the Commission should be devoted to developing and implementation of ICT tools for passenger information systems, which are reliable, timely and safe to be situated in bus stops, as well as light, on-board intelligent transportation systems (ITS).

4.7 *Terminals in bus and coach transportation*

4.7.1 The proposal makes a number of references to terminals on the route of the bus or coach. It is pertinent to note that such terminals generally do not exist and in locations where they do exist most of the time this is under the responsibility of a rail station or airport. In most other circumstances there would not be terminals but merely stops that are unmanned.

Brussels, 16 July 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 amending Council Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio navigation programmes'

COM(2009) 139 final — 2009/0047 (COD)

(2009/C 317/19)

Rapporteur: **Mr MCDONOGH**

On 21 April 2009 the European Council decided to consult the European Economic and Social Committee, under Article 156 of the Treaty establishing the European Community, on the:

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio navigation programmes

COM(2009) 139 final — 2009/0047 (COD).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 26 June 2009. The rapporteur was Mr McDonogh.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 15 July 2009), the European Economic and Social Committee adopted the following opinion by 174 votes with 5 abstentions.

1. **Conclusions and recommendations**

1.1 We strongly support the Commission's proposals, since legislation that was enacted back in 2004 could be very much out of date.

1.2 The security of systems is of vital importance, and steps should be taken to eliminate hackers.

1.3 Proposed background checks for security purposes must be made on employees, as the management structure is made up of civilian staff. Staff should also be aware of their high responsibility to the end-users, so that continuity and reliability of service should be ensured.

1.4 The cost to the users must be competitive with other similar systems.

1.5 It is important that the European Union should be independent from other providers, who could switch off their systems at will, and monitor for either commercial or military purposes, the end-user activity.

1.6 Galileo should be explained properly to the citizens of the EU, since it is going to affect directly or indirectly the lives of most citizens, from pilots to miners, to farmers, and in order that its full potential can be exploited.

1.7 The EESC should be consulted at various stages of the decision-making about the progress being made in the implementation of the project.

1.8 The EESC supports the funding of EU GNSS programmes and underlines that multi-annual funding should be secured so as to ensure the success of the programmes.

1.9 The role of the EESC should be recognised. GNSS programmes have a direct impact on citizens and the EESC should be fully informed and consulted. Galileo is developed and controlled by civilians and transparency is needed. The European Commission should keep on consulting the EESC as major issues linked to surveillance, individual rights and privacy will arise at a later stage.

2. **Introduction**

2.1 The EESC has already adopted several opinions on Galileo [1].

2.2 It is important to get Galileo up and running as soon as possible in order that Europe should have its own satellite navigation system like the US, and not be dependent on others to supply these services.

2.3 This will increase security from a national point of view, and provide income from a commercial point of view. This should enable commercialisation, and produce a valuable source of revenue.

2.4 The EESC should give full support to the Commission for this legislation which is urgently needed.

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[1] OJ C 256, 27.10.2007, p. 73-75.
OJ C 256, 27.10.2007, p. 47.
OJ C 324, 30.12.2006, p. 41-42.
OJ C 221, 8.9.2005, p. 28.

3. **General remarks on European GNSS programmes**

3.1 It is important that the EU be independent from other major global satellite service providers. However Galileo will be more efficient on the global market and EGNOS will complement other systems and improve the quality of information.

3.2 Galileo also offers access to space to some Member States which would otherwise not be involved in space activities. GNSS programmes should also enjoy good 'public relations', which would enhance the EU's image among the public and secure the success of the programmes. Awareness-raising activities about the benefits of European GNSS programmes are necessary to allow the public to make the most of the new opportunities.

3.3 European GNSS programmes can have a positive impact on other EU policies.

3.4 Research in this field should be encouraged.

4. **Specific remarks**

4.1 Regulation (EC) No. 1321/2004 needs to be amended explicitly and quickly for the following reasons:

— The current situation, which can be characterised by the co-existence of two texts which in places contradict each other - Regulation (EC) No 1321/2004 and Regulation (EC) No 683/2008 - is unsatisfactory from a legal point of view.

— Regulation (EC) No. 683/2008 provides that the Commission is to manage all aspects relating to system security, but at the same time entrusts the Supervisory Authority to ensure accreditation with regards to security. The precise role of the Authority as regards security and accreditation needs to be quickly clarified.

4.2 Under the amendment to the regulation, the Agency has the following objectives:

— security accreditation: the Agency is to initiate and monitor the implementation of security procedures and perform security audits on European GNSS Systems;

— contribute to the preparation of the commercialisation of European GNSS systems, including the necessary market analysis;

— operate the Galileo security centre.

4.3 An ex-ante evaluation was carried out when the Agency was set up in 2004.

4.4 This amendment to the Agency's rules of governance is designed to take into account the lessons learned from the experience of managing the Agency and its contribution and its role in European satellite radio-navigation programmes.

4.5 A new framework for public governance is therefore necessary. Regulation (EC) No 683/2008 provides for:

— the strict division of responsibilities between the European community, represented by the Commission, the Authority, and the European Space Agency;

— granting the Commission responsibility for the management of the programmes; and

— setting out precisely the tasks given at that time to the Authority.

4.6 The establishment of satellite radio-navigation systems cannot be sufficiently achieved by the individual Member States since this objective exceeds the financial and technical capabilities of any single Member State. Action at community level is therefore the most appropriate basis for completing the European GNSS programmes (Galileo and EGNOS).

Brussels, 15 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the 'Green Paper — European workforce for health'

COM(2008) 725 final

(2009/C 317/20)

Rapporteur: **Mr METZLER**

On 10 December 2008, the European Commission adopted a Communication addressed to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, entitled

Green Paper on the European workforce for health

COM(2008) 725 final.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 June 2009. The rapporteur was Mr Metzler.

At its 455th plenary session, held on 15-16 July 2009 (meeting of 15 July 2009), the European Economic and Social Committee adopted the following opinion by 104 votes to 29 with 29 abstentions.

1. **Committee's comments and recommendations**

1.1 The EESC welcomes the publication by the European Commission of the Green Paper on the European workforce for health. Demographic change and its impact on the workforce and workload in the healthcare sector are described by the Green Paper.

1.2 The EESC feels that measures should be taken to make jobs in the health care sector more attractive to young people, so that later on, more of them take up jobs in the sector.

1.3 The Committee recommends that sufficient staffing capacity be created in health care systems to meet health care needs, boost health care, health promotion and disease prevention.

1.4 The Committee believes that the undesired emigration of healthcare personnel to other countries can be countered by higher pay and better working conditions and, where applicable, new responsibilities. New responsibilities require the appropriate qualifications. This would also enhance the attractiveness of the sector generally.

1.5 The amount of data concerning healthcare workers in the EU, especially in relation to migration and mobility, must be significantly improved, as decisions are based on them.

1.6 The use of new technologies in healthcare is to be encouraged where these reduce the workload of healthcare staff, improve the quality of care and support patients. The EESC is aware that this may lead to a re-examination of how the division of tasks among health care staff works in practice.

1.7 The EESC underscores the key role of social standards in ensuring a high quality of patient care and patient safety, and is unequivocally opposed to any attempt to undermine these (no race to the bottom).

1.8 The EESC emphasises the key part the professions play in the health care sector, alongside hospitals and publicly-run health services, which form the central hub, since it is in large part through these professionals that personal treatment and care can be secured in an environment of competence and safety. Such professionals are highly qualified thanks to the efforts made by civil society in the Member States to support public education. EESC members, who represent said civil society, are cautious about the Commission's wish to encourage healthcare workers to practice as self-employed persons. At the same time, the EESC is critical of the increasing trend towards apparent self-employment where this is problematic for the particular activity concerned (e.g. nursing and care of the elderly).

1.9 The EESC is concerned at the discussion about a new division of tasks in healthcare with the aim of replacing treatment by qualified staff with cheaper alternatives. The EESC takes the view that structural considerations regarding the division of tasks among the healthcare professions should be focused on clinical need, skill levels and the needs of patients.

1.10 The EESC is of the firm belief that healthcare institutions and their staff provide services of general interest and that more use should therefore be made of the Structural Funds for their training. The EESC stresses that it is vital to ensure conditions which can enable healthcare professionals to participate in continuous training programmes, thereby ensuring they can extend the breadth and depth of their skills, and also helping to remedy the under-provision of healthcare in structurally weak regions.

1.11 The EESC stresses the outstanding role the social partners and social dialogue play in determining pay, working conditions and skills for healthcare workers.

1.12 The EESC considers that social professions play a key role in patient welfare and care and thus have a significant role in healthcare.

2. **Summary of the Commission's paper**

2.1 The Green Paper is intended as a basis for in-depth debate between the EU institutions, EU Member States and the key social and economic players involved at European and national level. It provides a framework in which needs can be considered over the long term.

2.2 The Green Paper concentrates on nine key areas:

— Demography

— Public Health Capacity

— Training

— Managing mobility of health workers within the EU

— Global Migration of Health Workers

— Data to support decision-making

— The impact of new technology: improving the efficiency of the health workforce

— Strengthening the principle of self-employment

— Cohesion policy.

2.3 *Background*

2.3.1 EU health systems have to deal with constantly increasing demands on health services, respond to changing health needs and be prepared for major public health crises. At the same time, there is a high level of expectations with regard to the quality of healthcare services. It must be recognised that the sector is labour intensive, employing one in ten of the European workforce, and on average 70 % of healthcare expenditure goes on wages and salaries.

2.3.2 Article 152 of the EC Treaty states that 'Community action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care' and that, at the same time, cooperation between the Member States should be encouraged with a view to promoting the coordination of strategies and programmes and the exchange of information about successful programmes in individual Member States.

2.3.3 In the Green Paper, the European Commission sets out key questions relating to the problems and challenges of healthcare provision so as to encourage discussion. These key questions include:

— the ageing population;

— new technologies;

— the need for healthcare services to be more accessible;

— service quality and, with that, more cost-intensive treatments;

— the outbreak and potential of epidemic diseases, and

— local availability of healthcare.

Definition of 'Healthcare workers': all those working in the healthcare sector who provide services in patient care and welfare, nursing care, social and welfare services, and all those belonging to specialised professions.

2.3.4 In all Member States a debate is now under way on the extent and availability of workforce potential that will be required for the next decade and beyond. In some Member States there is a significant lack of young blood coming in to work in the sector, as well as a shortage of skilled employees, especially in those areas where predominantly older service staff are employed.

2.3.5 In addition to the labour shortage resulting from the age structure, there is a workforce 'drain' from the EU to other countries such as the USA and Switzerland, particularly in the highly skilled sectors of health care.

Within the EU, too, the rate of migration and mobility is high. There are significant migratory flows between the individual Member States.

The migration of healthcare workers is a matter of vital interest. Discrepancies in pay and differences in working conditions underlie this development. The difference in system structures has a major impact on the service provided and on skills structures.

2.3.6 With this Green Paper and through public consultation on the future of the health workforce in Europe, the Commission raises the profile of the issues facing the EU health workforce and paints a clearer picture of future challenges. It takes into account the fact that health care is an important, fundamental requirement for all Europeans. It also takes into consideration the fact that, without adequate health care, basic freedom of movement within the European Community can rapidly be restricted.

2.3.7 Preventive and curative healthcare both have an economic component. The healthcare sector requires trained and experienced staff with recognised qualifications. These make up a significant part of the knowledge society.

3. **The EESC's comments on the solutions proposed in the Green Paper:**

3.1 *The Commission's proposed solutions:*

Because competence in this sphere is limited, the Commission is cautious about putting forward solutions. It has noted that the proportion of women working in the health care sector has risen over the last few years, and therefore suggests measures to make it easier to reconcile professional, family and private life in order to secure the supply of health service employees and skilled workers in the sector. It is also promoting a sound planning strategy and is suggesting that investment be increased to expand further education in all Member States so as to prevent situations where people undertake their health training in only a few countries and then go to others just for employment; such situations could ultimately lead to a further reduction in training capacities. Improved qualifications opportunities, especially in further and continuous training, would also give employers the incentive to employ people and provide training.

3.2 The European Economic and Social Committee (EESC) welcomes the Green Paper as a comprehensive discussion paper on the major challenges facing the health system, the health sector and the labour force in Europe. It will encourage a public debate within the context of the Lisbon Strategy with a view to fostering knowledge-based services. It sees healthcare as an integrated whole.

3.3 The EESC takes the view that the market in healthcare services should be seen as a market with special rules, as it has a direct impact on the health of the population. The EESC therefore proposes a discussion about the problems caused by the fragmented nature of healthcare provision in some countries, in particular those systems not directly controlled by the state, which makes it very difficult to ensure uniform standards in the development of qualifications and further training.

3.4 *Demography and the promotion of a sustainable health workforce*

3.4.1 The EESC stresses that women already account for a large proportion of those working in the healthcare professions and that their number is very likely to increase further. This applies across the board. Equal treatment is necessary to ensure gender equality in accordance with the Equal Treatment Directives and also to encourage more men to go and work in the various parts of the healthcare sector. This would include measures to help reconcile work and family life, recognising skills used and the onerous nature of the work involved, and to help women stay in employment and support those re-entering the labour market after extended periods looking after families.

3.4.2 Unsurprisingly, good working conditions, health and safety at work have an impact on employees in the healthcare sector. Staff who are satisfied and secure in their work are more caring about patients. If high skill levels, patient safety and security of service provision are to be ensured, workplace and job quality care for staff and the handling of the particular stresses and strains at the workplace in this health sector are particularly important. The Green Paper barely touches on this.

3.4.3 The EESC notes the research being undertaken by the social partners on 'Return to Work' schemes. The EESC believes that such schemes can play a vital role in bringing health workers, and especially women, back into the workforce and keeping them there, and that these schemes will become increasingly important in addressing the shortage of skilled workers.

3.4.4 The EESC feels that measures should be taken in some Member States to make jobs in the health care sector more attractive to young people, so that later on, more of them enter the healthcare professions or look for jobs in the sector. If more young people, and more men, are to be encouraged to choose careers in healthcare, nursing care and social care, such employment must be made more attractive through better pay and working conditions throughout the whole of their career.

3.5 *Public Health Capacity*

3.5.1 Successful prevention, health promotion and improved healthcare management can reduce the need for treatment and care services. The Committee therefore recommends that sufficient capacity be secured in health care systems to boost health care, health promotion and disease prevention. One precondition must be, however, that there should be a scientific basis to measures, which can then be financed comprehensively on a long-term basis. The Committee believes that the Community should also target health promotion amongst health care practitioners themselves so that they remain healthy and effective (burn-out syndrome). Particular attention should be paid to the fitness of workers at the end of their careers so that they are more able to work without health problems, and to take account of the onerous nature of their working life when determining the conditions for their entry into retirement.

3.6 *Training*

3.6.1 The EESC suggests that there be a discussion about the problems caused by the fragmented nature of health care provision structures in certain countries, especially those not directly controlled by the state, making it quite difficult to secure a high standard of uniform skills development and further and continuous training. The Committee thinks it would be useful to look at the extent to which these fragmented structures could be given support with a view to job creation. It also raises the question of mandatory further and continuous training and the application of high standards, as well as greater transparency through certification and uniform standards at European level, together with corresponding measures to achieve this. It wonders to what extent countries have been given incentives to make progress on this front.

3.6.2 The Committee wonders about dovetailing the qualifications recognition directive with a possible directive on qualifications in health care. How would this tie in with the existing special directives applying to certain professions? It wonders how this directive has influenced the consistency of qualifications and skills and further and continuous training in Europe, as well as determining the extent to which working conditions in everyday life are standardised.

3.6.3 The EESC wishes to broach the cost/benefit considerations relating to a corresponding requirements structure for further upgrading the skills of European health care service providers.

3.7 *Managing mobility of health workers within the EU*

3.7.1 The Committee raises a question about the impact of the services on offer and the effect of support programmes; it also asks that it be shown scientifically how far national borders, language borders and perhaps even cultural differences impact on employee migration in this particular type of work for which so much empathy and knowledge is required.

3.8 *Global Migration of Health Workers*

3.8.1 As called for in the Green Paper, ethical principles should be respected when hiring staff: thus, for example, in addition to staff being hired from other countries, young people should also be encouraged to stay in their home countries and work in the health care sector. Countries should not try to make up for insufficient encouragement of new generations at home by wooing staff away from other countries. Given the plethora of existing voluntary commitments and the EU's participation in drafting the WHO code of conduct, the EESC queries the additional value of an EU code of conduct.

3.8.2 It is also necessary to prevent the brain drain of developing countries. Recruitment of health workers should take place as much as possible in an institutionalised context, where workers mobility will be supported with bilateral or multilateral cooperation programmes. This can be done through investments in health training infrastructures and improvements of working conditions. Without addressing the reasons for migration, i.e. huge inequalities in pay and working conditions, migration will continue and create further shortages in health staff in developing countries.

3.9 *Data to support decision-making*

3.9.1 The EESC calls for national statistics to be comparable across Europe. One obstacle is the fact that some health care professions are classified differently in the various Member States. Distinctive national features relating to competence and descriptions of healthcare professions should not be concealed for the sake of achieving uniform indicators. The Committee suggests that corresponding statistics be compiled on health professions in Europe and on migration between states. With regard to the idea proposed in the Green Paper of setting up an observatory on the development of the health workforce, the question arises as to whether this is really necessary and/or whether existing bodies, such as Eurostat or the Dublin Foundation, could be used to achieve the same objectives.

3.9.2 In general terms, data should be improved by establishing a data register. The Committee would suggest that the monitoring of health care professions referred to in the Green Paper be tied in with other EU projects, such as steps to promote health care information systems and to improve the communication between national registers – where these exist – for all professions.

3.9.3 Since in most Member States health care systems are organised or regulated by the state, the EESC welcomes European Commission support, which will generate better planning. To this end, it suggests that the European Union make resources available for carrying out an analysis of health care provision in the Member States. This analysis would provide the basis for building up a comprehensive system of locally available medical and health care provision.

3.10 *The impact of new technology: improving the efficiency of the health workforce*

3.10.1 The EESC suggests that research look into whether new technologies can, in the interests of the workforce, be used together with new opportunities for treatment, tied in with electronic communications networks and provided comprehensively in very remote areas, including arrangements for self-diagnosis and patient participation. To this end experience in other Member States can be helpful. Before new technologies can be introduced, they do need to be accepted by the medical professions. To secure such acceptance, those working in this domain must be involved in developing the e-health technology, to make sure that the electronic tools used in everyday practice can be used in a straightforward, safe manner. Proper, optimal training of medical staff in the new technologies is essential if they are to be successfully introduced. The Committee would point out that there are also always risks associated with benefits of new technologies, such as data protection issues. The introduction of new technologies must be geared to the different national health systems. It could trigger a change in the national laws on medical accountability applying in every Member State. The Committee wonders to what extent the measures and pilot projects promoted by the European Commission will hamper moves to build up national IT structures, or even align them downwards.

3.11 *The role of health professional entrepreneurs in the workforce*

3.11.1 In some countries of the European Union self-employed healthcare professionals, who put the concept of entrepreneurship into practice, play a major role in the provision of healthcare in the Member States. The Green Paper recognises the role the healthcare professions fulfil, alongside the public sector. It is often through these professionals that personal treatment and care can be secured in an environment where competence and safety are

guaranteed. However, the Committee points out that, in the EU, most self-employed healthcare workers acquired their skills over long periods thanks to society's efforts in supporting free public education. Civil society is entitled to expect a return (price and costs) and its representatives cannot but look with caution upon the Commission's wish, expressed in point 6 of its paper, which seems to encourage an increase in private provision of this aspect of healthcare. At the same time, the EESC is critical of the increasing trend towards apparent self-employment where this is problematic for the particular activity concerned (e.g. nursing and care of the elderly).

3.12 *Cohesion policy*

3.12.1 The EESC recommends making more use of the Structural Funds for the education and training of health care personnel. The scarcity of such workers in structurally weak regions could, for example, also be remedied by building up and supporting education and training in those regions where trained staff are most urgently needed. This suggestion is based on the observation that health care professionals mostly end up working where they train and qualify. Cohesion policy could also offer a framework for fostering pilot projects to tackle any questions arising. The Committee would further suggest releasing Structural Funds resources to improve health care infrastructures and, where appropriate, to improve communications or new treatment standards (evidence based medicine).

3.12.2 The EESC views with concern the essentially economically motivated debate, above all involving management and the professional groups concerned by this matter, on new task allocations in the health care sector, designed to replace qualified staff with cheaper alternatives in medical practice. Improved coordination, process optimisation and networking, together with greater flexibility in the division of tasks, would in fact provide a better solution. In this context, the EESC considers it to be of the utmost importance that appropriate training be provided to prevent a fall in care standards.

3.12.3 The EESC considers that the attribution of qualifications or professions to tasks should be based on:

1. clinical necessity;
2. training, job description and responsibility, and
3. patients' needs.

3.12.4 The EESC holds the view that, even during the financial crisis, Member States should still be willing to provide adequate funding for their health care systems (financial management), not least to ensure that there are adequate staff resources that can provide high-quality services. This also involves improving the working conditions of employees in this sector.

3.13 *Social partnership*

3.13.1 The EESC stresses the key role and responsibility of the social partners in shaping the working conditions of staff in the healthcare sector and the great diversity of the healthcare professions and refers to the preparatory work already carried out by the social partners in this area.

3.13.2 Demographic change, which is leading to a shortage of new staff, must not lead to the level of skills and wages being lowered (race to the bottom). The EESC considers that Member States have a duty to take responsibility for this.

3.13.3 The EESC welcomes the establishment of social dialogue in the European Hospital Sector and notes that the Work Programme agreed by the social partners covers all the issues discussed in the Green Paper. The EESC therefore regrets the failure of the Green Paper to refer to this process.

3.13.4 The EESC underscores the important role of the principle of equal pay for equal work, regardless of gender.

3.13.5 The specific 24/7 working conditions require specific compensation mechanisms (payment for overtime and night work, time off in lieu) in order to compensate for the high pressure on the workforce. In this context, the EESC is very critical of the increasing incentives in many Member States to promote apparent self-employment and thus the loss of social security and employment protection.

Brussels, 15 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers'

COM(2008) 815 final — 2008/0244 (COD)

(2009/C 317/21)

Rapporteur: **Ms LE NOUAIL-MARLIÈRE**

On 1 April 2009, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (recast)

COM(2008) 815 final — 2008/0244 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 June 2009. The rapporteur was Ms Le Nouail-Marlière.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 16 July 2009), the European Economic and Social Committee adopted the following opinion by 154 votes to two, with four abstentions.

1. **Conclusions**

1.1 Being concerned that an excessively restrictive or unwelcoming asylum framework constitutes indirect support for some of the world's most authoritarian and least democratic regimes, the Committee endorses the recast and improvement of the directive on reception standards, but reiterates a number of recommendations made in its previous opinions, and in particular in its response to the Green Paper on the future Common European Asylum System ([1]) and the policy plan ([2]).

With regard to the reception of asylum seekers, the proposal for a recast of the directive should promote 'common' rather than 'minimal' standards which should constitute safeguard clauses for the standards applied by those Member States which do most to respect the fundamental rights of applicants for international protection, refugee status or subsidiary protection, particularly regarding:

— guaranteed admission to the country,

— freedom of choice as to where to lodge the application for asylum and protection,

— consideration of refugee convention status first and then subsidiary protection, if and only if the conditions for the first status are not met,

— the principle of no forcible repatriation if the applicant's life would be in danger in his country of origin or last transit country,

— the suspension of an expulsion decision until the competent court has issued its decision, in order to make the right of appeal fully effective, in accordance with the case law of the European Court of Human Rights (see point 4.8.1 below),

— the special protection required by minors or presumed minors,

— respect for individual rights and particularly the right of women to lodge an application for protection.

1.2 With regard to minors, the Committee would like it to be systematically stated that 'the best interests of the child shall be a primary consideration', **in reference to Article 3(1) of the International Convention on the Rights of the Child (Article 22(1))**.

1.3 Holding and detention should always be a last resort after all alternatives have been exhausted, and should never be applied without a court order, taking account of the right to legal defence, and in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms.

1.4 Competent NGOs active in the field of human rights should always have access to applicants for protection, and applicants should always have access to legal aid and humanitarian assistance from States or NGOs.

([1]) See EESC opinion of 12.3.2008 on the Green Paper on the future Common European Asylum System, rapporteur: Ms Le Nouail Marlière (OJ C 204, 9.8.2008).

([2]) See EESC opinion of 25.2.2009 on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Policy plan on asylum: an integrated approach to protection across the EU, rapporteur: Mr Pariza Castaños, co-rapporteur Ms Bontea (OJ C 218, 11.9.2009).

1.5 The Committee encourages the Member States to accelerate negotiations with a view to the adoption of this recast by co-decision with the European Parliament, which will enable the European Union to improve its capacity to respond appropriately to requests for protection from asylum seekers.

1.6 The Committee approves the proposal to establish a Support Office to assist Member States on matters of asylum and international protection, if this office helps to accelerate the distribution of reception and protection obligations among the Member States of the EU, to bring transparency with regard to the reception of applicants for asylum and international protection, to make use of the experience of associations and organisations involved in assisting applicants for asylum and international protection and to improve the process of examining individual applications.

2. **Introduction and summary of the Commission proposal**

2.1 The Common European Asylum System (CEAS) has developed over two separate phases. The first of these began at the **Tampere European Council** (1999), following the adoption of the Treaty of Amsterdam, which gave an EU dimension to immigration and asylum policies. This first phase ended in 2005.

2.2 In the **first phase** progress was made on developing a number of asylum directives, improving the level of cooperation between Member States, and on some aspects of the external dimension of asylum.

2.3 The **second phase** of building the CEAS began with the **Hague Programme** (adopted in November 2004), which sets 2010 as the deadline for achieving its main objectives, by adopting instruments and measures aimed at greater harmonisation and an improvement in CEAS protection standards.

2.4 As a preliminary to the adoption of new initiatives, in 2007 the Commission produced a **Green Paper** [3] to launch a debate among the various institutions, the Member States and civil society [4]. The Commission then used this as a basis for its policy plan on asylum. The latter set out a roadmap for the coming years, listing the measures that the Commission intended to take in order to implement the second phase of the CEAS.

2.5 This is the backdrop to the Commission's proposed recast of the directive originally adopted by the Council on 27 January 2003, which was the subject of a Committee opinion [5].

2.6 The main objective of the proposal is to ensure higher standards of treatment for asylum seekers with regard to reception conditions, in order to guarantee a decent standard of living, in line with international law. Further harmonisation of national rules on reception conditions is also required in order to limit the phenomenon of secondary movements of asylum seekers amongst Member States, insofar as such movements are generated by divergent national reception polices.

2.7 The proposal extends the scope of the directive in order to include applicants for subsidiary protection. It is intended to apply to all types of asylum procedures and to all geographic areas and facilities hosting asylum seekers.

It also aims to facilitate access to the labour market. It provides that asylum seekers will be able to access employment after a period of maximum six months after lodging an application for international protection and stipulates that the imposition of national labour market conditions must not unduly restrict access to employment for asylum seekers.

2.8 With a view to ensuring that access to material reception conditions ensures 'a standard of living adequate for the health of the asylum seeker and capable of ensuring his/her subsistence', the proposal obliges Member States to take into consideration the level of social assistance provided for nationals when granting financial support to asylum seekers.

2.9 The proposal ensures that detention will be allowed only on exceptional grounds laid down in the directive.

2.10 The proposal also guarantees that detained asylum seekers are treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law.

2.11 The proposal ensures that national measures are put in place in order to identify specific needs immediately.

Moreover, the proposal incorporates numerous safeguards in order to ensure that reception conditions are specifically designed to meet asylum seekers' special needs.

2.12 With regard to the implementation and improvement of national systems, the proposal contains measures designed to ensure the continuity of monitoring and to strengthen the Commission's role as the guardian of EU legislation.

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(3) COM (2007)301 final, submitted on 6 June 2007.

(4) On 12 March 2008, the EESC issued an opinion on the Green Paper on the future Common European Asylum System, rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8.2008).

(5) EESC opinion of 28 November 2001 on the Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States, rapporteur: Mr Mengozzi and co-rapporteur: Mr Pariza Castaños (OJ C 48, 21.2.2002).

3. **General comments**

3.1 The Committee endorses the improvements which the Commission's proposals should entail for the reception conditions for people seeking international protection and the will to harmonise national arrangements and broaden the scope of application to include subsidiary protection. However, it draws attention to the need to examine the situation of each applicant individually, also when determining which Member State is responsible for the exhaustive examination of the application, and to consider subsidiary protection if and only if the conditions for the first convention status (refugee) are not met.

3.2 The Committee supports the aim of securing a dignified standard of living for asylum seekers and facilitating their integration and settlement within the host country ([6]), by offering access to the labour market within a maximum of six months, without undue national restrictions (Article 15(2)), and with absolute respect for the fundamental rights of applicants for asylum or international protection, as derived from European law implementing the Universal Declaration of Human Rights, in particular Article 23(1) ([7]), the International Covenant on Economic, Social and Cultural Rights (Articles 2, 9, 10, 11 and 12), ILO Convention 118 concerning Equality of Treatment of Nationals and Non-Nationals in Social Security, the European Social Charter, the Charter of Fundamental Rights and the Geneva Convention relating to the Status of Refugees ([8]). The same applies to the level of social assistance granted and housing conditions differentiated according to individuals' specific needs and to the broader definition of applicants' family links as well as to the need to give them due consideration when examining applications.

3.3 Regarding the general principles and the international guidelines that underlie the recognition and defence of the fundamental rights of people in distress and the detention of those seeking international protection under the Geneva Convention, and in particular Article 26, which refers to freedom of movement, and Article 31 on refugees unlawfully in their host country ([9]), and as reiterated by the Commission in the proposal's 16th recital, no one may be detained simply because they have requested protection. Detention should therefore be considered to be an option only in duly justified cases of absolute necessity, and must not be considered to be acceptable practice in circumstances that do not involve fraudulent or dilatory intent on the part of the applicant.

3.4 The Committee welcomes the measures recommended by the directive with a view to meeting the specific needs of minors. It would nevertheless note that the reference to the 1989 United Nations Convention on the Rights of the Child would be clearer were systematic reference made to Article 3(1) ([10]) in addition to Article 37 ([11]), and not only to the notion of the 'best interests of the child', which has been known to give rise to differing interpretations.

3.5 Lastly, the Committee is particularly concerned about the systematic introduction of possibilities for asylum seekers or refugees to appeal against judicial or administrative decisions concerning them. It notes nevertheless that these appeals must systematically be considered to be suspensive in order to be fully effective.

4. **Specific comments**

4.1 *On information (Chapter II - Article 5)*

4.1.1 The Committee recommends that the following text be added: 'Member States shall inform the members of the families of asylum seekers of their right to submit independent applications'.

4.2 *On detention and detention conditions (Chapter II - Articles 8 to 11)*

4.2.1 In the Committee's view, the treatment of asylum seekers should be founded as a general rule on Article 7 of the draft directive, which states that priority should be given to the principle of the free movement of people and to alternatives to detention.

4.2.1.1 In other words, asylum seekers (**Article 8**) may be detained in exceptional circumstances only, namely:

— **if the request for asylum is made after an expulsion measure has already been issued to the asylum seeker;**

— in order to make a decision on the asylum application as part of a procedure designed to determine the person's right to enter the country, **in the case of placement in a detention centre or waiting area**.

([6]) See EESC opinion of 28 November 2001 on the Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States, rapporteur: Mr Mengozzi and co-rapporteur: Mr Pariza Castaños (OJ C 48, 21.2.2002).

([7]) 'Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.'

([8]) 1951.

([9]) Geneva Convention, Article 31: 'The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.'

([10]) Article 37 refers to detention in particular.

([11]) Convention on the rights of the child; Article 3 (1): 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'

4.2.1.2 The Committee takes the view that with the exception of these two cases, no asylum seeker should be detained and that a decision to detain someone should never be justified by the need to '*determine, ascertain or verify his identity or nationality*', and even less to '*determine the elements on which his application for asylum is based which in other circumstances could be lost*'.

4.2.1.3 The EESC proposes to amend the wording of recast article 9(5) to read: 'The detention shall be reviewed **ex officio** by a judicial authority at reasonable intervals of time **and on request of the asylum-seeker concerned, whenever circumstances arise or new information becomes available which affects the lawfulness of detention**.'

4.2.2 According to the EESC, conditions of detention should ensure humane treatment with respect for the inherent dignity of the person. As for conditions of detention (**Article 10**) in specialised centres other than prison accommodation, it is right that an asylum seeker should not be placed with other third country nationals not having requested asylum without the former's **written consent** (**Article 10 (1)**).

4.2.3 Furthermore, in the light of the diverse means of detention in the various countries of the European Union, it should be noted that the UNHCR and other organisations may communicate with asylum seekers and visit them in **all detention areas** (Article 10(2)). The same terminology should be used in **Article 10(3)**.

4.2.3.1 Reiterating its recommendation made in connection with the proposal for a recast of the Dublin 2 Regulation on Criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ([12]), that information of the type described in Article 10(3) should be given to an applicant for international protection in his/her language or a language that the person concerned acknowledges understanding, where necessary with the assistance of a sworn interpreter or legal translation.

4.2.4 In the interests of consistency in the wording, the term '**applicants for international protection**' should replace 'asylum seekers' in **Article 11 (4)**.

4.2.5 The EESC welcomes the prohibition on detention of unaccompanied minors (recast Article 11(1)) and supports the confirmation that persons with special needs shall in principle not be detained (in recast Article 11(5)).

([12]) See page 115 of this Official Journal.

4.3 *On the schooling of minors, employment and vocational training (Chapter II – Articles 14 to 16)*

4.3.1 The draft directive aims to facilitate and accelerate the integration of asylum seekers in their host countries. The schooling of minors and access to employment and vocational training play a large role in this.

4.3.1.1 For this reason, the Committee believes that minors should be integrated into the education system as soon as possible, and that the three month period is unnecessarily long and should be reduced to **two months (Article 14(2))**.

4.3.2 The Committee approves of the Commission's initiative to enable asylum seekers to access the labour market within a maximum period of six months and believes it is necessary to reduce the margin for interpretation of Article 15(1) and specify that '*Member States shall ensure that applicants have **real** access to the labour market*', which implies access to the social services that support job seekers.

4.3.2.1 The Committee recognizes that reception arrangements can be beneficial both to the State and to the asylum-seeker where they provide an opportunity for the asylum-seeker to attain a degree of self-reliance.

4.3.3 Recalling its opinion ([13]) on the first reception directive, the Committee would stress that '*Training should be offered as widely as possible for third-country nationals in the care of a Member State. This is essential on two counts. Firstly, any training which these people receive will benefit the development of their country of origin if they return there. (…). Secondly, if these people remain in a Member State, the training they have received will make it easier for them subsequently to find employment there*'. On the same note, it believes that Member States should be reined in when it comes to their interpretation of Article 16, by using a more direct and more complete wording: '*Member States **shall allow and organise** access to vocational training **for asylum seekers** irrespective of whether they have access to the labour market*'.

4.4 *On the general rules on material reception conditions and health care (Article 17)*

4.4.1 The Committee recommends that it be made clear that the rules continue to apply during appeals procedures.

([13]) See EESC opinion of 28 November 2001 on the Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States, rapporteur: Mr Mengozzi and co-rapporteur: Mr Pariza Castaños (OJ C 48, 21.2.2002) – Directive 2003/9/EC.

4.4.2 The EESC supports the recast Article 17(5), which should raise the standard of material reception conditions in those Member States where current levels are insufficient.

4.5 *On the reduction or withdrawal of material reception conditions (Chapter III – Article 20)*

4.5.1 The Committee is concerned about this measure in cases where the asylum seeker '*has already lodged an application in the same Member State*'. Experience would suggest that an initial request may be followed by a request to review the case, justified by the production of additional information on the asylum seeker's situation or by the production of additional documents. It would therefore be very harsh for the asylum seeker to be excluded from material reception conditions. The Committee therefore calls for this **point to be removed (Article 20 (1) (c))**.

Furthermore, this measure seems to contradict the spirit behind the recasting of the regulation '*establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection*' ([14]) and the planned provisions.

4.5.2 The EESC welcomes the proposals to reduce the possibilities for withdrawing reception conditions in recast article 20(2) and the proposal to strengthen the provision for ensuring that minimal material reception conditions are provided to all asylum-seekers in recast article 20(4).

4.6 *On the provisions for persons with special needs (Chapter IV – Articles 21 to 24)*

Where minors are concerned, the Committee would like to see systematic mention of the fact that the 'best interests of the child' are to be understood **with reference to Article 3 (1) of the UN Convention on the Rights of the Child (Article 22(1))**.

4.7 *On victims of torture and violence (Article 24)*

4.7.1 The Committee proposes that victims of torture or violence and persons suffering physical or mental health problems be cared for in an appropriate hospital environment.

4.7.2 They should be allowed access, if necessary, to specialised centres. General and specialised medical staff must have access to reception and detention centres and applicants for international protection must be able to benefit from diagnostic skills and specific care provided by qualified health professionals recognised as competent by the health system of the host State.

4.7.3 Although the EC has not proposed amendments to Article 13 which allows Member States to require medical screening of applicants on public health grounds, the Committee wishes to recall that mandatory HIV testing violates a number of human rights, in particular the right to privacy ([15]). Testing should not be a precondition for allowing entry to territory or asylum procedures of persons seeking international protection. More generally, medical screening should be accompanied by appropriate information provided in a language the applicant understands (see 4.2.3.1) and should provide guarantees for consent, counselling and confidentiality, as well as appropriate medical follow-up and treatment.

4.8 *On appeals (Chapter V – Article 25)*

4.8.1 The Committee agrees that Member States should provide asylum seekers with legal assistance (Article 25(2)) but believes that it should be specified that **appeals have suspensive effect (Article 25 (1))** to avoid running the risk of rendering them meaningless ([16]).

Brussels, 16 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([14]) COM(2008) 820 final, which is the subject of an EESC opinion of 16.7.2009 on the Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), rapporteur: Ms Le Nouail Marlière (CESE 443/2009 - SOC/333. Is contained in the same publication).

([15]) As laid down, inter alia, in EHCR Article 8.

([16]) Gebremedhin v. France; ECHR judgment of 26 April 2007: Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, 1950, Articles 3 and 13, irreversible nature of the damage liable to be caused if the risk of torture or ill-treatment materialises, remedies of a suspensive effect; paragraphs 66 and 67 http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=816069&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649.

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person'

COM(2008) 820 final — 2008/0243 (COD)

(2009/C 317/22)

Rapporteur: **Ms LE NOUAIL-MARLIÈRE**

On 1 April 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 Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

COM(2008) 820 final — 2008/0243 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 June 2009. The rapporteur was Ms Le Nouail-Marlière.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 16 July), the European Economic and Social Committee adopted the following opinion by 154 votes to six, with seven abstentions.

1. **Conclusions**

1.1 The Committee welcomes the Commission's plans for developing the 'Dublin II' regulation, in that it should make the system more effective and ensure that the procedure is applied properly and that the rights of anyone needing international protection are upheld. It should also respond to the situations experienced by those Member States that are lacking in reception capacity and are thus unable to ensure the necessary level of protection.

1.2 The EESC welcomes and supports the bid to secure real access to the asylum application procedure and the obligation on every responsible Member State to make a complete evaluation of the protection needs of asylum seekers transferred to its territory.

1.3 The Committee notes the progress made in the Commission proposal when it comes to securing higher protection standards, in particular by means of improved information for asylum seekers on progress in the procedure for examining their requests. Certain doubts remain however regarding linguistic matters and the language in which information on the status of their request or transfer is provided. Indeed, since the information constitutes notification and brings with it rights of appeal and deadlines, persons seeking international protection should always be notified in their mother tongue or a language they acknowledge understanding, even if it involves using an accredited interpreter or legal translation, and a defence counsel should be appointed automatically by the courts or chosen by the applicant himself.

1.4 Persons seeking international protection should have automatic access to free legal defence and assistance.

1.5 The Committee welcomes the inclusion of the humanitarian clauses under discretionary clauses but would wish the implementation framework to be specified so that these discretionary and sovereignty clauses cannot be transformed to work against the interests and protection of asylum seekers.

1.6 The Committee emphasises the need always to examine the situation of each applicant individually, also when determining which Member State is responsible for the exhaustive examination of the application, and to consider subsidiary protection if and only if the conditions for the first convention status (refugee) are not met.

1.7 The Committee reiterates its recommendation to Member States and the European Union not to use lists of so-called safe third countries until the establishment of a common list, used by all Member States, and submitted to human rights NGOs, the European Parliament, and national parliaments, especially at the stage of determining which Member State is responsible for examining the application.

1.8 The Committee regrets that the **detention of asylum seekers** has not been declared an unacceptable practice unless and only unless this has been ordered by a court of law.

1.9 In accordance with the case-law of the European Court of Human Rights, the Committee would like appeals to be systematically considered to have suspensive effect in cases of forced return or so-called voluntary return.

1.10 The Committee advocates putting the experience of human rights NGOs to good use by giving them access to persons seeking international protection and giving asylum seekers access to assistance, and allowing Member States to harness their expertise, possibly involving them in training programmes for officials responsible for adjudicating asylum and protection claims, also during the crucial stage of determining the Member State responsible, and to take the local dimension into account in order to enable local and regional authorities to obtain assistance and support from the competent NGOs.

1.11 The Committee recommends that Member States step up their activities against criminals engaged in human trafficking; ratify international instruments to combat crime, including the two Additional Protocols to the United Nations Convention against Transnational Organised Crime; strike from their lists of safe third countries, countries that have failed to ratify these instruments and the Geneva Convention for the protection of refugees; and also ensure the protection and exemption from prosecution of victims of human trafficking through greater respect for their right to international protection when they seek asylum or protection, and to do so as soon as public officials have knowledge of the situation; and to ensure that they are trained accordingly.

1.12 *Confidentiality and management of personal data*

— The EESC welcomes proposals to ensure greater data security in Eurodac (COM(2008) 825-3), including the insertion of obligations for each Member State to put in place a security plan designed physically to protect data, to deny access for unauthorised persons and to prevent, inter alia, the unauthorised use, reading, copying or input of data ([1]). The particular vulnerability of asylum seekers to dangers which could result from the publication of data demand high standards of confidentiality and security.

— Other provisions aimed at ensuring the 'more efficient management of deletions' are also supported by the Committee, on the grounds that they will ensure that sensitive information is not retained in the database longer than necessary, notably after the issuance of a residence permit or the individual's departure from the Member States.

1.13 *Protection of refugees in neighbouring third countries of the EU*

The Committee urges the EU not to delegate the case-by-case examination of asylum cases to countries that have not ratified the international Convention for the protection of refugees ([2]); or its additional protocol ([3]).

2. **Introduction and gist of the proposal**

2.1 The Common European Asylum System (CEAS) has developed in two separate phases. The first of these began at the **Tampere European Council** (1999), following the entry into force of the Treaty of Amsterdam, which gave an EU dimension to immigration and asylum policies. This first phase ended in 2005.

2.2 The **first phase** involved developing a number of asylum directives and laid the foundations for a certain amount of cooperation between Member States.

2.3 The **second phase** of building the CEAS began with the **Hague Programme** (adopted in November 2004), which sets 2010 as the deadline for achieving its main objectives, by adopting instruments and measures aimed at greater harmonisation and an improvement in CEAS protection standards.

2.4 As a preliminary to the adoption of new initiatives, in 2007 the Commission produced a **Green Paper** ([4]), which was submitted to the various European institutions, to the Member States and to civil society ([5]). The Commission then used this as a basis for its policy plan on asylum. The latter lists the measures that the Commission intends to take in order to implement the second phase of the CEAS.

2.5 Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (hereafter referred to as the Dublin Regulation ([6])), the subject of the Commission's proposed recast, was the focus of a Committee opinion ([7]).

2.6 The main aim of the proposal is to increase the system's efficiency and to ensure higher standards of protection for persons falling under the 'Dublin procedure'. The latter governs the process of determining which Member State is responsible for the individual examination of a request for asylum, subsidiary protection or international protection within the meaning of the 1965 Geneva Convention, the 1967 New York Protocol and the Council directives on 'reception' (2003/9/EC of 27 January 2003) and 'qualification' (2004/83/EC of 29 April 2004), which are also in the process of being recast. In parallel, the proposal also aims to find better ways of addressing situations of particular pressure on Member States' reception facilities.

([1]) See Article 19(3) - (COM(2008) 825 final).

([2]) The 1951 Geneva Convention.

([3]) The 1967 New York Protocol.

([4]) COM(2007) 301 final, submitted on 6 June 2007.

([5]) The EESC addressed this issue in its opinion of 12 March 2008 on the *Green Paper on the future Common European Asylum System*, rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8.2008).

([6]) See Council Regulation (EC) No 343/2003/EC of 18 February 2003 on the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50, 25.2.2003, p. 1).

([7]) See the EESC opinion of 20 March 2002 on the *Proposal for a Regulation of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national*, Rapporteur: Mr Sharma (OJ C 125, 27.5.2002).

2.7 The proposal retains the same underlying principles as the existing Dublin Regulation, namely that responsibility for examining an application for international protection lies primarily with the Member State that played the greatest part in the applicant's entry into or residence in the territories of the Member States, subject to exceptions designed to protect family unity.

2.8 It maintains most of the Member States' obligations towards each other, and provisions governing Member States' obligations vis-à-vis asylum seekers subject to the Dublin procedure, insofar as those provisions affect the course of the proceedings between Member States or are necessary to ensure consistency with other asylum instruments. While improving existing procedural safeguards for a higher degree of protection, the new provisions are designed simply to respond more effectively to the particular needs of the people subject to the procedure, seeking to avoid any loopholes in their protection.

Bringing the regulation into line with the 'qualification' Directive 2004/83/EC, the current proposal extends the scope to include applicants for and beneficiaries of subsidiary protection, whereas the original Regulation (EC) No 343/2003 covered asylum seekers only. The current proposal also improves a number of provisions with the aim of ensuring that the procedure and system for determining Member State responsibility operates smoothly, while toughening up the legal safeguards for applicants for international protection applicants to enable them to defend their rights more effectively.

The proposal also sets greater store by measures designed to preserve family units and protect non-accompanied minors and 'other vulnerable groups'.

Lastly, in order to prevent Dublin transfers from adding to the burden on those Member States with limited reception and absorption capacities, the regulation includes a new procedure allowing for the suspension of Dublin transfers.

3. **General comments**

3.1 The proposal, which ties in with a package of measures announced as part of the policy plan on asylum implementing the CEAS ([8]), is one element in the harmonisation that the Committee has been hoping for and takes into account the loopholes highlighted during the Green Paper consultation on the future system. Nevertheless, it clearly does not review the principle whereby responsibility for examining the asylum application lies with the Member State that played the key role regarding entry or residence, apart from in exceptional cases. The Commission itself proposes more substantial changes but does not give a timetable (see Summary of the Impact Assessment SEC (2008) 2962/2963-2, third paragraph of the chapter on monitoring and evaluation), planning to base determination of responsibility on the place where a request is made (see COM(2008) 820, Explanatory Memorandum, Paragraph 3 of Point 2: Consultation of interested parties).

3.2 The Committee notes that the stance taken by the Commission appears to be that defended by the majority of the Member States. It recalls however that its own firmly stated position on this issue since 2001 has been that asylum seekers should be able to choose the country they wish to apply to, '*taking account of the cultural and social factors (…) which are crucial for faster integration*' ([9]). It would also note that with regard to the future CEAS ([10]) its stance has the support of numerous civil society organisations and also of the UNHCR.

3.3 Reservations regarding this principle aside, the Committee approves of the fact that a new procedure is planned in order to suspend Dublin transfers when the responsible Member State concerned would be subject to additional pressure.

3.4 The Committee notes that these measures reflect the intention to implement better legal and procedural safeguards with a view to upholding the fundamental rights of asylum seekers.

3.5 The Committee regrets that **the detention of asylum seekers** has not been declared an unacceptable practice – except where it has been legally established that the asylum seeker has fraudulent or criminal intentions. Detention is envisaged only for so-called 'exceptional' cases, but the criteria leave the Member States concerned with excessive leeway and oblige those defending asylum seekers to go through many lengthy procedures.

3.6 The EESC approves of the confirmation of the principle of the right to appeal against any decision, particularly those that would lead to a 'transfer'. It believes that these appeals should be considered to have '**suspensive**' effect so as to ensure that they are fully effective in securing rights, in accordance with the case-law of the European Court of Human Rights.

([8]) The EESC was not consulted on the changes made to Eurodac [COM (2008) 825]. Council Regulation (EC) 2725/2000 of 11 December 2000 complements the Dublin Regulation.

([9]) See in particular:
- the EESC Opinion of 20 March 2002 on the *Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national[Dublin II]*, (COM(2001) 447 final), rapporteur: Mr Sharma (OJ C 125, 27.5.2002, pp. 28–31).
- Opinion CESE 497/2008 of 12 March 2008 on the *Green Paper on the future Common European Asylum System* (COM(2007) 301 final), rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8.2008, pp. 77-84).

([10]) Green Paper on the Future common European asylum system (COM(2007) 301 final).

4. **Specific comments**

4.1 *On the recitals:*

4.1.1 On the family unit (**12**): the joint treatment of requests from members of a single family should not only aim to ensure that 'the members of one family are not separated', but also aim to secure **family reunification** for people seeking international protection, while upholding the autonomous rights of each asylum seeker, and particularly those of women.

4.1.2 The EESC strongly supports the proposal that **any Member State should be able to derogate from the responsibility criteria**, particularly for humanitarian reasons (**14**).

4.1.3 The right of appeal with regard to transfers to the Member State responsible (**16, 17**) should be qualified as having **suspensive** effect, so as not to risk contradicting its purpose ([11]).

4.1.4 In line with the Geneva Convention, asylum seekers should be **placed in detention** (**18**) only under 'exceptional circumstances'. However, these exceptional circumstances are not clearly defined in the recitals of the proposed text. The Committee is of view that it should be possible to place an asylum seeker in detention only **if their request is made after they have been notified that a removal order has been served**.

4.2 *On subject matter and definitions (Chapter 1, Articles 1 and 2)*

4.2.1 The Committee would question the relevance of having included **'risk of absconding' (Article 2 (l))** in the series of definitions, whereas this concept is used later in the text of the recast of the regulation for the purposes of determining 'detention' cases. At all events, there is a need to restrict the number of 'objective criteria defined by law' pointing to the risk that a person concerned by a transfer decision is liable to abscond: at the same time, it should be specified that these grounds must be decided by a competent court of law in compliance with the right to a defence, as set out in the Convention for the Protection of Human Rights and Fundamental Freedoms.

4.3 *On general principles and safeguards (Chapter II, Articles 3 to 6)*

The right to information

4.3.1 Asylum seekers should be informed of **their right to** 'challenge a transfer decision' and be **given access to information on the means of doing that**; they should not simply be informed that the possibility exists (**Article 4 (1)(e)**).

4.3.2 The Committee considers that stating simply that information should be 'provided in writing in a language that the applicant is reasonably supposed to understand' gives discretionary power to the authorities' representatives, whereas there is no guarantee that they have sufficient linguistic skills to exercise it (**Article 4.2**). It should be specified that the information must be given in **a language that the person concerned acknowledges understanding**.

Guarantees for minors

4.3.3 Whereas the 'best interests of the child' must govern all procedures (Article 6 (1)), it should be stated expressly that this is **in line with Article 3 (1) of the International Convention on the Rights of the Child**, so as to make this consideration legally irrevocable in a court of law.

Dependent relatives (Article 11 (1))

4.3.4 In the interests of consistency, the expression 'asylum seeker' should be replaced by '**applicant for international protection**'.

4.3.5 The fact that the applicant's desire must be expressed 'in writing' could restrict applicants' capacity to express themselves, going against the spirit of the text. It would be more correct to specify that **this request may be made in any form that enables the authorities to register it (in writing, in an interview or on a questionnaire)**.

On discretionary clauses (Chapter IV, Article 17)

4.3.6 The Committee agrees that any 'decision [by the Member State requested to take charge] refusing the request shall state the reasons on which it is based' (**Article 17 (2) paragraph 3**). It believes that it should also be specified that **in the absence of a response within a time limit of two months, the requested Member State should become responsible for examining the application**.

On procedures for taking charge and taking back (Chapter VI, Articles 20 to 31)

4.3.7 The Committee urges Member States to make the request to take back the person concerned (**Article 23(2)**) as soon as possible, and always within the deadline recommended by the Commission (two months for Eurodac cases and three months for others).

4.3.8 If the intention is for the applicant to have as much information as possible and that they should understand this information, it is not enough to provide notification in 'a language which the person is reasonably supposed to understand' (**Article 25 (1)**). As is the case for Article 4 (2), the Committee would like it to be specified that notification should be made in a **language that the applicant acknowledges understanding**.

([11]) Gebremedhin v. France; ECHR judgment of 26 April 2007: Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, 1950, Articles 3 and 13, irreversible nature of the damage liable to be caused if the risk of torture or ill-treatment materialises, remedies of a suspensive effect; paragraphs 66 and 67 http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=816069&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649.

It should be specified that appeals have suspensive effect (Articles 25 (2) and 26 (1)), as mentioned above (in relation to recitals 16 and 17):

4.3.9 It seems contradictory to promote the right to an **appeal** (with suspensive effect) for an applicant concerned by a transfer decision, while at the same time stating that the person concerned may not be authorised to remain in the country pending the outcome of his or her appeal or request for a review (**Articles 26 (3) and 26(4)**).

4.3.10 In order to support the principle enshrined in the Geneva Convention, according to which States may not hold people in **detention** simply because they have requested international protection (Article 27 (1)), the Committee would suggest that **Article 27 (3) should be placed before Article 27 (2)** in order to highlight alternatives to detention.

4.3.11 The Committee approves the explicit statement to the effect that the detention of minors may only be considered if they are **accompanied** (**Article 27 (10)**).

Brussels, 16 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

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

COM(2009) 28 final — 2009/0007 (CNS)

and the

'Proposal for a Council Directive on administrative cooperation in the field of taxation'

COM(2009) 29 final — 2009/0004 (CNS)

(2009/C 317/23)

Rapporteur: **Mr Sergio SANTILLÁN CABEZA**

On 13 February 2009, the Council decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the

Proposal for a Council Directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures

COM(2009) 28 final — 2009/0007(CNS)

and the

Proposal for a Council Directive on administrative cooperation in the field of taxation COM(2009) 29 final – 2009/0004 (CNS).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 June 2009. The rapporteur was Mr Sergio Ernesto Santillán Cabeza.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 16 July), the European Economic and Social Committee adopted the following opinion by 114 votes to three, with one abstention.

1. **Conclusions and recommendations**

1.1 The EESC welcomes the proposals for directives on mutual assistance for the recovery of claims relating to taxes and administrative cooperation in the field of taxation, because they meet an urgent need. The 30-year old legislation that they will replace has proved inadequate in the light of current requirements. The fact that only 5 % of claims are currently recovered calls for an urgent response.

1.2 The Commission's proposals take account of studies, suggestions and recommendations that have been made by the EU, in the Member States and in international fora and institutions such as the G-20 and the OECD. The EESC too has, in a number of opinions, given its unreserved support to the proposals aimed at making arrangements for cooperation between States in the field of taxation more effective (point 4.8 of this opinion).

1.3 The need for reform is now growing, as companies are having to deal with the social and economic fallout of the economic meltdown caused by the speculative and fraudulent practices uncovered in late 2007. This fallout, which will place a considerable burden on taxpayers for years to come, has led to the urgent call for effective measures to be adopted against the fraudsters who operate from the safety of tax havens or who use legal loopholes to avoid paying tax.

1.4 Globalisation makes the need for States to cooperate in the field of taxation even more pressing. In the EU, the fundamental freedoms that underpin its workings cannot be used to cover up failure to comply with the public obligation to pay taxes.

1.5 As a consequence, the Commission has rightly decided to draw up a new regulation in this field instead of introducing partial reforms to current legislation.

1.6 The EESC endorses the core aim of the proposals, which is to establish a Community administrative culture and give administrations the appropriate tools provided by modern technology (such as electronically-processed forms) to make procedures simpler and swifter. The provisions on language arrangements, one of the main obstacles to cooperation in the field of taxation (point 5.1), are also worth highlighting.

1.7 The obligation to provide information and the limit set (point 5.2) are in line with the OECD's procedures and attempt, quite rightly in the EESC's view, to prevent the improper use of banking secrecy and other, seemingly legal, procedures to defraud the treasury.

1.8 The involvement of a requesting State's officials in investigations carried out in the requested State has precedents in current legislation in certain fields (point 5.3). On this and on other aspects, the proposals uphold national sovereignty (point 5.5).

1.9 The taxpayer's obligations to the treasury are upheld in the context of cooperation between States, because this entails the possibility of contesting the legality of investigations and the acts carried out by the authorities (point 5.4).

1.10 The EESC suggests that in future, the Commission consider unifying tax law (point 5.6).

2. Proposal for a Council Directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (COM(2009) 28 final)

2.1 *Grounds for the Commission proposal*

2.1.1 The current legislation on mutual assistance [1] is slow, disparate and lacks coordination and transparency.

2.1.2 Tax authorities lack the power to recover taxes beyond their State borders because legislation in this field is national in nature: in order to recover taxes, the authorities must request the assistance of another Member State (or States), using procedures that have proven to be ineffective. This limitation on powers has created a problem that is worsening, due to the increased mobility of capital and persons. As a result, free movement, which is one of the European Union's key aims, has a detrimental effect in this area, as it benefits fraudsters. There is, therefore, a clear need for new measures.

2.1.3 This is plainly demonstrated by the fact that in 2007, the Member States received 11 794 requests for assistance from other Member Status to recover tax claims. The amounts actually collected, however, account for only 5 % of the total.

2.1.4 VAT fraud is particularly significant, and has two undesired effects: it distorts competition in the internal market and reduces Member States' and the Community's revenues [2].

2.2 *Proposed measures for the recovery of tax claims*

2.2.1 Extending the scope of mutual assistance. Unlike Directive 2008/55/EC, which contains a short list of claims likely to be recovered, the current proposal covers 'all taxes and duties levied by or on behalf of Member States' territorial or administrative subdivisions, including the local authorities', as well as compulsory social security contributions, 'refunds, interventions and other measures' relating to the EAGF [3] and the EAFRD [4], as well as 'levies and other duties provided for under the common organisation of the market for the sugar sector;' (Articles 1 and 2).

2.2.2 Better exchange of information. In addition to the spontaneous exchange of information (Article 5), the proposal adds the highly significant option of officials from one Member State being able to participate actively in enquiries carried out by another Member State (Article 6).

2.2.3 Simplification of the procedure for the notification of documents (Articles 7 and 8).

2.2.4 More effective recovery and precautionary measures (Chapter IV). These provisions, which form a key part of the proposal, address the following aspects:

— The conditions governing a request for recovery in the requesting Member State (Articles 9 to 12).

— Consideration of the claim: 'For the purpose of the recovery in the requested Member State, any claim in respect of which a request for recovery has been made shall be treated as if it were a claim of the requested Member State, unless this Directive provides otherwise.' (Art. 12(1)) [5]. The requested Member State shall recover the claim in its own currency.

— Other aspects relating to recovering a claim: information to the requesting State, the transfer of any amounts recovered, interest charged and payment by instalment (Article 12(2) to 12(5).

— Precautionary measures ensuring claims recovery (Articles 15 and 16).

— Limits to the requested authority's obligations (Article 17).

— Limitation on claims (Article 18).

— Procedural costs (Article 19).

2.2.5 Uniformity and simplification of the general rules governing requests in relation to forms, means of communication, use of languages, etc. (Articles 20 to 23).

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(1) Directive 76/308/EEC of 15 May 1976, subsequently codified by Council Directive 2008/55/EC of 26 May 2008.

(2) COM(2009) 28 final: 'The effect of Directive 2000/65/EC, which abolished the possibility of requesting designated VAT representatives, and the expansion of VAT fraud - especially the so-called carousel fraud - has led to a situation where 57,50 % of all recovery requests relate to VAT claims (situation in 2007)'. See too the Commission Communication on 'A coordinated strategy to improve the fight against VAT fraud in the European Union', COM(2008) 807 final.

(3) European Agricultural Guarantee Fund

(4) European Agricultural Fund for Rural Development.

(5) Directive 2008/55/EC currently in force contains a similar provision (Art. 6(2)). According to this provision, the claim **does not belong** to the requested Member State but **can be considered as such**, in other words, it is treated in the same way in which the requested State treats its own claims.

3. **Proposal for a Council Directive on administrative cooperation in the field of taxation (COM(2009) 29 final)**

3.1 *Grounds for the Commission proposal*

3.1.1 The High-level working group on fraud ([6]), the Commission ([7]) and the Member States have all noted that the legislation on mutual assistance by the competent authorities in the field of direct taxation and the taxation of insurance premiums taxes is inadequate ([8]). According to the Commission, the serious shortcomings of Directive 77/799 have created increasing difficulty in assessing taxes correctly, affect the functioning of taxation systems and entail double taxation, which itself incites to tax fraud and tax evasion, while the powers of controls remain at national level ([9]).

3.1.2 Consequently, it is proposed to adopt an innovative approach that goes beyond simply making changes to the current directive. The new scheme, therefore, represents a new and integrated legal framework that covers all the fundamental aspects of administrative cooperation in the field of taxation, markedly boosting the authorities' powers to combat fraud and tax evasion.

3.1.3 Since the aim is to establish effective mechanisms for cooperation between the Community authorities and the Member States and between the Member States themselves, a key objective of the two proposals is to set common rules, whilst fully respecting national sovereignty in the field of taxation.

3.2 *Proposed measures to improve administrative cooperation between Member States*

3.2.1 Extending the scope of legislation along the lines of the preceding proposal (on the recovery of claims).

3.2.2 Exchange of information. Three proposals for exchanging information are put forward:

— A prior request by the requesting authority (Articles 5 to 7). The request for information might entail carrying out 'any administrative enquiries' necessary to obtain the information.

— Automatic exchange of information (Article 8). This means the systematic communication of predefined information from one Member State to another, without prior request, at pre-established regular intervals or as and when that information becomes available (Article 3(4)). Nevertheless, it is the comitology procedure, set out in Article 24 that will, within two years, determine the specific features of this information exchange.

— Spontaneous exchange, where the competent authorities of a Member State deem this appropriate.

3.2.3 Other forms of cooperation:

— The presence of officials from the requesting authorities in the offices of the administrative authorities and their participation in the administrative enquiries of the requested authority (Article 10).

— Simultaneous controls of one or more persons in different States (Article 11).

— Rules governing the administrative notification decided on in another Member State (Article 12).

3.2.4 General aspects of administrative cooperation.

— Feedback (Article 13). The emphasis is on the speed of response, amongst other things.

— Sharing of best practices and experience (Article 14).

— Different aspects of cooperation. The requesting or requested authorities may disclose the information and documentation they obtain to other authorities and use these for purposes other than those originally stated (Article 15). Other aspects covered are: the conditions governing Member States' obligations (Article 16); The limits on the obligation to cooperate (Article 17); Application of the principle of 'most favoured nation' (Article 18); Standard forms and computerised formats (Article 19) and use of the common communication network (CCN network) (Article 20).

4. **General comments**

4.1 The EESC fully shares the Commission's assertion that 'The Member States' need for mutual assistance in the field of taxation and especially for direct taxation is growing rapidly in a globalised era. There is a tremendous development of the mobility of taxpayers, of the number of cross border transactions and of the internationalisation of financial instruments, which makes it more and more difficult for Member States to assess taxes due properly, while they stick to national sovereignty as regards the level of taxes' ([10]).

([6]) Report published in May 2000 (Council Document 8668/00 entitled 'Fight against tax fraud').

([7]) See the Communications from 2004 (COM (2004)611 final) and 2006 (COM(2006)254 final).

([8]) Council Directive 77/799/EEC, of 19 December 1977.

([9]) COM(2009)29 final, p.2.

([10]) Explanatory memorandum, COM(2009) 29 final.

4.2 The two proposals are based on the observation that the legislation produced more than thirty years ago (at a time when the EU had nine Member States) is today inadequate, due to the changes that have taken place in the internal market since then: in the second half of the 1970s, free movement had not yet been achieved and integration was minimal.

4.3 For years now, concern has been expressed at the high levels of fraud and tax evasion in the EU. In 2004, the Commission addressed this issue, as the result of scandals relating to the dubious practices employed by some companies ([11]) and put forward a range of measures to 'improve transparency of tax systems' and proposed developing 'concrete proposals targeted at cases of tax fraud and avoidance involving complex and opaque structures'. Referring to specific cases ([12]), the Commission pointed out that these scandals 'caused uncertainty in capital markets, damaging the overall economy'.

4.4 Five years on, the events detailed in the 2004 Communication appear insignificant in comparison with those that have erupted recently and the damage done to the economy now is also considerably greater.

4.5 This issue is today of global importance due to the economic and financial disaster caused by fraudulent practices, which started to emerge in late 2007. One of the G-20's tasks is to propose the drafting of international rules to make commercial transactions transparent and trustworthy, thereby combating fraud and tax evasion ([13]).

4.6 The scandals caused in some EU countries in relation to tax-evasion mechanisms provided by tax havens (such as the fraud committed in Liechtenstein at the expense of the German Treasury), have been widely condemned by the public, which is calling for more effective measures to combat tax evasion and financial crime.

4.7 The exchange of information and greater ease of access to data to combat tax fraud are another of the OECD's goals ([14]).

4.8 Over the years, the EESC has strongly supported measures to improve cooperation and has called for better control instruments and mechanisms ([15]).

4.9 In line with all of this earlier work, the EESC welcomes the two proposals for directives, because they represent a real step forwards for European integration. Compliance with tax obligations is a cornerstone of a functioning welfare state.

5. **Specific comments**

5.1 *Creating a Community administrative culture*

5.1.1 In the EESC's view, the most noteworthy aspect of the two proposals – particularly in the proposal for administrative cooperation - is the desire to establish a Community administrative culture, a crucial aspect of the fight against fraud, as stated in the 2006 Communication ([16]).

5.1.2 This decision, which reflects the experiences of tax administrations over a period of time, also applies to different aspects such as: the obligation to designate a single tax liaison office in each Member State, and also the option to designate specific liaison services, which will stay in touch with one another; the possibility of appointing competent officials to play a direct role in activities; setting deadlines (which do not currently exist) for the transmission of information; the obligation to provide 'feedback', etc.

([11]) Commission Communication on Preventing and Combating Corporate and Financial Malpractice (COM(2004) 611 final).

([12]) Such as Parmalat and Enron, whose shareholders lost USD 67 billion.

([13]) G-20 Washington Declaration (15 November 2008): 'Tax authorities, drawing upon the work of relevant bodies such as the Organization for Economic Cooperation and Development (OECD), should continue efforts to promote tax information exchange. Lack of transparency and a failure to exchange tax information should be vigorously addressed.'

([14]) Global Forum on Taxation, also involving non-OECD countries. See 'Tax co-operation: towards a level playing field – 2008 Assessment by the Global Forum on Taxation'. OECD, August 2008.

([15]) See the EESC opinion on the Commission Communication concerning the need to develop a coordinated strategy to improve the fight against fiscal fraud, OJ C 161, 13.7.2007, p. 8. This opinion contains an exhaustive list of Community legislation. See also the opinions on the following proposals:

— Proposal for a Regulation (EC) of the Council, of 7 October 2003, on administrative cooperation in the field of value added tax and the 'Proposal for a Directive of the European Parliament and of the Council amending Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation', OJ C 80, 3.4.2002, p. 76.

— The proposal for a European Parliament and Council regulation on administrative cooperation in the field of excise duties and the Proposal for a European Parliament and Council Directive amending Council Directive 77/799/EEC, concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums, and Council Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products., OJ C 112, 30.4.2004, p. 64.

— Proposal for a Decision of the European Parliament and of the Council establishing a Community programme to improve the operation of taxation systems in the internal market (Fiscalis 2013) OJ C 93, 27.4.2007, p. 1.

([16]) Adopts a suggestion from the Council's ad hoc Group on fiscal fraud See COM(2006) 254, point 3.1)..

5.1.3 The EESC welcomes the proposal to use standardised forms and computerised formats, which will greatly facilitate procedures.

5.1.4 Also worth highlighting is the simplification of the language arrangements – a major obstacle to cooperation and a factor making procedures more expensive - and the use of the new technologies in this field, as forms can be translated automatically.

5.2 *Limits on administrative cooperation, banking secrecy, the involvement of intermediaries and share ownership*

5.2.1 There are limits to the administrative cooperation set out in the proposal. The requested Member State should provide the requested information provided that this does not 'impose a disproportionate administrative burden' and that the requesting State 'has exhausted the usual sources of information which it could have used'. The requested State may, however, refuse to provide information on certain grounds: a) if conducting enquiries or copying the requested information breaches its own legislation; b) if, for legal reasons, the requesting State is unable to provide information similar to the information it is requesting; c) where this might lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy ([17]). The EESC considers these limits to be adequate.

5.2.2 The requested Member State may not, however, refuse 'solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person' ([18]). Given the high frequency of tax fraud, the EESC welcomes this clarification, without which the stated aims of both proposals to ensure compliance with tax obligations could come to nothing ([19]).

5.2.3 It should be noted that the obligations to provide information and the limits on these obligations are covered in similar terms in the OECD's Model Convention ([20]).

5.3 *The presence of officials from another Member State*

5.3.1 The proposal for a directive on administrative cooperation and the proposal for a directive on assistance for the recovery of claims both provide for the possibility that officials from the requesting Member State be present during the administrative enquiries carried out in the requested State. The EESC considers this form of cooperation to be adequate, as it is subject to two important conditions: an agreement must be in place between the requesting and requested authorities and the officials must act 'in accordance with the laws, regulations or administrative provisions of the requested Member State' ([21]).

5.3.2 The presence of officials from another Member State is already provided for in the fields of excise duties ([22]) and VAT ([23]) although in the case under consideration, the powers involved are greater, because officials may exercise powers of inspection.

5.4 *Legality of the instrument for enforcing a tax claim*

5.4.1 One issue of particular interest is the legality of the investigation procedures that the tax authorities are entitled to carry out. The EESC considers that this issue is satisfactorily addressed in the proposal for a directive on assistance for the recovery of claims. First of all, it should be borne in mind that the schemes provided for, not only in the two proposals for directives under consideration in this opinion but also those applying to VAT and excise duties, only establish procedures for cooperation between States, which retain full sovereignty for determining the legality of the investigation procedures that they carry out on their territory.

5.4.2 As a general principle, officials must act in accordance with the law ([24]) and administrative measures are presumed to be valid and are consequently binding, with the exception of the right of the party concerned to contest them in a court of law. With regard to disputes concerning the recovery of claims, it is the Member State seeking to recover the claim (in other words, the requesting State) that is competent to determine the validity of the claim, the initial instrument permitting enforcement, the uniform instrument permitting enforcement and the validity of the notifications sent by that State ([25]).

5.4.3 In the event of a dispute, however, it falls to the corresponding bodies in the requested State to determine whether the enforcement measures taken or the notifications sent by that State are legal ([26]). In both cases, the guarantee that can be requested from the taxpayer is assured because, except where the law provides for the possibility referred to in the following point, the enforcement procedure is suspended in the part of the claim affected by the dispute. The obligation for States to provide information on contested claims is set out, although the parties concerned could, of course, also provide this information.

([17]) COM(2009) 29 final, Art. 16.

([18]) COM(2009) 29 final, Art. 17(2).

([19]) Switzerland is estimated to account for about a third of the world's USD 11 000 bn in clandestine personal wealth. 'Swiss banks ban top executive travel. Concern that employees will be detained'. Financial Times 27-03-09.

([20]) Model Convention with respect to taxes on income and capital, Articles 26 and 16; OECD, 17 July 2008.

([21]) COM(2009) 28 final, Art. 6(2) and COM(2009) 29 final, Art. 10(2).

([22]) Council Regulation (EC) No. 2073/2004 of 16 November 2004 on administrative cooperation in the field of excise duties, Art. 11.

([23]) Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value-added tax and repealing Regulation (EEC) No 218/92, Art. 11.

([24]) According to the European Code of Good Administrative Behaviour, 'The official shall […] take care that decisions which affect the rights or interests of individuals have a basis in law and that their content complies with the law.' (Article 4).

([25]) COM(2009) 28 final, Art. 13(4).

([26]) COM(2009) 28 final, art. 13(2).

5.4.4 In the case of claims contested in the courts, precautionary measures could be adopted, provided that the legislation of the requested State permits this. Furthermore, if allowed under the legislation of the requesting Member State, that State may ask the requested authority to recover a contested claim in the courts on the basis of a reasoned request ([27]).

5.4.5 Where criminal law is concerned, it should be noted that this falls within the exclusive remit of the Member States ([28]).

5.5 *The sovereignty of Member States*

5.5.1 The EESC wishes to emphasise that the proposals fully respect the sovereignty of the Member States which ultimately, under the directives in question, implement their own legislation through their own institutions in the relevant fields. This is illustrated, amongst other things, by the cases referred to in points 5.3 and 5.4 of this opinion.

5.5.2 This also concerns the disclosure of information and documents received under the directive, which states that:

— It may be disclosed by the requesting or requested authority to other authorities within the same Member State, in so far as this is allowed under the legislation of that Member State. The information may be used for other purposes than those relating to taxation.

— The competent authority of a Member State may transmit that information to the competent authority of a third Member State, 'provided this transmission is in accordance with the rules and procedures laid down in this Directive'.

— Further, any documents and information obtained by the requesting authority may be invoked/used as evidence on the same basis as similar information obtained within its own territory ([29]).

5.5.3 Unlike the provisions of the OECD's Agreement on Exchange of Information on Tax Matters ([30]) authorisation from the requested State is not required.

5.6 *The need to unify legislation*

5.6.1 The two directives contain regulations with identical or similar content. One example is the proposal on the notification of documents ([31]) and other examples could be given. As stated above, the presence of officials from other Member States is addressed in two directives and two regulations, which also differ on the range of powers for investigators.

5.6.2 The EESC considers that in future, a better legislative technique would be to strive to unify tax laws as far as possible.

5.7 *Implementation of the new scheme*

5.7.1 Implementing the complex new scheme now being proposed will require considerable effort by the Community and national institutions. Firstly, due to the deadlines: the time limit for transposing the two directives (which cover different areas of the legal system) is 31 December 2009, which would appear to be quite ambitious. The Committee on Administrative Cooperation for Taxation will have to work extremely hard to draw up the rules on the automatic exchange of information within two years.

5.7.2 Secondly, adapting the administrative machinery to the new requirements will mean ensuring the tax authorities have the necessary material and human resources. Particular attention is drawn to the need to provide training for officials, which will in many cases require additional budgetary allocations.

5.7.3 In any event, the EESC wishes to emphasise that the proposals' aims for the fight against fraud and tax evasion will only produce tangible results if there is a determined political will to provide the appropriate resources.

Brussels, 16 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([27]) If the court finds in favour of the debtor, the applicant authority shall be liable for reimbursing any sums recovered, together with any compensation due, in accordance with the laws in force in the Member State of the requested authority COM(2009) 28 final, Art. 13(4), final paragraph.

([28]) '… shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.', Treaty on European Union, Art. 33.

([29]) COM(2009) 29 final, Art. 15(1), 15(2) and 15(3).

([30]) The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party. (Art. 8).

([31]) COM(2009) 28 final, Articles. 7 and 8; COM(2009) 29 final, Art. 12.

Opinion of the European Economic and Social Committee on the 'Communication from the European Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Regional integration for development in ACP countries'

COM(2008) 604 final

(2009/C 317/24)

Rapporteur: **Mr DANTIN**
Co-rapporteur: **Mr JAHIER**

On 1 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 European Economic and Social Committee and the Committee of the Regions: Regional integration for development in ACP countries

COM(2008) 604 final.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 27 May 2009. The rapporteur was Mr Dantin. The co-rapporteur was Mr Jahier.

At its 455th plenary session, held on 15 and 16 July 2009 (meeting of 16 July 2009), the European Economic and Social Committee adopted the following opinion by 132 votes with 2 abstentions.

1. **Conclusions and recommendations**

1.1 The Committee would reiterate the view expressed in previous opinions that the regional integration of the ACP countries is a prerequisite to their development. Development, in turn, will help to deepen integration, thus sparking the beginnings of a virtuous circle.

1.2 **It therefore welcomes the analysis and ways forward set out in the present Communication. It also calls for regional integration to be one of the defining elements of the 2010 revision of the Cotonou Agreement.**

1.3 The Committee regrets, however, that the Communication does not provide an analysis of the difficulties so far encountered and does not state more clearly the implementation priorities.

1.4 The Committee emphasises that making headway in regional integration hinges on a number of factors. **The EU can and must play a significant role with regard to each of these factors**.

1.5 Deeper regional integration cannot be achieved without greater stability in the countries concerned. **Peace and security must be one of the EU's priorities**.

1.6 The development of the ACP States is one of the prerequisites for regional integration, which in turn nurtures development.

1.7 This development depends, in particular, on:

— redirecting the sources of growth and thus diversifying the economy, production structures and services systems;

— rural and sustainable development guaranteeing food security;

— developing the private sector, especially SMEs;

— good governance, which must be seen in the round and include respect for human and workers' rights, the rule of law, democracy and tackling corruption. **On this last issue, the Committee is astonished that at no point does the Communication mention corruption**; it would want the EUR 1,75 billion of the 10th EDF earmarked for supporting integration to be allocated only if it is possible to trace how it is used;

— and effective participation of non-state actors, as was laid down in the Cariforum-EC EPA. Hence there will be a need to politically and financially promote socio-occupational networks at regional level.

1.8 The Committee would like to see consideration – or further consideration – of the following aspects:

— the possibility of promoting regional cooperation between the EU's outermost regions and integrated ACP regions that form their geographic environment, and how useful this would be;

— the fact that interim EPA agreements with individual countries could set back the concluding of regional EPAs, and possible solutions to this;

— the fact that regional integration may be hindered by EPA negotiations that involve regional groupings different from existing ones;

— the possible consequences for regional integration, especially in Africa, of the fact that the contingent of powerful economic players has changed and become more diverse in recent years;

— and the impact of the current financial and economic crisis.

2. **Introduction**

2.1 It seems reasonable to conclude that global competition will be the distinguishing feature of the new millennium. Faced with the opportunities and the challenges this presents, one response for all countries in every continent is to integrate their economies regionally with their neighbours, creating bigger and more competitive regional economic blocs (such as NAFTA, ASEAN, APEC, MERCOSUR and CARIFORUM) in order to trade internationally not only as countries but as a regional power.

2.2 Nowhere is such a shift more urgently needed than in the ACP countries, especially Africa [1], where a number of factors (relatively underdeveloped economy, dire poverty, trade terms, borders inherited from colonial times, maladministration, often endemic conflicts, corruption and so on) have so far combined to prevent them from playing a significant part in international trade, even though they have considerable markets and potential.

2.3 This is why support for regional integration has been one of the lynchpins of the European Union's cooperation policy where the ACP countries are concerned. The European Community's support for economic integration policy has its roots in the Yaoundé Convention of 1969, which defined the notion of cooperation linked to partnership aid. Since then, the EU has pursued both political and technical and financial cooperation through the various Lomé and Cotonou conventions [2]. This has since been elaborated and extended beyond the ACP to all developing countries [3]. One of the eight action plans adopted at the EU-Africa summit held in Lisbon on 8 and 9 December 2007 concerned 'regional integration and infrastructure' [4].

[1] Africa is not only the largest ACP continent, but also accounts for 95 % of ACP aid.

[2] See on this matter the very clear provisions in the Cotonou Agreement regarding both the goals (Art. 1) and the regional cooperation and integration strategy (Art. 28, 29 and 30; also see Annex 1). These provisions remain pertinent and must be revived and relaunched.

[3] Commission Communication on European Community support for regional economic integration efforts among developing countries, COM(1995) 219 final, 16.6.1995.

[4] The aim is 'supporting the African integration programme, strengthening African capacities for quality controls, [and] setting up an EU-Africa infrastructure partnership'. See EESC Opinion OJ C 77 of 31.3.2009, p. 148-156 on EU-Africa Strategy.

2.4 The present Communication aims to map out the scope and context of regional integration and to take stock of progress made and challenges to be faced. It also sets out the goals to pursue and proposes a support approach to achieve them.

2.5 This opinion will first set out and examine the substance of the Communication and then put forward a few ideas and make some general and specific remarks about it. To do this, it will draw on all the work the Committee has already produced, be it in previous opinions or at its regional seminars that have brought together the organised civil society of different ACP regions and the conferences held in Brussels attended by non-state actors from all the ACP countries.

3. **Gist of the Communication**

3.1 The Communication summarises the changing context and the European Union's sustained action over many years, as well as some recent political initiatives to further the regional integration of the ACP countries (regional programming of the 10th European Development Fund, intensive negotiations on the Economic Partnership Agreements, and so on). It then goes on to take stock, reviewing the coherence of European Union action and mapping the routes to be followed using EU instruments.

3.2 The assessment of past action and prospects falls into four main sections:

— the prime objectives of regional integration;

— achievements and challenges in regional integration in ACP countries;

— the development of an EU support approach based on five priorities:

  — strengthening regional institutions;

  — building regional integrated markets;

  — supporting business development;

  — connecting regional infrastructure networks;

  — developing regional policies for sustainable development.

— making the most of EU tools by strengthening political dialogue at global, regional and national level while systematically supporting the creation or reinforcement of regional civil society. This reinforced Community support will ensure that greater benefit is derived from the 10th EDF.

4. **General remarks**

4.1 The EESC has examined the question of the regional economic integration of the ACP countries on a number of occasions.

4.1.1 The matter was the central topic of three regional seminars it organised (Yaoundé in May 2003, Fiji in October 2004, and Bamako in February 2006) and has been the subject of two opinions.

4.1.2 The ideas generated were firmed up at the conference of ACP non-state actors held in Brussels in June 2005. Its proceedings noted that ACP countries would have to step up their regional integration if they were to open up to trade. The creation of real common markets in Africa, the Caribbean and the Pacific would have to be accelerated. If they were better organised in this regard, these countries would be more able to defend their own social and economic interests in the face of globalisation.

4.1.3 More recently, in an exploratory opinion on the EU-Africa strategy fn ([5]) drafted at the request of Commissioner Michel, the Committee stated: '**Africa's economic development depends first and foremost on deepening its internal market so that it is able to develop the type of endogenous growth that would stabilise and establish the continent in the world economy. Regional integration and internal market development are the pillars and springboards that will enable Africa to participate positively in world trade**. **Regional integration and internal market development are the pillars and springboards that will enable Africa to participate positively in world trade**. From this perspective, the Committee regrets that **regional** negotiations on economic partnership agreements, which include economic integration among their objectives, have not been concluded at the time of writing.'

4.2 In keeping with its earlier thoughts and positions taken, the **Economic and Social Committee welcomes the Communication** and all the ways forward it proposes. It also believes that, given its importance, regional integration must be one of the defining elements of the 2010 revision of the Cotonou Agreement, both regarding the joint evaluation by those involved in the partnership and in the context of strengthening and relaunching this agreement for the years to come.

4.3 The EESC regrets, however, that the present Communication does not provide a fuller, if not exhaustive, inventory and critical analysis of the difficulties so far encountered that have held regional integration back. Such an analysis would have uncovered the stumbling blocks to be avoided and made it possible to define and propose rational approaches to cooperation. Similarly, the Committee thinks that a clearer ranking of priorities would have made the Communication more readable and comprehensible, even though adjustments would be needed in the implementation phase to cater for different stages of development in the countries concerned.

4.4 The Committee thinks it useful to highlight a number of issues in the general and specific comments that follow. The Communication addresses some of these, at least in passing, and some it does not. However, the Committee thinks they are of critical importance in deepening regional cooperation and should therefore be highlighted and given prominence as the cornerstones and essential and indispensable stages of this process.

5. **General and specific comments**

5.1 It is generally accepted that successful regional integration depends on a number of factors, including political commitment, peace and security, rule of law, democracy, good governance of public affairs and macroeconomic stability. To these can be added an economic environment in which markets are able to operate effectively, greater access for third countries, sufficiently robust institutions with clear terms of reference, the appropriate resources, political support and a large involvement of the private sector and civil society.

5.2 Nevertheless, if headway is to be made in implementing regional integration – and especially if the ideas in the broad definition proposed by the Cotonou Agreement ([6]) are pursued – **priority must be given to aspects (addressed in the points that follow) which help the ACP countries develop, since if integration is a source of development, development in turn nurtures integration**. The EU must do its utmost on all of these points.

5.3 *Peace and security*: In Africa in particular, development – and hence regional integration – cannot be achieved without greater stability in the countries concerned. However, a fair number of countries are still mired in interminable conflicts. In the last ten years, hostilities in Guinea, Liberia and Sierra Leone (countries with natural resources, including diamonds and timber) have plunged the region into a severe crisis provoking a tide of refugees. This is to say nothing of the Darfur conflict in Sudan, the 'forgotten war' in the north of Uganda, the massacres in Kivu driven by coltan and an ethnic war evoking to some extent the genocide in Rwanda, the abiding insecurity in the east and north of the Central African Republic, instability in Congo, Mauritania and Fiji, the 'difficulties' recently encountered by Kenya, and Zimbabwe. This is an enormous hurdle to regional integration. This is an enormous hurdle to regional integration. Helping to make these countries more stable must be one of the European Union's priorities, not least in order to foster development – which, in turn, may lead to deeper integration.

([5]) REX/247 - OJ C 77 of 31.3.2009, p. 148-156, rapporteur: Gérard Dantin.

([6]) 'Regional integration is the process of overcoming, by common accord, political, physical, economic and social barriers that divide countries from their neighbours, and of collaborating in the management of shared resources and regional commons.'

5.4 *The countries first*: While regional integration is crucial for the development of ACP countries, it also hinges on the development of each of the countries ([7]) concerned, and on the degree to which their economic level and policy types complement each other. There would be no point seeking to integrate what does not exist. Transport can only be integrated and infrastructures interconnected on a regional basis insofar as these exist and are developed in the countries in question. In this sense, a pivotal issue is how well the national and then regional and central indicative plans (participation of non-state actors) are drafted and executed. The EU is responsible, for example, for the 'use' of EDF resources provided. The Committee suggests that particular attention also be paid to the **funding of cohesion measures** where aid is granted to regional economic integration between countries that have widely divergent economic structures and stages of development. The cure could otherwise be worse than the malady.

5.5 *Corruption*: This is present at virtually every level of society, especially in Africa, and is an obstacle to economic development ([8]). It is also, consequently, an obstacle to regional integration ([9]). **The Committee is astonished that at no point does the Communication mention corruption itself**, given that combating corruption is one of the goals of the African Union and also features strongly in the Cotonou Agreement (cf. Article 30(f)). Admittedly, the enormous political and economic ramifications – with the African countries, for example – mean that diplomacy has an important role to play. But diplomacy is not enough in itself. While it is not the EU's place as a donor to tell its partners what action to take, it is obliged to ensure that Cooperation funds are well targeted and used, since this is European tax-payers' money. The Committee would therefore want the EUR 1,75 billion of the 10th EDF earmarked for supporting integration to be allocated only if it is possible to trace how it is used.

5.6 *Redirecting the sources of growth by diversifying the economy, production structures and services systems*: Regional economic integration will be facilitated by a market that is diversified and expanding. It will not come about simply by exploiting natural resources and traditional agricultural and mass production (sugar cane, cotton, bananas, peanuts, cocoa, etc.). It will be the result of developing a transformation industry that creates added-value products: this is the best way in the long run to avert a fall in exchange rates and enable positive participation in the development of the regional economy ([8]).

5.7 *Guaranteeing food security and rural and sustainable development*: There will be no regional economic integration without food security for all the countries participating in it ([8]). This being the case, agriculture must be a strategic priority, since it is the essential plank of sustainable development. The sector must learn all the lessons from the food crisis of 2007 and 2008 and the one we are currently experiencing, which has come in the wake of the sharp hike in agricultural produce and energy prices in 2008. The incremental development of agriculture, which entails the genesis and/or development of the agro-food sector, and more generally a new priority for the rural dimension of development, can only be achieved by putting in place at national and regional level a serious policy for the sector and for food security and rural development. This must be structured and planned for the short, medium and long term. This policy must be given budgetary and financial priority in the broadest sense and be adapted to the constraints of each country while at the same time integrating the regional approach. A priority programme for agricultural development in each of the ACP countries participating in regional integration should be promoted in the 10th EFD. There must be a clean break from the way in which the 9th EFD was used, when only four out of 78 ACP countries made agriculture a priority sector and only fifteen chose rural development, meaning that only 7 % was devoted to sustainable development and 1.1 % to activities explicitly connected with agriculture. On this point, a broader, constant and structural involvement of non-state actors (NSAs), especially farmers and rural organisations, and of local authorities is a crucial element in any sustainable implementation of development policies.

5.8 *Promoting the private sector*: Strengthening and diversifying the private sector is of paramount importance for sustainable development, the creation of decent jobs and poverty reduction. Developing the private sector, especially industrial SMEs, while promoting trade opportunities ([8]), is a *sine qua non* of successful integration. If this development is to have an impact it must be

([7]) The Committee's analyses and proposals on this matter are to be found in the Opinion on The EU-Africa Strategy – OJ C 77 of 31.3.2009, p. 148-156.

([8]) Ibid. point 7.

([9]) In May 2008, for example, the World Bank published a report on Ivory Coast which states that 'Racketeering by Ivorian security forces and the hassle at roadblocks in the country constitute obstacles **to free movement of goods and people**. Apart from its negative impact on economic activity, racketeering illegally costs transport operators between USD 230 and USD 363,3 million annually.' The study notes that this sum is equivalent to between 35 and 50 % of the country's investment expenditure in the 2007 budget.

underpinned by efforts at regional level to strengthen the way in which SMEs are organised. **In tandem with this, due regard should also be given to upgrading human resources** ([10]), obviously in terms of education and training, but also as regards health issues, such as combating HIV/AIDS ([11]), access to drinking water, easier access to healthcare (social security), health and safety at work, etc. The Committee welcomes the fact that the Commission is making development of businesses, and especially of SMEs, one of the pillars of its action to support regional integration. On this point, social dialogue, collective bargaining and the role of the representative social partners generally are necessary elements for the process to be effective. This must therefore be promoted at regional level. As part of its PRODIAF education programme ([12]), the ILO has encouraged the development of social dialogue in West Africa. The Committee has already made it clear in several final declarations from its seminars and conferences that it would like to see this model duplicated in English-speaking Africa and the Pacific while moving forward with the idea of a regional collective agreement, like that already concluded in French-speaking Africa.

5.9 *Good governance*: Bad governance of one kind or another in the countries that make up the region will be both an obstacle to integration and a handicap when it comes to attracting FDI. Good governance must be seen in the round and include respect for human, children's and workers' rights, the rule of law, democracy and the absence of corruption ([13]). For this good governance to be effective it must be accompanied in parallel by strong associations and representative unions – both trade unions and employers' bodies – **independent of the political authorities**.

5.10 *Participation of non-state actors* ([14]): The EESC welcomes the Communication's proposal to 'systematically support the creation or reinforcement of regional civil society forums' in order to oversee regional integration. In this sense, the negotiation of Economic Partnership Agreements is an opportunity. It is an opportunity seized upon in the Cariforum-EC EPA, which institutionalised the participation of non-state actors in monitoring its implementation. As it believes that, by pooling knowledge, such participation helps deepen regional integration and achieve public ownership, thus boosting the ACP/EU partnership, **the Committee asks the Commission and the ACP States involved in negotiations to retain this principle in all future regional EPAs**. However, for the stated intention to crystallise and become reality and for civil society to participate fully and effectively in the process of regional integration, **attention must be given to politically and financially promoting the creation and/or strengthening of socio-occupational networks at regional level**. Experience has shown this to be an indispensable stage in organising a coherent and effective dialogue at regional level between non-state actors.

In adopting such an approach, the difficulties in implementing the Cotonou Agreement in this regard – especially concerning **increasing non-state actor capacities** – need to be taken on board. If not, there is a risk of failure. This is vital in the light of the gaps and oft-noted weakness in state institutions, be they national or regional.

6. **Specific comments**

6.1 *Further reflection*: The EESC calls on the Commission to assess the impact of cultural and ethnic aspects and of borders on regional integration efforts and what might be done to mitigate their effects.

6.2 *Proliferating cooperation*: The Committee asks the Commission to promote and/or support regional cooperation between the EU's outermost regions and ACP countries and integrated regions that form their geographic environment with a view to cooperation based on the development needs of the various partners and respecting the interests of all. EPAs and regional integration:

6.3 *EPAs and regional integration*: As noted in point 4.1.3 above, the Committee regrets, as stated in its Opinion of September 2008 on The EU-Africa strategy, that regional Economic Partnership Agreements – one of whose goals is precisely regional integration – have so far not been concluded (with the exception of Cariforum-EC EPA). At present, interim EPA agreements with certain individual countries are operating in lieu of regional EPAs. The Committee thinks that this approach may set back the concluding of regional EPAs and hence regional integration, since it has largely rested on the specific characteristics of each country rather than the composite characteristics that make up the identity of the region. This state of affairs, which will make it difficult to move from national to regional EPAs, merits very serious attention.

([10]) Ibidem 7: article 7.5 and Appendix V.

([11]) Ibid. point 7. See footnote 7. Here, it is worth revisiting the opinion drawn up by Mr Bedossa in May 2006: Prioritising Africa: European civil society's perspective, OJ C 195 of 18.8.2006, p. 104-109.

([12]) Promotion of Social Dialogue in French Speaking Africa.

([13]) Ibid. point 7. See also Article 30 of the Cotonou Agreement in force.

([14]) Ibid. point 7.

Moreover, the Committee thinks that assessments need to be made of the possible consequences for regional integration of EPA negotiations that involve regional groupings different from existing ones ([15]).

6.4 *New players on the scene*: In a number of ACP countries, especially Africa, the contingent of powerful economic players has changed and become more diverse. To ensure the efficacy of future policy, it would have been useful for the Communication's analysis to include the consequences for regional integration of the omnipresence of China, the visible return of the USA, and incipient Indian – and Japanese and Korean – penetration. Some cross-referencing between the present Communication and the *Communication on the EU, Africa, and China: towards trilateral dialogue and cooperation on Africa's peace, stability and sustainable development* ([16]) from the regional integration perspective would also have been useful.

6.5 The Communication was drafted long before the global economic crisis had reached its present proportions and could therefore not include it. In the Committee's view, the crisis only further justifies the need for integration. However, given what we have seen in both the USA and in Europe, it is to be feared that the exact opposite will happen and we shall see a return to the primacy of the State in the form of economic self-sufficiency and nationalism. Obviously, the EU is not responsible for the choices made by the ACP States. However, through the implementation of the Cotonou Agreement and the conclusion of regional EPAs, and by guarding against any erosion of the financial commitments initially undertaken by the Member States, ensuring that the decision of the G20 on developing countries is properly followed through, the EU has a core role to play in preventing any curbs to the economic development of the ACP countries. Such curbed development could lead to a surge in migration, particularly given the risk of a sharp drop in funds coming from Europe to the ACP countries, especially Africa ([17]), via the diaspora.

Moreover, it is very likely that strengthening the regional dimension is one of the few real opportunities the ACP countries, especially Africa, have to be active in tackling the current financial and economic crisis so that they can play a role in the future course of globalisation and so secure for themselves the prospect of development.

Brussels, 16 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

([15]) In Africa, for example, the SADC has fifteen member states. Seven countries negotiate together in the southern Africa framework, six in the context of south eastern Africa (COMESA), one in the context of eastern Africa (EAC: Eastern Africa) and one as part of central Africa.

([16]) COM(2008) 654 final.

([17]) See OJ C 120 of 16.5.2008, p. 82-88: Migration and development: opportunities and challenges, rapporteur: Mr Sharma.

Opinion of the European Economic and Social Committee on the 'Amended proposal for a Council Directive on pure-bred breeding animals of the bovine species'

COM(2009) 235 final — 2006/0250 (CNS)

(2009/C 317/25)

On 26 June 2009 the Council decided to consult the European Economic and Social Committee, under Articles 37 and 94 of the Treaty establishing the European Community, on the

Amended proposal for a Council Directive on pure-bred breeding animals of the bovine species (Codified Version)

COM(2009) 235 final — 2006/0250 (CNS).

Since the Committee unreservedly endorses the contents of the proposal and has already set out its views on the subject in its earlier opinion, adopted on 15 February 2007 (*), it decided, at its 455th plenary session, held on 15-16 July 2009 (meeting of 15 July 2009), by 185 votes in favour, one vote against and four abstentions to issue an opinion endorsing the proposal and to refer to the position it had taken in the above-mentioned document.

Brussels, 15 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

(*) Opinion of the European Economic and Social Committee on the *Proposal for a Council Directive on pure-bred breeding animals of the bovine species (codified version)* - OJ C 97 on 28.4.2007, p. 13.

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