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### Information and Notices

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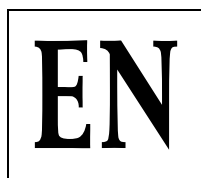
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## III

(Preparatory Acts)

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

## 443rd PLENARY SESSION HELD ON 12 AND 13 MARCH 2008

**Opinion of the European Economic and Social Committee on The future of the Single Market — Going global**

(2008/C 204/01)

On 27 September 2007, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on:

*The future of the Single Market — going global.*

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 27 February 2008. The rapporteur was Mr Cassidy.

At its 443rd plenary session held on 12 and 13 March 2008 (meeting of 12 March), the European Economic and Social Committee adopted the following opinion by 39 votes to nine with 12 abstentions.

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

1.1 The Single Market Observatory has been set up by the EESC to monitor progress on completion of the Single Market and over the years has produced a number of opinions responding to requests for Exploratory Opinions from other institutions, such as the Council, the Commission and the Parliament and also from the EU Presidencies <sup>(1)</sup>, the most recent being the response to the Commission's progress report on the Review of the Single Market <sup>(2)</sup>. Additionally the EESC has produced a number of 'own-initiative' opinions over the years.

1.2 This own-initiative is timely as the European Council at its meeting on 18-19 October 2007 decided to make the EU the pacesetter internationally in regulatory matters and in market opening. The EU can shape globalisation if it connects its model for development combining sustainable growth, social justice and concern for the environment. The Lisbon Strategy for Growth and Jobs is a better response to globalisation rather than a retreat in to protectionism.

1.3 Employers and trade unions agree that, when negotiated by the social partners, 'flexicurity' <sup>(3)</sup> can create a win-win situation for companies and workers. It therefore provides the right framework for

<sup>(1)</sup> OJ C 24 of 31.1.2006, rapporteur: Mr Retureau, at the request of the British Presidency.

<sup>(2)</sup> OJ C 93 of 27.4.2007, rapporteur: Mr Cassidy.

<sup>(3)</sup> Rapporteur: Mr Janson, OJ C 256 of 27.10.2007.

Interim Report of the Expert Group on Flexicurity 20.04.2007: 'Flexicurity is a policy strategy to enhance, at the same time and deliberately, the flexibility of labour markets, work organisations and labour relations on the one hand, and security — employment security and social security — on the other. The key principles that underpin a flexicurity strategy are that flexibility and security should not be seen as opposites, but can be made mutually supportive. Encouraging flexible labour markets and ensuring high levels of security will only be effective if workers are given the means to adapt to change, to enter into employment, to stay on the job market and to make progress in their working life. Therefore, the concept of flexicurity includes a strong emphasis on active labour market policies, and motivating lifelong learning and training — but also on strong social security systems to provide income support and allow people to combine work with care. This should also contribute to equal opportunities and gender equality.'

modernising European labour markets, embracing labour law, effective life long learning systems and preserved and enhanced social protection. In addition, an effective social dialogue (especially if conducted through collective bargaining) will contribute to the smooth functioning of labour markets.

1.4 The EESC is aware of the Commission Communication on 'The European interest: Succeeding in the age of globalisation' <sup>(4)</sup> which it submitted to the Lisbon informal European Council.

1.5 The success of the Single Market in so many internal EU activities has been taken for granted by the majority of EU citizens. The Single Market is not a '*fait accompli*' but has been described by Commissioner McCreevy as 'work in progress' <sup>(5)</sup>. Apart from the need to complete the Single Market the EU is now required to face up to the challenge of globalisation and encourage the open market principles on which the union is based, a world in which protectionism has no place and competition is genuine.

1.6 A part of the EU's global mission is to bring about harmonised standards with a free movement of capital, goods, services and people. This means third countries wishing to do business in the EU will not be allowed to circumvent the rules applied in the Internal Market whether concerning consumer protection, technical standards, working conditions and respect of the environment.

1.7 An important part of the challenge of globalisation is the role of the World Trade Organisation, the ILO and the increasingly interdependent world financial markets, an interdependence which has been underlined by the crisis on stock markets and other financial markets in the second half of 2007.

1.8 The European Single Market is not sufficient itself. The EU needs to trade and develop its relations with the rest of the world. It also needs to remain competitive with benefit to workers, employers and all citizens. The Lisbon strategy has been developed in order to achieve this and to enable the EU to become a more competitive economy on the world scene. The EU itself needs to ensure that remaining internal barriers are removed.

1.9 The object of this own-initiative opinion is to spur the EU into facing globalisation and to take the opportunities arising from it. Europe's economic success has not been built on protectionism but on the four freedoms on which the original European Economic Community was constructed. (The EU still needs to abolish some of its own trade restrictions.)

1.10 It should also be wary of falling into the American trap of subsidising the production of biofuels. Unless checked through the WTO these wasteful subsidies will inevitably lead to rising food prices and the problem of hunger in the developing and underdeveloped parts of the world <sup>(6)</sup>.

1.11 The EESC takes note of and urges the Commission and Member States to heed the recommendations of the social partners in their joint review and analysis of the key challenges facing the European labour markets <sup>(7)</sup>.

1.12 The EESC welcomes the Commission communication to the Lisbon Informal Council <sup>(8)</sup>. In particular it supports the four strategies agreed then for both the Union and the Member States: R&D and innovation: the right business environment, investment in people, and energy and climate change. In all four areas, however, there is a need to deepen the reform agenda if the real potential for growth and jobs is to be met.

1.13 The EESC calls upon the Commission and the Council to ensure that social partners are closely involved in the design and implementation of the 'flexicurity' policy measures at national level.

<sup>(4)</sup> COM(2007) 581 final of 3.10.2007.

<sup>(5)</sup> See the package on the Review of the Single Market adopted by the Commission in November 2007, COM(2007) 724 final.

<sup>(6)</sup> OJ C 44, 16.2.2008 (rapporteur Mr Iozia).

<sup>(7)</sup> Social partners: ETUC/CES, CEEP, UEAPME and BUSINESSEUROPE 'Key challenges facing European labour markets: a joint analysis of European social partners', October 2007.

<sup>(8)</sup> See footnote 4.

1.14 EU firms and workers cannot be put at a disadvantage with those competing with them from third countries simply because the EU would like to be a standard bearer for advanced environmental practices.

1.15 The solution is that a common EU voice needs to be raised insistently and consistently in international negotiations on global warming; and that pressure is brought to bear on defaulting countries.

## **2. Succeeding in the age of globalisation — the main elements**

2.1 The Commission communication to the October meeting of Heads of State and Government follows up the informal meeting at Hampton Court in October 2005 where the challenge posed by globalisation in areas like innovation, energy, migration, education and demography were addressed. 2007 has seen an agreement to put Europe in the forefront of global efforts to tackle climate change and to put in place a European policy for secure, sustainable and competitive energy — to put Europe, in fact, on the threshold of the 3<sup>rd</sup> industrial revolution.

2.2 Public awareness of globalisation and its benefits, as well as the resulting problems, have grown. Welcomed by some, feared by others, it has challenged some of the post war assumptions about the world economy (for example the dominance of the USA) and how governments could help their citizens to accept change. 'Globalisation' is an opportunity as well as a challenge for the EU.

2.3 50 years of European integration have seen the economic prospects of Member States entwined as never before, bringing unprecedented social progress. The next stage should aim to enable the EU to lead developing trends in the global economy and bring about international standards based on EU values.

2.4 Monetary union and the success of the euro have been and will continue to be a catalyst to deeper market integration and a reinforcement of the internal market. An environment characterised by low inflation, low interest rates, cheap and transparent transactions and deeper financial integration is conducive to cross border trade and investment in the EU, and helps European companies face global competition. Externally, the euro is providing shelter against current financial market turbulences and its strength alleviates some of the effects of price hikes on global food and energy markets driven by strong demand, not least from new emerging giants. However, the strength of the euro must reflect economic fundamentals. A rapid and marked appreciation of the euro, encouraged by an excessively high ECB reference rate and combined with monetary policies which are essentially similar to competitive devaluations in other parts of the world, represents a threat to EU prosperity. Such appreciation is a serious handicap for European business faced by costs in euros and revenue in dollars, resulting in relocation risks.

## **3. The external consideration of the Single Market**

### *3.1 Trade liberalisation*

The World Trade Organisation is the most important vehicle for delivering liberalisation of international trade. A successful Doha Round has the potential to open markets for EU exports in over one hundred countries around the world. The slow progress of the negotiations is highly disappointing. Bilateral trade agreements have spread in addition to WTO agreements. Companies and workers have an urgent need for new access to high growth markets in key trading partners. The EU's strategy to negotiate free trade agreements with Korea, ASEAN and India is a positive step. These deals must be as broad and ambitious as possible, covering goods (including non-tariff barriers), services, investment, intellectual property rights, trade facilitation, competition policy, environmental and ILO standards. It is also worth considering a SOLVIT model into these agreements.

3.2 In addition to straight free trade agreements the EESC can see other innovative ways of tackling ongoing problems faced on the ground in a bilateral context by looking at the discussions in the Transatlantic Economic Council, set up after the April 30 EU-US summit. The first meeting of the Council on

November 9 made good initial progress towards resolving problems for improved trade and investment conditions in the EU's largest economic partner. The issues that are in the balance need not necessarily interest other trading blocs, and hence the importance of such bilateral deals. (It is said that since April the two sides have made substantial progress in removing barriers to trade and investment and in easing regulatory burdens.)

The issues and areas of agreement relate to:

- Acceptable accounting standards in the US — GAAP — where EU financial statements prepared in accordance with International Financial reporting Standards have now been accepted for EU companies listed on US stock exchanges.
- Enhancing of security and facilitation in trade — a road map for reaching mutual recognition in 2009 of EU and US trade partnership programmes will be reached through key performance-based stages.
- Easing of burdens for introducing new drugs for rare diseases by agreement on a common form to apply for orphan drug designations.
- EU action on a legislative proposal allowing access to information by patients on legal pharmaceuticals.
- The Commission has proposed that the EU will continue to allow importation of products labelled with both imperial US and metric measurements to reduce costs for transatlantic trade.
- By the next meeting of the Council, the US Occupational Safety and Health Administration (OSHA) will confer with EU Commission counterparts on progress made to facilitate trade in electrical products with respect to conformity assessment procedures relating to safety and identify areas on which progress can be made next year.
- The US Federal Communications Commission (FCC) will review products subject to its mandatory third-party testing in order to allow suppliers' declarations of conformity for products with a good record of compliance with relevant standards.
- There is a financial markets Regulatory Dialogue that is considering how and in which areas to establish mutual recognition in the field of securities and identification of other approaches to facilitate cross-border trade in financial services. The work has only just started and US — EU summits will work with stakeholders to identify other priorities.

3.3 In addition, the European Union should also deepen and strengthen its economic cooperation with neighbouring countries such as Ukraine and with Russia. Russia's WTO Accession, the EU-Russia Common Economic Space and the new EU-Russia framework treaty are important milestones on the road to a truly strategic economic partnership. This strengthened cooperation should prepare the terrain for future negotiations on a Common Economic Area that would promote the free movement of goods and services, capital and people, knowledge and technology.

3.3.1 Since the broad issues of a strategic economic partnership can only be partially addressed by WTO accession, the EU and Russia should build their future economic relations where possible on WTO+ structures to create a common economic area for Greater Europe. This requires strong commitment from the EU and Russia to address a much broader and deeper range of issues than found in traditional free trade agreements.

3.3.2 The EU-Russia agreement should include inter alia common provisions for the national treatment of cross-border investments, elimination of customs duties, dismantling of non-tariff barriers, regulatory convergence, mutual recognition of standards and conformity assessment, trade facilitation and customs, cooperation on competition, services liberalisation, public procurement, sanitary and physio-sanitary regulations, intellectual property rights protection, dispute settlement and the use of international accounting standards. Examples of issues covered by such a broad agreement can be found, for instance, in the European Economic Area Agreements.

### 3.4 *R&D and Innovation*

The successful functioning of the Single Market is also a prerequisite to boosting Europe's innovative capacity. A true Single Market provides most leverage and an opening for innovative goods, products and services. Co-ordination is required at European level of efforts on R&D between 'clusters' of SME and large firms, Research Institutes, Universities and the new European Institute of Innovation and Technology. This will reinforce the overall strength of European industry in achieving higher levels of technology that are incorporated in their products in the common goal of keeping investment in the EU from relocating and rendering industry more competitive on higher value-added products and services in the global sphere.

3.5 Globalisation has stepped up the pace of change — for technology, for ideas, for the way we work and live our lives. The EESC has consistently supported these aims and believes that if Europe can unlock its potential for innovation and creativity it can shape the direction of change in the world with a distinctive emphasis on European values and cultural diversity.

### 3.6 *Intellectual Property Safeguards*

Europe's efforts in the innovation field have to be supported by appropriate conditions to safeguard the resultant intellectual property that requires substantial financial and human investment. Amongst other initiatives, it is desirable, and indeed overdue, for the EU to have a single and unitary protection of the Community Patent <sup>(9)</sup>. Success in this field translates into market advantages for EU products in the global marketplace.

In addition, ensuring strong enforcement of intellectual property rights and effectively combating counterfeiting and piracy is key. The completion of the legal framework at EU level remains an essential condition. Increased international cooperation is also necessary to address the problem in a global context. The bilateral IP dialogues conducted by the European Commission with China, Russia and other regions are a useful instrument to address the problem but they need to produce concrete results. Also, the new proposed Anti-Counterfeiting Trade Agreement is a positive step in the right direction.

### 3.7 *Working conditions*

The least that the EU can do to help European industry to compete fairly in the global field is to ensure that other countries respect minimum working conditions set by the ILO and other international conventions concerning individual rights, freedom of association, the right to organise and to bargain collectively, equality, and the abolition of child and forced labour.

### 3.8 *Market Surveillance of Imported Products*

Recent reports of sub-standard imported products that are harmful to health have accentuated the absence of effective market surveillance in EU. This is another aspect of how unfair terms of trade are further skewing competitiveness levels for EU firms. The strengthening of market surveillance by Member States should ensure that quality standards claimed by overseas manufacturers are verified to strike a fair balance with EU producers and to safeguard EU consumers against sub-standard and unsafe products.

### 3.9 *Security of Energy Supplies — a common EU external energy policy*

Recent happenings in the energy field have made it necessary for EU countries to close ranks and hammer out a strategic energy policy supported by bilateral agreements between the EU and other countries that need to be negotiated for industry to be able to plan its future investments within the EU. Such a policy will also help safeguard the standard of living for EU consumers. EU Member States will need to develop

<sup>(9)</sup> For further information on what DG Enterprise and Industry is doing on *Keeping better guard on intellectual property*, see [http://ec.europa.eu/enterprise/library/ee\\_online/art34\\_en.htm](http://ec.europa.eu/enterprise/library/ee_online/art34_en.htm).



alternative energy supplies such as renewables or nuclear <sup>(10)</sup> energy and reduce their reliance on Russia and the Middle East for the supply of gas and oil <sup>(11)</sup>. The EESC calls upon the Commission to ensure that its recently published Energy and Climate package <sup>(12)</sup> ensures predictability, avoids negative economic impacts particularly on the competitiveness of EU energy-intensive industries, encourages development of European lead markets in this area and enhances eco-innovation.

### 3.10 Environment Issues

EU firms and workers cannot be put at a disadvantage with those competing with them from third countries simply because the EU would like to be a standard bearer for advanced environmental practices. The strategy whereby the EU outpaces other countries in achieving higher environmental standards does not make economic sense for three reasons:

1. Global warming cannot be reversed by the EU on its own and the final effect of EU measures will certainly be neutralised if other countries do not take steps to control use of energy and emissions.
2. The EU should avoid creating an imbalance in competitiveness for EU producers of goods who would have to increase their operating costs by paying higher environmental taxes, thereby rendering themselves less competitive on the global stage. Moreover, this would be paving the way for de-location of investments that could be of strategic importance to the EU Single Market.
3. The EESC is not convinced by the argument that higher environmental standards trigger new demands for more research into environmentally-friendly products. There is bound to be a huge time-lag before such products are researched and brought to market. In the meantime the other EU producers of goods that are energy intensive could be driven off the market by unfair competition from producers in countries that are not so enthusiastic in taking steps to control their emissions.

3.10.1 The solution is that a common EU voice needs to be raised insistently and consistently in international negotiations on global warming; and that pressure is brought to bear on defaulting countries. If the EU decides to go ahead on its own with raising certain higher environmental standards then it should consider imposing WTO compliant border measures on products that originate from countries that are known to be grave sinners against the environment, so that European producers would not operate at a competitive disadvantage.

3.10.2 An open global trading system is in the interests of the EU. Once the EU needed to protect its citizens, its interests and its values. Today protectionism cannot be the solution. As the world's leading trader and investor, our openness allows lower cost inputs for industry, lower prices for consumers, a competitive stimulus for business and new investment. At the same time, it is important for the EU to use its influence in international negotiations to seek openness from others: the political case for openness can only be sustained if others reciprocate in a positive manner.

3.10.3 The Commission needs to ensure that third countries offer proportionate levels of openness to EU exporters and investors and to have ground rules which do not undermine our capacity to protect our interests and to safeguard our high health, safety, social, environmental and consumer protection.

## 4. Greater employability and investment in people: creating more and better jobs

4.1 Globalisation and technological change risk increasing inequality, opening up the gap between the skilled and the unskilled and between rich and poor nations. The best solution is to help each individual and nation to adapt by improving the quality and the availability of education and training for all ages.

<sup>(10)</sup> Some countries have declared themselves to be against any form of nuclear energy and do not allow the construction of nuclear plants on their territory. However, they import vast amounts of nuclear-generated electricity, e.g. Italy.

<sup>(11)</sup> OJ C 318 of 23.12.2006, rapporteur: Ms Sirkeinen.

<sup>(12)</sup> The Commission's Energy and Climate Action was issued on 23 January 2008. See: [http://ec.europa.eu/energy/climate\\_actions/index\\_en.htm](http://ec.europa.eu/energy/climate_actions/index_en.htm).

4.2 The EESC and the social partners have commented upon how 'flexicurity' should be shaped in order to help people to manage employment transitions more successfully in times of accelerating economic change.

4.3 The adoption by the 5 December Employment and Social Affairs Council <sup>(13)</sup> of a common set of principles on flexicurity paved the way for integration by Member States of flexicurity in their National Reform Programmes and subsequent implementation in close cooperation with national social partners.

4.4 The EESC would like to see more attention given to active policies to encourage inclusiveness and provide equal opportunities for groups encountering discrimination in the work market — over 50's, women, ethnic minorities and under qualified school leavers.

#### **5. Instability in the world financial market**

5.1 The EU is currently experiencing the effects of a global crisis on stock markets and other financial markets. Monetary union and the prompt reaction of the ECB to the turmoil have played a positive role. First of all, by injecting large amounts of liquidity on money markets the ECB has contributed to lessening a crisis of confidence in the banking sector, reducing the risk of significant tightening of credit conditions for companies and households. Secondly the absence of currency risks and low country specific risk premia imply that the more fragile EU economies have been able to face financial market turbulences relatively unaffected.

5.2 The global financial market turmoil and a weakening of the US dollar is affecting Europe, including through a significant appreciation of the euro due to the ECB maintaining its reference rate at an excessively high level and monetary policies which are essentially similar to competitive devaluations in other parts of the world, which will bear damaging consequences for the EU economy and its medium term prospects.

5.3 Recent events in world financial markets show a need to strengthen prudential rules, improve co-ordination and communication between monitoring authorities and central banks and enhance transparency and reporting.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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<sup>(13)</sup> Council press release 16139/07, link: <http://register.consilium.europa.eu/pdf/en/07/st16/st16139.en07.pdf>.

## APPENDIX

**to the opinion of the European Economic and Social Committee**

The following amendments, which received more than a quarter of the votes cast, were voted together and rejected in the debate:

**1. Point 2.4**

Amend the penultimate sentence as follows:

~~'(...) A rapid and marked appreciation of the euro, encouraged by an excessively high ECB reference rate and combined with monetary policies which are essentially similar to competitive devaluations in other parts of the world, represents a threat to EU prosperity. (...)~~

*Reason*

Such open and harsh criticism of ECB policy, inserted as if it were a 'precision', cannot be made until the EESC has endorsed a specific opinion on that topic. Rates are the subject of lively debate and there are differing views on the matter, all of them perfectly respectable. It must be remembered that the ECB uses rates to fulfil a task assigned it by the Treaty, namely to protect against inflation.

**2. Point 5.2**

Amend as follows:

~~'The global financial market turmoil and a weakening of the US dollar is affecting Europe, including through a significant appreciation of the euro due to the ECB maintaining its reference rate at an excessively high level and monetary policies which are essentially similar to competitive devaluations in other parts of the world, which will bear damaging consequences for the EU economy and its medium term prospects'.~~

*Reason*

Same as for the amendment to point 2.4, indeed more strongly: Point 2.4 states that the appreciation of the euro has been 'encouraged' by ECB policy, while 5.2 actually says that it is 'caused' by it. Such a harsh assessment by the EESC is unacceptable, and is also inappropriate from a procedural viewpoint.

*Outcast*

Votes in favour: 22 Votes against: 29 Abstentions: 8

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**Opinion of the European Economic and Social Committee on the Communication from the Commission A Europe of results — Applying Community law**

COM(2007) 502 *final*

(2008/C 204/02)

On 5 September 2007 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*Communication from the Commission: A Europe of results — Applying Community law*

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 27 February 2008. The rapporteur was Mr Retureau.

At its 443rd plenary session, held on 12-13 March 2008 (meeting of 12 March), the European Economic and Social Committee adopted the following opinion by 59 votes, *nem. con.* with two abstentions.

## 1. Introduction

1.1 In its Communication, the Commission states that out of over 9 000 legislative measures, nearly 2 000 are directives each requiring between 40 and 300 transposition measures. Noting the large number of Europeans who could query their rights under these laws, the Commission considers that in pursuing the objective of Better Regulation, high priority must be given to the application of law and to identifying why difficulties in implementation and enforcement persist.

It therefore proposes to improve the present method of handling issues related to application and enforcement of Community law.

1.2 The Commission identifies four possible avenues for improving application:

- a) prevention: better impact assessments, risk assessments included in Commission proposals, inclusion of a correlation table in each proposal; training of national authorities in Community law;
- b) effective, appropriate reaction: improvement of information exchange with businesses and the public and also with national authorities, with the introduction of 'package meetings' across the board playing a particularly important role here;
- c) better working methods: designation of a central contact point in each Member State, responsible for liaising between the relevant national authority and the Commission; more efficient management of the infringement process, setting priorities in particular;
- d) strengthening dialogue and transparency: more effective interinstitutional dialogue; publishing of general information on the effectiveness of the 'new approach'.

1.3 The EESC endorses the Commission's intention to enhance the relevant instruments so as to ensure better application of Community law by the Member States.

In this connection it would like to make the following comments:

## 2. Identifying the problem

2.1 Most failures to apply or implement Community law properly arise from failure to transpose directives. Transposition can be defined as the process by which a Member State to which a directive is addressed takes all the necessary measures to incorporate it properly into its national legal system using appropriate regulatory instruments.

2.2 To transpose a directive, Member States have to do two things:

- firstly, incorporate all the legal content of the directive into national law;
- secondly, repeal or amend all existing national rules which are not in line with the directive.

2.3 The same applies to the inclusion of the Framework Decisions referred to in Article 34 of the Treaty on European Union (TEU), which, like the directives referred to in Article 249 of the Treaty establishing the European Community (TEC), are '*binding upon the Member States as to the result to be achieved, but leave to the national authorities the choice of form and methods*'.

2.4 The transposition of Framework Decisions is equally likely to give rise to difficulties. However, in contrast to the procedure for failure to take the necessary measures laid down in Articles 226 and 228 TEC, the Treaty on European Union does not provide for the Commission taking any such supervisory action in the event of failure to transpose or incorrect transposition. This does not, of course, make Member States' obligation to transpose the Framework Decisions any less binding.

2.5 It should be noted that the Member States are still finding it difficult to adapt their processes for drafting transposition provisions, which, although this may not be apparent, give rise to complex legal constraints and at times upset domestic law-making traditions.

### 3. Outline of the transposition requirement and the difficulties encountered by the Member States

3.1 The Member States have sole authority to decide in what form directives should be transposed and to decide, under the supervision of the national court, the ordinary courts applying Community law, how best to give the directive effect in national law. The Commission's obligation as guardian of the Treaties to ensure proper implementation of the law and the smooth functioning of the single market by bringing action against Member States, when appropriate, using the range of measures available to it (reasoned opinion, appeal to the ECJ, penalty payment), should be stressed here. Lastly, delayed, incomplete or incorrect transposition does not prevent affected citizens from invoking the directive over national law, by dint of the principle of primacy of Community law.

3.2 Thus, proper transposition requires the adoption of binding national rules, which must be published in an official publication <sup>(1)</sup>. The Court can thus censure mere references to Community law masquerading as transposition <sup>(2)</sup>.

3.3 It may be that the general principles of constitutional or administrative law make transposition effected by adopting specific laws or regulations superfluous, but these general principles must still guarantee the full application of the directive.

3.4 Directives must therefore be transposed as faithfully as possible. Directives harmonising national laws must be transposed as literally as possible in order to ensure respect for the need for uniform interpretation and application of Community law <sup>(3)</sup>.

3.5 This seems simple in theory, yet in practice there are instances where Community law concepts whose content is clear and precise <sup>(4)</sup> have no equivalent in national legal terminology, or where this kind of concept does not include referral to Member States' law to determine its meaning and scope <sup>(5)</sup>.

3.6 There are also instances where the directive contains an article to the effect that the national provisions transposing the directive must make reference to the directive or be accompanied by a reference of this kind when they are published. Ignorance of this clause, known as the 'interconnection clause', is penalised by the Court, which refuses to provide for an exception where Member States plead that their existing domestic law already complies with the directive <sup>(6)</sup>.

<sup>(1)</sup> French Council of State study: 'Pour une meilleure insertion des normes communautaires dans le droit national', adopted by the Council of State general assembly on 22 February 2007, Documentation française, Paris, 2007.

<sup>(2)</sup> ECJ, 20 March 1997, Commission of the European Communities v Federal Republic of Germany, C 96/95, ECR p.1653.

<sup>(3)</sup> Rapporteur: Mr Van Iersel, OJ C24 of 31.1.2006.

<sup>(4)</sup> See, for example, ECJ, 26 June 2003, Commission of the European Communities v French Republic, C 233/00, ECR p.I-6625.

<sup>(5)</sup> ECJ, 19 September 2000, Grand Duchy of Luxembourg v Berthe Linster, Aloyse Linster and Yvonne Linster, C 287/98, ECR p.I-6917.

<sup>(6)</sup> Established case law, ECJ, 23 May 1985, Commission of the European Communities v Federal Republic of Germany, 29/84, ECR p.1661, ECJ, 8 July 1987, Commission of the European Communities v Italian Republic, 262/85, ECR p.3073, ECJ, 10 May 2001, Commission of the European Communities v Kingdom of the Netherlands, C-144/99, ECR p.I-3541.

3.7 The difficulty of transposing directives correctly also derives from the varying degree of latitude permitted in their implementation. There are, in fact, two main types of provisions laid down by directives:

- non-explicit provisions, which merely set forth general goals, leaving Member States fairly extensive leeway in choosing national transposition measures;
- prescriptive/explicit provisions, which require Member States' transposition measures to comply with the provisions of the directive. These include definitions; prescriptive/explicit provisions, which place specific obligations on the Member States; annexes to directives, which may include lists or tables detailing substances, objects or products; and specimen forms which apply throughout the European Union.

3.8 In the case of non-explicit provisions, evaluation of the full, faithful and effective nature of the transposition does not relate to the actual drafting of the national measures but their content, which must enable the directive's objectives to be achieved.

3.9 Where prescriptive/explicit provisions are concerned, the Commission and the Court focus more on the drafting of national measures, which should comply fully with the directive's provisions.

3.10 Certain Member States encounter serious difficulties when it comes to drafting rules that transpose prescriptive/explicit provisions. The basic problem is that any new provisions drafted must, to ensure legal clarity, be gone over with a fine tooth-comb to remove any redundant or — even worse — contradictory statements. The right balance therefore has to be struck between blind copying and excessively free revising of the provisions in question, and that can be a problem area <sup>(7)</sup>.

### 4. Transposition methods used by the Member States

4.1 The choice of techniques for drafting transposition measures varies according to whether the provisions to be transposed are non-explicit or prescriptive/explicit.

- It seems to be becoming increasingly common for prescriptive/explicit provisions to be transposed by simply transcribing them, as the transposition of this type of provisions

<sup>(7)</sup> Contribution by the French Council of State to the XIXth conference of the Association of the Council of States and Supreme Administrative Jurisdictions of the European Union, The Hague, 14-15 June 2004.

leaves Member States no margin of manoeuvre; the Commission and the Court thus focus their attention more on ensuring that the wording of the transposition measures corresponds with, or even is identical to, the prescriptive provisions of the directive. However, the Court has never gone as far as to rule that the obligation to transpose faithfully necessitates direct transcription.

— The Commission tends to favour this transcription procedure, while taking particular care to ensure that the definitions included in the directive are faithfully reproduced in the transposition text, so as to prevent any semantic or conceptual disparities which would hinder the uniform application of Community law in the Member States or its effectiveness.

— Checking the transposition of non-explicit provisions is, however, more problematic. Here we are talking about cases where, in accordance with Article 249 of the EC Treaty, a directive merely sets out general objectives and leaves it to the Member States to determine the ways and means of attaining them. Evaluation of whether the directive has been transposed fully and faithfully must then focus on the actual content of the national measures, and not on the drafting of them. The Court thus advocates that checking of transposition measures must be done pragmatically on a case by case basis, in the light of the objectives of the directive and the sector concerned; and this may throw the Commission off course <sup>(8)</sup>.

4.2 Lastly, the Member States can also use a reference to transpose technical provisions such as annexes to directives which contain lists of items or specimen forms or which are frequently amended.

4.3 The Netherlands, Slovakia, Austria, Finland and Estonia use a reference to transpose the technical annexes to directives which are often amended by directives adopted under the comitology procedure.

4.4 It is clear that transposition is not as simple an operation as it might seem because of the way that the latitude permitted by directives with regard to their implementation varies. This variation leads to differences between national transposition procedures.

4.5 The United Kingdom uses a fast-track adoption procedure for transposition laws, known as 'negative declaration', whereby the government places before Parliament the transposition text decided on in consultation between government departments but it is not subject to a debate, except where a request is made to the contrary.

<sup>(8)</sup> ECJ, 15 June 2006, *Commission v Sweden*, C 459/04: The Court rejected the action which the Commission had brought against Sweden for failing to fulfil its obligations under Article 7(8) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work. The Court ruled that the Directive should be deemed a Framework Directive which, as such, did not demand total harmonisation of Member States' regulations on the working environment.

4.6 Belgium uses an urgency procedure which applies to all laws where a transposition law needs to be adopted quickly because the transposition deadline is about to expire.

4.7 On the other hand, this kind of fast-track legislative procedure for the adoption of transposition laws does not exist in some Member States, such as Germany, Austria and Finland.

4.8 In France, the directives to be transposed are not treated differently (i.e. using a simplified legislative process or a regulatory process) according to the problems they pose.

## 5. Solutions to be recommended for more effective transposition of directives

— Most importantly, decide how to draw up Community legislation which is easier to transpose and provides the conceptual consistency and degree of continuity essential for business activity and private life;

— take the decision to use a regulatory transposition instrument earlier on, establishing from the outset discussions on the draft directive and an accurate, constantly-updated correlation table, following the example of the United Kingdom;

— speed up the transposition process once the directive has been published in the Official Journal of the European Union, by entrusting domestic coordination to a national contact point which will have a database established for this purpose, as recommended by the Commission in its Communication. The contact point could even be equipped with an early warning system, which would be triggered a few months before the expiry of the transposition deadline. Belgium, Hungary and the Netherlands already have this kind of arrangement;

— encourage transposition by copying where specific, explicit provisions or definitions are concerned;

— allow transposition by means of a specific reference to prescriptive/explicit provisions in the directive such as lists; tables detailing the products, substances or items covered by the directive; specimen forms or certificates annexed to the directive. The reference must be specific as the Court of Justice considers that a national-law text which makes a general reference to a directive does not provide proper transposition <sup>(9)</sup>. The Netherlands, Slovakia, Austria, Finland and Estonia are champions of this method of transposing the technical annexes to directives;

<sup>(9)</sup> ECJ, 20 March 1997, *Commission of the European Communities v Federal Republic of Germany*, C 96/95, ECR p.1653, mentioned above.

— gear national transposition procedures to the scope of the directive by using fast-track procedures, without neglecting the mandatory domestic consultations prescribed for the adoption of regulatory texts.

## 6. Conclusion

6.1 Improving the application of Community law, as called for by the Commission, is a sensible goal whose achievement is for the most part the responsibility of the Member States, who are clearly faced with problems that are more complex than they might at first sight appear.

6.2 Member States should not use transposing directives as an excuse to revise parts of their national legislation which are not directly affected by the Community legislation in question (gold-plating), or to 'downgrade' domestic legal provisions, reducing people's or businesses' rights and blaming Brussels for these changes.

6.3 Member States should more systematically take the opportunity provided by primary legislation/the Treaties to use collective bargaining when transposing directives, particularly those on social and economic issues. According to the subject, civil society organisations should be consulted during the preparations for transposition<sup>(10)</sup>, on the changes or additions to be made to domestic law on that occasion. Using collective bargaining and consultation procedures encourages and facilitates the subsequent implementation of Community law by appealing to civil society. Consulting civil society before adopting national transposition measures enables the national authorities to take a more informed decision by garnering the views of the social partners, experts and professionals from the sector concerned. It also performs a pedagogical function, as it enables these stakeholders to become more familiar with the details of the forthcoming reforms. Thus the United Kingdom, Denmark, Finland and Sweden, for example, consult their social partners and advisory bodies by sending them the transposition text together with a set of specific questions about it.

Brussels, 12 March 2008.

6.4 Greater account should be taken of the domestic constitutional arrangements of a number of Member States (federal states, regional devolution and other means of transferring sovereign powers to a sub-state entity). Transposition deadlines should sometimes be extended where Community provisions concern, in particular, powers delegated to local or regional authorities (regional policy, outermost regions and islands etc.).

6.5 National parliaments and regional parliaments or assemblies (such as those in Scotland, Belgium or the German Länder), are particularly involved, bearing particular responsibility, in transposition of Community law in fields in which they can assign powers or have consultative powers. The commissions or committees that they form to this effect should hold hearings of specialists and representatives of relevant sectors of civil society and have special authority to plan discussion of the proposals for transposition laws so as to avoid domestic law 'emergencies' pushing the schedules for discussing national transposition measures beyond the deadlines. However, 'urgency' measures (delegation of legislative powers to the executive) could be taken in respect of many drafts currently behind schedule which are not essentially sources of dispute between the political parties, in order to severely reduce the backlog of directives which have not been transposed within the deadlines.

6.6 Some of them have already put systems in place designed to speed up the procedures for adopting transposition measures. Others have developed techniques which should improve the quality of transposition; others have not yet taken the plunge and have yet to come into line. For example, ministries and parliaments could set up a transposition bureau to give guidance on transposition work. This is a chance to modernise public action rather than suffering constraints imposed by the Community institutions, first and foremost the Commission. In other words, this is an area where each country must shoulder its responsibilities in European integration and play its part to the full<sup>(11)</sup>.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

<sup>(10)</sup> Rapporteur: Mr Retureau, OJ C 24 of 31.1.2006 and rapporteur: Mr Van Iersel, OJ C 24 of 31.1.2006).

<sup>(11)</sup> In essence, this is the conclusion of the French Council of State study: 'Pour une meilleure insertion des normes communautaires dans le droit national', mentioned above.

**Opinion of the European Economic and Social Committee on the Proposal for a Decision of the European Parliament and of the Council amending Council Directive 76/769/EEC as regards restrictions on the marketing and use of certain dangerous substances and preparations 2-(2-methoxyethoxy)ethanol, 2-(2-butoxyethoxy)ethanol, methylenediphenyl diisocyanate, cyclohexane and ammonium nitrate**

COM(2007) 559 final — 2007/0200 (COD)

(2008/C 204/03)

On 23 October 2007, the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

*Proposal for a Decision of the European Parliament and of the Council amending Council Directive 76/769/EEC as regards restrictions on the marketing and use of certain dangerous substances and preparations 2-(2-methoxyethoxy)ethanol, 2-(2-butoxyethoxy)ethanol, methylenediphenyl diisocyanate, cyclohexane and ammonium nitrate*

The Section for Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 27 February 2008. The rapporteur was Mr Sears.

At its 443th plenary session, held on 12 and 13 March 2008 (meeting of 12 March), the European Economic and Social Committee adopted the following opinion by 125 votes with 2 abstentions.

## 1. Conclusions and recommendations

1.1 This proposal from the Commission for a Decision of the European Parliament and Council seeks to amend Council Directive 76/769/EEC by adding restrictions on the marketing and use of five unrelated substances. Four of these were contained in the original priority lists set out between 1994 and 2000. The measures proposed address risks to the general public only. The last substance, ammonium nitrate, is introduced under this heading to improve the safety of ammonium nitrate based fertilisers during normal handling by farmers and distributors, and as a move to combat terrorism, in particular by limiting access to explosive precursors. In this later case, sales to retailers and to the general public will also be affected.

1.2 The EESC supports some but not all of the proposals made. The detailed arguments for each substance and the preparations in which they are contained are set out in paragraphs 5 to 9.9.

1.3 The EESC recognises that this is, almost, the last such amendment of Council Directive 76/769/EEC before it is replaced on 1 June 2009 by Regulation (EC) 1907/2006 (REACH). However, as with previous amendments, it regrets that unrelated substances and preparations have been brought together in this manner and notes the long delays that have occurred since these were first noted as 'priority' substances under Council Regulation (EEC) 793/93. If this is due to resource or skill constraints in the Commission or in other relevant bodies, including the newly formed Chemicals Agency in Helsinki, these must be addressed as soon as possible and certainly before 1 June 2009. Manufacturers must also recognise

their obligation to provide relevant information in a timely fashion during the risk assessment. Without this discipline, the outcomes rapidly become meaningless.

1.4 Finally the EESC clearly supports the Council's Declaration on Combating Terrorism and the many individual actions that follow from this. The EESC believes that it has a key role to play in this process and is currently developing a number of Opinions on this topic. Agreeing what actions are proportionate and which legislative routes should be followed to ensure timely and effective responses from all those affected will be critical to achieving long term security.

## 2. Introduction

2.1 Regulation (EC) No 1907/2006 of 18 December 2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) will come into effect on 1 June 2009. This will repeal and replace a number of existing Council and Commission Regulations and Directives, including Council Directive 76/769/EEC of 27 July 1976 on the marketing and use of certain dangerous substances and preparations. This Directive, to which this proposal is an amendment, is designed to preserve the Internal Market and at the same time ensure a high level of protection of human health and the environment.

2.2 Annex I of Council Directive 76/769/EEC sets out the specific restrictions on the marketing and use of certain dangerous substances and preparations that have been agreed



and put in place over the last 30 years. On 1 June 2009 these will become the cornerstone of Annex XVII of Regulation (EC) No 1907/2006 (REACH).

2.3 Previous amendments to Council Directive 76/769/EEC (i.e., to add further restrictive measures) have been in the form of Directives requiring implementation by Member States. This proposal by the Commission is, for a Decision, which will not require transposition into national laws which would otherwise have to be repealed on 1 June 2009 when Regulation EC No 1907/2006 (REACH) comes into force.

2.4 It is understood that a final proposal under Council Directive 76/769/EEC will be brought forward in the coming months, also for a Decision, on restrictions on the marketing and use of dichloromethane. All subsequent proposals for restrictions on the marketing and use of dangerous substances or preparations will be under Regulation EC No 1907/2006 (REACH).

2.5 The substances (and any preparations containing them) for which restrictions on marketing and use have been deemed necessary have generally resulted from evaluations of certain 'priority substances' under Council Regulation (EEC) 793/93. Four priority lists for assessment were established, the last of these being dated 30 October 2000, for implementation by the competent authorities in the member states. Of the 141 substances listed, 83 have final Risk Assessment Reports (RARs). 39 of these have been evaluated by the appropriate scientific committees of the EU and the results published in the Official Journal. Restrictive measures have been agreed for 22 of these substances. Restrictive measures for a further 4 substances (identified and discussed below in paragraphs 5 to 9.9 as DEGME, DEGBE, MDI and cyclohexane) are included in this proposal.

2.6 The slow progress made under this Regulation was cited as one of the main reasons for introducing a new approach for all 'existing' substances under Regulation EC No 1907/2006 (REACH). Council Regulation (EEC) 793/93 will therefore also be repealed on 1 June 2009.

2.7 A number of substances not included in the original four priority lists have also been assessed for their impact on human health and the environment, and/or proposals made to restrict their marketing and use, as new problems have been addressed at the request of the member states. Ammonium nitrate is included under this heading.

2.8 Ammonium nitrate is a peculiar and particular case in that its characteristics are well known and it did not therefore require evaluation for its effects on human health or the environment. It has been used for many years in very large quantities world-wide as a nitrogen-based fertiliser and poses no unexpected risks in the work place or to professional users or to

consumers for domestic scale application. Unfortunately it is also an effective, low cost and widely used component of explosives, for legitimate use in industrial or military blasting and for illegitimate use by terrorists. It is on these grounds that restrictions on its marketing and use are sought under Council Directive 76/769/EEC.

2.9 Other bases for legislation addressing terrorism or explosive precursors could have been chosen, but, under the existing EU Treaty, would have required unanimity across the member states. The process will change under the Treaty of Lisbon, when fully ratified, but that too will not be for some time.

2.10 It is understood that other drug and explosive precursors are likely to be added to Annex XVII of Regulation EC No 1907/2006 (REACH), therefore this course of action is deemed appropriate at the present time.

2.11 All of the above refers to 'existing' substances, i.e., the 100,195 substances that were deemed to have been on the European Community market between 1 January 1971 and 18 September 1981. These are listed in the European Inventory of Existing Commercial Chemical Substances (EINECS) published in the Official Journal of the EU in 1990. Substances placed on the market after 18 September 1981 are defined to be 'new' and require a detailed pre-marketing notification in order to protect human health and the environment.

### 3. Summary of the Commission's proposal

3.1 The Commission's proposal seeks to protect human health, in particular of consumers, whilst preserving the Internal Market for three substances (DEGME, DEGBE and cyclohexane) taken from the 1st priority list, dated 25 May 1994, and one substance (MDI) from the 3rd priority list, dated 27 January 1997, as established under Council Regulation (EEC) 793/93.

3.2 In line with Commission Recommendation 1999/721/EEC of 12 October 1999, and with subsequent similar Recommendations on the results of the risk evaluation and risk reduction strategies for a number of substances, a series of specific and very detailed restrictions are proposed which will apply only to sales to the general public and will not have any impact on conditions in the work place or on the environment. The costs to industry and to society at large are believed to be minimal and therefore the actions proposed are believed to be proportionate to the risks identified. Further health data are requested in the case of preparations containing MDI.

3.3 A fifth substance, ammonium nitrate, used widely as a fertiliser, is added because of its ability to act as an oxidant and, in particular to explode when mixed with other substances. The restrictions proposed are intended to ensure that all ammonium nitrate fertilisers meet a common safety standard and in addition

to limit the range of ammonium nitrate based products sold to the general public with the aim of reducing the quantities that can be easily diverted into illegal uses. Thus the restriction may be said to benefit the health and safety of the public at large. Professional users (farmers and legitimate manufacturers of explosives) will not be affected by this restriction. Although the costs (and benefits) are proving difficult to quantify, they are believed to be proportionate to the risks identified (and measures proposed).

3.4 The Decision would come into force on the third day following that of its publication in the Official Journal of the EU.

3.5 The proposal is accompanied by an explanatory memorandum, a Commission staff working document (impact assessment report) and, for the four substances assessed under Council Regulation (EEC) 793/93, lengthy and detailed Risk Assessment Reports (RARs) published by the European Chemicals Bureau, together with additional material, both supportive and critical, from the various scientific committees and other bodies that have helped prepare or evaluate the relevant data.

#### 4. General comments

4.1 As with many of the previous amendments to Council Directive 76/769/EEC, this proposal deals with unrelated substances which, for clarity, will be discussed separately.

#### 5. 2-(2-methoxyethoxy)ethanol (DEGME)

5.1 DEGME is a high boiling glycol ether miscible with water, typically used as an intermediate in synthetic chemistry, as co-solvent in various household decorative products, or as a low temperature anti-icing agent, for instance in jet fuel. According to the RAR prepared for the Dutch Government and completed in July 1999, total production in Europe at the start of the 1990s was around 20 000 tonnes, of which just over half was for export.

5.2 Consumer exposure resulted from its use in paints and paint strippers supplied for domestic non-professional 'do it yourself' (DIY) application. As would be anticipated from its physical properties, DEGME is readily absorbed through the skin and, in the absence of any regular and guaranteed use of protective clothing, there was a risk to consumers via dermal exposure.

5.3 According to the most recent surveys, DEGME has now been replaced by other solvents in all paints and paint strippers sold to the general public. Therefore the appropriate action is to ensure that this situation continues for products manufactured in, or imported to, the EU. The proposal therefore ensures that, from 18 months after the entry into force of the Decision, DEGME shall not be placed on the market as a constituent in

paints or paint strippers in concentrations equal or higher than 0.1 % by mass (i.e., at anything above levels caused by contamination of or co-production in other permitted constituents). This is seen as being a reasonable response by the industry sectors affected. The EESC therefore supports this limitation on the marketing and use of DEGME.

#### 6. 2-(2-butoxyethoxy)ethanol (DEGBE)

6.1 DEGBE is also a member of the glycol ether family, with a slightly higher boiling point than DEGME but with similar physical properties, including miscibility with water. It is widely used as a solvent in water-borne paints where it helps film formation and increases durability. This in turn reduces the frequency of painting and limits overall exposures. The RAR estimated total production in Europe to be around 46 000 tonnes in 1994; by 2000 this had increased to 58 000 tonnes, of which 33 000 tonnes were used in paints.

6.2 The RAR identified some risks to consumers of respiratory irritation following the inhalation of fine droplets during the use of water-borne spray paints containing DEGBE. Inhalation of vapour arising from brush or roller applications was not of toxicological concern.

6.3 Based on evidence submitted after the completion of the RAR in 1999, and recognising the difficulty of replacing DEGBE as a vital component in water-borne paints, it was concluded that the fixing of a maximum level of 3 % by mass for DEGBE in paints designed for spray application would be appropriate to protect the health of consumers. Paints with higher concentrations of DEGBE may be placed on the market for supply to the general public, but only with the marking 'Do not use in paint spraying equipment'. Sales to professional users, who are more likely to use the appropriate protective equipment, will be unaffected. The distribution channels are regarded as being sufficiently different to make this possible.

6.4 These measures will become effective 18-24 months after the Decision comes into force to allow time for any reformulation and re-labelling required. This is seen as being a reasonable response by the industry sectors affected. The EESC therefore supports this limitation on the marketing and use of DEGBE as being the appropriate way to protect the health of consumers and to preserve the Internal Market.

#### 7. Methylenediphenyl Diisocyanate (MDI)

7.1 MDI is the name given to a mix of similar products (isomers) which if pure would exist as waxy solids but are more generally available as a highly reactive viscous brown liquid. According to the RAR, worldwide production in 1996 exceeded 2 500 000 tonnes, of which at least 500 000 tonnes were

produced in the EU. In the presence of suitable low weight polyols or glycols (or even water) and a blowing agent, MDI reacts extremely rapidly to produce polyurethane foams. These can be either rigid or flexible with a wide range of uses in the building and other trades as structural components, sealers, fillers, moulds and adhesives.

7.2 Consumer exposure comes primarily from the use of one-component foams (OCF), sold in spray cans to DIY enthusiasts to fill irregular holes in plaster or brick work or to seal around newly installed doors or windows. Total sales to this sector are around 10 000 tonnes per annum of MDI. This is sufficient for the production of around 36 million cans per year for consumers and a further 134 million cans per year for professionals. Alternative products — for instance glass fibre to seal around windows — are less convenient to use and would bring a different set of concerns.

7.3 Quantifying the risks to consumers for dermal and respiratory exposure and sensitisation, based on evidence from work place exposures, has not proved easy. Pure samples of the isomers are hard to obtain. The very rapid reaction of MDI with water to make an inert insoluble solid makes standard hazard testing difficult. The practical application route for a consumer of spraying via a directional tube from a small hand-held can limits the total amount available. A standard can is emptied in 2-4 minutes. Rapid curing in the presence of water vapour in the air removes the MDI. The solid end product is inert and non-hazardous. Usage is likely to be once-off (to fill or seal a particular hole, door or window) and infrequent (for most users) and certainly does not replicate daily exposures under shop floor conditions. As ever in DIY applications, personal protective equipment may or may not be routinely used.

7.4 Given the above, it is not surprising that, although a theoretical risk exists, it has proved difficult or even impossible to identify any cases of actual dermal or respiratory sensitisation in the public at large (or indeed in the work place where appropriate protective measures can be put in place). This in turn means that identifying a proportionate, cost-effective, and practical response is more difficult.

7.5 In this respect the impact assessment reasonably points out that whilst light weight, cheap and perfectly adequate polyethylene gloves can, and should, be provided with each can sold to the general public for once-off occasional use, heavy duty neoprene or nitrile gloves, as required for industrial applications, can not. In contrast, whilst light-weight cotton dust masks could be supplied with each can, they would be ineffective in the case of actual risk — whereas a full gas mask to protect

against all possible gaseous exposures would cost around ten times the cost of the can, with no guarantee that it would be used when required.

7.6 The Commission therefore proposes that all cans sold to the general public should contain polyethylene gloves (for instance, folded into the cap) and that the can should be suitably labelled with respect to the dangers of allergic (non-standard) reactions to MDI from those already sensitised, or of asthma like reactions (from asthma sufferers) or of dermal reactions (from those already suffering from skin problems).

7.7 The EESC supports the first of these measures, i.e., the provision of polyethylene gloves which should be worn in any case for most DIY applications. Any requirement for these to conform to a more stringent standard which would prevent the gloves from being distributed should be resisted if this important and proportionate measure is to remain enforceable.

7.8 The EESC questions however the detail of the proposed additional labelling, even if due time is given to allow this to be introduced at proportionate cost. It is unclear, for instance, how a member of the general public would know that they had been 'sensitised to diisocyanates other than MDI' — or why that is particularly important. As sufferers from chronic (long term) asthma or dermatitis will be aware, almost any household or DIY product can bring about an acute (short term) adverse reaction. In these circumstances, the importance of good ventilation and the use of protective clothing (gloves) are all important — together with advice to cease any use of the product immediately if the symptoms occur. This is good advice for all users, whatever their past history, and must be included on the label. Given that the cans, and therefore their labels, are small, all such advice must be clear, to the point and legible under normal conditions of use. If further handling or safety instructions are required, these should be included in any accompanying leaflet.

7.9 The EESC also questions the proposal in indent (6) that 'natural or legal persons placing on the market for the first time preparations containing MDI ... shall within 3 years collect data on possible cases of persons suffering from respiratory allergy ... and make these data available to the Commission .. in accord with a study protocol that shall involve specialised centres ...to demonstrate that there is no need for further restrictions'. Given that MDI has been in routine use since the 1970s, and that, as noted above, current sales exceed 36 million cans per year from existing manufacturers who are excluded from this requirement, it is difficult to see this as being anything other than a poorly justified bar to market entry.

7.10 The Commission's impact assessment report explains that this follows from a concern expressed in the RAR that 'some risks for respiratory allergy for workers ... could potentially be relevant for consumers'. Later in the same paragraph it states that 'information currently available from poison centres seems to indicate that there are no or few cases of respiratory allergy of consumers caused by MDI containing products'. Whatever the alleged limitations of this reporting route, it is unclear that the proposal by the Commission would be any more definitive. This proposal therefore seems disproportionate to a risk that is acknowledged to be hypothetical and which lacks any supporting evidence following actual widespread use.

7.11 The EESC therefore recommends that this part of the restriction on marketing and use is withdrawn. If there are still valid doubts over the safety of these products, which cannot in the short term be replaced, these should be explored with the manufacturers and proper processes for the collection of data and for their evaluation followed.

## 8. Cyclohexane

8.1 Cyclohexane is colourless liquid made in very large quantities by the hydrogenation of benzene. It is almost entirely (>95 %) used in the synthesis of adipic acid and, from that, nylon. World wide production capacity currently exceeds 5 000 000 tonnes, of which around 1 500 000 tonnes is located in the EU. These processes are in closed systems and exposure levels are low. Cyclohexane also occurs naturally in combustion products, including tobacco smoke, in crude oil and plants, and in gasoline vapours.

8.2 Cyclohexane is also used as a solvent for, amongst other things, the neoprene-based contact adhesives used in the leather (shoes), automobile and construction industries. This in turn includes large scale carpet laying by professionals and similar smaller scale repairs or other DIY applications by the general public. Total usage in adhesives in the EU is less than 10 000 tonnes per year.

8.3 As with all hydrocarbons, good ventilation and the use of appropriate protective clothing or breathing equipment is essential. This can be reasonably guaranteed for professional use, but not for members of the public. However, as with preparations including MDI, the physical characteristics of the products marketed significantly limit the risks. The fast-setting contact adhesives are ideal for small applications but are extremely difficult for a non-professional to use satisfactorily on a

large scale. A limitation on package size for the products sold to the general public would therefore seem appropriate and generally acceptable.

8.4 The Commission therefore proposes that cyclohexane shall not be placed on the market as a component of neoprene-based adhesives for sale to the general public in packages of more than 650 grams. Any packages sold should be marked 'Do not use for carpet laying' and should show a warning 'Do not use under conditions of poor ventilation'.

8.5 Practical tests for worst case scenarios, for instance fixing large cork panels to an interior wall, suggest that this would adequately limit consumer exposures which, as in the other cases discussed above, would be expected to be infrequent and short-lived. There appears to be no evidence of actual incidents being reported from the use of neoprene-based adhesives despite their wide-spread and long term use. The measures can however be introduced without undue disruption to either manufacturers or consumers. The EESC therefore supports this limitation on the marketing and use of cyclohexane as being proportionate to the risks discussed.

## 9. Ammonium Nitrate

9.1 Ammonium nitrate is a white solid, sold in pellets, that has been produced from ammonia from natural gas for more than 100 years. World-wide production exceeds 20 000 000 tonnes. It is important as a nitrogen fertiliser and as a raw material for explosives. This latter capability and its ready availability and low cost have attracted the interest of terrorists. Other components are required, for instance diesel oil, but these too are easy to acquire. Ammonium nitrate was for many years the explosive of choice for the IRA and was also used in high profile bombings in Oklahoma, the World Trade Centre and Bali. It has recently been used in attacks by extremist groups operating in London and other European capitals. Recipes for the production of such devices are readily available on the internet. As little as 2 kg can prove devastating. Quantities in excess of 500 kg can seemingly be obtained without difficulty by determined members of the general public, if necessary by the repeat buying of smaller quantities from garden shops or retail stores. Controlling this is clearly difficult.

9.2 For professional users (farmers) control is exercised via maintaining large minimum sizes of shipment (so that a single package cannot easily be transported or removed illegally) and by requiring careful product stewardship at all stages of the

supply chain. Ammonium nitrate as generally supplied is unstable and may decompose and become unusable. It must therefore be stored carefully and applied to the ground as soon as possible. This limits the amounts available for diversion to other uses.

9.3 Ammonium nitrate may be supplied in a number of strengths ( % nitrogen content) and with or without other essential elements (typically phosphorus and potassium derivatives). In its pure state it is approximately 35 % nitrogen. Some dilution is necessary to avoid damage to vegetation. The different qualities may be manufactured by blending in active components or inert fillers, such as chalk, or by chemical reactions to produce the desired ratio of key ingredients. Products sold to farmers may have 28 % or more of nitrogen. These 'high nitrogen' fertilisers are subject to controls under Regulation (EC) No 2003/2003 to ensure that they deliver the required quantity of nitrogen and can be safely used without the risk of explosion. Fertilisers conforming to these standards can be labelled as 'EC fertilisers' and can be traded across national borders. Fertilisers that do not meet these standards cannot cross borders and are known as 'national fertilisers'. Consumer products typically have 20-25 % nitrogen. The lower the percentage of nitrogen, the higher the transport costs per unit of fertiliser and the greater volume that must be applied to a given area. Although ammonium nitrate fertilisers are regarded as essential for commercial farming, this is not the case for the much smaller volumes sold via retail outlets to the general public, and other products may be substituted.

9.4 From the point of view of anyone seeking to make illegal explosives, the higher the nitrogen content of ammonium nitrate the better. Mechanically blended mixes can be re-concentrated via simple solution and crystallisation. Chemically bound mixes are harder or impossible to concentrate. Concentrations as low as 16 % have been made to explode by government experts in Denmark. Given time and resource anything is possible, although competing formulations using equally available raw materials eventually become more attractive. These are set out in the Terrorist's Handbook and other web-based resources available to the general public.

9.5 Following the Madrid bombings in March 2004, the European Council agreed a Declaration on Combating Terrorism. This set up an Explosives Security Experts Task Force (ESETF) charged with developing an Action Plan to combat the use of explosive devices by terrorists. This was completed in June 2007. One of the 47 specific actions required the setting up of a Standing Committee of Experts on Explosive Precursors

(SCEEP). A number of private and public sector specialists are involved in this, with inputs from CEFIC and FECC, representing chemical manufacturers and distributors, and EFMA representing fertiliser manufacturers.

9.6 The intent of the current proposal is to bring all ammonium nitrate fertilisers sold to farmers (or distributors) up to the standards set out in Regulation (EC) No 2003/2003 and to limit the nitrogen content of products sold to the general public. If adopted, ammonium nitrate could not be placed on the market for supply to the general public from 18 months of the Decision coming into force 'as a substance or in preparations that contain 20 % or more by mass of nitrogen in relation to ammonium nitrate'.

9.7 The EESC fully supports the first part of this proposal that all 'high nitrogen' fertilisers supplied to farmers, whether or not traded across national borders, should comply with Regulation (EC) No 2003/2003.

9.8 With regard to the second limitation, with respect to sales to the general public, the EESC notes that the volumes concerned may be larger than previously thought, at more than 50 000 tonnes and that EFMA, acting for fertiliser manufacturers, has accepted the 20 % limit for blended fertilisers (which could be re-concentrated without too much difficulty) but has proposed a limit of 24,5 % for chemically bound products (where this is much harder). Given that discussions are ongoing within SCEEP, this and any related possibilities need to be fully explored before the Decision is finalised. Whatever else is known about countering terrorism, it is clear that full agreement and commitment between the various stakeholders, in this case including manufacturers, distributors, retail outlets and the general public, will be essential if real progress is to be made on limiting access to explosive precursors.

9.9 The EESC accepts with some reluctance that Council Directive 76/769/EEC is the only basis for legislation available to the Commission in the short term, and that therefore the measures have to be proposed and discussed in this manner. It is to be hoped that a better system can be put in place, once the Lisbon Treaty has been fully ratified.

## 10. Specific comments

10.1 The EESC regrets, as it has done in its Opinions on previous amendments to Council Directive 76/769/EEC, that these continue to bring together unrelated products on which quite separate decisions must be taken. This is not good practice

and serves no useful purpose. It is certainly not an example of good governance. It can only be hoped that an improved procedure will be in place from 1 June 2009 under Regulation (EC) No 1907/2006 (REACH).

10.2 The EESC also notes the long time taken to bring these to fruition. The first priority list was published in May 1994. Even if this proposal is fast-tracked as desired, there will be little impact on the market until the end of 2010 (and indeed even then, it is difficult to see that any improvements in human health will be recorded). It is also difficult to portray these delays as being entirely due to the manufacturers who were required to supply the data upon which the RARs are based, as these have been available for some time. If this is due to lack of resource within the Commission or its scientific committees or other bodies or agencies responsible for the safety of the general

public, this must clearly be addressed before a much greater work load, largely unprioritised, becomes evident from 1 June 2009 onwards.

10.3 The EESC clearly supports the Council's 2004 Declaration on Combating Terrorism and the various actions that have followed from this, and believes that civil society has a key role to play in this. It therefore hopes to be considered a valid and useful interlocutor and stakeholder in this process and notes that a number of related Opinions are currently being prepared on this topic. Agreeing what actions are proportionate and which legislative routes should be followed to ensure timely and effective responses from all those affected will be critical to achieving long term peace and security within and around the EU.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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**Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation setting up the Fuel Cells and Hydrogen Joint Undertaking**

COM(2007) 571 *final* — 2007/0211 (CNS)

(2008/C 204/04)

On 30 November 2007 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 Council Regulation setting up the Fuel Cells and Hydrogen Joint Undertaking*

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 27 February 2008. The rapporteur was Mr Dantin.

At its 443rd plenary session, held on 12 and 13 March 2008 (meeting of 12 March), the European Economic and Social Committee adopted the following opinion by 117 votes, with 7 abstentions.

**1. Conclusions and recommendations**

concerning, in particular, the environment and sustainable development.

1.1 The Committee welcomes the decision on setting up the Fuel Cells and Hydrogen Joint Undertaking. It considers that this approach to relaunching investment in R&D has the potential to give European businesses a stable frame of reference, making it possible to overcome the current fragmentation of Community financing and coordinate research, which is often too widely dispersed, thereby helping to make it more effective.

1.3 In welcoming the decision under discussion, the EESC wishes firstly to underline the importance for the EU of the strategy being proposed for investment and coordination of research. In so doing, the Committee feels that the strategy strongly supports the creation of a European research area.

1.2 It welcomes the choice of this sector, which ties in with the Lisbon strategy, with the Barcelona objectives on funds devoted to R&D, and also with other Community policies

1.4 However, in view of the multiplicity of sources of funding, the number of stakeholders and the substantial Community resources involved, the use and ownership of the end

products of the research should be better defined, particularly with regard to intellectual property rights and patents. This shortcoming had already been pointed out by the Committee in its opinions on the creation of the IMI and Clean Sky Joint Undertakings. In this JTI, this shortcoming could prove even more sensitive, insofar as the end product will interest rival companies on the market, particularly car manufacturers.

1.5 Finally, the Committee feels that the following measures are necessary:

- a genuine simplification of procedures, not least because of the negative impact that red tape has had on previous R&D programmes. In this context, the EESC regrets that no serious assessment has been carried out in order to pinpoint the reasons for any difficulties encountered by the European Technology Platforms (ETPs) and prevent any further difficulties;
- an information programme aimed at encouraging the necessary private and public funding to be released;
- the establishment of appropriate vocational training programmes to ensure that the skills of workers match the jobs created by this JTI.

## 2. Introduction

2.1 The purpose of the proposed Council regulation is to launch one of the very first European public-private partnerships in the area of research and development. It is one of the six Joint Technology Initiatives (JTIs). This partnership, the Fuel Cells and Hydrogen Joint Undertaking, concerns a strategic sector for the diversification and future availability of energy.

2.2 The general aim of this Joint Undertaking is to allow industry, Member States and the Commission to pool their resources in selected research programmes.

2.3 Unlike the traditional strategy, which involves providing public funding for projects on a case-by-case basis, JTIs involve large-scale research programmes with shared strategic research goals. This new approach should create a critical mass for European research and innovation, consolidate the scientific community in key strategic sectors, and harmonise the funding of projects so that research findings can be put to use more quickly. JTIs concern key sectors where the current instruments have neither the scale nor the speed to keep or place Europe at the forefront of global competition. These are sectors where national, European and private funding of research can bring substantial added value, especially by stimulating an increase in private R&D expenditure.

2.4 Fuel cells are highly efficient energy converters capable of delivering substantial greenhouse gas and pollutant reductions.

They offer flexibility to the energy mix as they can be operated on hydrogen and other fuels such as natural gas, ethanol and methanol, thus making a decisive contribution to protecting the environment and combating pollution.

2.5 In the fuel cells and hydrogen sector, the purpose of the Fuel Cells and Hydrogen Joint Undertaking is to help develop key competences in the sector and thus strengthen Europe's competitiveness. The proposed regulation sets down the legal framework needed to set up this kind of joint undertaking.

2.6 The Fuel Cells and Hydrogen Joint Undertaking also contributes to the implementation of the Environmental Technologies Action Plan (ETAP) provided for by Communication COM(2004) 38 final, which included this technological platform among the priority actions of the ETAP.

## 3. Context and general considerations

3.1 The scarcity of energy and the constant insecurity of supply sources compromise people's quality of life and make it hard for European enterprises to remain competitive. This could have a serious impact in the future, creating permanent instability and increasing energy prices.

3.2 For these reasons, hydrogen-based fuel cells are an extremely useful solution for the future: as well as making it possible to diversify available energy sources, they are clean energy converters, as they only emit steam. Other types of fuel cells, using natural gas or other fossil fuels, also reduce emissions as a result of their higher efficiency.

3.3 The introduction of hydrogen as a flexible energy carrier can contribute positively to energy security and stabilise energy prices, as it can be produced from any primary energy source, and as such can introduce diversity into the transport mix, which is currently 98 % dependent on oil.

3.4 The annual world turnover of the fuel cell industry in 2005 amounted to about EUR 300 million, of which Europe accounted for only 12 %; meanwhile, world investment in research was estimated at about EUR 700 million, 78 % of which was in North America against only 10 % in Europe.

3.5 The present structure of the fuel cell and hydrogen industries in Europe is therefore unsatisfactory, even though significant EU public funds have already been invested, with the topic already included in the FP7 energy and transport research portfolio. Europe's research efforts are too far behind those in other regions of the world; according to an EC study (the 'HyLights' project by DG TREN), the EU is five years behind Japan and North America when it comes to fuel cell vehicles.

3.6 Without new, specific R&D efforts, the industrial development of a key sector such as fuel cells and hydrogen could fall even further behind the global competitors, and this would have a negative impact on industrial development and employment in the sector.

3.7 The main problems brought to light by the Commission's analyses and consultations stem from the complexity of research needed in the sector, and the lack of a specific Community agreement for a long-term investment plan.

3.8 In this context, given the work needed in terms of innovation, which requires considerable resources, it seems clear that no enterprise or institution can carry out the necessary research alone.

3.9 As well as being insufficient, the resources currently available are not put to the best use, as evidenced by the gaps in programmes and/or needless overlaps; these resources are not enough to fund a large scale, EU-wide programme.

3.10 Moreover, the European fuel cell sector is not sufficiently coordinated between different countries and activity areas (academia, new industrial companies, high-tech SMEs, etc.) which restricts the exchange and pooling of knowledge and experience, and the technical breakthroughs needed to improve performance and materials and reduce system costs to meet the expectations of potential customers.

3.11 Bringing a European dimension to research in fuel cells and hydrogen is an essential option; indeed, it may well be the only possible solution to the difficult challenges that the sector must face.

3.12 The choice of a public-private joint undertaking should make it possible for Community R&D in the sector to move towards more effective research, as this is currently undergoing problems in achieving the necessary critical mass. This is vital to overcome the current fragmentation of research programmes in the various Member States which are unable to reach the essential critical mass due to their lack of resources to fund the necessary programmes.

#### 4. Consistency

4.1 The starting point for research programmes is the Seventh Framework Programme (FP7). In order to achieve a competitive, dynamic economy, it is essential to give new impetus to R&D investment.

4.2 The proposed regulation appears to be consistent with Community policies in research, with the Lisbon strategy (competitiveness), and with the Barcelona objectives (research spending) under which the EU is to invest 3 % of its GDP by 2010.

4.3 It also appears consistent with the Commission communication on the initiative for *An Energy Policy for Europe*, launched

in January 2007, and with the European Strategic Energy Technology Plan (SET Plan), on which the EESC is currently drawing up an opinion <sup>(1)</sup>, and which has the aim of guiding the course of energy technology innovation over the coming decade. It is also consistent with other fields of Community action, such as the environment and sustainable development.

#### 5. The Commission proposal

5.1 The proposed Council Regulation setting up the Fuel Cells and Hydrogen Joint Undertaking (COM(2007) 571 final) refers to the provisions of the 7th Framework Programme (FP7) covered by Decision 1982/2006/EEC, providing for a Community contribution towards the establishment of long-term public-private partnerships at European level in the area of research.

5.2 These partnerships take the form of Joint Technology Initiatives (JTI) and arise from the work of the former European Technology Platforms (ETP).

5.3 The Council, in its Decision No 971/2006/EC on the Specific Programme 'Cooperation', emphasised the need to set up public-private partnerships and identified six areas in which the creation of joint technology initiatives is appropriate with a view to relaunching European research:

- hydrogen cells and fuel cells;
- aeronautics and air transport <sup>(2)</sup>;
- innovative medicines <sup>(3)</sup>;
- embedded computing systems <sup>(4)</sup>;
- nanoelectronics <sup>(5)</sup>;
- GMES (global monitoring for environment and security).

5.4 In the context of this general strategy, the regulation proposed in COM(2007) 571 final provides for the implementation of the Joint Technology Initiative (JTI) on fuel cells and hydrogen by means of setting up a Fuel Cells and Hydrogen Joint Undertaking.

5.5 The Joint Undertaking is to be considered as an international body with a legal personality within the meaning of Article 22 of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004, and Article 15 of Directive 2004/18/EC. Its seat will be in Brussels and its activities will cease on 31 December 2017, unless extended by Council decision amending the regulation under consideration.

5.6 The Commission's main objectives in setting up this Joint Undertaking are explained in detail in Article 1.2 of the Statutes of the Joint Undertaking appended to the proposed regulation:

- to place Europe at the forefront of fuel cell and hydrogen technologies worldwide;

<sup>(1)</sup> TEN/332: *European Strategic Energy Technology Plan*, Rapporteur: Mr Zboril.

<sup>(2)</sup> (INT/364) OJ C 44, 16.2.2008, p. 11.

<sup>(3)</sup> (INT/363) OJ C 44, 16.2.2008, p. 1.

<sup>(4)</sup> (INT/370) OJ C 44, 16.2.2008, p. 15.

<sup>(5)</sup> (INT/369) OJ C 44, 16.2.2008, p. 19.



- to enable the market breakthrough of fuel cell and hydrogen technologies, enabling commercial market forces to drive the substantial public benefits;
- to reach the critical mass of research effort to give confidence to industry, public and private investors, decision-makers and other stakeholders to embark on a long-term programme;
- to leverage further industrial, national and regional RTD&D investment;
- to build the European Research Area;
- to stimulate innovation and the emergence of new value chains including SMEs;
- to facilitate the interaction between industry, universities and research centres on basic research;
- to encourage the participation of the new Member States and candidate countries;
- to support the development of new regulations and standards to eliminate artificial barriers to hydrogen trading;
- to provide reliable information to the general public on hydrogen safety, and the benefits of the new technologies for the environment, security of supply, energy costs, and employment.

## 6. Legal basis

6.1 The proposal consists of a Council Regulation with the statutes of the joint undertaking in an annex. It is based on Article 171 of the Treaty. The Joint Undertaking is to be a Community body, and its balance sheet will fall under Article 185 of Council Regulation 1605/2002/EC, Euratom. It will therefore have to take account of the fact that, through its very nature, this initiative involves public-private partnerships with a large private-sector contribution at least equal to that of the public sector.

## 7. Membership

7.1 The founding members of the Joint Undertaking are:

- a) the European Community represented by the Commission;
- b) the European Fuel Cell and Hydrogen Joint Technology Initiative Industry Grouping.

7.2 A research grouping, representing non-profit research organisations, may become a member, after the establishment of the Joint Undertaking, provided an entity to represent the research community has been established.

## 8. Funding

8.1 The running costs of the Joint Undertaking, explained in detail in Article 5 of the regulation, will be covered in equal parts by the founding members.

8.2 The operational costs for RTD&D will be jointly funded through the financial contribution of the Community and through in-kind contributions from the private legal entities

participating in the activities. Their contribution from private legal entities should correspond to an amount at least equal to the Community's contributions.

8.3 The maximum Community contribution to the running costs and operational costs of the Joint Undertaking will be EUR 470 million. The EESC considers that this sum could have been higher given the significance of the research to which this JTI is devoted. Moreover, the running costs are estimated not to exceed EUR 20 million. The contributions will come from the 'Cooperation' Specific Programme implementing the Seventh Framework Programme for research, technological development and demonstration, according to the provisions of Article 54(2) (b) of Regulation (EC, Euratom) No 1605/2002.

8.4 If a research grouping is established (see point 7.2), it will contribute one twelfth of the running costs, in which case the Commission contribution will decrease correspondingly.

8.5 Unless funding is provided after 2013 (when FP7 ends), only projects for which a grant agreement has been signed at the latest by 31 December 2013 will continue in the years 2014-2017.

## 9. General comments

9.1 The EESC supports the decision to create the Fuel Cells and Hydrogen Joint Undertaking and endorses the related proposal for a regulation COM(2007) 572 final. The EESC particularly highlights the importance for the EU of the strategy proposed with regard to investment and research coordination which, with regard to this JTI, can lead to greater diversity in the energy mix, especially when it comes to the transport sector <sup>(6)</sup>.

9.2 As the Committee has already stated in opinions on other regulations arising from Council Decision 971/2006/EC concerning the Specific Programme 'Cooperation', it believes that relaunching investment in R&D is an appropriate way of giving businesses a stable frame of reference that makes it possible to overcome the current fragmentation of Community financing and prevents programmes from being too widely scattered.

9.3 Since the outset, and as evidenced in numerous opinions, the EESC has been strongly in favour of an ever-greater commitment from the EU towards R&D. Although it is not possible to cite every reference, it is worth mentioning the two most recent opinions on this subject, adopted by a large majority at the EESC's plenary session of 24 and 25 October, relating to the Clean Sky and ENIAC Joint Undertakings.

9.4 **In general terms:** in its opinion <sup>(7)</sup> on the *Green Paper on The European Research Area: New Perspectives*, the EESC states that it 'supports the objective of creating world-class science and technology infrastructure, but this must be backed up by long-term, reliable funding,' noting that 'the success and purpose of this investment is contingent on the involvement of the relevant institutes and university groups in the Member States being involved, and on committed participation of industry in technology projects.'

<sup>(6)</sup> TEN/297: *The energy mix in transport*, Rapporteur: Mr Iozia.

<sup>(7)</sup> (INT/358) OJ C 44, 16.2.2008, p. 1.

9.5 **In specific terms:** in its opinion <sup>(8)</sup> on the *Communication from the Commission to the Council and the European Parliament — Biofuels Progress Report — Report on the progress made in the use of biofuels and other renewable fuels*, the EESC strongly supported the development of research programmes relating to the subject covered by the present regulation.

9.5.1 In the opinion, the EESC stated that it *'believes that particular attention should focus on research in the biofuels sector, especially for second-generation fuels, without sacrificing other possibilities such as those produced by the development of solar hydrogen or biomass processing.'*

9.5.2 The EESC went on to point out that *'In spite of the recent development of research geared to producing hydrogen from biomass, sometimes with the use of biotechnologies or renewable sources, the potential widespread use and marketing of hydrogen-fuelled cars is also determined by the high cost of the fuel cells', and declared that 'For hydrogen to become an economically practicable alternative energy source, production costs must be brought down.'* The Committee then stated that it *'believes support should be given to research into biofuel cell technologies, i.e. biofuel cells that use biocatalysts to convert chemical energy into electricity.'*

## 10. Specific comments

10.1 In the light of the multiple, composite financing system that has been set up and of the significant volume of Community resources involved, the EESC believes that it would be appropriate to better define the use and allocation of the end products of the research in question. To this end, the issue of patents and intellectual property — as defined in Article 17 of the proposed regulation and Article 1.24 of the Statutes of the Joint Undertaking appended thereto, which limit themselves to setting out principles — ought to be more precise and more explicit, lest it become a sticking point in the implementation and running of the Fuel Cells and Hydrogen JTI. This shortcoming had already been pointed out by the EESC in its opinions on the creation of the IMI and Clean Sky Joint Undertakings. In this JTI, this shortcoming could prove even more sensitive, insofar as the end product resulting from the research will interest rival companies on the market, particularly car manufacturers, many of which will be part of the joint undertaking. In this regard, because of the significant Community funding, it would be appropriate to consider mechanisms that

promote a return on European investment or, at least, for this concern to be reflected in the document under consideration.

10.2 As stated under point 5.2, JTIs arise out of the former European Technology Platforms (ETPs). However, the latter did not always achieve their stated aim of strategically relaunching research in Europe. The creation of JTIs is based in particular on any difficulties encountered by the ETPs, whose role was essentially to make a key contribution to industry in the area of competitiveness.

10.2.1 In the light of this, the EESC regrets the absence from the Commission proposal of a more detailed outline of the work previously carried out by the European Technology Platforms (ETPs); there is no assessment, the results are not mentioned, and there are no bibliographical references. A serious assessment with the aim of pinpointing the reasons for any difficulties encountered by the ETPs would have helped to prevent difficulties in the new initiative.

10.3 To achieve the aims of the Fuel Cells and Hydrogen JTI and maximise the potential that this new instrument offers, the EESC considers the following to be necessary:

- a genuine simplification of procedures, not least because of the negative impact that red tape has had on previous R&D programmes. Moreover, the EESC highlights the need for all parties to participate in selecting the objectives and analysing the final results;
- a wide-ranging information programme on the opportunities provided by the ITC, inter alia on its ability to mobilise the necessary economic resources in the light of the new forms of financing;
- the establishment of appropriate vocational training programmes to create a highly-skilled workforce with the knowledge needed for the R&D supported by this Joint Undertaking; this knowledge being highly strategic for the EU's industrial future. These high-level qualifications will provide the technical skills needed for the R&D jobs that will be created, will serve to slow the brain drain, and will provide one of the necessary conditions for ensuring leadership in these sectors, which are of strategic importance from both an industrial and an environmental perspective.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

<sup>(8)</sup> (TEN/286) OJ C 44, 16.2.2008, p. 34.

**Opinion of the European Economic and Social Committee on the Proposal for a Directive .../.../EC of the European Parliament and of the Council on the legal protection of computer programs (Codified version)**

COM(2008) 23 *final* — 2008/0019 (COD)

(2008/C 204/05)

On 13 February 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 .../.../EC of the European Parliament and the Council on the legal protection of computer programs (codified version)*

Since the Committee unreservedly endorses the proposal and feels that it requires no comment on its part, it decided, at its 443rd plenary session of 12 and 13 March 2008 (meeting of 12 March), by 126 votes with 2 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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**Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council concerning mergers of public limited liability companies (Codified version)**

COM(2008) 26 *final* — 2008/0009 (COD)

(2008/C 204/06)

On 14 February 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 concerning mergers of public limited liability companies (codified version)*

Since the Committee unreservedly endorses the proposal and feels that it requires no comment on its part, it decided, at its 443rd plenary session of 12 and 13 March 2008 (meeting of 12 March), by 117 votes to 1, with 7 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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**Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on co-ordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (Codified version)**

COM(2008) 39 final — 2008/0022 (COD)

(2008/C 204/07)

On 14 February 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 co-ordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (Codified version)*

Since the Committee unreservedly endorses the proposal and feels that it requires no comment on its part, it decided, at its 443rd plenary session of 12 and 13 March 2008 (meeting of 12 March), by 125 votes with 6 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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**Opinion of the European Economic and Social Committee on the Communication from the Commission — Trans-European networks: Towards an integrated approach**

COM(2007) 135 final

(2008/C 204/08)

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

*Communication from the Commission — Trans-European networks: Towards an integrated approach*

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 19 February 2008. The rapporteur was Mr Krzaklewski.

At its 443rd plenary session, held on 12 and 13 March 2008 (meeting of 13 March 2008), the European Economic and Social Committee adopted the following opinion by 64 votes with 1 abstention.

**1. Conclusions and recommendations**

networks and reduce associated construction costs, unlike an approach that does not take account of the effects of possible synergy between different kinds of network.

1.1 The European Economic and Social Committee (EESC) notes that an integrated approach to trans-European networks (TENs) is one way of achieving the goal of the sustainable development of the European Union.

1.2 The EESC is convinced that an integrated approach can speed up the implementation of planned trans-European

1.2.1 In that connection, the Committee calls on the European Commission to put forward proposals to broaden the

scope of financial support for integrated approaches, in the form of an 'integrated approached fund' for trans-European networks (as a whole, i.e. including network branches), ahead of the forthcoming mid-term review.

1.3 Having assessed the conditions for successfully creating an integrated approach covering all TENs, the EESC believes convergence between sectors <sup>(1)</sup> is needed if synergy is to be effectively achieved. Another of the key conditions, in the Committee's view, for a more effective integrated approach is the earliest possible completion of the basic structure of these networks.

1.4 The EESC suggests broadening the Commission communication to examine the question of the extent to which the accession of 12 new Member States has affected the possibility of adopting an integrated approach in these countries and the scope of its application.

1.5 The Committee notes that an integrated approach to trans-European networks can play a very important role, namely by:

- limiting environmental damage caused by the construction and operation of networks, and;
- reducing the number and severity of disputes sparked by conflicts of interest involving the construction and operation of networks.

1.6 The EESC considers that scientific research comprising both Community and national initiatives has a particularly important role to play in optimising the effects of an integrated approach to trans-European networks. In this connection, the Committee notes that current research is split along thematic and sectoral lines. The EESC therefore calls on the Commission and the Council to devise and implement programmes and applications throughout the area of European scientific research in connection with synergies between all the different kinds of network making up the TENs.

1.7 Given that a 'backbone' of fibre-optic networks exists in some EU Member States to meet the technological needs of certain national infrastructures (such as the electricity and rail networks), the EESC is convinced that, if an integrated approach is to be adopted, these fibre-optic networks will have to be used to a greater extent for commercial purposes (telecommunication services, transmitting information etc.).

1.7.1 At the same time, the Committee believes that, with an eye to adopting an integrated approach, the active development of local infrastructure currently under way in a large number of Member States should be used to step up development of fibre-optic access networks and construct intelligent <sup>(2)</sup> local infrastructure. An integral part of this infrastructure should be an integrated GIS map <sup>(3)</sup>. This would result in an integrated

<sup>(1)</sup> Organisational convergence of sectors, encompassing businesses.

<sup>(2)</sup> **Intelligent infrastructure** has attached or built-in components that are able to collect and transmit information about the state of the infrastructure to a central computer, and in some cases receive back instruction from the computer, which triggers controlling devices. (*U of T Civil Engineering — last updated: Nov. 9, 2001*).

<sup>(3)</sup> See specific comments, point 4.2.3

approach to local network infrastructure based on an IT system (intelligent infrastructure management system — IIMS).

1.8 The Committee proposes that the Commission take account of integrated technologies for renewable natural gas and environmentally-friendly energy generation in its plans for an integrated approach to trans-European networks. These technologies, which bring electricity generation closer to the end user, can cut CO<sub>2</sub> emissions.

1.8.1 This approach should aim to yield results in terms of synergy, coordination and savings, possible through the development of gas and biotechnologies.

1.9 Considering the potential synergy of trans-European energy networks in the Baltic states as new EU members, the EESC believes that the integrated approach should adopt one particular measure that can be implemented quickly and construct an energy bridge to integrate the systems of the Baltic States with those of the EU. Over the longer term (2020), however, it is important that *stranded costs* <sup>(4)</sup> do not arise from existing transmission networks.

## 2. Introduction

2.1 Developing, connecting, better integrating and better coordinating the development of European energy, transport and telecommunications infrastructures are ambitious objectives and are referred to in the Treaty <sup>(5)</sup> and the Guidelines for growth and jobs <sup>(6)</sup> based on the Lisbon Strategy.

2.2 Articles 154-156 of the Treaty and the Guidelines for growth and jobs contain objectives for developing, connecting, better integrating and coordinating European energy, transport and telecommunications infrastructures.

2.3 These provisions in the Treaty and the above-mentioned guidelines formed the basis for the idea of trans-European transport, energy and telecommunications networks, which are the lifeblood of the EU economy.

2.4 With a view to reaping the greatest possible benefit from trans-European networks, particularly in terms of making the EU more competitive, in July 2005 the European Commission mandated a steering group especially set up for this purpose to define a common approach to better coordinate the various Community initiatives supporting work on the trans-European transport, energy and telecommunications networks.

2.4.1 The Steering Group examined the following matters in particular:

- Synergy between European networks
- Respect for the natural environment and trans-European networks

<sup>(4)</sup> Stranded costs — costs of investments and commitments incurred exclusively in the past (historic costs) which have yet to be recovered by investors through the sale of electricity and other services and which cannot be recovered on the competitive market. The cut-off date is generally the date on which the energy market was established or liberalised.

<sup>(5)</sup> Articles 154, 155 and 156 of the Treaty.

<sup>(6)</sup> Guidelines for growth and jobs (2005-2008) No 9, 10, 11 and 16.

- Making use of new technologies in trans-European transport networks
- Funding for trans-European networks, and in that connection:
  - Combining funds
  - Funding for major priority projects
  - Using public-private partnerships (PPP) to finance trans-European networks.

2.5 The subject of the EESC opinion below is the Commission's Communication COM(2007) 135 *final Trans-European networks: Towards an integrated approach* — the result of the Steering Group's work.

### 3. General considerations

*Current situation regarding the implementation of trans-European networks*

#### 3.1 Trans-European transport network (TEN-T)

3.1.1 Following the most recent EU enlargement in 2007, TEN-T now comprises 30 priority projects which should be completed by 2020. Furthermore, the Commission has recently underlined the necessity to extend the trans-European transport network to the neighbouring countries <sup>(7)</sup>.

3.1.2 The completion dates for these major projects have fallen behind the original timetables. Despite the fact that some of these projects have been completed or are currently nearing completion <sup>(8)</sup>, the pace of construction of what are considered to be priority transport routes is still too slow. The EESC own-initiative opinion <sup>(9)</sup> describes in detail the reasons for this.

3.1.3 Of these 30 priority projects, 18 are railway projects, 2 are inland waterways and shipping projects. High priority has therefore been given to the most environmentally friendly transport modes. Maps contained in a study carried out by ECORYS for the Commission <sup>(10)</sup> show the progress made on the 30 priority projects to date and the progress which should be made by the end of the multi-annual financial framework period in 2013. These maps show how incomplete the network still is.

3.1.4 The Commission's Communication (subject of this opinion) assesses the financial resources used to implement TEN-T during the 2000-2006 financial period and presents the financial mechanisms under the 2007-2013 multi-annual financial framework. The sum of EUR 8,013 billion was allocated directly from the EU budget for the development of the trans-European transport network in this financial period.

3.1.5 The ERDF and the Cohesion Fund will continue to be the main sources of Community assistance for co-funding of the

<sup>(7)</sup> COM(2007) 32 of 31.1.2007.

<sup>(8)</sup> The fixed link connecting Sweden and Denmark, completed in 2000, Malpensa airport, completed in 2001, the Betuwe railway line linking Rotterdam to the German border, completed in 2007 and the PBKAL project (HST Paris-Brussels/Brussels-Cologne-Amsterdam-London, completed in 2007).

<sup>(9)</sup> OJ C 157 of 28 June 2005 p. 130.

<sup>(10)</sup> *Synergies between Trans-European Networks, Evaluations of potential areas for synergetic impacts*, ECORYS, August 2006.

trans-European transport network projects during the 2007-2013 programming period. In general terms, the Community contribution to the implementation of the trans-European transport network should be concentrated on the cross-border sections and on bottlenecks.

3.1.6 The European Investment Bank will continue to provide funding for transport infrastructure in the form of loans and through a specific guarantee instrument which has a budget of EUR 500 million under the EIB's own funds and EUR 500 million under the trans-European transport network's budget (i.e. 6,25 % of the total amount available).

#### 3.2 Trans-European energy network (TEN-E)

3.2.1 In January 2007, the Commission assessed the progress made on projects of European interest in its *priority interconnection programme*. In the case of electricity, little progress has been made — 12 out of 32 projects are on schedule, and only five are actually complete <sup>(11)</sup>.

3.2.2 As far as gas is concerned, the situation appears to be better — seven out of ten projects should be ready by 2010-2013. On the other hand, 29 LNG <sup>(12)</sup> terminals and storage facilities are behind schedule — nine projects have been abandoned, work on five has stopped.

3.2.2.1 The Commission identified the complexity of planning and other authorisation procedures as the main reason for the delays and shortcomings. Other reasons include opposition from public opinion, insufficient financial resources and the structure of vertically integrated energy companies.

3.2.3 The EU will need to invest, before 2013, at least EUR 30 billion in infrastructure (EUR 6 billion for electricity networks, EUR 19 billion for gas pipelines and EUR 5 billion for Liquefied Natural Gas (LNG) terminals), if the priorities outlined are to be fully implemented. Investment is essential not only in cross-border capacity but also generation capacity.

3.2.4 The EU budget offers financial support for TEN-E investments, which can be provided only in special and duly justified cases. Funding comes from the budget heading exclusively earmarked for trans-European networks and from the Cohesion and Structural Funds. (The funds represent over one third of the budget and their purpose is to finance regional development projects, including energy networks.)

3.2.5 Investments are also supported through other financial instruments (funds, credit). The European Investment Bank is the main source of funding for trans-European networks. From 1993 until the end of 2005 credit agreements provided a total of EUR 69,3 bn in funding for all trans-European networks, of which EUR 9,1 bn went to energy networks.

<sup>(11)</sup> Aleksandra Gawlikowska-Fryk: *Trans-European Energy Networks*, 2007.

<sup>(12)</sup> LNG — Liquid Natural Gas.

### 3.3 Trans-European telecommunications networks

3.3.1 Of all the TEN networks, the construction of the infrastructure for telecommunications networks (eTEN) is the most advanced. Telecommunications services have been progressively opened to competition since 1988 and the impact has been dramatic. More competition has stimulated investment, innovation, the emergence of new services and a significant decline in consumer prices.

3.3.2 Nowadays, investment is concentrating on the upgrade of existing networks to next generation, the deployment of 3<sup>rd</sup> generation mobile and other wireless infrastructure, and bringing broadband to the rural areas of the EU.

3.3.2.1 Investment may involve the layout of fibre-optic networks, where civil works and indoor cabling represent 70 % of deployment costs. Construction of railway lines, roads or energy lines may facilitate the rollout of these networks in under-served areas.

3.3.3 The main challenge for the European telecommunications network is 'bridging the broadband gap'. There are disparities between urban and rural areas and Member States must therefore undertake concrete actions and set targets to close the gap by 2010.

3.3.4 A greater coordination and integration of various sources of funding (Structural Funds, Rural Development Fund, TEN and national funds) is needed to develop coherent planning and complete the coverage of broadband.

#### *Integrated approach for trans-European networks*

### 3.4 Synergies between European networks

3.4.1 Combining road and rail networks is the first example of synergy in trans-European networks <sup>(13)</sup>. The merits of this are set out in the Commission Communication on *Extension of the major trans-European transport axes to the neighbouring countries: Guidelines for transport in Europe and neighbouring regions* <sup>(14)</sup>. The most important are: better use of space, joint construction work, lower visual impact on and less fragmentation of the landscape, measures to soften the impact of joint infrastructures (anti-noise protection, viaducts for large and small wildlife). Combined infrastructures also offer genuine scope for reducing costs and environmental damage.

3.4.2 A study has been carried out into the scope for developing other combined networks, such as passing a high-voltage line through a railway tunnel, and laying telecommunications cables — specifically fibre-optic cables — by railway lines <sup>(15)</sup>. Technical feasibility, the impact on project costs and the complexity of the procedures have been analysed, with the following conclusions.

<sup>(13)</sup> Some Member States have introduced a legal obligation to seek synergy, in particular Germany — Federal Nature Conservation Act (*Bundesnaturschutzgesetz*), paragraph 2, Bundling law (*Bündelungsgebot*).

<sup>(14)</sup> COM(2007) 32 of 31.1.2007.

<sup>(15)</sup> Synergies between Trans-European Networks, Evaluations of potential areas for synergistic impacts, ECORYS, August 2006.

3.4.2.1 Apart from the possibility of combining gas pipelines with other infrastructures, where technical feasibility seems difficult in view of the extent of the secure areas required, there are genuine advantages to be gained from combining other kinds of TENs.

3.4.2.2 Synergies between the telecommunications and transport networks seem to be the most promising. Every transport network can be optimised by having its own communication network which is used to manage the network. In most cases, rail and motorway networks already have such communication networks. In some cases, the surplus capacity of these networks is used for other purposes, e.g. for data communication.

3.4.2.3 It is still rare for systematic synergies to be sought between an infrastructure management network and a telecommunications network from the start of construction of the infrastructure.

3.4.2.4 Interesting solutions involving the interconnection of electricity networks and transport and telecommunications infrastructure include the following: laying high-voltage cables along the banks of canals and rivers, low-voltage interconnections (2 x 25 kV) along high-speed railway lines, more systematic interconnections of underground high-voltage lines (300 to 700 kV) along transport network paths. These suggestions do not replace the immediate need to interconnect the national high-voltage networks, but are a proposal for finer meshing of the national electricity systems over a longer time span matching the time it takes to complete the major infrastructure projects.

### 3.5 Integrating the environment and the trans-European networks

3.5.1 The Lisbon Strategy for Growth and Jobs calls for the TENs to be implemented in a manner which is compatible with sustainable development.

3.5.2 The majority of TEN-T priority projects are projects which promote more environmentally friendly transport modes and which consume less energy, such as the railways and waterways. The completion of the trans-European transport network will have a positive impact on the environment. If transport-generated CO<sub>2</sub> emissions continue to increase at the present rate, by 2020 they will be 38 % above present levels. In the Commission's opinion, completing the 30 priority projects will slow down this rise by about 4 %, equivalent to reducing CO<sub>2</sub> emissions by 6,3 million tonnes a year.

3.5.3 By interconnecting the national power systems and connecting the renewable energy sources to them it will be possible to optimise capacity utilisation in each Member State and thereby soften the negative environmental impact.

3.5.4 Community environmental protection legislation provides a clear framework in which these major projects have to be implemented. The Community guidelines for the development of the trans-European transport network refer to it explicitly<sup>(16)</sup>. Each new TEN infrastructure programme has to undergo a strategic environmental assessment<sup>(17)</sup>, and each project has to be assessed on an individual basis<sup>(18)</sup>. There is also the possibility of using the assessments as a framework for study to find possible synergies.

3.5.5 Each individual project has to comply with Community legislation on noise, water and the protection of flora and fauna<sup>(19)</sup>.

3.5.6 If none of the alternatives to a project declared to be in the public interest is considered to be an optimum solution and in line with Community legislation, compensatory measures may be adopted which will allow the project to be carried out while at the same time compensating for any negative impact.

### 3.6 Integrated approach for financing trans-European networks

3.6.1 Combining funds for the implementation of TEN has led to major problems and even disputes. The question of cumulation of Community funding of various financing sources on the same project has been a constant preoccupation of the Commission. The Court of Auditors has highlighted this issue in its reports on the Commission's implementation of the trans-European networks.

3.6.2 In the Communication, which is the subject of this EESC opinion, the Steering Group concludes that there must be no possibility of cumulation of subsidies from several Community funds. In order to ensure budgetary transparency and proper financial management, the Financial Regulation and/or basic sectoral acts adopted or in the course of adoption rule out the cumulation of different Community financial instruments for one and the same action.

3.6.3 The key point in the Communication, which has major consequences for combined TEN investments, is that expenditure within a project that is part of an operational programme receiving financial assistance from the Structural Funds and/or the Cohesion Fund cannot benefit from other Community funding.

3.6.3.1 It follows that when expenditure, for example for ERTMS equipment or electrification of a railway line, is not receiving financial assistance from the Structural Funds and/or the Cohesion Fund, it could benefit from TEN-funding. The

<sup>(16)</sup> Article 8 of the abovementioned Decision No 884/2004/EC.

<sup>(17)</sup> Strategic Environmental Assessment (SEA) Directive (2001/42/EC) for plan and programme assessment.

<sup>(18)</sup> Environmental Impact Assessment (EIA) Directive (85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC) for project assessment.

<sup>(19)</sup> Birds Directive (79/409/EEC), Habitats Directive (92/43/EEC) and Water Framework Directive (2000/60/EC).

actual construction of the railway line could be funded by the ERDF or the Cohesion Fund. Projects could also be divided into geographical sections, which could be co-financed either by ERDF/Cohesion Fund or TEN-funding.

## 4. Specific comments

### 4.1 Integrated approach to developing energy networks: electricity and gas

4.1.1 The development of gas-powered generation technologies (combi technologies<sup>(20)</sup>, cogeneration<sup>(21)</sup>) is making investment in electricity networks a riskier proposition (transmission of electricity is being replaced by transport of natural gas and development of gas-powered cogeneration at local level, small-scale cogeneration, micro-cogeneration).

4.1.2 The development of new technologies for transporting gas is making investment in gas networks a riskier proposition (network transmission of natural gas is being replaced by sea and road transport, made possible through use of CNG<sup>(22)</sup> and LNG technologies).

4.1.3 The convergence of the electricity and gas sectors (companies in these sectors), i.e. convergence in terms of ownership, management and organisation, is a prerequisite for an integrated technological approach to use of natural gas, and electricity and heat generation. There is therefore an urgent need to break down the sectoral divide (move away from the mutual isolation of the electricity and gas industries). It is particularly important to speed up convergence of the electricity and gas sectors in the new EU Member States of Central and Eastern Europe, while taking account of the inevitable social consequences in the Member States concerned, both 'old' and 'new'.

### 4.2 Integrated approach to developing fibre-optic networks

4.2.1 In some Member States, including several new members (e.g. Poland), major fibre-optic networks have been constructed to meet particular technological needs (electricity<sup>(23)</sup> and rail<sup>(24)</sup>). Although use of these networks for commercial purposes is increasing<sup>(25)</sup>, the significant potential for integration has yet to be exploited. This untapped potential is still present, for example, in the gas industry. However, the main potential lies in integrating the technical fibre-optic networks of various infrastructures (electricity, rail) with the telecommunications network to form an efficient access network.

<sup>(20)</sup> 'Gas/steam units each capable of generating between a few dozen and 200 MW' Jan Popczyk, 'What next for electricity?', Monthly magazine of the Polish Electricians Association, VI 2000.

<sup>(21)</sup> See footnote No. 25.

<sup>(22)</sup> CNG — compressed natural gas (20-25 MPa).

<sup>(23)</sup> An example is the Polish fibre-optic network *TelEnerg*.

<sup>(24)</sup> An example is the Polish fibre-optic network *Telekomunikacja Kolejowa — Grupa PKP*.

<sup>(25)</sup> An example of this in Poland is the merger of *TelEnerg* and *Telbank*, which led to the creation of *Exatel*, a modern company in the telecommunications and IT services market.



4.2.2 Many EU Member States, particularly the new members, are currently taking active steps to build up local infrastructure, such as waterworks and sewage systems, co-financed from EU funds, mainly the Regional Development and Cohesion Funds. This represents a unique opportunity to integrate this infrastructure into fibre-optic access networks and would be a huge step forward for rural areas and small towns in Europe. This integration could be supported by introducing incentives in connection with EU funding for local infrastructure development, such as promoting the construction of integrated infrastructure.

4.2.3 The fibre-optic access network could provide the basis for constructing intelligent local infrastructure, covering (technical) control of various (intelligent) infrastructure components (waterworks, sewage systems, transport, heating networks, public safety) and their management (in terms of technical supervision and in the services market). An integral part of intelligent local infrastructure should be an integrated GIS map (administered by the commune/district and accessible to infrastructure companies operating in the local area). The GIS map currently offers the greatest potential for integration of local infrastructure networks.

#### 4.3 *The integrated approach and the issue of renewable natural gas and environmentally-friendly energy production*

4.3.1 Renewable natural gas technologies (small-scale, cogeneration technologies<sup>(26)</sup>, which gasify biomass produced on large farms) make it possible to limit expansion of electricity networks and the losses they entail and to make better use of primary energy sources, thereby cutting CO<sub>2</sub> emissions.

4.3.2 A very important category of integrated technologies are environmentally-friendly technologies (environmentally-friendly/cogeneration) which are designed to generate energy

(electricity and heat) and to utilise waste (use of municipal waste, agricultural waste and waste from food processing).

#### 4.4 *Integrated approach to financing infrastructure networks through public/private partnership*

4.4.1 The aim of integrated financing of infrastructure through public-private partnerships is to make more effective use of EU funds for infrastructure development, particularly in the new Member States.

4.4.2 Public-private partnerships in the old Member States (EU-15) have been used to finance major infrastructure projects. In the new Member States of Central and Eastern Europe, these partnerships should be used to finance small-scale infrastructure investment at local level. For this reason, it is becoming increasingly important to apply the experience of partnerships in the old Member States to the new members. However, it is important to bear in mind that direct transfer of experience is not possible, as direct parallels cannot be drawn between financing major one-off infrastructure projects and funding a large number of small projects).

4.4.3 As a result of the availability of EU funds, local authorities in some Member States including Central and Eastern European countries often allow overinvestment in infrastructure, especially water and sewage works, while not exploiting the potential for sectorally integrated investment. This is a serious cause for concern because opportunities to reduce expenditure on infrastructure investment are being missed (less effective use of EU funds) and local authorities are increasingly being saddled with the unjustified future costs of operating this over-invested infrastructure (increase in ongoing costs of using this infrastructure, borne by local residents). The use of private capital to finance infrastructure is an effective way of exploiting the potential for integration and curbing the risk of overinvestment.

Brussels, 13 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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<sup>(26)</sup> **Cogeneration** (also combined heat and power) is a technical process which involves simultaneously generating electricity and useful heat in a power station.

**Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on common rules for access to the international road haulage market (recast)**

COM(2007) 265 final/3 — 2007/0099 (COD)

(2008/C 204/09)

On 16 July 2007, 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 common rules for access to the international road haulage market (recast)*

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 February 2008. The rapporteur was Mr Chagas.

At its 443rd plenary session, held on 12 — 13 March 2008 (meeting of 12 March), the European Economic and Social Committee adopted the following opinion by 65 votes to 21 with 6 abstentions.

## 1. Conclusions and recommendations

1.1 The EESC notes with interest the proposal for a regulation on access to the international road haulage market. The decision taken by the Commission in this proposal to opt for a form of harmonising the regulation's implementation that entails a clear and easily enforceable definition of cabotage and largely improved rules on compliance and enforcement would meet the demands of the majority of stakeholders in the sector.

1.2 The Committee considers, however, that the social aspect of access to the international road haulage market warrants closer attention. Cabotage, like cross-trade<sup>(1)</sup> (carriage to and from third countries), can entail unfair competition and social dumping in the sector, as a result of the wage gap between drivers from the old and new Member States.

1.3 In the EESC's opinion, requiring cabotage operations to take place within seven days could make it easier to monitor. Such operations can only be allowed where they follow an international journey.

1.4 Monitoring cabotage should form part of a national strategy for monitoring the implementation of road haulage legislation and should be coordinated by the Commission. The Committee would not want to see a plethora of European-level committees and calls for a single committee made up of representatives of the Member States, with the social partners being given observer status.

1.5 For the longer term the Committee would encourage the Commission to undertake further analysis with a view to better achieving the internal market coupled with further harmonisation of quality standards, worker protection and the fiscal and social framework, including the reduction of the pay gap.

<sup>(1)</sup> Cross-trade is deemed to be carriage between country A and country B undertaken by a haulier established in country C.

## 2. Introduction

2.1 The proposal for a regulation currently under consideration, on access to the international road haulage market, addresses matters that form part of the pillars of the internal market in road transport.

2.2 More specifically, these pillars consist of a legal framework laying down European rules, known as common applicable rules, which must be complied with in the international carriage of goods and passengers by road within EU territory (in other words the carriage of goods to or from the territory of a Member State or passing across the territory of one or more Member States).

2.3 This framework:

- sets minimum quality standards which must be met in order to enter the profession;
- liberalises international road haulage and occasional passenger services; and
- establishes regulated competition between regular passenger services and for cabotage haulage operations by non-resident hauliers.

2.4 Because the aim of establishing this legal framework was to achieve the smooth operation of the internal transport market, account was not always taken of its social impact, in other words the impact on the employment and working conditions of professional coach or lorry drivers (both male and female). At the time, (the first directive dates back to 1962), the social dimension of the internal road haulage market and sustainable transport were not policy considerations in this sphere.

### 3. Commission proposal

3.1 The Commission proposal identifies five policy options ranging from a 'no change' option to a 'liberalisation' option that would place virtually no quantitative restrictions on cabotage. The Committee considers that standards vary too greatly within Europe at present for full liberalisation to be possible without eroding standards and quality of service and long-established norms for the protection of health, safety and working conditions in the industry. It is therefore proposing at present a more limited middle option, the 'harmonisation' option, which would include a clear and enforceable definition of the circumstances in which cabotage operations should be permitted, along with improved procedures for securing compliance and enforcement and standardising and simplifying the paperwork involved.

3.2 This proposal forms part of a legislative package that includes three proposals for regulations aimed at updating, simplifying and condensing the rules on access to the international road passenger and goods transport profession and market and also includes a report on the application to self-employed drivers of the directive on working time. It makes sense, therefore, to ensure that the proposal fits neatly into this package.

3.3 With this in mind, the Commission's rationale for this proposal for a regulation is the need to enhance the clarity, readability and enforceability of the current rules. Certain measures forming part of this legislative framework are unequally applied and enforced because of unclear or incomplete legal provisions.

3.4 More specifically, the implementation and/or enforcement of the following aspects are a cause for concern:

- the scope of the Regulation on transports by Community hauliers to and from third countries;
- the difficulties in implementing the concept of temporary cabotage; despite an interpretative communication published in 2005 on the basis of the Court of Justice definition of 'temporary' in connection with the freedom to provide services, difficulties have remained and Member States tend to implement rules which are divergent, difficult to enforce or which impose an additional administrative burden;
- the ineffectiveness of the exchange of information between Member States; as a result, undertakings which operate on the territory of a Member State other than their Member State of establishment hardly risk any administrative sanctions, as a result of which the competition might be distorted between these undertakings less inclined to comply with rules and the others;
- the heterogeneity of the various documents (Community licence, certified copies and driver attestation), which creates problems during roadside checks and often leads to considerable time losses for operators.

3.5 The proposal aims at revising and consolidating Regulations (EEC) No 881/92, (EEC) No 3118/93 and Directive 2006/94/EC. This is not merely a recast, however, because the proposal contains new aspects, for example, on cabotage. It is based on Article 71 of the Treaty, which refers to common rules applicable to international transport and to the conditions for allowing non-resident hauliers access to national transport in a Member State (<sup>2</sup>).

3.6 The Commission considers that its proposal reflects the need to ensure the smooth operation of the internal market, helps to attain the objectives of the Lisbon strategy by improving road safety, contributes to the process of 'better lawmaking' and improves compliance with rules on social protection.

3.7 The proposed act concerns an EEA (European Economic Area) matter and should therefore extend to the EEA.

### 4. General comments

4.1 The EESC is interested to note the proposal for a regulation on access to the international road haulage market. In principle the EESC believes that the long-term goal should be to move towards a more liberalised market for road haulage operations within the EU coupled with proper enforcement of Europe-wide standards for health, safety and worker protection and further harmonisation in the fiscal and social fields, including the reduction of the pay gap, i.e. the direction of movement should be towards the Commission's Option 5. This option is in line with the existing Regulation nr 3118/93 and the internal market policy. This might make the industry more competitive with benefits to all of European business as users of haulage services, and might have environmental advantages in reducing the number of empty or part-empty journeys undertaken because of the present restrictions on cabotage.

(<sup>2</sup>) Article 71, OJ C 325, 24.12.2002, p. 61, states that:

1. For the purpose of implementing Article 70, and taking into account the distinctive features of transport, the Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, lay down:
  - a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
  - b) the conditions under which non-resident hauliers may operate transport services within a Member State;
  - c) measures to improve transport safety;
  - d) any other appropriate provisions.
2. By way of derogation from the procedure provided for in paragraph 1, where the application of provisions concerning the principles of the regulatory system for transport would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities, they shall be laid down by the Council acting unanimously on a proposal from the Commission, after consulting the European Parliament and the Economic and Social Committee. In so doing, the Council shall take into account the need for adaptation to the economic development which will result from establishing the common market'.

4.2 The Committee agrees however with the Commission that full liberalisation of the haulage market throughout Europe would be too disruptive at the present time and would carry a grave risk of eroding social and quality standards and reducing compliance with them. It believes that the Commission should be encouraged to undertake the deeper analysis which they have suggested would need to be involved in moving towards further liberalisation in the future. But it agrees with the Commission that the 'harmonisation' option is the best way forward in the immediate future

4.3 In particular, the EESC considers that:

- the new definition of cabotage, regulating the conditions under which non-resident hauliers may operate national road haulage services within a Member State;
- the requirement for a simplified and standardised format for the Community licence, certified copies and the driver attestation;
- enhancing the current legal provisions by obliging a Member State to act, when requested to do so by another Member State, when a haulier to whom it delivered a Community licence commits an infringement in the Member State of establishment or in another Member State;

all help to improve the clarity and enforceability of the current rules.

4.4 The Committee wishes to point out that the results of the consultation carried out by the Commission prior to the legislative package and to this proposal in particular suggest that most stakeholders consider that what is needed are rules that are clear, straightforward, applicable, identical in all Member States and easily monitored. The decision taken by the Commission in this proposal to opt for a form of harmonisation entailing a clear and easily enforceable definition of cabotage and largely improved rules on compliance and enforcement would meet the demands of these stakeholders.

4.5 Indeed, although the preamble to Regulation 881/92 refers to eliminating '... all restrictions imposed on the provider of services because of his nationality or the fact that he is established in a Member State other than that in which the service is to be provided', maintaining the derogation, even on a temporary basis, in line with Article 71(2) of the Treaty, would be entirely justified: total liberalisation of the market 'would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities ...'.

4.6 The EESC considers, however, that the social dimension of access to the international road haulage market warrants closer attention. A number of recitals, recital 13 in particular, do, of course, refer to the Directive concerning the posting of workers (Directive 96/71) in the framework of the provision of services, which should apply in cases where, for the provision of

cabotage operations, hauliers post workers who have an employment relationship with those hauliers, from the Member State where they ordinarily work. **This recital does not, however, appear in either the articles or the explanatory memorandum.**

4.7 This aspect assumes even greater importance since Community legal provisions for the road transport industry, and in particular those concerning the social chapter, are not being properly implemented in all Member States.

## 5. Specific comments

### 5.1 *Scope (Article 1)*

5.1.1 The EESC regrets the fact that the regulation does not apply to international transports of less than 3,5 tonnes. Given the growth of the express and home delivery sector, in border regions too, it would have made sense for this regulation to include the vehicles of less than 3,5 tonnes commonly used in this sector, in order to prevent situations of unfair competition.

5.1.2 The EESC wishes to express its fears concerning the fact that the regulation does not apply to international carriage between a Member State and a third country as long as no agreement between the EU and the third country in question has been concluded. The EESC thus calls on the Commission to make every effort to conclude these agreements, in particular with those States sharing a border with the European Union.

### 5.2 *Definitions (Article 2)*

5.2.1 The EESC welcomes the fact that new, clearer definitions of the 'host Member State', 'non-resident haulier' and 'cabotage operations' are provided.

### 5.3 *The operational definition of cabotage (Articles 2 and 8)*

5.3.1 The Commission proposal states that hauliers are permitted to carry out up to three cabotage operations consecutive to an international carriage once the goods carried in the course of the incoming international carriage have been delivered. The last cabotage operations must take place within seven days.

5.3.2 The advantage of this operational definition is that it clearly prohibits non-resident hauliers from entering a Member State with an unladen vehicle. Cabotage is only authorised where it precedes or follows a laden international journey.

5.3.3 The drawback lies in the fact that, in theory, the haulier can repeat the operation following the 7-day limit, with the same company, the same type of goods and the same journey. How, in such cases, can the temporary nature of cabotage transport be guaranteed?

5.3.4 The EESC thus calls for the new text to stipulate and emphasise that the 'temporary nature' of cabotage is one of its defining features <sup>(3)</sup>.

5.3.5 Although cabotage accounts for only 3 % of international freight transport <sup>(4)</sup>, it is nonetheless of importance to the smaller Member States, where the limited national road haulage markets encourage hauliers to seek out freight opportunities abroad. The statistics might not be 100 % reliable — cabotage is reported by the country in which a haulier is registered — but they do show that this phenomenon is growing <sup>(5)</sup>.

5.3.6 Although the statistics might be open to discussion they show that cabotage accounts for a substantial part of international haulage, especially in the smaller of the older Member States. Dutch hauliers are the most active caboteurs, followed by Germany and Luxembourg. These three countries accounted for half of all cabotage performed by EU-25 hauliers in 2005. Although, conversely, the penetration rate by country (this rate is the percentage of cabotage within a country's domestic market, i.e. national transport plus cabotage) has experienced slow but steady growth, it remains within negligible limits. Since 1999, Belgium, Luxembourg and France have been the most heavily penetrated countries: Belgium 2,87 %, France 2,50 % and Luxembourg 1,99 % <sup>(6)</sup>. Cabotage penetration in the new Member States is generally below 0,3 %, apart from Latvia at 0,8 %.

5.3.7 The Committee is concerned, however, at the detrimental effects of cabotage — which will be considerable — on small and medium-sized enterprises in the sector, when cabotage is carried out in the old Member States by operators from the new Member States, which will send drivers to carry out cabotage on wages considerably lower than those paid in the host State <sup>(7)</sup>.

5.3.8 The EESC is, of course, not against operators from the new Member States entering the market, but wishes to raise the issue of limiting and monitoring cabotage in order to prevent unfair competition and social dumping. The Committee, therefore, supports the Commission's choice, which is to establish a legal framework that encourages regulated competition and not the complete liberalisation of cabotage.

5.3.9 The assessment of the impact of the measures proposed by the Commission also highlights the increase in cross-trade (some people use the term 'home trade') <sup>(8)</sup>. Furthermore, a growing number of freight and logistics companies are

<sup>(3)</sup> Based on Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident hauliers may operate national road haulage services within a Member State (OJ L 279, 12.11.93, p. 1) and the Commission interpretative communication on the temporary nature of road cabotage in the movement of freight, of December 2004.

<sup>(4)</sup> Statistics in focus, Yves Mathieu, 77/2007, 'Trends in road freight transport' 1999-2005, page 4.

<sup>(5)</sup> Statistics in focus, Simo Pasi, 27/2007, trends in road freight transport 1999-2005, page 6; in 2005, there was an increase of 2 % compared to 2004.

<sup>(6)</sup> Statistics in focus, Simo Pasi, 27/2007, trends in road freight transport 1999-2005, page 6; in 2005, there was an increase of 2 % compared to 2004.

<sup>(7)</sup> Commission staff working paper, impact assessment SEC(2007)635/2 explains that labour costs (drivers) in particular can vary from 1 to 3 and even in some cases from 1 to 6 (page 6).

<sup>(8)</sup> Commission staff working paper, Impact assessment, SEC(2007) 635/2, page 6 stipulates: 'cross-trade grew steadily at an annual average rate of 4,4 % between 1999 and 2003. This rate increased to over 20 % for 2004 and 2005'.

establishing offices in the new Member States and are sending drivers from these countries to carry out international transport between old Member States. The pricing of this transport excludes all competition because it is based on the wage gap between drivers from the old and new Member States. The proposal for a regulation makes no reference to this other aspect of unfair competition and social dumping.

5.3.10 This is also why the EESC regrets the absence of the social aspect from the legislative package and from this proposal in particular. No account is taken of the considerable wage gap that exists between the new and old Member States in the sector, or of the detrimental effect on small and medium-sized enterprises, employment and drivers' wages.

5.3.11 Turning to the issue of monitoring cabotage (Article 8), according to the Commission, enforcement bodies will be able to check more easily whether a cabotage is lawful by looking at the CMR consignment letters which indicate the dates of loading and unloading of an international carriage. Furthermore, for each cabotage operation, the following details must be provided: the sender, the haulier and the consignee, the place and the date of taking over of the goods and the place designated for delivery, the description in common use of the nature of the goods and the method of packing and, in the case of dangerous goods, their generally recognised description as well as the number of packages and their special marks and numbers, the gross weight of the goods or their quantity otherwise expressed and the number plates of the motor vehicle and trailer. Such data will certainly help to improve monitoring of the cabotage operation, which should take place within seven days.

The EESC considers, however, that requiring a cabotage operation to take place within seven days could make it easier to monitor.

## 6. What is the relevance of the directive concerning the posting of workers?

6.1 The Directive concerning the posting of workers (Directive 96/71) in the framework of the provision of services, should apply in cases where, for the provision of cabotage operations, hauliers post workers, who have an employment relationship with those hauliers, from the Member State where they ordinarily work.

6.2 The problem lies in the manner in which this directive has been transposed into national legislation ... which, in this specific case has resulted in its implementation differing in terms of the sectors covered and the duration of service provision. Consequently, some countries apply the directive only to the construction sector, whilst others make application of the directive mandatory from the first day on which service is provided <sup>(9)</sup>. Furthermore, the Directive enables Member States to exempt the sector from the regulation, by means of collective agreements, where the length of the posting does not exceed one month <sup>(10)</sup>.

6.3 Where cabotage is concerned, given that the directive's implementation today varies from one State to another, even if properly implemented, it will not solve the problems of unfair competition and social dumping.

6.4 Furthermore, checks on the implementation of the directive on posting are non-existent <sup>(11)</sup>. This is a remarkable omission, given that each Member State is obliged to make provision for cooperation between the public authorities which, in accordance with social security legislation, are responsible, as set out in the directive referred to above <sup>(12)</sup>.

6.5 The EESC will, therefore, take note of the results of the European social dialogue in the road haulage sector on this subject.

## 7. Driver attestation (Article 5)

7.1 The EESC calls for the attestation of drivers who are third-country nationals also to state that they are registered with the social security system.

## 8. Enforcement (Articles 10 to 15)

8.1 The proposal for a regulation requires Member States to exchange information using the contact points established pursuant to the new regulation on the admission to the occupation of road transport operator. These are designated administrative bodies or authorities in charge of carrying out the informa-

tion exchange with their counterparts in the other Member States.

8.2 It is also stipulated that Member States enter in their national register of road transport undertakings all serious infringements and repeated minor infringements committed by their own haulier and which have led to the imposition of a sanction.

8.3 The proposal for a regulation introduces a new procedure to be followed by a Member State detecting an infringement committed by a non-resident haulier. This Member State has one month to communicate the information according to a minimum standard format. It may ask the Member State of establishment to impose administrative sanctions. The Member State of establishment of the haulier concerned has three months to inform the other Member State of the follow-up.

8.4 The EESC considers these new provisions to represent progress. The Committee regrets, however, the fragmentation and diversity of principles and procedures in the enforcement and implementation of European road haulage legislation. The EESC considers that the principle of extraterritoriality, which applies to legislation on driving time and rest periods (Regulation 561/2006), should also be enforced in the event of infringements of legislation on cabotage. This would provide a greater incentive to comply with legislation.

8.5 Directive 2006/22 stipulates a coherent national enforcement strategy and requires Member States to appoint a body to coordinate enforcement of legislation on driving time and rest periods. The EESC considers that enforcement with regard to cabotage should form part of this strategy.

8.6 The same applies to the committee established to assist the Commission. The EESC is against this proliferation of committees and calls for a single committee, made up of members representing the Member States and the social partners as observers, entrusted with the task of assisting the Commission in enforcing and implementing European road haulage legislation.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

<sup>(9)</sup> Jan Cremers, Peter Donders, Editors, 'The free movement of workers in the European Union', European Institute for Construction Labour Research, CLR studies 4, 2004. This holds true of the Netherlands in particular, which applies the directive to the Construction sector and excludes all others, whilst Belgium applies the postings directive from the first day on which service is provided.

<sup>(10)</sup> Article 3(4) of Directive 96/71/EC.

<sup>(11)</sup> Ecorys, 'study on road cabotage in the freight transport market', report for DG TREN, page 8.

<sup>(12)</sup> Directive 96/71/EC, Article 3.

## APPENDIX

**to the opinion of the European Economic and Social Committee**

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

**Points 4.5 and 4.6**

Delete points 4.5 and 4.6:

- ~~4.5 The EESC considers, however, that the social dimension of access to the international road haulage market warrants closer attention. A number of recitals, recital 13 in particular, do, of course, refer to the Directive concerning the posting of workers (Directive 96/71) in the framework of the provision of services, which should apply in cases where, for the provision of cabotage operations, hauliers post workers who have an employment relationship with those hauliers, from the Member State where they ordinarily work. This recital does not, however, appear in either the articles or the explanatory memorandum.~~
- ~~4.6 This aspect assumes even greater importance since Community legal provisions for the road transport industry, and in particular those concerning the social chapter, are not being properly implemented in all Member States.'~~

*Reason*

The social dimension of cabotage is to a large extent already regulated by Regulation (CE) No 561/2006 on the regulation of driving time and rest periods, by the respective ways in which Directive 2002/15/EC on working time is transposed into national legislation in the different Member States and by the temporary nature of cabotage itself.

*Result of the vote*

Votes in favour: 27 Votes against: 41 Abstentions: 5

**Point 4.6**

Replace the text with the following:

- ~~4.6 This aspect assumes even greater importance since Community legal provisions for the road transport industry, and in particular those concerning the social chapter, are not being properly implemented in all Member States. In conclusion, a word or two would have been appropriate about the alleged phenomenon of cabotage by hauliers from new Member States, insofar as there are transitional measures following the Accession Treaties concluded with the new Member States, were it not for the fact that all the transitional measures will come to an end in 2009 at the latest and cabotage will be allowed..~~

*Reason*

Transitional measures applied for the New Member states will come to an end in 2009. Therefore all the countries will be equally treated as regards the above regulation. The Regulation will come into effect realistically after 2009. This fact is important to be mentioned because it should help to stop speculations about unfair competition and social dumping from the new member sates.

*Result of the vote*

Votes in favour: 27 Votes against: 47 Abstentions: 4

**Point 5.3.9**

Replace the text with the following:

- ~~5.3.9 The EESC is, of course, not against operators from the new Member States entering the market, but wishes to raise the issue of limiting and monitoring cabotage in order to prevent unfair competition and social dumping. The Committee, therefore, supports the Commission's choice, which is to establish a legal framework that encourages regulated competition and not the complete liberalisation of cabotage. The assessment of the impact of the measures proposed by the Commission highlights the increase in internal market cross-trade (third country traffic within the internal market) <sup>(1)</sup>. Furthermore, a growing number of freight and logistics companies are establishing offices in the new Member States and are sending drivers from these countries to carry out international transport between old Member States. For the EESC, however, this is inherent in EU enlargement and the objectives of the internal market.~~

<sup>(1)</sup> Commission staff working paper, Impact assessment, SEC(2007) 635/2, page 6 stipulates: 'cross-trade grew steadily at an annual average rate of 4.4% between 1999 and 2003. This rate increased to over 20% for 2004 and 2005'.

*Reason*

Again there are fears raised for unfair competition and social dumping and the paragraph reiterates what have already been repeatedly said. Preferably is to say a word about internal market the EU needs more.

*Result of the vote*

Votes in favour: 31 Votes against: 61 Abstentions: 0

**Point 5.3.10**

Delete paragraph 5.3.10:

- ~~5.3.10 The assessment of the impact of the measures proposed by the Commission also highlights the increase in cross-trade (some people use the term 'home trade')<sup>(1)</sup>. Furthermore, a growing number of freight and logistics companies are establishing offices in the new Member States and are sending drivers from these countries to carry out international transport between old Member States. The pricing of this transport excludes all competition because it is based on the wage gap between drivers from the old and new Member States. The proposal for a regulation makes no reference to this other aspect of unfair competition and social dumping.~~

*Reason*

To put stress on the social aspects in the Regulation does not mean that the new member states always have to be the only reason to do that.

*Result of the vote*

Votes in favour: 33 Votes against: 58 Abstentions: 5

**Point 5.3.11**

Delete paragraph 5.3.11:

- ~~5.3.11 This is also why the EESC regrets the absence of the social aspect from the legislative package and from this proposal in particular. No account is taken of the considerable wage gap that exists between the new and old Member States in the sector, or of the detrimental effect on small and medium-sized enterprises, employment and drivers' wages.~~

*Reason*

To put stress on the social aspects in the Regulation does not mean that the new member states always have to be the only reason to do that.

*Result of the vote*

Votes in favour: 27 Votes against: 62 Abstentions: 1

**Point 6**

Delete point 6:

**~~6. What is the relevance of the directive concerning the posting of workers?~~**

- ~~6.1 The Directive concerning the posting of workers (Directive 96/71) in the framework of the provision of services, should apply in cases where, for the provision of cabotage operations, hauliers post workers, who have an employment relationship with those hauliers, from the Member State where they ordinarily work.~~
- ~~6.2 The problem lies in the manner in which this directive has been transposed into national legislation ... which, in this specific case has resulted in its implementation differing in terms of the sectors covered and the duration of service provision. Consequently, some countries apply the directive only to the construction sector, whilst others make application of the directive mandatory from the first day on which service is provided. Furthermore, the Directive enables Member States to exempt the sector from the regulation, by means of collective agreements, where the length of the posting does not exceed one month.~~
- ~~6.3 Where cabotage is concerned, given that the directive's implementation today varies from one State to another, even if properly implemented, it will not solve the problems of unfair competition and social dumping.~~

<sup>(1)</sup> Commission staff working paper, Impact assessment, SEC(2007) 635/2, page 6 stipulates: 'cross-trade grew steadily at an annual average rate of 4.4% between 1999 and 2003. This rate increased to over 20% for 2004 and 2005'.



- 6.4 ~~Furthermore, checks on the implementation of the directive on posting are non-existent. This is a remarkable omission, given that each Member State is obliged to make provision for cooperation between the public authorities which, in accordance with social security legislation, are responsible, as set out in the directive referred to above.~~
- 6.5 ~~The EESC will, therefore, take note of the results of the European social dialogue in the road haulage sector on this subject.'~~

*Reason*

The specific features of the transport industry mean that it already regulates its social aspects, through Directive 2002/15/EC on working time, and Regulation (CE) No 561/2006 on the regulation of driving time and rest periods and also through use of the digital tachograph.

Where other social aspects are concerned, it is one thing to apply Directive 96/71 to a sector such as construction, which entails stable periods away from home for workers, but another matter altogether to apply this directive to freight transport in the form of individual cabotage services as an extension of an international transport. In the latter case, the driver's journey is not a journey as such but part of his work as an international haulage driver holding a Community road haulier licence.

*Result of the vote*

Votes in favour: 24 Votes against: 63 Abstentions: 2

**Point 6.3**

Amend point 6.3 as follows:

- 6.3 ~~Where cabotage is concerned, g~~Given that the directive's implementation today varies from one State to another, even if properly implemented, it will not solve the problems of ~~unfair competition and social dumping.~~

*Reason*

To put stress on the social aspects in the Regulation does not mean that the new member states always have to be the only reason to do that.

*Result of the vote*

Votes in favour: 32 Votes against: 57 Abstentions: 2

**Point 1.2**

Replace the text with the following:

- 1.2 The Committee considers, however, that the social aspect of access to the international road haulage market ~~warrants might warrant closer attention. Cabotage, like cross trade~~ <sup>(1)</sup> ~~(carriage to and from third countries), can entail unfair competition and social dumping in the sector, as a result of the wage gap between drivers from the old and new Member States.~~

*Reason*

If we want to put stress on the social aspects in the above regulation it does not mean that the new member states have to be the reason to do that. Unfair competition can exist and come from any Member State. As regards mentioning of social dumping so within the EU this definition of social dumping can not be applied if undertakings or persons acts absolutely legally wherever they do it.

*Result of the vote*

Votes in favour: 28 Votes against: 61 Abstentions: 1

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(1) Cross trade is deemed to be carriage between country A and country B undertaken by a haulier established in country C.

## Opinion of the European Economic and Social Committee on the Reduction of CO<sub>2</sub> emissions from airports through new airport management (Exploratory opinion)

(2008/C 204/10)

In a letter dated 4 July 2007, the Portuguese Ministry of Transport, in the context of the Portuguese EU Presidency, asked the EESC, under Article 262 of the Treaty establishing the European Community, to draw up an exploratory opinion on:

*Reduction of CO<sub>2</sub> emissions from airports through new airport management.*

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 19 February 2008. The rapporteur was Mr McDONOGH.

At its 443rd plenary session, held on 12 and 13 March 2008 (meeting of 13 March 2008), the European Economic and Social Committee adopted the following opinion by 103 votes with 5 abstentions.

### 1. Recommendations

- Encourage airports to adopt management strategies for the reduction of airport carbon dioxide emissions through the introduction of an air quality model where all sources of NO<sub>x</sub> are identified and targets for CO<sub>2</sub> reduction are established. This model should be calibrated against on site air quality monitoring points. Key areas to be included in the model are airfield, airport buildings (terminal and associated service facilities), car parks and surface access.
- The adoption of recognised building standards and international best practice associated with the building and operation of airport infrastructure should be encouraged to minimise the associated carbon footprint. Key examples are insulation, maximising use of natural light and solar gain, rain-water harvesting, solar energy, combined heat and power units (CCHP), intelligent building management systems and heat exchangers.
- Encourage airports to use energy sources, which have been generated from renewable resources.
- Encourage the use of environmentally friendly airport service vehicles at airports where there are large concentrations of service vehicle activity associated with aircraft turn-arounds. Airports could also encourage the use of environmentally friendly vehicle use by passengers through the use of differential parking charges and preferential parking locations.
- Encourage airports to minimise waste generation at airports through the provision of enhanced airport recycling facilities. The identification of waste generated per passenger as a key environmental indicator would be beneficial.
- Minimise the impacts associated with car travel to airports through the provision of sustainable transport alternatives for passengers and staff alike, examples would include train links, bus links, car sharing and cycling initiatives.
- Encourage airports where possible to improve air traffic management procedures at and in the vicinity of the airport to reduce aircraft fuel burn.
- Auxiliary engines where possible should not be left running on the ground. Fixed ground power and pre-conditioned air should be made available from the terminal building.
- Discourage or ban use of older engine aircraft, which are inefficient in fuel, by increasing landing and take off fees appropriate to those aircraft, through differential charges.
- Discourage the use of noisier aircraft through the adoption of aircraft noise classification schemes and associated noise quota schemes at airports.
- Emissions reduction through a systems approach — while preserving safety as the top priority all factors must be considered, including airframe and engine design and operations, trade-offs, alternative fuels, ground services, airport capacity and air traffic management.
- Continuous Descent Approach (CDA) through which aircraft begin a constant descent at a higher altitude, moving groundward steadily, as opposed to a staggered approach that requires the aircraft to fly level for longer periods and thereby requires greater thrust to maintain constant speed and consequently burns more fuel. This continuous descent means that aircraft descend at a more efficient speed, therefore reducing fuel burn. The impact of this approach on air quality is likely to be within 15 to 20 miles of the airfield.
- Turbo propeller planes to be used on all journeys less than 500 km and where routes support less than 70 passengers per sector and range permits.
- Reducing fuel consumption by switching off 1-2 engines when taxiing to and from the runway.

## 2. Introduction

2.1 Aviation is a significant contributor to greenhouse gas emissions. Emissions currently account for about 3 % <sup>(1)</sup> of total EU greenhouse gas emissions, and have increased by 87 % since 1990. The rapid growth in aviation emissions contrasts with the success of many other sectors of the economy in reducing emissions. Without action, the growth in emissions from flights from EU airports will by 2012 cancel out more than a quarter of the 8 % emission reduction the EU-15 must achieve to reach its Kyoto Protocol target. By 2020, aviation emissions are likely to more than double from present levels.

2.2 Aviation stimulates the economy, trade and tourism, generates business opportunities and enhances the potential for improving the quality of life in both developed and developing regions.

2.3 Aviation transports annually 2 billion passengers and 40 % of interregional exported goods (by value). 40 % of international tourists travel by air. Aviation generates 29 million jobs worldwide. Its global economic impact is estimated at USD 2 960 billion, equivalent to 8 % of world GDP.

2.4 The airport should be an integral part of the local infrastructure, and play a leading role in the protection of the environment in the locality.

2.5 The efficiency and utilisation to the maximum of airports infrastructure depends highly on air traffic control. The introduction and focus on efficient air traffic control procedures both at and in the vicinity of the airport can limit the amount of fuel wasted in take-off, landing and taxing at the airport.

2.6 Many airports like Gatwick, Paris Orly, Milan Linate, etc., are already desperately short of capacity. By 2010 another 15 or so European airports will have joined them. Britain's Civil Aviation Authority, among others, consider that slots should be auctioned to airlines and then traded in a transparent secondary market to encourage better utilisation of a scarce resource.

2.7 More efficient use of the airport infrastructure and its associated ground facilities could be made by using larger aircraft where feasible. Even though many flights are full, the average number of passengers on each aircraft using many airports, is only 68. The aircraft are too small, and there is little incentive for airlines to bring in bigger, more modern aircraft, as the airports cannot be priced to encourage this type of efficiency. A combination of market mechanisms and efficiency rules, such that carriers must use their departure gates at least

once an hour depending on the type of aircraft used, or make them available to another carrier should be in place to improve the situation.

2.8 The Commission's proposal (SESAR) to establish a single open sky for Europe unifying the separate national air traffic control arrangements pertaining at present offers the potential for a major increase in the efficiency of use of air space on the approach and take-off thereby diminishing stacking and holding on the ground i.e. waiting for landing and take-off slots respectively. (IATA, the International Air Transport Association, predicts that 12 % of global CO<sub>2</sub> emissions by aircraft could be saved if air traffic control systems were more efficient). The Committee urges all concerned to make rapid progress with the negotiations to establish this new regime, and not to allow it to be held back through delaying tactics by sectional interests.

## 3. Aviation — A source of noise and emissions

3.1 Aviation's environmental impact is estimated to contribute about 2 % of global greenhouse gas emissions and could double by 2050.

3.2 The aviation industry has surpassed most other industry sectors in reducing noise and emissions per unit of production over the years. Fuel efficiency is currently improving by about 1-2 % a year, and emissions account for 2 % of total volume. The aviation growth makes 5 % a year, while energy efficiency brings savings of less than 1,5 %. However, aviation is predicted to grow more quickly than this, so technological improvements by themselves won't be enough to solve the problem.

## 4. Noise and air quality around airports

4.1 The aviation industry is committed to implementing the International Civil Aviation Organisation's (ICAO) balanced approach to noise management, which aims to alleviate community exposure in the most cost-effective way.

4.2 Reduction of noise at source through technological progress is key in this regard, and impressive improvements have been made over the past decades and further progress is targeted for the coming 15 years. The (EC) issued a Directive <sup>(2)</sup> which established principles for managing aircraft noise and introduced operating restrictions, including provision for the withdrawal of the noisiest Chapter 3 aircraft, at EC airports, the outcome of this directive should now be reviewed.

<sup>(1)</sup> See: [http://ec.europa.eu/environment/climat/aviation\\_en.htm](http://ec.europa.eu/environment/climat/aviation_en.htm).

<sup>(2)</sup> Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (Text with EEA relevance) OJ L 83, 28.3.2002, p. 40-46.

4.3 Airports and air navigation service providers are committed to implementing the continuous descent approach and other low noise flight procedures wherever appropriate, while safeguarding runway capacity. This has been identified as a key area of improvement for CO<sub>2</sub> emission reductions in and around airports.

4.4 Governments must ensure preventive land-use planning and management measures around airports.

4.5 Local air quality concerns call for comprehensive action targeting all sources of emissions in the air and on the ground, including activities — such as industry and road traffic that are not directly attributable to air transport, but are a by-product of servicing the airport. Linking airports to the train networks should be encouraged thereby establishing environmentally sustainable transport options for getting to the airport, enhanced bus and train networks are a key factor in this regard also. Airports should encourage the use of environmentally friendly cars in their car parks, by differential pricing and preferential parking locations. Airport service vehicles should as a minimum operate on cleaner energy sources like gas and electricity, a number of vehicle types use battery power presently, this should be expanded further where feasible for the specific operational requirement. The transport of staff to and from the airport can be a significant car trip generator, alternative options should be encouraged like staff busses, car sharing, staggered shift patterns avoiding peak times and if feasible, cycling for the airport's staff.

4.6 Technological progress has practically eliminated visible smoke and hydrocarbons, while oxides of nitrogen from aircraft engines have been progressively reduced by 50 % over the past 15 years. An extra 80 % reduction in nitrogen is targeted by 2020 for new engine technology.

4.7 Fuel-cell systems are under development, which could replace on-board auxiliary power units (APU) and thus reduce emissions by up to 75 % per unit.

4.8 Airports and airlines are committed to using cleaner and more efficient ground service equipment and vehicles, while also pressing governments and local authorities to provide cleaner surface access to airports — like trains or metros.

4.9 Aircraft traditionally run one of their engines while they are parked on the ground to power the plane.

## 5. Aviation contribution to climate change

5.1 Aviation accounts for approx. 2-4 % of European CO<sub>2</sub> emissions from fossil fuel use. This could reach approximately 5 % or more by 2050 according to an Intergovernmental Panel on Climate Change (IPCC) forecast. It is also noted that growth in aviation emissions could by 2012, offset more than a quarter of the EU's environmental contribution made under the Kyoto Protocol. Reaching international agreement on action is proving difficult but the proposed Directive is intended to provide a model for action at a global level and is the only initiative which offers this possibility.

5.2 80 % of aviation's greenhouse gas emissions are related to passenger flights exceeding 1 500 km/900 miles for which there is no practical alternative.

5.3 Aviation is committed to actively exploring the progressive introduction of alternative fuels such as biomass to liquid (BTL) to further reduce CO<sub>2</sub> emissions.

5.4 Technological progress, infrastructure improvements and operational good practices at airports are currently considered the most efficient and cost effective means to address climate change concerns, next to appropriate market based measures.

5.5 Airports need international standards and global policies, not piecemeal or short-sighted fixes.

5.6 Airport design could play a positive role in emission reduction, particularly the re-design of taxiways and piers to reduce the amount of congestion on the airfield. The terminal building design should minimise energy requirements as in heat and air conditioning, and consider the use of solar panels where feasible, maximising the use of natural light and solar gain, the use of combined heat and power systems (CCHP) and heat transfer systems, the incorporation of rain water harvesting in to building designs to be used in toilets, aircraft wash, etc. The temperatures in the terminal buildings should be efficiently controlled, to reduce energy wastage in over heating/over cooling.

5.7 Airport operational management should target the reduction of waste generated per passenger throughput, through the use of enhanced recycling initiatives both within the airports direct control and through incorporation into Service Level Agreements with airlines and other key service partners.

5.8 The Directive bringing aviation within the remit of the European Emissions Trading Scheme (ETS) <sup>(3)</sup> may positively increase public awareness, offer significant new carbon reduction resources and provide a measure for internalising those external environmental costs which hitherto the aviation industry has been able to ignore. Given the level and volatility of carbon prices it is unlikely to have a major impact on the continuing growth of air traffic and emissions.

## 6. Conclusions — next steps

6.1 Tackling airports environmental impact in a proactive, timely and cost effective manner requires the full co-operation and agreement of international bodies, governments and industry stakeholders.

6.2 Emissions reduction through a systems approach — while preserving safety as the top priority all factors must be considered, including airframe and engine design and operations, trade-offs, alternative fuels, ground services, airport capacity and air traffic management.

6.3 Consolidating long term environmental targets for airports, based on reliable and verifiable data and requirements is an urgent priority. All aspects of the airport process (air traffic, buildings, surface access etc.) should be included in these targets.

6.4 The creation of new airport infrastructure to reduce fuel burn before takeoff and after landing should be a key design parameter for all future airport design. Initiatives like the provision of holding grids at larger airports should be researched further and provided where feasible, to which commercial airplanes would be towed — engines off before takeoff, only to start their engines about 10 minutes before takeoff.

6.5 Continuous descent approach through which aircraft begin descent at a higher altitude, moving groundward steadily, as opposed to a staggered approach that burns excessive fuel. This continuous descent means that aircraft descend at a more efficient speed, therefore reducing fuel burn.

Brussels, 13 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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<sup>(3)</sup> COM(2006) 818 final — 2006/0304 (COD) and the Committee's opinion OJ C 175, 27.7.2007, p. 5.

**Opinion of the European Economic and Social Committee on the Guidelines on the application of Article 81 of the EC Treaty to maritime transport services (Additional Opinion)**

(2008/C 204/11)

On 20 November 2007, the Bureau of the European Economic and Social Committee, under Rule 29 A of the Implementing provision of Rules of Procedure, decided to draw up an additional opinion on the

*Guidelines on the application of Article 81 of the EC Treaty to maritime transport services.*

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 19 February 2008. The rapporteur was Dr Bredima.

At its 443rd plenary session, held on 12 and 13 March 2008 (meeting of 12 March), the European Economic and Social Committee adopted the following opinion by 117 votes with 6 abstentions.

## 1. Conclusions

1.1 The EESC believes that the structure and the current wording of the draft Guidelines can for the most part be endorsed. However, it notes a difference in details between the chapters on liner shipping and tramp shipping (pools). The section on information exchanges in the liner shipping chapter is fairly detailed and seems to be relatively helpful in terms of describing and interpreting relevant case law and decision-making practice on the subject. Overall, the draft Guidelines for liner services seem clear and are based on existing case law and long, thorough discussions with the industry. On the other hand, the sections on tramp shipping in general and tramp shipping pools in particular are less detailed. The EESC presumes that this lack of detail is to a large extent due to an absence of case law and therefore of experience of the relevant (competition) authorities, including the European Commission, regarding tramp shipping and tramp shipping pools as there have been no formal complaints from charterers as yet.

1.2 The EESC reiterates its calls in earlier Opinions (2004, 2006, 2007) for the EU to enter into meaningful consultations with other jurisdictions with a view to determining the compatibility between existing regimes governing liner trades worldwide. Furthermore, the EESC reiterates its recommendation in the same Opinions that the European Commission should also take the human resources aspect (e.g. impact on employment for European seafarers) into consideration — in addition to purely competitive factors — when dealing with competition rules with regard to maritime transport.

1.3 The EESC suggests using illustrative examples to specify the content of the (draft) Guidelines dealing with liner shipping, particularly where data are considered 'historic'.

1.4 As the sections dealing with tramp shipping and tramp shipping pools are less detailed for the reasons presumed above, the EESC wonders whether they will be sufficient enough to provide tramp (pool) operators with the required guidance to carry out a self-assessment of the cooperation agreements in which they are involved. It is possible that some greater clarity on certain sections of the draft Guidelines dealing with tramp shipping (pools) may be needed. Equally, it may be worth considering extending the consortia Regulation, which is specifically limited to container trades at the moment, to cover other relevant segments of the global shipping market as well.

1.5 The EESC stresses that shipping pools do not constitute the majority of the tramp shipping markets. Indeed, the vast majority of tramp vessel services are operated by many small or medium sized companies that compete with each other for cargo. For this reason, the EESC maintains that specific clarification in the Guidelines acknowledging this point is required. Moreover, the European Commission should also have given more guidance on the application of the *de minimis* rule to pools that are too small to have any appreciable effect on their markets.

1.6 It is disappointing that the guidance given on tramp shipping pools does not entirely answer the questions that are causing uncertainty and even concern for tramp pool operators. The EESC agrees with the perception that can be inferred from the draft Guidelines that tramp shipping pools are *per se* not in conflict with EC competition law but it urges the European Commission to give more specific guidance in the final version of the Guidelines regarding application of Article 81(3) to tramp shipping pools to provide the necessary tools to carry out self-assessments.

1.7 It is noteworthy that the draft Guidelines do not define what they mean by 'tramp shipping' and it is therefore not clear whether they apply also to maritime passenger transport and/or to specialised shipping. It might be worth considering clarification on this point as well.

1.8 Moreover, with regard to the tramp shipping chapter, the EESC suggests that the Guidelines clarify that a shipbroker's activities do not essentially differ from the activities of a pool manager with regard to setting prices. Tramp shipping markets, including those within which tramp shipping pools are operating, are bidding markets, i.e. prices are determined between price-negotiating parties and are based on supply and demand. The mere fact that a pool manager agrees a price with a charterer for use of a pool vessel does not therefore constitute 'price fixing' as a hardcore restriction.

## 2. Introduction

2.1 On 13 September 2007 the European Commission published its long-awaited draft Guidelines on the application of EC competition rules to the maritime transport services. The Guidelines apply to cooperation agreements in the maritime transport service sectors directly affected by the changes brought about by Regulation 1419/2006 applying to cabotage, liner and tramp shipping services. They are aimed at providing guidance to assist shipping companies in carrying out a self-assessment of cooperation agreements in which they are involved, i.e. they should enable the relevant companies to determine whether their cooperation agreements are compatible with Article 81 of the EC Treaty. The Guidelines will be valid for an initial period of five years.

2.2 The draft Guidelines aim in particular to shed light on the conditions under which liner operators may lawfully exchange freight information and under which tramp operators may enter into pooling arrangements. A complex set of parameters is set forth to that end. However, the real added value of the (draft) Guidelines in practice will have to be assessed in the future, e.g. will the (draft) Guidelines provide the required guidance for operators to determine the lawfulness of their intended conduct in the market?

## 3. General observations

### *Liner Shipping Services*

3.1 The draft Guidelines dealing with liner shipping — apart from confirming what is already known i.e. that liner confer-

ences on trades to or from the EU will be abolished as from 18 October 2008 — address permitted means of sharing market information between liner operators. Although certain details may need refinement, the Guidelines as drafted will probably just about provide the liner industry with the kind of information exchange it needs to function properly.

3.2 From 18 October 2008, liner carriers operating services to and/or from a port in the EU must cease all anti-competitive liner conference activities, regardless of whether such activities are permitted by other jurisdictions around the world. The EESC maintains that it will be difficult for globally-operating carriers to ensure that liner conference activities that are unlawful in the EU do not appreciably affect the EU market.

3.3 As far as liner shipping is concerned, the spotlight is on information exchange systems. Liner companies have been given some freedom to exchange information. Important elements include market structure, the type of information exchanged, how old it is and the frequency of the data exchange. The focus is rightly on the exchange of future data, notably capacity forecasts and price indices. It seems that capacity forecasts are *prima facie* always likely to be unlawful. The EESC acknowledges that the effects of information exchange must be considered on a case-by-case basis.

3.4 With regard to price indices, an aggregated price index is unlikely to infringe the law, unless the information can be disaggregated so as to allow undertakings directly or indirectly to identify the competitive strategies of their competitors. The level of aggregation, the 'historic' or 'recent nature' of the data and the frequency of publication should be assessed, but the draft Guidelines do not specifically state how much importance should be attached to these factors.

3.5 As far as liner services are concerned, the Guidelines do not contain any genuinely novel element, but seem to restate the general criteria previously developed by the European Commission and the European Courts.

3.6 The EESC reiterates its calls in related earlier opinions <sup>(1)</sup> for the EU to enter into meaningful consultations with other jurisdictions with a view to determining the compatibility between existing regimes governing liner trades worldwide. Furthermore, the EESC reiterates its recommendation in the

<sup>(1)</sup> OJ C 256, 27.10.2007, p. 62–65; OJ C 309, 16.12.2006 p. 46–50; OJ C 157, 28.6.2005, p. 130–136.

same opinions that the European Commission should also take the human resources aspect (e.g. impact on employment for European seafarers) into consideration — in addition to purely competitive factors — when dealing with competition rules with regard to maritime transport.

### *Tramp Shipping Services*

3.7 Tramp shipping services are global and highly competitive and they satisfy many of the characteristics of the perfect competition model. The commodity is homogeneous and entry costs are generally very low. Many companies compete for business, with substitution taking place between the different vessel sizes and vessel types depending on market circumstances. Information flows also make the market very transparent. Business is mainly carried out on the basis of voyage charters, consecutive voyage charters, contracts of affreightment or time charters. The freight rates achievable in these markets are highly volatile, depending on market circumstances. Finally, tramp shipping markets are able to respond rapidly to market developments and to shippers' needs <sup>(?)</sup>.

3.8 Shipping pools operate in every sector of the tramp shipping business. A 'pool' is a collection of similar vessels, under different ownership, operating under a single administration. The pool manager manages the vessels as a single, cohesive fleet unit, collects their earnings and distributes them under a pre-arranged 'weighting' system, while the individual owner is left merely to conduct the nautical/technical operation of the ship. Pools are generally developed for two reasons. Firstly, they are set up to allow participants to provide the service levels that their major customers increasingly demand. Secondly, they aim to improve transport efficiency by special investment and increased ship utilisation. Pools operate in an environment of supply and demand where contracts are concluded on the basis of tenders, rates are driven to a large extent by a spot market, buyers are large and sophisticated and brokers offer an exceptional visibility of tonnage and conditions at any given time.

3.9 The EESC stresses that shipping pools do not constitute the majority of the tramp shipping markets. Indeed, the vast majority of tramp vessel services are operated by many small or medium-sized companies that compete with each other for cargo. For this reason, the EESC maintains that specific clarification in the Guidelines acknowledging this point is required.

3.10 The EESC notes that tramp vessel services as well as tramp shipping pools have always been subject to EC competition law, i.e. long before the adoption of Regulation 1419/2006

granting enforcement powers to the European Commission with regard to these services. However, during this period there have been no formal complaints from charterers with regard to this sector and there has been no case law. The EESC presumes that it is the lack of case law and thus experience of relevant (competition) authorities, including the European Commission, that explains why the sections of the draft Guidelines dealing with tramp shipping (pools) are less detailed than those on liner shipping. It is also noteworthy that the draft Guidelines do not define what they mean by 'tramp shipping' and it is therefore not clear whether they also apply to maritime passenger transport and/or to specialised shipping. It might be worth considering clarification of this point.

3.11 The draft Guidelines do not take sufficient account of the specifics of the tramp sector and appear to follow the non-sector specific Guidelines on Horizontal Cooperation. Shipping pools will have to conform to the same Guidelines applied to other industry sectors to ensure that they do not inhibit free competition or behave like a cartel.

3.12 The draft Guidelines are quite general and do not provide precise legal certainty. They do not explicitly state that shipping pools are incompatible with EU competition law but they do not provide the guidance as to when they are.

3.13 The most crucial section of the draft Guidelines is that dedicated to the assessment and classification of shipping pools. The starting point is the finding that pools generally involve joint marketing and varying degrees of joint production features.

3.14 With regard to the relevant market, the EESC maintains that the Guidelines should take into better account the fact that there is a substantial element of substitutability or interchangeability in tramp shipping on both the demand as well as the supply side, (e.g. with regard to vessel type, vessel size, types of transportation contracts and geographic market). Moreover, if a pool has to do a self-assessment, market shares cannot be defined for each and every contract but they have to be assessed over a given time period.

3.15 The EESC believes that improvements will be necessary with regard to the relevance and definitions of market share enjoyed by shipping pools and 'substitution' between trades and ship types. It acknowledges that no practical guidance is given regarding the definition of the relevant market. However, market shares could be quite different according to the methodology used.

<sup>(?)</sup> Fearnleys Report, 'The Legal and Economic Analysis of Tramp Maritime Services', February 2007, p. 14-31. [http://ec.europa.eu/comm/competition/antitrust/legislation/maritime/tramp\\_report.pdf](http://ec.europa.eu/comm/competition/antitrust/legislation/maritime/tramp_report.pdf).



3.16 In the assessment of tramp vessel pool agreements within the context of Article 81, it should be emphasised that the pool manager 'manages' the fleet put into the pool in both operational and commercial terms and hence offers a joint product through a single pool entity. The tendering of vessels in the market is *de facto* ancillary to the pool manager's task of managing the service being offered. Individual owners, for their part, retain responsibility for the pure nautical/technical operation of the vessels. Pools provide a jointly 'produced' service that is the result of a significant degree of integration of the parties' activities<sup>(3)</sup>. Thus, pool agreements should be assessed on a par with other forms of joint production or specialisation agreements.

3.17 The EESC maintains that any reference to 'price fixing' as a characteristic of pool functioning (and hence as a hardcore restriction of competition) cannot be sustained in the Guidelines on the basis that the agreement of the price between the pool manager and the customer is an inherent part of the service being offered and it is the result of a price negotiation for use of a pool vessel in a bidding process.

Brussels, 12 March 2008.

3.18 The EESC believes that, given the purpose of pool agreements and their fundamental characteristics, the four conditions contained in article 81(3)EC are typically fulfilled to exempt pools. The fact that pools were established to respond to the needs and requirements of charterers and have for decades operated without complaint supports this view.

3.19 The EESC hopes that the European Commission will keep the Guidelines under constant review in the light of experience and, if necessary, bring out supplementary or clarification guidance as and when it is available without waiting for the five-year period to expire.

3.20 The Commission should at the earliest possible opportunity begin reviewing the scope of the liner consortia block exemption and on this occasion examine the need to cover also other relevant segments of the global shipping market, particularly those tramp trades that operate on a regular basis on regular routes, a feature of several specialised trades (e.g. conventional reefer vessels, timber trades and specialised car carriers and ro-ros).

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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<sup>(3)</sup> Fearnley's Report (2007): the authors of this report have reached the same conclusion.

**Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and the Council on reciprocal recognition of navigability licences for inland waterway vessels (Codified version)**

COM(2008) 37 *final* — 2008/0021 (COD)

(2008/C 204/12)

On 13 February 2008, the Council decided to consult the European Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Community, on the

*Proposal for a Directive of the European Parliament and the Council on reciprocal recognition of navigability licences for inland waterway vessels (Codified version)*

Since the Committee unreservedly endorses the proposal and feels that it requires no comment on its part, it decided, at its 443<sup>rd</sup> plenary session of 12 and 13 March 2008 (meeting of 12 March) by 121 votes in favour and 6 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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**Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures, and amending Directive 67/548/EEC and Regulation (EC) No 1907/2006**

COM(2007) 355 *final* — 2007/0121 COD

(2008/C 204/13)

On 13 July 2007 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

*Proposal for a Regulation of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures, and amending Directive 67/548/EEC and Regulation (EC) No 1907/2006*

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 26 February 2008. The rapporteur was **Mr David Sears**.

At its 443<sup>rd</sup> plenary session, held on 12 and 13 March 2008 (meeting of 12 March), the European Economic and Social Committee adopted the following opinion by 124 votes in favour with 2 abstentions.

## 1. Summary and recommendations

trade and to assist less developed economies in their efforts to protect the safety and health of workers and consumers.

1.1 The UN, acting on behalf of its member countries, has proposed a model for a 'globally harmonised system' (GHS) for the criteria and processes used in the 'classification, packaging and labelling of chemicals'. This is intended to support world

1.2 The EESC strongly supports this aim of global harmonisation, the form and legal basis of the implementing legislation

hereby proposed by the Commission, and the timetable proposed for implementation by manufacturers and suppliers to coincide with the first major deadline for the registration of 'substances' under Regulation (EC) 1907/2006 (REACH).

1.3 The EESC also agrees with the Commission's assessment that, although the changes to the system developed in the EU over the last 40 years are both inevitable and widely supported, the short term benefits within the EU are likely to be negligible and the costs potentially high. The EESC therefore believes that greater attention should have been paid to these, quite unusual, circumstances in the original impact assessment. In the absence of any significant overall benefit, any addition or modification to existing legislation that is not absolutely essential to implementing the UN proposal should be accompanied by a separate health, safety or economic justification. Above all, every effort must be made to ensure that existing standards are not compromised during the inevitably long transition period between these two largely equivalent systems. Education at the point of purchase will be a key requirement.

1.4 The EESC also believes that, given the very tight timetable, and the need to contain start-up costs, there is scope for flexibility in the proposal and in its immediate application. It has taken many years to develop the current system to a point where it properly protects the health and safety of workers and consumers across the EU and it is likely to be the same for the new globally harmonised system. What is key, however, is to commit sufficient long term resources at both the UN and in the Commission to ensure that the process of harmonisation continues — and that this eventually extends to the actual classification and labelling of widely traded goods as opposed to merely the criteria upon which these classifications are based.

1.5 The EESC notes, with concern, the length of this proposal, by itself and in conjunction with recent proposals such as REACH, the many other pieces of EU legislation with which these both interact, and the ever growing volume of guidance notes now deemed necessary. A new approach is essential if European industry (let alone the processes of monitoring or amending legislation) is not to be irretrievably damaged. It is simply not reasonable to assume that everyone, from the owner of the smallest SME to the typically larger groups of responsible officials in a national competent authority should have to routinely refer to more than 20 000 pages of interlinked documentation on these topics alone. A better way has to be found.

1.6 Under this same heading the EESC regrets the absence of key definitions and, in particular, the shift from the use of the word 'preparations', which has specific toxicological significance, to 'mixtures', which does not. The continuing absence of any EU definition of 'chemical' as either a noun or adjective continues to give rise to confusion for workers, consumers, managers and legislators alike. This proposal is intended to be neutral and

uncontentious in content. It provides a great opportunity to correct mistakes at the detail level. This is already happening in the technical appendices. The provision of a standard set of definitions, applicable across all the related legislation should be tackled forthwith, leading eventually to a glossary of the key words in all languages, identifying those that mean the same (presumably 'chemical', 'chemical substance' and 'substance') and those that either have different meanings or are unrelated ('article' and 'product', for instance). Cultural confusions or associations, in some languages, with the words 'substances' (taken to mean drugs, alcohol or tobacco) and 'chemicals' (as indications of terrorist or other illegal activities) should also be identified and avoided.

1.7 The EESC also notes the twin dangers of over-classification and over-labelling which eventually diminish the impact of warnings that are absolutely essential, and of relying on labels as the only sources of information for workers and consumers alike. Certainly the key information must be included. Links to other readily available sources are also important. The growing use of internet purchasing and online research on both benefits and risks of specific products suggests that further work on this is necessary. The needs of emergency responders and poison centres are not best served by long lists of standardised and unfamiliar names for components of complex mixtures. Indications of overall hazard and safety treatment, combined with contact data for round-the-clock follow-up offer the best protection for anyone affected. In specific circumstances where proprietary formulation technology is involved, the manufacturer is also protected, as in existing legislation, by this approach.

1.8 The EESC notes that there is no label proposed for the often very small quantities transferred between laboratories for the purposes of academic study or business R&D. This could be added to the array of labels proposed by the UN without difficulty and is to be preferred to the extremely restrictive, disproportionate and costly exemption currently proposed.

1.9 Finally the EESC notes that there will be a growing need to review the quality of the data used and the decisions made under the different jurisdictions world wide. The pressure to agree the outcomes of classification, not just the criteria and processes leading to them, will surely continue. The global needs and benefits of this are rather easier to understand.

## 2. Introduction

2.1 This proposal is designed to align existing EU legislation with a recently agreed UN model for a 'globally harmonised system' for the classification, labelling and packaging of raw materials, intermediate and finished products defined to be 'dangerous' or 'hazardous' and variously described as 'chemicals', 'substances', 'mixtures' or 'preparations'. European legislation

dating back to 1967 will be replaced. Many other directives and regulations, including Regulation (EC) 1907/2006 (REACH), currently being implemented, will require amendment. The longer term effects within the EU are intended to be positive, provided that costs can be contained and some rather minor benefits realised. Overall the proposal should facilitate world trade whilst maintaining high standards of protection for human health and the environment.

2.2 The 40-year old directive to be replaced is the Dangerous Substances Directive 67/548/EEC. This is generally regarded as the first piece of pan-European 'chemicals' legislation aimed, in particular, at protecting worker safety. It, and its many amending directives and adaptations to technical progress, now provide manufacturers and marketers, workers, distributors and consumers, in and outside the EU, with a harmonised system for the classification of 'dangerous substances', using specified tests against agreed end points and hazard criteria; for their proper labelling, via a limited set of pictograms and standardised phrases to identify possible risks and to recommend procedures for safe handling; and for their packaging, to protect regular users and vulnerable groups, in particular, young children.

2.3 Twenty-one years after the adoption of Directive 67/548/EEC, the Dangerous Preparations Directive 88/379/EEC, extended the process from 'substances' (a relatively finite list of 'elements and their compounds') to the theoretically infinite list of 'preparations' ('mixtures of two or more substances'). Recognising that animal testing was undesirable or impossible on such a scale, the directive introduced into European law for the first time a theoretical relationship between the known or determinable hazards of the component substances and the most probable hazard of the eventual mixture. This could then be used to classify, label and package the preparation without the need for further testing.

2.4 Given that the vast majority of products sold to consumers are indeed 'preparations' (or even 'articles'); this was an important step towards ensuring consumer safety for products not already covered by specific and more restrictive directives, for instance those applying to the sale of pesticides, detergents or cosmetics. The 1988 directive was significantly amended in 1999 by Directive 1999/45/EC.

2.5 The above directives, together with the supporting Safety Data Sheet Directive 91/155/EEC, also subsequently modified, have, for many years, provided the cornerstones of worker and consumer protection across the EU. They interact with, and provide input to, virtually all other EU legislation aimed at protecting human health, safety and the environment. Constant updating is required to reflect changes in scope, manufacturing technology and test methods, product availability and possible usage, and to reflect the latest scientific understanding of the consequences of all of these and of ways to mitigate any undesired effects.

2.6 Equally important, these directives 'pursue internal market objectives' in that they seek to establish a Single Market in the EU for the various products affected. Products, whether they be raw materials, natural or synthetic products, intermediates or waste streams, finished products or articles, can be safely imported to or traded within and between Member States provided that they conform to these and other relevant pieces of EU legislation.

2.7 In 2001 the European Commission launched a White Paper entitled 'A Strategy for a Future Chemicals Policy'. This culminated last year in the adoption of Regulation (EC) 1907/2006, otherwise known as REACH, for the 'registration, evaluation, authorisation and restriction of chemicals'. An accompanying Directive 2006/121/EC, published and agreed at the same time, provided further amendments to Directive 67/548/EEC to bring the two into line. This process will presumably continue as more data become available or as legislative needs change.

2.8 All of the above refer to and affect the manufacture, distribution and marketing of specified products within the EU and trade between the EU and its importing and exporting partners. Similar but not identical systems have, inevitably, been developed over the same time-frame in a number of other economies worldwide with whom the EU regularly trades, via the multiplicity of large, medium and small enterprises established in and outside its borders.

2.9 A number of other countries, generally less well-developed in terms of their economies and/or legislative structures, have recognised the need for such a system for classification, labelling and packaging of 'dangerous substances' but await agreement on a globally recognised model to implement at local level.

2.10 Recognising, in the early 1990s, that these locally developed national or regional systems, whilst essential to the protection of human health, safety and the environment, could also form barriers to world-wide trade, the United Nations sought authority to develop a proposal for a Globally Harmonised System (GHS) for the 'classification, packaging and labelling of chemicals and for the provision of safety data sheets'. Models for this harmonisation already existed in the transport sector, in particular for physical hazards and acute toxicity.

2.11 Approval to develop this wider approach was given in Chapter 19 of Agenda 21 adopted at the United Nations Conference on Environment and Development (UNCED) in 1992. Technical input would be gathered from the Organisation for Economic Cooperation and Development (OECD), the International Labour Organisation (ILO) and the United Nations Subcommittee of Experts on the Transport of Dangerous Goods (UNSCETDG).

2.12 After nearly a decade of work, representatives of the 160 or so contributing UN member states reached agreement on the technical content of the new GHS in December 2002. The World Summit on Sustainable Development (WSSD) in Johannesburg in September of the same year encouraged its signatory countries 'to implement the GHS as soon as possible with a view to having the system fully operational by 2008'. The UN GHS, which now included the 2008 target date for implementation, was adopted by the UN Economic and Social Council in July 2003. These agreements were signed by representatives of all 27 member states of the, by now, enlarged EU.

2.13 A number of amendments to the original UN proposal were adopted in 2004 and included in the recommendations for 'a globally harmonised system of classification and labelling of chemicals (GHS)' published by the UN in 2005. This 540 page document, and its subsequent revisions, has become generally known as the 'Purple Book', following the colour adopted for its printed cover. Details of progress towards the 2008 target date, for 65 countries, including 27 from the EU, are available on the relevant UN website.

2.14 Further technical amendments were agreed by the UN in 2006 and included in a revised edition of the Purple Book published in 2007. The proposals include, inevitably for such an extended and complex process of global harmonisation of existing systems, a mixture of old and new test criteria and end points, pictograms, approved phrases and label designs. A 'building block' approach was introduced to allow different views to co-exist and to make it possible for an agreement to be reached between the participating countries (although excessive use of this would of course remove many of the intended benefits.)

2.15 The UN proposed model does not however have the necessary force of law and implementing legislation is required for those countries wishing to follow its recommendations. For the member states of the EU, this requires a proposal from the Commission.

2.16 The Commission started work in 2004 on an implementing proposal, publishing a first draft for an EU system in line with the GHS in 2006. Impact assessments were undertaken and published during this same period. A stakeholder consultation on the internet in the 3<sup>rd</sup> Quarter of 2006, together with a series of concerns expressed by the Commission's Legal Services, led to a major re-drafting of the original proposal. This was finally agreed and published by the Commission in June 2007. Technical reviews have already started in the appropriate working group of the Council. Opinions are now expected as ever from the European Parliament, the European Economic and Social Committee (EESC), and the Committee of the Regions.

2.17 There is a widespread desire that the current reviews neither delay nor significantly amend the harmonising proposals. The benefits are generally accepted as being diffuse, are related primarily to world trade, and will diminish if harmonisa-

tion is not achieved. Costs within the EU (or for those trading with the EU) will increase sharply if the implementation timetable differs from that already agreed for REACH. Any benefits for health, safety or the environment will be felt largely outside the EU, in countries not at present having effective systems of their own.

2.18 Implementation of the GHS will have consequential effects for EU transport legislation and for a raft of associated 'downstream' EU legislation affecting consumer products, the handling of chemicals for particular uses, the control of dangerous or hazardous chemicals, occupational health and safety, waste and end-of-life products. Further proposals will be introduced to cover these where necessary over the coming years. A full list of legislation likely to be affected was published by Commission Services in August 2006. Amendments to Regulation (EC) 1907/2006 (REACH) are included in the current proposal.

### 3. Summary of the Commission's Proposal

3.1 The proposal is set out in 3 'Volumes' and 7 'Annexes'. In the English language version, these total just over 2 100 pages. Although the main elements of the proposal are confined to the relatively short, 64 page, Volume I, new material, or new or revised interpretations of old material, are present throughout the document. The proposal must therefore be considered in its entirety as an essential piece of primary EU and national legislation affecting regulators, manufacturers, suppliers, distributors, traders, workers and consumers, in and outside the EU.

3.2 Volume II, comprising Annex I, sets out the detailed classification and labelling requirements for hazardous substances and mixtures (154 pages).

3.3 Volume III, comprising Annexes II to VII, provides a series of special rules for certain substances and mixtures; lists of new hazard and precautionary statements; new hazard pictograms; detailed harmonised classification and labelling for certain hazardous substances; and a translation table intended to assist users to show the changes from the classification and labelling requirements under Directive 67/548/EEC to the new requirements and hazard statements of the proposed Regulation (430 pages). A 'Legislative Financial Statement' for the proposal as a whole, which is required for the proper evaluation of the proposal but has little enduring value or interest as primary legislation, is included, or perhaps buried, at the end of this Volume.

3.4 Volumes IIIa and IIIb comprise Tables 3.1 and 3.2 as components of Annex VI, as set out in Volume III above. These together comprise a translation into the new regulatory framework of Annex 1 of the existing Directive 67/548/EEC — close to 1 500 pages recording decisions on the classification and labelling of specific hazardous substances accumulated over 40 years of product assessment in the EU.

3.5 The Commission's impact assessment, which must be read in conjunction with the above, is based on reports prepared by consultants RPA and London Economics and is relatively brief (34 pages).

3.6 The proposal is presented as a Regulation under Article 95 of the EC Treaty 'to ensure a level playing field for all suppliers of substances and mixtures in the internal market, as well as a high level of protection of health, safety, environment and consumers'.

3.7 The proposal recognises that the scope of existing EU legislation and the scope of the UN GHS proposal are not identical. Both differ in detail from the already largely harmonised transport regulations on classification and labelling. Changes under this proposal have, as far as possible, been kept to a minimum. In some cases further proposals will be required, in particular during the implementation phases of REACH.

3.8 The proposal adopts some new terms and definitions from the UN GHS, most noticeably the use of 'mixture' in place of 'preparation'.

3.9 The proposal recognises that any new system of classification could lead to the extensive use of laboratory animals. Alternative methods should be used wherever possible. Experiments on humans and other primates for the purposes of this classification appear to be expressly forbidden (depending on the unresolved legal and linguistic distinction, in the various official languages of the EU, between 'should not' and 'shall not') in the Commission's proposal (although such testing is permitted in the UN GHS model).

3.10 The problems associated with classifying 'mixtures' are recognised. 'Bridging principles' are provided which aim to facilitate read-across from products likely to have similar effects.

3.11 The proposal provides for the possibility of providing shorter common names for substances alone or as components of mixtures where the formal names as defined by the International Union of Pure and Applied Chemistry (IUPAC) exceed 100 characters in length. The use of product identifiers (numbers and names) supplied by the Chemical Abstracts Service of the American Chemical Society (CAS) will also continue. The controlled use of generic names which correctly identify the likely hazard without putting at risk any associated intellectual property associated with the precise composition of a mixture is maintained from existing legislation.

3.12 The necessary period of transition between the two systems is discussed in detail. It is clearly recognised that the new criteria must be applied first to 'substances' and later to 'mixtures'. To avoid unnecessary burdens on enterprises, there will be no obligation for an enterprise to reclaim or re-label

products (either 'substances' or 'mixtures') already in the supply chain at the time that the relevant legislation comes into force.

3.13 Member States will be required to appoint authorities for the application and enforcement of the Regulation — and to establish 'appropriate sanctions for non-compliance'. It is noted that 'good cooperation between all competent authorities is essential'.

3.14 The Regulation will in principle apply to all substances and mixtures, except where other Community legislation lays down more specific rules. Cosmetics, flavourings, food additives, animal food and veterinary products, certain medical devices; products governed by rules relating to civil aviation, road or rail transport, and ammunitions (but not 'explosive products marketed for decorative effects', i.e. fireworks) are all excluded from the effects of this Regulation.

3.15 Waste as defined by Directive 2006/12/EC cannot, according to this proposal, be classified as either a 'substance' or a 'mixture' or an 'article' as defined by this Regulation and is therefore excluded from its effects.

3.16 Alloys are however defined to be 'mixtures' in line with point 41 of Article 3 in Regulation (EC) 1907/2006 (REACH) and are therefore included in this regulation, as presumably are true 'mixtures' (but not, in any useful sense, 'preparations') of naturally occurring substances such as metal ores, minerals and plant extracts.

3.17 Labelling requirements are changed in both layout and content from the existing EU system. Some existing pictograms are replaced; others are added for the first time. Existing permitted standardised 'risk' and 'safety' phrases are replaced with new 'signal words', 'hazard statements' and 'precautionary statements'.

3.18 All of the above approved words and statements are defined in all of the official languages of the EU and must be used as necessary on each label, depending upon the country in which the product is eventually sold. Multiple languages may be used, although the space available is becoming increasingly limited. (In some special cases additional translation of labels and supporting documentation may of course be required into legally necessary but not 'official' languages such as Welsh, or into other languages required, for instance Russian, Turkish, Arabic and Hindi, to meet the needs of specific indigenous or immigrant groups).

3.19 The proposal recognises that the process of classification, and therefore of labelling and packaging, is one of continuous update within the EU as new information or understanding becomes available or as test methods or legislative requirements change. Changes requiring action and the procedures then to be followed are set out in the text.

3.20 It is intended that the Regulation will come into force 20 days following its eventual publication in the Official Journal. Substances should be classified, labelled and packaged under existing legislation until no later than 1 December 2010 (to coincide with registration deadlines for REACH). Mixtures should be classified, labelled and packaged under existing legislation until no later than 1 June 2015. From then onwards, only the new legislation will apply.

#### 4. General comments

4.1 The UN, acting on behalf of all its member countries, has proposed a model for a 'globally harmonised system' for the criteria and processes of classification, packaging and labelling of 'chemicals'. The member states of the EU have agreed that the model should be implemented, ideally by 2008. The Commission has proposed implementing legislation in the form of the Regulation now under discussion.

4.2 The EESC strongly supports the aim of global harmonisation, the form and legal basis of the legislation proposed, and the timetable proposed for implementation to coincide with the first major deadline for the registration of substances under Regulation (EC) 1907/2006 (REACH).

4.3 The EESC also notes that there must be flexibility to run the two systems in parallel, in particular for 'mixtures' which in many cases are themselves 'mixtures' of 'mixtures', each with a definable and sometimes long shelf life, measured in months or even years. The transition is unlikely to be fully within the time-frame proposed — but fortunately that does not mean that the process will be ineffective. In the absence of such flexibility, the start-up costs will increase and the intended long term benefits may not be realised.

4.4 The EESC also notes and agrees with the introductory comments of the Commission's impact assessment that 'in the long term, the GHS implementation seems worthwhile ... as cost savings will ultimately overcome the one-off costs of implementation' ... although ... 'implementation costs need to be kept in check so as to arrive at net benefits ... in the foreseeable future and to avoid unnecessary costs and administrative burdens for SMEs'.

4.5 The EESC also notes the views expressed by the Commission in its Legislative Financial Statement that 'the legislative proposal relates to the implementation of an international agreement. Even a negative ex-ante evaluation would not result in the Commission not putting forward a legislative proposal since other policy options do not exist. A negative ex-post evaluation would not induce the Commission to withdraw from its commitment to implement the internationally agreed system of Classification and Labelling.'

4.6 Simply put, the Commission believes it had no choice but to put forward the proposal, whatever the calculated or actual balance of costs and eventual benefits. The EESC agrees

that this is realistic under the circumstances but regrets that the impact assessment, even if not key to the decision making, did not explore further the likely costs of implementation, with a view to mitigating these effects during drafting. The fact that the same consultants (RPA) have prepared a detailed (and conflicting) analysis for just one affected sector (certain consumer products) suggests that this could have been done more widely and certainly more effectively if the money, time and will had been made available. As with all processes of harmonisation, the dangers of escalating costs and vanishing benefits are all too obvious.

4.7 It is, for instance, difficult to see why there should be any benefits at all for health, safety and the environment inside the EU as a direct consequence of this swap from one long-established and fully functioning system to another equally valid but unfamiliar system. In the short-term, consumer protection could even suffer as the two systems, with differing words, phrases and pictograms, run in parallel. A coordinated programme of education and training, focused on the retail sector, would go some way to reduce this risk.

4.8 There are also conceptual difficulties in understanding how the benefits to world trade will be fully realised with countries implementing the UN proposal on different time frames and with differing interpretations of the basic requirements. Early implementation by Japan and New Zealand has already given rise to concerns in Europe. Implementation in the US, with 4 or 5 systems currently running in parallel, is far from completion. Different language versions will of course continue to be required for globally traded goods, however the required labels and safety data sheets are harmonised.

4.9 The best that can be said therefore is that this is the start of a process of global harmonisation which mirrors what has already occurred across the member states of the EU and which will now require the same level of resources, supporting systems and processes to maintain on a global basis. This will be an unfamiliar role for the Commission and it will be important that it dedicates sufficient resources to allow the inevitable changes, updates and adaptations to technical progress to the current proposal to be made in a timely and effective manner. It is unclear that either the financial statement or the proposals for comitology and subsequent scrutiny are adequate in this respect.

4.10 Similar comments should be directed to the UN, to ensure that full harmonisation of not only the criteria for classification, but of the actual classifications determined and used as a basis for subsequent labelling and packaging, for globally traded high volume 'basic chemicals' (and eventually for the majority of globally traded high volume consumer products) is achieved as quickly as possible. In both cases, close and continuing cooperation between the manufacturers of the products and the relevant regulators will be essential.

4.11 In the EU the Commission still needs to address the twin problems of dealing with the many only partially defined interactions with its own 'downstream' legislation — and of recognising and accommodating the needs of specific sectors, in particular for consumer products. Given that both systems are supposed to be equally effective, some flexibility should be possible to ensure that the broad framework of the proposal can be agreed as soon as possible.

4.12 On a similar theme, 'workers' (in the workplace) and 'consumers' (in a retail store, when shopping on line or subsequently at home) should of course all continue to be given the highest possible protection with respect to their health and safety. However the two environments and the information needs and support services available to those concerned are quite different. This is only partially recognised in this proposal. There is no need for a one-size fits all approach. Recent developments in consumer shopping patterns, in particular via the internet, should be recognised. The professional needs of emergency responders, first line health services and poison centres should also be taken into account with regard to the content of the labels and the relevance of the information specified.

4.13 The availability and value of other information sources apart from the label should also be recognised, in particular for consumers, where informed choices can be made using advice from consumer organisations or on-line from most manufacturers or suppliers. The bald statement by the Commission that 'the label is the only tool for communication to consumers' is therefore an over-simplification. For those reliant on the label alone, perhaps long after initial purchase, the need for clearly focused, understandable and relevant information is paramount. For others, additional information is readily obtainable under existing EU law or good commercial practice for anyone wishing to delve deeper. The many individual purchasing choices made solely on the basis of brand loyalty work both ways — a product may be assumed to be safe simply because it is made by Company X — and the value of that customer loyalty to Company X ensures that its products are indeed kept safe, reformulated, re-made or withdrawn if this is not the case. (Some recent and undoubtedly expensive voluntary global recalls of toys and other consumer goods due to the failure of internal quality controls illustrate this point quite clearly.)

4.14 For workers, and for everyone entering a workplace, where exposures are generally greater and/or more prolonged and where the need to maintain the highest standards of health and safety is a daily priority for all concerned, the packages and quantities contained therein are generally larger and the labels can be more detailed. Once again, there is no shortage of additional information, much of which must be made available under EU or other law at or before delivery of a raw material or intermediate product for further processing. A US website

which, in an earlier (February 2005) EESC Information Report on REACH, was quoted as having 1.4 million Material Safety Data Sheets available, now has in excess of 3.5 million — and claims to be adding around 10 000 per day. Safety data sheets formatted for the EU and in the appropriate national languages for both substances and preparations are available from most manufacturers and suppliers and from some centralised sources — and must of course be provided to customers in Europe before any delivery of a product can be made. As these must be provided in all relevant languages and by all manufacturers and suppliers for all their products, a very large number of individual data sheets are required — and must be updated on a regular basis or as new legislation, such as this, demands.

4.15 Complementing the above, a newly launched (June 2007) OECD *eChemPortal* gives easy access to a range of databases maintained by its member governments and agencies, including for the EU, the European Chemicals Bureau. These databases provide data on many tens of thousands of individual substances manufactured and marketed in the EU and rejoice in a range of acronyms including ESIS (EU), CHRIP (Japan), OECD HPV (OECD), SIDS HVPC (UNEP), HPVIS (US EPA), INCHEM (IPCS), as well as better known and regularly used EU resources such as IUCLID, ORATS, HPVCS, LPVCS, ELINCS and EINECS, together with sector specific sites such as SEED, EUROPHYT, PHYSAN and CAT. Globally coordinated supporting programmes such as *pharmacovigilance* and *cosmetovigilance* ensure that any adverse effects of specific products are centrally and speedily recorded. The extension of these joint industry and regulator early warning programmes to other products in wide consumer use should be encouraged.

4.16 It is clearly good news that these data sources exist and are readily available — and even better if all of the above can indeed be updated, safety sheet by safety sheet, product record by product record, to reflect detailed changes required under the different national and regional implementations of the GHS without incurring unacceptable costs to all concerned — although it is again unclear whether this has been fully considered in the impact assessment.

4.17 This wealth of on-line information, combined with the length of the implementing legislation, is however becoming burdensome, as well as legally and intellectually challenging, to regulators and users alike. Regulation (EC) 1907/2006 (REACH) was, in its final published form in English, 850 pages long. REACH Implementation Projects (RIPs) and guidance notes, not yet finalised, are said to exceed 10 000 pages. Their final forms and eventual legal status are not yet known. The GHS proposal now under discussion exceeds 2 000 pages. Guidance notes will again be required — to this Regulation and to assist implementation in the 20 or so major pieces of downstream legislation,



including Directive 1996/82/EC (Seveso II), that it will affect. Thus the responsible institutions and bodies of the EU will shortly have produced or reviewed close to 20 000 pages of legislation or supporting material in this one area alone. It is difficult to see this as a model for better regulation — or as the ideal way to support the Lisbon objectives — or to endear the idea of a listening and supportive centrally administered EU to the citizens of Europe.

4.18 However, if these essential communication problems can in due time be surmounted (probably by breaking down the legislation into the essential components of definitions, clearly set out and agreed; test methods; end points; outcomes; required processes and procedures and so on; all separately published and updated on appropriate but different timetables, and not all requiring simultaneous publication as primary legislation) then great benefits will indeed be achieved. The data-based and generally applicable GHS should eventually affect and guide all those commenting on the best ways to protect human health, safety and the environment — and the benefits of this may be far greater than the rather small associated increases in world trade or in local employment currently used as the economic justification for the proposal.

## 5. Specific comments

5.1 The EESC notes the tight timetable for the adoption of this proposed Regulation, so that implementation can follow the same deadlines as defined by REACH in order to contain the once-off start-up costs. The EESC also notes that this is just the beginning of a global process which will require continuing change by all the participating regulatory bodies and by the businesses and others directly affected. There is therefore an obvious need to understand and rectify as many of the perceived problems as possible — and to implement the core of the proposal as flexibly as possible. Given that one good and well-tried system is being replaced by another, hopefully equally good, system, the risks attached to any specific derogations to allow time for problems to be solved, are slight.

5.2 As an example of this, the preparation and inclusion of a 'translation table', by Commission staff and national experts, of Appendix 1 of the existing Directive into Annex VI of the new Regulation whilst useful as a guide to the transposition from the old to the new requirements, has bypassed all the due processes of review and consent on which the more than 1 000 pages of decisions were originally built. If this is to become law with immediate effect, then resources must be devoted to checking this in detail, at a time when the majority of enterprises are fully stretched fulfilling the registration requirements of REACH. As it is often the case that EU legislation is adopted with some or all the Annexes still empty, a similar course could be followed here, so that the overall timetable is maintained. This also removes the problems of liability for incorrect 'translation' or 'transposi-

tion' of the requirements which at the moment would lie, unsatisfactorily, with the responsible Commission services. The fact that this process is reported to be highlighting many errors in the current legislation, in particular with the introduction of many new languages where 'translation', in its normal linguistic sense, is all important, brings only a small degree of comfort. Given the volume of data, it has to be assumed that new errors are being introduced at the same time which only the manufacturer or supplier of that product will discover in due course.

5.3 Similar comments apply to all instances where the new GHS will, without due consideration, increase the severity of current classifications, and hence labelling, packaging and possibly other impacts under any associated transport or downstream legislation. This could be the case, for instance, for some widely used consumer products such as, household detergents, where the new GHS appears to require quite nonsensical overlabelling. An example frequently quoted that, 'on spilling a commonly used detergent, the user should then remove all their clothes — and wash them in the same detergent' would merely bring the system, and those applying it, into disrepute. It certainly would not lead to the highest standards of protection for human health, safety and the environment. Careful use of the derogation under Article 30(1) where 'clearly unnecessary statements ... may be omitted from the label' seems essential.

5.4 Also of concern are requirements to over-classify — a practice in some jurisdictions designed to limit the liability of manufacturers but again not really conducive to the proper protection of workers or consumers. Specifically the current proposal fails to distinguish adequately between products that are potentially 'irritants' (i.e., they can in certain cases cause temporary and reversible redness or swelling to the skin) and those that are 'corrosive' (i.e., they are likely to cause a permanent and possibly irreversible eating away of the skin, for instance by a strong acid or alkali or by the effects of oxygen). The potential for 'eye damage' alone is of course rather more frequent and in some cases is potentially more severe, with the risk of causing blindness, and should be identified whenever present by an appropriate and easily recognised symbol. All of this is aggravated by imposed or voluntary limitations on the use of animals for testing of products which now find themselves close to a revised end point and where both the labelling and packaging for consumer sales depend on the classification adopted. As the products affected in this way are likely to be exceptions rather than the rule, short term derogations would allow the proposal as a whole to be introduced without delay.

5.5 Overlabelling also has an undesired knock-on effect with regard to packaging, with child-resistant closures proving equally resistant to opening by older or infirm users. Advice on careful handling and storage of products in daily life is generally more valuable than devices that make them inaccessible to users

or lead to containers being left open or the contents being transferred to less safe alternatives. Consumers, with the support of helpful labelling and normal common sense and daily observation, do understand that products such as oven and drain cleaners must be treated with great respect; they are also, in most cases, quite capable of handling washing powder or solid dishwasher pellets without injury. Labelling them all as 'corrosive' with the key word 'DANGER' serves no good purpose and again puts the entire process at risk.

5.6 The above examples also put in question to what extent the various new (and old) pictograms, key words and phrases have been tested against the perceptions of different publics around the world. Although it is too late to change the existing UN GHS proposals, some additional words might be helpful, or amendments proposed, to improve clarity. The loss of the widely recognised 'St Andrews cross' symbol, rendered in black on orange, is particularly regretted. It will take a considerable time for replacement symbols to be properly recognised and there will be increased risks to consumers in particular until the new symbols are fully established. In store communication programmes to help all those making routine retail purchases should therefore be implemented (and centrally funded) as soon as possible. The needs of all those purchasing consumer products on-line, where a label is rarely visible at the time of purchase, require further study.

5.7 With regard to identifying the components of a preparation or mixture, the proposal reasonably requires the use of CAS numbers (which currently embrace more than 32 million organic and inorganic substances with partially or wholly defined structures, of which some 13 million are classified as being commercially available, often in very small quantities) and the use of IUPAC, CAS or other names to complete the identification. It is right to note however that these names are designed to define structures, not to identify hazards or risks. They are rarely of use to emergency responders or poison centres in that specific antidotes generally do not exist. The choice between inducing vomiting or neutralising in the stomach may however be critical to the first-aid treatment of an affected user. Subsequent contact with the manufacturer, at any time of day or night, seven days a week, for more specific advice is also likely to prove critical. It is this information, rather than the formal chemical name and molecular structure of one or more components of a complex mixture, which should be included on the label for use in the case of an emergency.

5.8 It follows that where the naming of a specific component, to the extent of defining its absolute chemical structure, has value only to a competitor, with the consequential loss of intellectual property rights for the original manufacturer, that the safeguards contained in the existing General Preparations Directive should be maintained. In general this is a problem

only for 'performance fluids' such as lubricating oils and other high-technology preparations where consumer exposure is generally limited and the general hazards obvious irrespective of the specific components present.

5.9 The above also raises the problem of the proposed use of the word 'mixture', which should refer only to a system of substances that can be separated by physical means, to distinguish it from being a 'compound' or 'substance' (which cannot be so separated). The definition here seems to lump together a series of quite different material systems (naturally occurring ores, minerals, concentrates and plant extracts) with 'preparations' which contains the essential idea of a deliberately constructed mixture of known components from which the hazard of the final product can be reasonably determined. Alloys (and glasses) of course are neither of these and should be separately and more appropriately regulated, both here and in REACH. It is equally unclear why waste streams are excluded as a category, despite being included in some cases in the EINECS inventory as 'substances' under 'slimes' and 'sludges'. This would seem to imply that a mixed ore in its natural state must be classified (to no obvious purpose, as there is no likelihood of contact with consumers and no possibility of finding any replacement) whereas scrap iron or mixed paper waste, which must all be treated 'as is' in continuous processing and recycling operations, are excluded. All of the above must be handled safely in the workplace, but this is not the prime thrust of classification, and, indeed, these products are rarely either labelled or packaged. Sector or workplace specific legislation normally provides better protection.

5.10 Whatever the definitions are, they should be included in full in this proposal, not merely taken from the GHS or requiring reference to other documents. This would be a useful opportunity to define 'chemical' for the first time — both as a noun and as an adjective. If it is equivalent to 'substance', which presumably is the case, this should be made clear. This would also make more clear the scope of this and other directives and regulations which apply far more widely than to the products of the, more precisely defined 'chemical' industry. It would also make clear that the translation of the word 'chemical' as a noun into 'chemical substance' in languages lacking a single equivalent word does not imply the existence of alternative (and presumably non-toxic?) 'non-chemical substances'. This might also hopefully diminish the use of well meaning but meaningless statements such as 'most articles include chemicals' <sup>(1)</sup> (what do the rest contain?) or 'chemicals are used in almost every work place' <sup>(2)</sup> (whatever do they use in the other work places?). The EESC of course understands that any definitions used must be consistent across all legislation. However the EESC does not accept that any one piece of legislation is any more 'fundamental' than any other (or if it is, then this proposal clearly

<sup>(1)</sup> From Commission 'frequently asked questions' on REACH.

<sup>(2)</sup> From UK DEFRA guidance notes to MEPs on this proposal.

qualifies) and certainly does not accept that all the related legislation should be read in its entirety by all those involved, merely to determine what a word does or does not mean. This becomes important as translation into different languages creates differences that did not exist in the original — or obliterates distinctions which were vital. For example, the word 'product' is used here in a neutral sense for any goods likely to be purchased or used in the workplace or by a consumer. It absolutely is not intended to be synonymous with the word 'article' which has a special meaning under EU and other legislation. This is clear enough in English but may be less clear in other languages. Whatever the situation, the distinction must be maintained. Other linguistic and cultural confusions should also be identified and avoided. For instance, a 'substance-free environment' in Europe would be taken to refer, perhaps, to outer space. In the US it means a school where drinking and smoking are not permitted. In the popular press in many cultures, anyone found with traces of 'chemicals' on their hands or clothing is assumed to be a terrorist.

5.11 In every case it must be made clear to everyone, including the general public, what particular significance the various words used are intended to convey. The prohibition on the use of the word 'danger' in association with the word 'warning' may be of interest to experts in labelling although the two words are frequently used together in other communications aimed at reducing risk. If the word 'dangerous' means anything different to the word 'hazardous', in all the languages of the EU (and its trading partners) this should be made clear. Certainly it is difficult to distinguish between them in English. The use of abbreviations such as 'm-factor' which are meaningful only where local language translations of 'multiplying' indeed begin with the letter 'm' should be avoided. (The fact that under existing legislation there is constant reference to 'R' and 'S' phrases, for risk and safety respectively, merely shows that the legislation has been drafted in English, with little regard for the needs of other language users.)

5.12 With regard to the overall scope of this proposal, and to avoid drowning the process in data on the many millions of substances transferred in small or even minute quantities, a cut off point, based on sales per year, package size or weight, or known toxicity, would be helpful. Equally a label appropriate to the transfer, generally between laboratories, of very small quantities as samples for R&D to indicate that the 'product has not been tested or classified' and 'is for professional use only' would be a useful addition to the range of labels currently available.

(The alternative new proposal to exclude 'substances and mixtures for scientific research and development' but only if used under conditions which assume that they are 'carcinogenic, germ cell mutagenic or toxic to reproduction' is inappropriate and should be deleted. There is no evidence brought forward to suggest that laboratory hazards require priority treatment or, contrary to normal expectation, that anyone working in a laboratory is at risk from lack of knowledge. If this is however shown to be the case, amendments to EU legislation on good laboratory practice would be a better route.)

5.13 Care should also be taken to ensure that the proposed classification and labelling process fully reflects, as now, the inherent hazardous properties of the individual substances and preparations or mixtures as placed on the market. Any extension to informal or unregulated mini-risk assessments by manufacturers or suppliers to cover possible or expected future use should be deleted as being inconsistent with both existing EU law and the UN GHS proposal.

5.14 With regard to enforcement, reporting and penalties for non-compliance, the proposal passes responsibility, quite reasonably, to the Member States, with the requirement that the provisions for this must be 'effective, proportionate and dissuasive' and that they shall be notified to the Commission within 18 months of entry into force of the Regulation. The EESC notes however that this proposal is designed, as in the existing legislation, to harmonise the criteria and processes used in any classification but not to harmonise the outcomes of this classification. Thus the penalties are likely to be minor in their size, effect and enforceability compared to the desire of manufacturers to fully and properly protect the workers and consumers upon whom their businesses depend. This being so, the workability of the overall proposal, in conjunction with other legislation such as REACH, remains critical.

5.15 Finally there will be a need to evaluate the quality of data received under different jurisdictions, to ensure that these are comparable and relevant to determining intrinsic hazards of novel and complex substances, including those of 'unknown or variable composition'. Ranking systems for this do exist, for instance from the Society of Chemical Hazard Communications. Peer reviewed data are also available in the Register of Toxic Effects of Chemical Substances. The proper process for this, presumably at the UN, does not seem to be fully defined or the resources and budgets put in place.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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## Opinion of the European Economic and Social Committee on Geographical indications and designations

(2008/C 204/14)

On 27 September 2007 the European Economic and Social Committee decided to draw up an own-initiative opinion, in accordance with Rule 29(2) of its Rules of Procedure, on

*Geographical indications and designations.*

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 26 February 2008. The rapporteur was Mr CAMPLI.

At its 443rd plenary session, held on 12-13 March 2008 (meeting of 12 March), the European Economic and Social Committee adopted the following opinion by 124 votes to one with three abstentions.

### 1. Conclusions and recommendations

1.1 The EESC feels it would be useful to launch further debate on EU quality policy as a whole, ensuring synergy between regulatory requirements in the area of food safety, the environment and social concerns, not least with a view to creating a potential EU quality mark, and regulations raising the profile of speciality products and foodstuffs from the various EU regions which meet higher standards.

1.1.1 As regards the efficiency of the geographical indications and designations (GI) scheme, the EESC can see a need for

- clearer, simpler application procedures;
- only public and/or private bodies which are independent and accredited (in line with ISO/EN <sup>(1)</sup> requirements on the accreditation of certification bodies) to be allowed to perform inspections;
- further modification of the legislative framework relating to disputes, to prevent and/or handle these problems and to avoid lengthy, exhausting court battles, for example by requiring Member States to act when Community rules <sup>(2)</sup> have been breached and providing for arrangements for out-of-court settlement etc.

The EESC feels that these dysfunctions were only partially addressed in the review which led to Regulation (EC) 510/06 and that they must be corrected because they could become even more serious as the scheme is extended to non-EU countries.

<sup>(1)</sup> International Organisation for Standardisation.

<sup>(2)</sup> Cf. ECJ Judgment of 26 February 2008 (*Parmesan* Case).

1.1.2 As regards effectiveness, the EESC proposes that measures be laid down to secure products' reputation on the market, strengthening GI management bodies, and to introduce clear, realistic specifications reinforced with genuinely independent, efficient, effective inspections.

1.1.3 The EESC therefore recommends that the necessary consensus on the content of specifications be ensured when the application is made for registration by applying criteria for representativeness of the applicant association, so as to guarantee that sufficient consensus is reached on complex, controversial aspects.

1.1.4 Still on the subject of effectiveness, the EESC stresses that GIs must increasingly be counted among the essential rural development tools in the Member States, being used in tandem with second-pillar measures at every possible opportunity, particularly where the countries which have recently joined the EU and disadvantaged areas in general are concerned.

1.1.5 Lastly, the EESC feels that the GI scheme — seen as an opportunity for rural development — must meet consumers' growing ethical, social, environmental and other expectations. If it becomes a strategy for partnership with other areas of the world, not least through a well-regulated and properly-monitored opening for import of GI products from developing countries, this approach could increase consensus on designations of origin and encourage multilateral negotiations.

1.1.6 As regards raising the profile of GI products, the EESC feels that greater backing must be given to initiatives to promote Community marks so as to provide operators with more information and make GI products more recognisable to consumers, especially in those countries where they are less common, to achieve an increase in GIs, more uniform distribution thereof in the EU and greater demand from the market.

1.1.7 As regards research and disseminating information on the impact of the scheme on the EU's regions and markets, the EESC recommends appropriate, uniform dissemination of the results of successful research carried out by the various Commission departments in all the Member States and to all stakeholders.

1.1.8 The EESC recommends that international trade negotiations on geographical indications and designations be made part of a wider policy for international cooperation. In this connection, the multilateral negotiating package needs to be relaunched with greater impetus and conviction (extension of Article 23 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to all GI products; international register; technical assistance for developing countries), alongside effective bilateral negotiations.

1.2 With particular reference to the following six topics identified by the Commission for future policy review (cf. 2720th meeting of the Council of the EU — 20 March 2006).

1.2.1 One: 'Identification of protected geographical indications and protected designations of origin as ingredients'. The EESC believes it is necessary for all stakeholders which are part of the applicant associations (protection consortia etc.) to agree on the criteria and parameters established regarding the GI-ingredient content required for the PDO and PGI labels to be used on the finished product.

1.2.2 Two: 'Use of alternative instruments such as trademarks to protect geographical indications and designations of origin'. The EESC feels that the use of trademarks to protect GIs outside the EU is certainly a feasible idea; however, it would not solve the problem of international protection for designations as it would be complex (given the number of countries potentially concerned) and costly (i.e. feasible only for large commercial organisations with sufficient financial resources) while failing to provide full protection.

1.2.3 Three: 'Scope of products covered by the regulation with particular consideration to be given to salt, mixed herbs,

wicker products, and condiments'. The EESC welcomes the opening-up of the Community system to allow applications for certification of origin of products that are, strictly speaking, non-agricultural (salt, mixed herbs, wicker products, condiments etc.), with a view to promoting the rural culture of an area. At the same time, it recommends that the system be extended to all agricultural products not yet included.

1.2.4 Four: 'Identification of the origin of raw materials'. In a general context of voluntary industry agreements between all stakeholders as provided for in the current application procedure for designations, the EESC recommends that, in the case of PDOs, aspects related to the use of raw materials be more carefully assessed, not least given the requirement that all raw materials must come from the area referred to in the designation.

1.2.5 Five: 'Criteria used to assess the generic status of a name'. *Inter alia* in the light of disputes that have arisen to date, the EESC recommends creating more finely-tuned instruments for establishing more easily the longstanding existence and/or reputation of a name, such as an authority (or adjudication board) which could act as a buffer and/or provide oversight regarding potential PDOs within the EU Member States, or other such forums for out-of-court settlement.

1.2.6 Six: 'Design of the Community symbols identifying geographical indications and protected designations of origin'. The EESC believes that merging the symbols for PDOs and PGIs may risk creating an inequality between two concepts of equal worth, established and rooted in various geographical areas. In view of the need to make products more recognisable to consumers, greater graphical distinction should therefore be ensured between PDOs and PGIs (e.g. different colours). The other European symbols (TSGs, organic), however, should be further differentiated (maybe using different symbols).

1.3 The EESC therefore hopes that when discussions are resumed on the future of the common agricultural policy towards 2013, the European Union's overall strategy will address, comprehensively and systematically, all the challenges facing European agriculture and food: market policy, which must remain joint and aim to combat the increasing threats to income caused by the volatile nature of increasingly open, globalised agricultural markets; a stronger, more effective rural development policy; a quality policy which is seen as a fundamental pillar for the future of European agriculture as a whole; and a balanced, sustained natural and energy resources policy.

1.4 Lastly, the EESC calls on the Member States to build on their initiative to fully exploit the European PGI and PDO scheme, so as to promote both their agricultural products and the European agricultural model more effectively.

## 2. Introduction: The European geographical indications and designations scheme: origins and development

2.1 In European civil society, consumer awareness of the properties of agrifood products has been steadily increasing for some time, resulting in a demand for quality products. The EU has responded to this demand with a policy for regulating and raising the profile of quality agrifood products, covering both food safety issues ('hygiene package', traceability etc.) and questions relating to the distinctive properties of certain products (quality marks: organic farming, GIs). That is how the term 'quality' should be understood in this Opinion.

2.2 In this context, specific EU regulations have been drawn up recognising local specialities associated with a place of origin: local products whose quality or reputation is associated with a particular production area or region or with raw materials or production methods used within a defined geographical area.

2.3 In European countries in the Mediterranean Basin, protection of designations relating to place of origin as a means of identifying a food product dates back to the early twentieth century. It was originally introduced in the wine sector and then extended to other agrifood products.

2.4 In 1992 the Commission adopted for the first time a common legislative framework on agrifood designations, which applied to all EU Member States. The new legislation borrowed definitions, requirements and procedures from pre-existing national legislation, as is clear from the close link between the European term *protected designation of origin*, the French *appellation d'origine contrôlée*, the Spanish *denominación de origen*, and even the Italian *denominazione di origine controllata*.

2.5 The legislative framework consisted of Regulation (EEC) 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, and Regulation (EEC) 2082/92 on certificates of specific character for agricultural products and foodstuffs. Both regulations

have recently been revised, with Regulations (EC) 510/2006 and 509/2006 of March 2006 respectively.

2.6 Regulation (EC) 510/2006 concerns protection of product designations whose specific nature is determined by their geographical origin, i.e. protected designations of origin (PDOs) and protected geographical indications (PGIs).

2.6.1 Products bearing a PDO label possess characteristics arising solely from the natural environment and from the skills of producers in the region they come from. Therefore, where PDOs are concerned, all stages in the production process — production of the raw material, processing and preparation — have to be carried out in the area in question and there must be a very close link between the product's characteristics and its geographical origin. Examples of PDOs are *Huile d'olive de Nyons*, *Parmigiano Reggiano* and *Shetland Lamb*.

2.6.2 Products bearing the PGI label also possess a specific characteristic which associates them with a particular regions, but *only one stage* in the production process has to be carried out in that area, while, for example, the raw materials used can come from another region. Examples of PGIs are *Clare Island Salmon*, *Arancia Rossa di Sicilia* and *Dortmunder Bier*.

2.7 Regulation (EC) 509/2006 concerns agricultural products and foodstuffs recognised as traditional specialities guaranteed (TSGs); this label is used for products with specific characteristics which are due to traditional ingredients or production methods rather than to geographical origin. Examples of TSGs are *Jamón serrano*, *Kriek beer* and *Kalakukko bread*.

2.8 Regulations 509 and 510/2006 were adopted by the Council of the EU on 20 March 2006. At the same meeting, the Commission made a statement on a future policy review of the operation of Regulation (EC) 510 and its future development <sup>(3)</sup>.

2.9 The new legislation on quality designations has simplified the system considerably. For instance, before, applicants submitted the registration application to the relevant authorities in their country, which assessed it and then sent the whole dossier to the Commission, which assessed it thoroughly once again. Now, however, Member States are responsible for assessing the application in line with Community regulations and guidelines. The Commission's role is merely to assess the main

<sup>(3)</sup> See document of the Council of the EU No 7702/06 ADD 1 (Addendum to draft minutes; 2720th meeting of the Council of the European Union (Agriculture and Fisheries), held in Brussels on 20 March 2006.

components, assembled in a *single document* which is then published in the OJEC. Another improvement is that producers from third countries can send registration applications straight to the Commission, whereas previously applications had to go through the national authorities, which were not always willing or equipped to assess them.

2.10 On 5 February 2007, the Commission held a Conference on Food Quality Certification, considerably extending the range of questions that can be addressed (certification schemes, quality mark schemes) and including the essential issue of food health, i.e. quality seen as an EU food safety system. It is not by chance that the first conclusion of the Conference reads: 'All (European) food, whether EU-produced or imported, meets high product standards of safety and hygiene' <sup>(4)</sup>.

2.10.1 It should nevertheless be noted that the Standing Committee on the Food Chain and Animal Health, made up of the Commission and the Member States, concluded on 20 December 2004 that traceability was a requirement which 'does not apply' to food imports. The EESC does not agree with this statement.

2.11 In the light of the results and conclusions of the February 2007 conference, the Commission has decided to draw up a Green Paper on Agricultural Product Quality, scheduled for October 2008, in which GIs are expected to feature heavily. The Green Paper may be followed by legislative proposals.

2.12 At the same time, the Commission (specifically DG Agriculture and Rural Development) is working on an internal assessment of the current system for protection of geographical indications, the results of which are expected by July 2008.

2.13 The present EESC own-initiative opinion fits into this general context. It is not, however, intended to discuss the multiple facets and difficulties of quality policy outlined above but to focus on efficiency and effectiveness of the European geographical indications and designations scheme and on the question of related multilateral and bilateral trade negotiations.

<sup>(4)</sup> See: [http://ec.europa.eu/agriculture/events/qualityconference/conclusions\\_en.pdf](http://ec.europa.eu/agriculture/events/qualityconference/conclusions_en.pdf).

2.14 The work achieved thus far and the EESC's views on the matter are reflected in its Own-initiative opinion on Promotion of local speciality agricultural products as a development instrument under the new CAP (rapporteur: Ms Santiago) <sup>(5)</sup>. In addition, in the Opinion on The Future of the CAP (rapporteur: Mr Ribbe) <sup>(6)</sup>, the EESC stressed the need to focus European agriculture on safe, high-quality production.

### 3. General comments

#### 3.1 Implementation and results of the scheme: efficiency and effectiveness

3.1.1 The scheme introduced by Regulation (EEC) 2081/92 has proved to be efficient overall. However, as regards operation, the EESC would like to draw the Commission's attention to three problem areas, in particular, which have emerged with the passage of time:

- the approval process for specifications, which is often excessively slow and incompatible with applicants' needs (difficult to plan sales, communication strategies etc.), and is therefore detrimental in particular to the designations of origin which have the potential to penetrate the market furthest and to have the highest profile;
- inspections, which are sometimes carried out by bodies which may not always be free of conflicts of interests, or, in any case, are not sufficiently independent to perform independent inspections satisfactorily;
- the assessment criteria for designations, based in particular on longstanding existence, reputation, dissemination and the question of any generic status, are often problematic in terms of subsequent disputes or court action both within and outside the EU.

3.1.2 The scheme has proved effective overall. The products in question come from practically all categories of goods — animal and vegetable, fresh and processed, drinks, fisheries products, spices etc., as shown in the following table, which contains December 2007 data. According to the table the total number of PDOs and PGIs was 772. Looking, in particular, at the number of products registered between 2000 and 2006, for example, the number of PDOs rose by 22 % and the number of PGIs by 40 %, i.e. a total average increase of 29 % was recorded over just five years.

<sup>(5)</sup> OJ C 284 of 14.9.1998, page 62.

<sup>(6)</sup> OJ C 125 of 27.5.2002, page 87.

TABLE I: Indications and designations registered by DG AGRI as at 15/12/2007 ([http://ec.europa.eu/agriculture/qual/fr/1bbaa\\_fr.htm](http://ec.europa.eu/agriculture/qual/fr/1bbaa_fr.htm))

	DE	AT	BE	CY	DK	ES	FI	FR	EL	HU	IE	IT	LU	NL	PL	PT	CZ	UK	SK	SI	SE	CO	Tot
Fruit, vegetables and cereals	3	3	0	0	1	34	1	27	32	0	0	53	0	2	0	22	0	1	0	0	0	0	179
Cheeses	4	6	1	0	2	19	0	45	20	0	1	33	0	4	1	12	0	12	0	0	1	0	161
Fresh meat (and offal)	3	0	0	0	0	13	0	50	0	0	1	2	1	0	0	27	0	7	0	0	0	0	104
Oils and fats/Olive oils	1	1	1	0	0	20	0	9	26	0	0	38	1	0	0	6	0	0	0	1	0	0	104
Meat-based products	8	2	2	0	0	10	0	4	0	1	1	29	1	0	0	28	0	0	0	0	0	0	86
Mineral waters	31	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	31
Bread, pastry, cakes, confectionery, biscuits and other baker's wares	4	0	1	1	0	7	0	3	1	0	0	3	0	0	0	0	4	0	1	0	1	0	26
Other products of animal origin (eggs, honey, milk products excluding butter, etc.)	0	0	0	0	0	3	0	6	1	0	0	2	1	0	0	10	0	1	0	0	0	0	24
Other Annex I products (spices etc. ...)	0	0	0	0	0	4	0	7	1	0	0	4	0	0	0	0	1	3	0	0	0	1 (*)	21
Beer	12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	2	0	0	0	0	17
Fresh fish, molluscs and crustaceans	3	0	0	0	0	1	0	2	1	0	1	0	0	0	0	0	2	3	0	0	0	0	13
Essential oils	0	0	0	0	0	0	0	1	1	0	0	1	0	0	0	0	0	0	0	0	0	0	3
Natural gums and resins	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Hay	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
<b>TOTAL</b>	<b>69</b>	<b>12</b>	<b>5</b>	<b>1</b>	<b>3</b>	<b>111</b>	<b>1</b>	<b>155</b>	<b>85</b>	<b>1</b>	<b>4</b>	<b>165</b>	<b>4</b>	<b>6</b>	<b>1</b>	<b>105</b>	<b>10</b>	<b>29</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>772</b>

(\*) Caffè di Colombia



3.1.3 The GI scheme has been discussed in specific studies and research (see DOLPHINS 1999-2003 and SINER-GI 2004-2008 projects, funded by DG Research) (<sup>7</sup>), from different perspectives. These consecutive projects highlighted significant points with regard to the effectiveness of Community GIs.

3.1.3.1 In this regard, the EESC points out one issue in particular, relating to the organisation and management of GIs (specific studies and research on the subject have been coordinated by Bertil Sylvander of INRA (National Institute for Agricultural Research) in Paris and Filippo Arfini of the University of Parma, in partnership with the Commission). There are three types of management:

- regional management, which focuses on involving all stakeholders in the region (institutions, businesses, associations etc.);
- sectoral management, which only involves operators in the chain (the region is merely a 'container');
- 'category' management, where only some operators in the chain are involved, and may be so purely for their own ends.

However, when it comes to effectiveness, there is a distinction between 'strong' and 'weak' management, where 'strong' implies management which can guarantee a product's reputation to the different users and, in particular, consumers.

3.1.3.2 Moreover, the EESC notes that the commercial success of GIs is still limited and is only significant where there is well-structured production of ingredient-rich products further up the chain managed by organisations able to create networks of businesses and effective commercial strategies. Putting across the content, qualities and, where appropriate regional nature of a GI product is, in fact, decisive for the success of a designation of origin. Of course, the longstanding existence of a GI product contributes to this but it does not remove the need for more effective measures to support organisations and communication initiatives.

3.1.3.3 However, the EESC points out that the effects and economic and social impact of the GI scheme cannot be measured solely by using a numerical-statistical indicator of contribution to gross marketable production, as the effects and impact that can be observed in respect of either regions or the balance of trade in a Member State or the EU will affect a wide range of socio-economic operators, far beyond just the agricultural sector.

3.1.4 The EESC believes that one aspect of GIs which is of great interest is the relationship between GIs and rural development. Initially designed as product protection instruments, many marks of origin have become genuine opportunities to promote cultural specialities from an entire geographical area. This gives a clear idea of the opportunities that could be created

by extending GIs to include products of non-agricultural origin and how this would be fully consistent with longstanding Community guidelines on rural development (1985 Green Paper; 1988 Communication on The future of rural society; 1995 Cork Declaration).

3.1.4.1 Local specialities, in their role of promoting culture, can and must become drivers for economic recovery in rural areas, especially the most disadvantaged areas. It is not just from a Community perspective that this aspect should be considered, however. The EESC stresses that in the context of the current European scheme and the potential use of EU marks by non-EU countries, the association of the concept of GIs with rural development and their subsequent practical application are particularly appealing to developing countries. Indeed, according to key international authorities (FAO, World Bank), there is a parallel between the concept of GIs and what might be described in developing countries as 'local knowledge' or simply as tradition. This is the approach taken in the GI user guides (setting forth Community rules and procedures) which the FAO and the World Bank are drawing up and disseminating in developing countries.

3.1.5 A further point which should not be overlooked is the beneficial impact of GIs on the environment in the regions they come from. Indeed, local specialities are produced using production and/or processing practices which are to a large extent based on procedures which, in line with tradition, use hardly any or no technical processes which could be harmful to the environment, and/or farming systems which are non-intensive and therefore further biodiversity and protection of the countryside and the environment.

3.1.6 In terms of effectiveness, the ways in which situations could evolve in the future should be borne in mind. The EESC can see signs that situations which have hitherto been deemed immutable might change. Many multinational food distribution chains and industries, for example, are engaging in initiatives to incorporate GIs into their product range, to some extent moving beyond international brand policies and global market strategies which have thus far disputed the need — as well as the grounds — for designations of origin. This is a very interesting precedent, and the way it evolves could be very important when it comes to developing GIs.

3.1.7 In this connection, studies have shown that, following changes in types of domestic production, a chink is now emerging in the United States' opposition to the European GI model (which arose from the fact that their agrifood situation is very different and their commercial strategies are often diametrically opposed to the EU's). Initial cases are starting to emerge in the United States, too, of production firms which have associated the success of their products with places of origin and are now lamenting the absence of proper protection. The well-known

(<sup>7</sup>) See: [www.origin-food.org](http://www.origin-food.org).

case of *Napa Valley* wines (California) has been joined more recently by other products from various US States and Canada (*Florida Orange*, *Bleuet du Lac Saint-Jean*) which are coming up against plagiarism of designations and distortion of competition within those or neighbouring States.

3.1.8 Lastly, the EESC notes a general trend among consumers to attach importance to the place of origin of products, seen as a factor influencing their purchase choices (see, for example, conclusions of the European projects TYPIC — 2005 and DOLPHINS — 2002). In the same way, consumers seem willing to pay a higher price for products certified as being of specific origin, which are generally considered to be higher quality and safer. In this context, the new issues of identification of the origin of raw materials and the use of GI products as ingredients in foodstuffs could also be explored.

3.1.8.1 However, the EESC notes that recognition of European certification schemes and their logos and labels is still inadequate and very patchy. According to a report by the International Centre for Advanced Mediterranean Agronomic Studies — CIHEAM (on *Identity and Quality of Mediterranean Foodstuffs*, Paris, 2007), 80 % of European citizens have never heard of PDOs and 86 % have never heard of PGIs. However, when the same question was asked with reference to corresponding national designations (e.g. the Spanish *denominación de origen* or the French *appellation d'origine contrôlée*) considerably more people were familiar with them. There is clearly a problem at EU level of promoting products and making them recognisable to the consumer.

## 3.2 The European scheme and multilateral and bilateral trade negotiations

### 3.2.1 Strategic interest

3.2.1.1 In September 2003, the proceedings and subsequent negative outcome of the Cancun Ministerial Conference showed that trade negotiations are forums no longer merely for negotiating prices and tariffs to facilitate reciprocal market access, but also, at the same time, for discussion of production models (i.e. production and food types, traditions and histories). Awareness and appreciation of each other's respective production and food traditions are an essential pre-requisite for successful trade negotiations.

3.2.1.2 When the European Community sits at the trade negotiation table, it thus compares its particular social and economic model with other valid models. The EESC therefore feels that, if the Community's negotiation initiatives are to be sufficiently substantial and credible, they must be part and parcel of an external relations policy which also includes negotiations on protection of intellectual property and on trade. If they are part of such a framework, quality policies can form a set of rules which is compatible with a wider, more general approach to international cooperation policy, now increasingly essential for the world's stability.

### 3.2.2 The regulatory process

3.2.2.1 As is well known, one of the basic principles of the Community legal system is free movement of products on the European single market (Article 23 of the EC Treaty). Difficulties have been encountered in implementing this policy because of Member States' extremely diverse regulations. Moreover, the historical backdrop to these disparities is a complex, contradictory, international framework of clashing rules and agreements, and globalisation makes the situation even more worrying. The need to ensure a level playing-field for economic operators in an increasingly open market therefore becomes essential. Coherent regulation of GIs could help to achieve this.

3.2.2.2 Internally, major steps towards harmonisation have gradually been achieved through the case law established by judgments of the EU Court of Justice originally applying the mutual recognition principle.

3.2.2.3 Internationally, work towards a joint approach on geographical indications formed part of negotiations and agreements on protection of industrial property, initially, and then intellectual property. With the Paris Convention (1883 — 169 member states), the Madrid Agreement (1891 — 34 member states) and the Lisbon Agreement (1958 — 23 member states), the principle that a product was associated with a local place of origin was recognised, albeit in a framework which was wholly unsatisfactory in terms of legal certainty, monitoring and potential for fraudulent imitation.

### 3.2.3 TRIPS: what has been achieved and the gridlock

3.2.3.1 The TRIPS Agreement, established in 1994, includes a section on trade-related aspects of intellectual property rights which is devoted to geographical indications:

- a) definition of GIs (Article 22);
- b) general protection standards for GIs for all products (Articles 22(2)-22(4));
- c) additional protection for geographical indications for wines and spirits (Article 23);
- d) future negotiations and exceptions (Article 24).

3.2.3.2 The terminology used in international agreements to describe the link between a 'place' and a 'product' denotes increasingly close links: **indications of source** (Madrid, 1891), **geographical indication** (TRIPS, 1994), **designation of origin** (Lisbon, 1958). Essentially it could be said that all designations of origin are geographical indications, while not all geographical indications are designations of origin. An account of the categorisation of the different kinds of products associated with regions under the various international agreements was given in Sabrina Cernicchiaro (University of Parma)'s doctoral thesis entitled *Analisi della Politica di riconoscimento internazionale delle indicazioni geografiche* (analysis of policy on international recognition of geographical indications).

3.2.3.3 While the TRIPS Agreement was a milestone in the history of agreements on the protection of intellectual property of products in international trade, it did leave many key points unresolved. It introduced a joint definition of GI which now applies to 151 member states and set forth a single dispute settlement system. At the same time, at least three major shortcomings should be pointed out:

- a) introduction of a principle of negative protection (member states are able to *prevent* improper use of GIs);
- b) hesitant, uncertain introduction of the multilateral notification and registration system (to the extent that there are still two different, conflicting interpretations of the rules: according to one, the rules are mandatory and binding; according to the other, the system is voluntary);
- c) the existence in practice of disparities in treatment (with reference to the same legal source!) — general protection of agricultural products and additional protection.

3.2.3.4 There are also other regional agreements relating to the protection of GIs, such as the African Intellectual Property Organisation (AIPO) Agreement of March 1977; and the African Regional Intellectual Property Organisation (ARIPO) Banjul Protocol on Marks of March 1997.

### 3.2.4 European producers' difficulties and key points for proper international competition

3.2.4.1 The EESC points out that the inadequacy of international rules is causing substantial difficulties for European producers of GI products. The growing abuse of geographical indications and a legal framework for the protection of GIs which varies greatly from country to country are severely distorting competition and trade between World Trade Organisation (WTO) member states.

3.2.4.2 The first difficulty is often correctly interpreting the internal rules of the market in question. Some European producers of GI products have succeeded in obtaining protection for their name outside the EU but there are still instances of abuse, counterfeiting and major red-tape difficulties even in these cases. Abuse is directly proportionate to how well known the GI product is: great financial damage is caused and the European business cannot employ any marketing strategy to secure consumers' loyalty to the product. In general terms, this situation constitutes fraud in respect of consumers in third countries and is damaging to the European agricultural and food model's overall image.

3.2.4.3 In countries with their own specific GI registration system, European producers encounter fewer difficulties,

although substantial problems arise when protection relates to names used together with terms such as 'type' or 'style'. Generally speaking, European producers have to face heavy costs and serious legal difficulties to prove that their GI is not a *generic* name.

3.2.4.4 In the absence of a clear, recognised international framework, European producers continue to access markets with protected marks (private company marks, collective marks and certification marks). This strategy, too, encounters substantial difficulties. Indeed, there are often trade marks on international markets which already contain the name of the GI which European producers want to register. (In this case, the arduous task of legally disputing the use of the mark needs to be undertaken.) Moreover, even when a mark has been registered, producers can lose its protection if the market in question is closed on health grounds and the mark cannot be used continuously.

### 3.2.5 Bilateral negotiations and agreements

3.2.5.1 In the face of the crisis or gridlock in multilateral negotiations — where a breakthrough is imperative — bilateral agreements are gradually taking centre stage in international trade negotiations. There are around 300 bilateral agreements, and this figure could reach 400 by 2010. The situation is cause for concern as this kind of agreement should by its very nature dovetail with WTO multilateral agreements, with each type of agreement dealing with particular kinds of issues: multilateral negotiations should cover highly complex issues such as subsidies, anti-dumping and intellectual property protection rules; bilateral negotiations should deal with simpler matters and the adoption of preferential criteria in trade between countries.

3.2.5.2 However, the EESC feels that the EU must not be a bystander while major world leaders negotiate and decide on key points of rules and trade bilaterally. As regards agrifood, in particular, it is generally observed that the flexibility of bilateral relations makes them a good starting point for entering into negotiations and achieving an acceptable, verifiable solution. Moreover, experience shows that these results are achieved partly because bilateral relations include technical assistance in drawing up the necessary legislative acts for the administrative systems of some countries signing such agreements, whose systems are still inadequate. Moreover, there is also a need for this in multilateral negotiations.

3.2.5.3 The EU started some time ago to enter into negotiations and sign bilateral agreements on GI agrifood products. These have now been launched with almost all non-European trading partners, for every category of foodstuff. The issue of protection of GIs is now systematically included.

3.2.6 GIs in the Doha Round: proper protection is in the interest of all stakeholders

3.2.6.1 Point 18 of the Doha Declaration (November 2001) sets out a differentiated, dual negotiating position:

- a) As regards the establishment of a multilateral system of notification and registration of GIs for wines and spirits, it explicitly provides ('We agree to negotiate ... by the Fifth Session of the Ministerial Conference ...') for this to be included on the agenda of the TRIPS negotiations;
- b) however, as regards extending the protection of GIs to products other than wines and spirits, the declaration merely refers discussion on the matter to the Council for TRIPS ('We note that issues related to the extension ... will be addressed in the Council for TRIPS').

3.2.6.2 With regard to the first point, no action has been taken to implement the negotiation commitment made in Doha, despite the Commission's negotiating endeavours. There are still two conflicting interpretations of the declaration: on the one hand, the EU, Switzerland, India, Turkey and some other countries consider that an agreement needs to be concluded on the **mandatory** introduction of the register in all WTO member states; on the other, the USA, Australia, New Zealand etc. want to limit the negotiations and agreement to **voluntary** establishment of this instrument, and then only in the countries which have set up a domestic legal system for protection of designations of origin — a sort of database.

3.2.6.3 With regard to the second point — extending the protection of GIs to products other than wines and spirits — proper negotiations have yet to be launched.

3.2.6.4 Just before the 2003 Cancun Conference, with no real prospect of progress in the TRIPS negotiations, the European Union made an unsuccessful attempt to place on the agenda for agriculture negotiations the multilateral protection of 41 designations of origin with a view to re-establishing legal protection in market access for foodstuffs whose names were

most frequently being wrongfully used on international markets. The failure of the Cancun Ministerial Conference curtailed negotiations at that point.

3.2.6.5 The WTO's most recent formal attempts to make progress in the area of multilateral negotiations and in extending greater protection for wines and spirits to other products were in 2005<sup>(8)</sup>. The technical discussions are still continuing, on the basis of informal documents submitted by the EU, focusing mainly on the proposal that inclusion in the multilateral register should imply that the GI is protected in all the other countries, with a timeframe of 18 months within which to object. Under this arrangement, the burden of proof to the contrary would lie with the objector. There are two objections in particular to the register: the United States and other English-speaking countries see its legal effects as conflicting with the principle of territoriality, while developing countries' problem is the administrative difficulty of observing the deadline for opposing inclusion on the register, which they consider to be too short. In December 2007, the Commission formally called for a text which could form the basis for an international register to be presented.

3.2.6.6 The EESC feels it is necessary to relaunch the negotiating package (extension of Article 23 TRIPS to all GI products; international register; technical assistance for developing countries), trusting in the new interest being shown in products bearing a label of origin which are emerging on the domestic markets of some third countries and in developing countries. Moreover, things have started to move at the negotiating table, where a Swiss initiative has given rise to the spontaneous formation of the 'GI friends' — a group of countries pushing for a breakthrough.

3.2.6.7 Indeed, the EESC points out that geographical indications are the only form of intellectual property that can be owned by local communities throughout the world. A north-south division in the WTO on this point would therefore make no sense.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

<sup>(8)</sup> WTO document ref. TN/IP/W/11 of 14 June 2005.

## Opinion of the European Economic and Social Committee on Improving the Community civil protection mechanism — A response to natural disasters

(2008/C 204/15)

On 25 September 2007, the European Economic and Social Committee, under Rule 29A of the implementing provisions of the Rules of Procedure, decided to draw up an additional opinion on

*Improving the Community civil protection mechanism — A response to natural disasters.*

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 26 February 2008. The rapporteur was **Ms Sánchez Miguel**.

At its 443<sup>rd</sup> plenary session, held on 12 and 13 March 2008 (meeting of 13 March), the European Economic and Social Committee adopted the following opinion by 108 votes in favour and 2 abstentions.

### 1. Conclusions and recommendations

1.1 The EESC, as the representative of civil society, believes that it should contribute to the EU debate on the handling of natural disasters, taking an approach geared towards prevention, intervention and the assumption of responsibility in the event of disasters caused by human acts or omissions.

1.2 In this context, it should be borne in mind that current European legislation contains sufficient provision for preventing or mitigating the potential effects of some natural disasters. It would therefore be useful to again urge the competent authorities to monitor the application of this legislation throughout the EU. The EESC believes that the implementation of the WFD and related legislation, particularly the Flood Directive, would alleviate these effects which — while not preventable — could be reduced by setting up the flood management plans included in river basin plans. Legislation to prevent forest fires could have a similar effect.

1.3 An important issue is the link between disaster prevention and training and education, and the need to set up a suitable information system so that professionals and the public are aware of the methods of response to incidents that might occur in an area. The EESC therefore welcomes the system of inter-regional civil protection training centres set up by the European Commission.

1.4 With regard to civil protection, the EESC wishes to congratulate the Commission for swiftly setting up a European solidarity system which is not only interregional but international, and has its own resources enabling it to act efficiently both in response to disasters and in rehabilitating affected areas. The new Article 176 C of the Lisbon Treaty strengthens the objectives that the European Parliament and the Council had set in this respect.

1.5 Lastly, the EESC believes that the environmental liability system should be applied as set down in the Directive on Environmental liability with regard to the prevention and remedying of environmental damage, so as to clearly establish the liability

of the perpetrators of certain disasters, such as arson attacks. The EESC considers that better implementation of national provisions and information on the consequences of non-compliance with preventive legislation or of harmful acts by both citizens and the competent authorities could help to alleviate the effects of natural disasters.

### 2. Introduction

2.1 Disasters are occurring with increasing frequency, not only within the borders of the EU but throughout the world; some are caused by natural phenomena such as floods, earthquakes, fires, etc., while others are due to terrorist acts which spread fear among civilians. In both cases, human activity is to some degree responsible, whether directly or indirectly, although the degrees of intentionality cannot be compared.

2.2 The EU has pledged to take preventive action in response to climate change, not just by implementing the commitments made in the Kyoto Protocol, but also through a number of decisions aimed at preserving land, water and air. This initiative is geared towards prevention; it could help not only to maintain and regenerate our land, seas and atmosphere, but also to encourage action to be taken in other countries. In addition, the Commission is conducting preparatory work regarding the development of a European integrated approach to the prevention of natural disasters by the end of 2008.

2.3 In addition to these preventive measures, the EU has set up a Community system for assistance in the event of any disaster that occurs within its borders. It is a mutual aid system intended not only for the EU countries, where it has been put into operation on numerous occasions, but also for disasters in the Indian Ocean, South America, etc.

2.4 It is important to clarify the complementarities between disaster intervention and humanitarian aid. Both instruments have largely the same primary objective of alleviating the impact of disasters and other events on the population. Disaster intervention falls within the domain of civil protection, which also

helps to reduce the impacts of disasters on the environment and property be it within or outside the EU, calling upon resources and teams from the EU Member States. Humanitarian aid, on the other hand, is active in specific third countries and involves NGOs and other humanitarian bodies. Both instruments cooperate with UN agencies.

2.5 It should be noted that the disaster fund set up in the wake of the severe flooding in the Elbe basin has helped to improve the interventions carried out in the EU. Equally important is the Civil Protection Mechanism <sup>(1)</sup> created in 2001 and later reformed <sup>(2)</sup> in order to provide a rapid response to disasters that could befall the Member States or third countries.

### 3. Prevention measures

3.1 Prevention is an essential factor in the protection and conservation of the environment, and in avoiding harm to civilians. The aim is to use natural resources in a sustainable way. Predictions about the wide scale decline and loss of biodiversity have come true, to an extent that surpasses even the most pessimistic forecasts. When we add human — often deliberate — intervention to this equation, we find ourselves confronted today by recurring disasters which, though natural, are not normal, owing to their frequency and above all the scale of their impact.

3.2 The prevention measures which will be mentioned in this opinion are those covered by existing legislation— in other words, they should have been implemented and monitored by the competent authorities in each Member State. Generally speaking, some disasters can be avoided, or minimised, and it can therefore be concluded that there should be similar conditions for environmental protection throughout the EU, by means of compliance with the regulations in force.

3.2.1 One of the legislative measures which has had the greatest impact on preventing natural disasters relates to pollution of the seas and oceans by hydrocarbons. This has been achieved by introducing not only certain transport conditions (double hull vessels) but also the maritime measures contained in the Erika I and II packages, which have helped to minimise their impact.

3.3 Environmental research is linked to the issue of prevention, and the EESC has already called for better, greater coordination between research and environmental programmes <sup>(3)</sup>, so that some research funds can be earmarked for practical environmental research.

<sup>(1)</sup> Council Decision 2001/792/EC, Euratom.

<sup>(2)</sup> Previously, there was an action programme in the field of civil protection, established by Council Decision 1999/847/EC of 9.12.1999, and reformed by Council Regulation 2005/52 of 6.04.2005. On 8 November 2007, the Council Decision establishing a Community civil protection mechanism (recast) was adopted.

<sup>(3)</sup> Opinion CESE 578/2003, OJ C 208 of 3.9.2003, pp. 16-22.

3.4 Prevention is also connected to training and information, not only for the members of the civil protection teams but for the public as a whole, in order to make the intervention more effective in the event of a natural disaster. Promotion and awareness of environmental policies should be increased in all Member States, and these policies should be taught in schools, not just in universities.

### 3.5 Flood prevention measures

3.5.1 The first area that will be covered here is water. Water is often involved in natural disasters, not only through floods, tsunamis or other marine phenomena, but also because of its scarcity <sup>(4)</sup>, which can wreak significant change, such as the desertification of large areas of southern Europe.

3.5.2 There has always been something missing from the Water Framework Directive <sup>(5)</sup>: the fixing of an objective on prevention, protection and preparedness in relation to floods. Considering the high number of disasters that have occurred in under a decade and their many victims, the Commission put forward a Communication and a proposal for a Directive <sup>(6)</sup> to regulate the assessment and management of flooding risks, proposing an analysis of the situation and future risks, and a concerted, EU-wide action and prevention plan.

3.5.3 Floods are on the increase in the EU for two main reasons: firstly, it is now generally believed that climate change has an impact on the intensity and frequency of floods all over Europe <sup>(7)</sup>, partly due to irregular torrential rains and potentially higher sea levels; secondly, human activity, such as construction work in rivers and projects to divert and channel the course of rivers and other activities which seal the soil, and thereby reduce the natural capacity of nature to store excessive amounts of water during a flood event without measures to assess and redress their environmental impact. The risks are also on the increase in the sense that the damage that floods cause is increasing as more and more settlement is taking place in areas of high flood risk.

3.5.4 In line with its earlier position <sup>(8)</sup>, the EESC considers that the measures set down in the Directive on the assessment and management of flood risks should be carried out. The

<sup>(4)</sup> COM(2007) 414 final — Communication from the Commission to the European Parliament and the Council — Addressing the challenge of water scarcity and droughts in the European Union.

<sup>(5)</sup> OJ L 327 of 22.12.2000, p 72 *et seq.*

<sup>(6)</sup> Communication on Flood risk management — Flood prevention, protection and mitigation. COM(2004) 472 final, OJ C 221 of 8.9.2005, p. 35.

Proposal for a Directive on the assessment and management of flood risk COM(2006) 15 final of 18.1.2006.

Directive 2007/60/EC of the European Parliament and of the Council of 23.10.2007 on the assessment and management of flood risks, OJ C 195 of 18.08.2006, p. 37.

<sup>(7)</sup> Intergovernmental Panel on Climate Change (IPCC) — Working Group II Report 'Impacts, Adaptation and Vulnerability'.

<sup>(8)</sup> See note 6.

Commission's acceptance of the EESC's proposal (in its opinion on the 2004 communication) to incorporate measures on flooding into the WFD implementation helps to promote the inclusion of flood management plans into river basin management plans, and thus ensure that the necessary action is planned for the entire basin and effective measures are taken by all competent authorities (local, state and transnational).

3.5.5 The EESC also reiterates that a preliminary flood risk assessment should be conducted for each basin, evaluating which sections are likely to flood, so that an intervention map can be drawn up to facilitate preventive measures, particularly with regard to the reforestation and afforestation of mountain areas, protection of wetlands and related ecosystems. In this context, it is important for civil society to be informed and involved, as this will help to make precautionary measures easier.

### 3.6 Fire prevention measures

3.6.1 Prevention policies must be stepped up. Although prevention is essentially the responsibility of the Member States, the Community can help them to prevent and reduce the impact of natural disasters, including forest fires.

3.6.2 The Community should continue considering measures ranging from public awareness-raising to land management. Such measures can also have other positive effects, such as helping to adapt to climate change.

3.6.3 An integrated approach should be taken, bearing in mind the ways in which different sectors interact. Urban development affecting areas traditionally devoted to forestry does not only increase the risk of fire and, therefore, environmental destruction, but may also mean that consideration should be given to the evacuation of inhabitants rather than the loss of forests.

3.6.4 The various EU financial instruments available in support of the Member States' prevention efforts should be revised and updated, in order not only to bring them into line with the current situation, but also to find synergies between the different instruments with a view to protecting lives and the environment, and cultural heritage more effectively. Where Community funds are granted for recovering from forest fires or for afforestation and reforestation, Member States should be required to demonstrate that sound fire prevention measures will be implemented.

3.6.5 Likewise, the Commission should continue promoting the exchange of information and experiences between Member States, in order to ensure that good practices are widely shared. The differences between situations in the various countries should be taken into account, and action in regional groups should be stepped up.

3.6.6 The prevention measures should also include legal provisions relating to the civil and criminal liability of those who cause fires, whether deliberately or accidentally.

## 4. Civil protection

4.1 The EESC welcomes the fact that the Lisbon Treaty <sup>(9)</sup> introduces a new article, 176 C, whereby civil protection is established as a means to 'encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters'. It is important to stress that the aim is not only to support the Member States, but also to harmonise actions taken internationally by the EU.

4.2 The framework regulating civil protection action consists of two instruments: the Community Civil Protection Mechanism and the Civil Protection Financial Instrument <sup>(10)</sup>. The Monitoring and Information Centre for the Civil Protection Mechanism is based at the European Commission and operates around the clock. It has a database on the civil protection services in each Member State, incorporating data from military databases, which are very useful. This centre also administers Community programmes in the area of preparedness, including training programmes and exercises.

4.3 Over the last few years, experience has shown how important the centre's coordination work is — as illustrated recently by the fires in Greece. However, there is still room for improvement, which is why the EESC called for an increase in its budget so that it could have more and better resources for its work. The Monitoring and Information Centre should become a genuine operational centre with increased staffing to proactively anticipate the development of crises, monitor their development, organise preparedness activities, and facilitate and coordinate EU civil protection assistance within the EU and outside of the EU.

4.4 To achieve better preparedness for major disasters, it is necessary to step up the EU efforts in the area of civil protection training and exercises. This would be best achieved by developing a European Civil Protection Training Institute that would link the national centres of expertise. Proposals for the creation of such a structured network should urgently be examined by the European Institutions.

4.5 Early warning systems exist for most of the main natural hazards in Europe but the lack of such systems for tsunamis is a significant gap. The lack of common alert systems and protocols is also an important concern in view of the growing mobility of citizens across Europe and third countries.

<sup>(9)</sup> OJ C 306 of 17 December 2007.

<sup>(10)</sup> Furthermore, in some Member States there are institutes to investigate and provide information about natural disasters. These play a major role in preventing such disasters.

4.6 The improvements provided for by the Commission in 2005 have helped to make the Civil Protection Mechanism more effective in the EU, and enabled it to act as an instrument for inter-regional, international solidarity. Consequently, no effort should be spared to provide the swiftest and most effective response to disasters in all their forms. This calls for predefined procedures or assistance plans which should in all cases be tested by means of drills, and updated on the basis of experience gained from these.

4.7 The plans must include satellite communications, up-to-date maps and suitable resources to achieve satisfactory coordination. All these resources should be owned by the EU. These plans should set a standard which will boost the image of solidarity and effectiveness at international level.

4.8 The recast of the Community civil protection mechanism provides for the creation by the Member States of civil protection modules made of national resources. This would contribute to the development of an EU rapid reaction force to major disasters. Member States should urgently identify and train such modules, in priority in the area of fire fighting. The Member States should ensure that such modules are available for swift deployment in case of activation of the Community mechanism.

4.9 Recent disasters have shown that despite EU solidarity, the resources mobilised are not always adequate. It is now urgent to undertake an analysis based on disaster scenarios to identify existing gaps. Where such assessments show that certain resources are insufficiently available in the EU or that the constitution of European reserve civil protection resources would have advantages in terms of effectiveness and cost-efficiency, the EU should develop European reserve resources.

4.10 Furthermore, EU assessment teams and coordinators must be consulted on the recovery of the affected area, as their expertise will be useful for its rehabilitation. This will help to prevent the speculative activity that, unfortunately, occurs after some fires.

4.11 When it comes to action in non-EU countries, interventions by the mechanism must be considered an integral part of EU foreign policy and humanitarian aid and seen as a sign of the EU's solidarity with the countries concerned.

4.12 Lastly, it is important to define the cooperative role that humanitarian organisations should play in civil protection. Operations outside the EU must be coordinated with humanitarian aid partners working with specific mandates, such as the United Nations, the Red Cross/Red Crescent Movement, international organisations and NGOs.

## 5. Environmental liability

5.1 It is important to note that prevention legislation has not had the desired effect on the damage caused by natural disasters. There have been excessive delays in setting up a legal system for

environmental liability<sup>(1)</sup> and criminal environmental legislation<sup>(2)</sup> is still only in its second draft.

5.2 National laws in this area vary widely, and this can distort the relevant legislation. In practice, there is no EU harmonisation of environmental liability, and there are no generalised provisions for repairing or cleaning up areas affected by natural disasters as this is not in the remit of EU law. Moreover, the 'polluter pays' principle is not applicable in many regions of the EU.

5.3 Other factors may also come into play, e.g. certain types of damage may affect more than one country, meaning that different systems of law apply. The separation of competent authorities from local to national level is also a major problem, as this causes conflicts when it comes to enforcing liability, given that these authorities may also be involved in the repair.

5.4 The scope of liability legislation, as set down in the Directive, focuses on prevention or repair of environmental damage, based on laws in force in the EU and relating to biodiversity, water and soil pollution, which is defined to a large extent, but not exclusively, by reference to existing Community legislation. It is therefore important to stress that only failure to comply with the laws in force and listed in Annex III of the Directive should be subject to liability claims against the perpetrators of the damage.

5.5 The first liability scheme applies to the dangerous or potentially dangerous occupational activities listed in Annex III to the Directive. These are mainly agricultural or industrial activities requiring a licence under the Directive on integrated pollution prevention and control, activities which discharge heavy metals into water or the air, installations producing dangerous chemical substances, waste management activities (including landfills and incinerators) and activities concerning genetically modified organisms and micro-organisms. Under this first scheme, the operator may be held responsible even if he is not at fault. The second liability scheme applies to all occupational activities other than those listed in Annex III to the Directive, but only where there is damage, or imminent threat of damage, to species or natural habitats protected by Community legislation. In this case, the operator will be held liable only if he is at fault or negligent. The Directive also provides for a certain number of exemptions from environmental liability.

<sup>(1)</sup> Directive on Environmental liability with regard to the prevention and remedying of environmental damage.

<sup>(2)</sup> A first Proposal for a Regulation was made in 2001, which was withdrawn by the Council. Later, the EESC was consulted on a new proposal (COM(2007) 51 final — 2007/0022 COD), upholding the Court of Justice case-law of 13 September 2005, confirmed by another judgement of 27 October 2007, on the authority of the Commission to legislate on environmental crimes.



5.6 There are two ways in which the damage may be corrected: either the operator may take the necessary restoration measures, in which case they will be financed directly by the operator, or the competent authority may have the measures implemented by a third party and recover the costs from the perpetrator of the damage. A combination of the two approaches is also possible in the interests of greater effectiveness.

5.7 When there is more than one party liable for the damage, the Directive leaves to the Member States to decide how to apportion the costs, the two main options being either

joint and several liability or apportioned liability. While this dual system is intended to facilitate adaptation to the legal systems of the Member States, it should nonetheless be pointed out that determining the proportion of environmental damage is extremely difficult, which makes this system difficult to implement in practice.

5.8 Lastly, it should be stressed that the requirement of financial security for operators subject to water, soil and biodiversity legislation helps to make repair more effective, whilst avoiding the negative consequences of insolvency.

Brussels, 13 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

**Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals (Own-initiative opinion)**

(2008/C 204/16)

On 27 September 2007 the European Economic and Social Committee, under Rule 29(2) of its Rules of Procedure decided to draft an own-initiative opinion on the

*Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 February 2008. The rapporteur was Ms Roksandić, the co-rapporteur, Mr Almeida Freire.

At its 443rd plenary session, held on 12 and 13 March 2008 (meeting of 12 March), the European Economic and Social Committee adopted the following opinion by 118 votes to 56 with seven abstentions.

## 1. Conclusions and recommendations

1.1 The EESC expresses regret at the fact that the proposed directive on 'Sanctions against employers of illegally staying third-country nationals' was not referred to the EESC for an opinion, although it is stated in the introduction to the directive that this is so. The proposed directive does not ordinarily come under one of the areas for which consultation of the Committee is mandatory; however the Committee believes that it is necessary to consult representatives of civil society organisations in such instances and related cases, because they concern the regulation of key areas which not only fall within the domain of freedom, security and justice, but also have an impact on employment and social policy.

1.2 The EESC has decided on its own initiative to draw up an opinion on this proposal for a directive. The Committee believes that organised civil society, and especially the social partners, has a most important role to play in shaping and

implementing the Directive proposed by the European Commission on 'Sanctions against employers of illegally staying third-country nationals'.

1.3 In its opinions to date <sup>(1)</sup>, the Committee has highlighted the need for simultaneous action to be taken to create opportunities for legal immigration and to deal with the causes of 'irregular' immigration.

<sup>(1)</sup> See the EESC opinion of 15.12.2004 on 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Study on the links between legal and illegal migration', rapporteur Mr Pariza Castaños (OJ C 157, 28.6.2005).

See the EESC opinion of 9.6.2005 on 'Green paper on an EU approach to managing economic migration', rapporteur Mr Pariza Castaños (OJ C 286, 17.11.2005).

See the EESC opinion of 15.12.2005 on 'Communication from the Commission to the Council and the European Parliament: The Hague Programme: Ten priorities for the next five years — The Partnership for European renewal in the field of Freedom, Security and Justice', rapporteur Mr. Pariza Castaños (OJ C 65, 17.3.2006).

1.4 The Committee endorses the proposal, because in practice it promotes respect for human rights. However, the Committee has some doubts about the proposed directive's content, the time frame in which the proposal has been made, and the order in which the legislative proposals have been put forward. The employment of immigrants is an issue closely connected to the operation of the labour market and illegal employment in general, and therefore cannot be prevented by punishing employers alone.

1.5 In view of the connection between two different fields of the European Commission's work, which have a bearing on immigration at EU level, namely the area of freedom, security and justice on the one hand, and employment and social policy on the other, the Committee would highlight the importance of harmonising existing European Union legislation with the legislation on legal and illegal immigration which is currently in the pipeline. The Committee believes that the problem of illegal immigration cannot be solved simply by closing borders and applying coercive measures.

1.6 Legal migration and immigration within and into the EU urgently need to be regulated, as do efforts to combat undeclared work. The Committee recommends that the Commission carefully examine the possibility of further activities to combat undeclared work.

1.7 International experience shows that the fight against undeclared work is at its most effective when based on a number of parallel and concurrent courses of action. Accordingly, in addition to allowing the legal migration of workers in those sectors of the economy with the highest numbers of illegal immigrant workers, it is necessary to organise information and educational campaigns which highlight the impact of undeclared work. Furthermore, there should be a policy of uniform sanctions against employers — irrespective of the nationality of the undeclared workers. The proposed directive should, therefore, be part of a broader package of measures to combat undeclared work — including among illegal immigrants — and not represent a fundamental policy instrument, as proposed by the Commission.

1.8 The Committee would stress the importance of effective implementation of the directive in Member States, whose task will not be an easy one because i) the monitoring bodies do not have enough qualified staff, ii) there are difficulties in dividing up responsibilities between the bodies concerned and iii) there are a large number of companies for which monitoring is envisaged.

1.9 The Committee believes that those proposals in the directive which would lead to benefits in practice should be consolidated. The changes and additions proposed by the Committee are listed under the heading 'Specific comments', and are aimed at securing a more appropriate division of responsibility, as well as improvements in the situation of undocumented workers. If these proposals were to be ignored, such workers might be subjected to even more exploitation.

## 2. Introduction

2.1 The proposed directive is one of several legislative proposals put forward by the European Commission in line with its communications on the Policy plan on legal migration of

2005 <sup>(2)</sup> and on the Policy priorities in the fight against illegal immigration of third-country nationals (July 2006) <sup>(3)</sup>. In these communications, the Commission proposed to reduce the factors encouraging illegal immigration into the EU, the most important being the possibility of finding work. Member States would introduce similar penalties for employers of third country nationals and implement them effectively. The European Council endorsed the Commission proposal <sup>(4)</sup> in December 2006.

2.2 The proposal for a directive was followed up in 2007 by the:

- Commission Communication on circular migration and mobility partnerships between the European Union and third countries <sup>(5)</sup>;
- Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment <sup>(6)</sup>;
- Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State <sup>(7)</sup>; and the
- Commission Communication on stepping up the fight against undeclared work <sup>(8)</sup>.

## 3. Summary of the proposed directive

3.1 The aim of the directive is to make the work offered by employers less attractive to migrants who do not have the proper permits (reduce the 'pull factor'). Building on existing measures in the Member States, the directive would ensure that i) all Member States introduce similar penalties for employers of third-country nationals who do not have the proper residence permits and ii) these penalties are enforced effectively.

3.2 The Directive is concerned with immigration policy, not with labour or social policy. Its legal basis is Article 63(3)(b) of the EC Treaty, and it is designed to reduce illegal immigration into the EU.

3.3 The proposal does not concern legal immigration and employment which conflicts with the residence status awarded (as in the case of students or tourists) or undeclared work by third-country nationals.

<sup>(2)</sup> COM(2005) 669 final.

<sup>(3)</sup> COM(2006) 402 final.

<sup>(4)</sup> Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals — COM(2006) 402 final.

<sup>(5)</sup> COM(2007) 248 final.

<sup>(6)</sup> COM(2007) 637 final.

<sup>(7)</sup> COM(2007) 638 final.

<sup>(8)</sup> COM(2007) 628 final.

#### 4. Content of the proposal

4.1 The directive prohibits the employment of third-country nationals staying in the EU illegally. Infringements would be sanctioned by penalties (which may be administrative in nature) consisting of fines and, in the case of businesses, possible other measures, such as exclusion from and recovery of public subsidies and exclusion from participation in public procurement contracts. Criminal penalties may be imposed in serious cases.

4.2 Article 2 sets out the definition of employment for the purposes of the directive. Employers are defined as natural and legal persons, for whom a third-country national is employed to do paid work.

4.3 Employers are obliged i) to check, before employing a third-country national, whether that person has a legal residence permit valid for at least the duration of employment and ii) to keep a copy of that document for possible inspection. Employers are then deemed to have fulfilled their obligation, unless the document presented is manifestly incorrect. Only businesses and legal persons are obliged to notify the competent authorities of both the start and the termination of employment of third-country nationals within one week at the latest.

4.4 Employers who do not comply with the ban on employing illegally resident third-country nationals will be punished by effective, proportionate and dissuasive sanctions. Employers are penalised for each infringement with fines and an obligation to cover repatriation costs (the employer must pay such third-country nationals any outstanding remuneration for their work, as well as any outstanding taxes and social security contributions). In line with Article 10, under certain circumstances an infringement may constitute a criminal offence when committed intentionally.

4.5 Member States are also to introduce financial penalties (fines and the costs of repatriating third-country nationals) as well as other sanctions (temporary exclusions from entitlement to public funds and from public procurement procedures, recovery of EU funding already awarded, temporary or long-term closure of establishments). The liability of legal persons and possible sanctions against them are also stipulated. Existing Member State provisions on the liability of legal persons may be maintained.

4.6 Where the employer is a subcontractor, Member States are to ensure that both the main contractor and the subcontractor are held jointly liable for the payment of all financial sanctions and back payments due.

4.7 The employer must reimburse all outstanding contributions and taxes to the third-country national concerned. In addition, Member States must put mechanisms in place to ensure that the recovery procedures are triggered automatically, without the third-country national concerned having to submit a claim. A work relationship is presumed to last at least 6 months, unless the employer can prove differently. Member States must ensure that such illegally employed third country nationals

receive any back pay recovered, including in cases where they have returned to their country or have been repatriated. Where a criminal offence is involved, third country nationals are not to be repatriated until they receive all the back pay due.

4.8 Member States must ensure that every year at least 10 % of companies established on their territory are subject to inspections to monitor the employment of illegally resident third-country nationals. The selection of companies to be inspected is to be based on a risk assessment which takes into account factors such as the sector involved and any past record of infringement.

4.9 Member States must transpose the directive within two years of its publication in the Official Journal of the EU.

#### 5. General comments

5.1 The proposal for a directive affects two different areas of the Commission's work, which in the implementation of immigration policy are closely intertwined: the area of freedom, security and justice, and employment and social policy. The Committee is not against the idea, set out in the proposal, to put pressure on both dishonest employers and illegal organisations trading in people who have no papers. The Committee endorses the proposal, because it promotes respect for human rights.

5.2 The Committee feels that it would be necessary for the European institutions to take into account EU institutions' decision-making and to:

- ensure that the legislation on legal and illegal immigration which is currently in the pipeline ties in with existing EU legislation;
- clarify the implications and repercussions, both for people migrating within the EU and those immigrating into the EU from third countries.

It is necessary to be quite clear about these delicate issues, because they concern not only security, justice and competition policy, but also human rights, and this in turn affects the market, four freedoms, and workforce, both from a collective and individual point of view, and also because immigration is necessary for the EU. In its opinions to date, the Committee has highlighted the need for simultaneous action to be taken to create opportunities for legal immigration and to deal with the causes of 'irregular' immigration.

5.3 Legal migration and immigration within and into the EU urgently needs to be regulated. Restrictions on migration in Member States have caused a number of problems, prevented the free movement of workers between certain Member States, and led to some third-country nationals, as well as EU citizens, being employed in breach of regulations and exploited by their employers. Steps to combat undeclared work in the EU and in individual Member States should deal with everyone employed

in this way on the same basis, irrespective of whether they are EU citizens or third country nationals. The Committee therefore urges the Commission to closely examine the possibility of extending the legal basis of the proposed directive to allow measures also to be taken against illegal work by any person who does not have the necessary permits or documents.

5.4 The Committee believes that the 'pull factor' for migrants referred to in the directive, which the latter is aiming to lessen, is not the possibility of irregular work itself, but rather the possibility of employment in another country. That is why steps to simplify the procedures for obtaining a single residence and work permit will without a doubt help reduce the pull factor. However, Member States themselves should also contribute to simplifying procedures.

5.5 Employers stress the need to fight illegal work and unfair competition, because those employers who employ workers illegally are creating illegal and unfair competition for other, honest employers.

5.6 Although implementation of the directive is the responsibility of the Member States, the Commission should be made aware that this will not be an easy task, because i) there are not enough administrative monitoring bodies, ii) there are difficulties in dividing up responsibilities between the individual bodies concerned and iii) there are a large number of companies to be monitored. The strength of the directive should be in its actual implementation.

5.7 European institutions should use the same terms as those used by international and regional organisations and in international law, which as a consequence are internationally recognised, such as 'irregular' or 'undocumented migrant worker' and not 'illegal workers' or 'illegal immigration'. The term 'illegal immigrant' has very negative connotations. The proposed directive could help exacerbate such notions; it could give rise to increased discrimination and xenophobia towards all migrant workers, who might be subjected to inspections on the basis of their appearance alone.

5.8 Notwithstanding any doubts regarding the proposed directive, the Committee believes that the proposals in the directive which could lead to benefits in practice should be consolidated. These have been listed under the heading 'Specific comments'.

## 6. Specific comments

6.1 **Article 1** — This article should offer Member States which have already taken steps to regulate irregular immigration the possibility of maintaining national measures that are more favourable to workers.

6.2 **Article 2** — the definitions should be modified as follows:

- 2(b): 'employment' means exercise of activities **which are remunerated or performed in circumstances of economic dependence** for and under the direction of another person;

- **temporary employment agencies** should be added to the definition of 'employer' 2(e) and 'subcontractor' 2(f), as the current definition is unclear. Many workers from third countries are employed by go-betweens, which includes agencies.

6.3 **Article 4(1)(c)** — the employer should retain a copy of residence permits for longer than the period of employment itself, given that in some sectors employment is generally short term and the employer often changes.

## 6.4 Article 5

- In cases where employers have i) fulfilled their obligations in respect of illegal employment and ii) checked residence permits and retained copies as required, and it subsequently transpires that a third-country national does not have a valid residence permit after all, the employers still have a duty to pay any outstanding remuneration and meet the other commitments set out in Article 7 of the directive. For this reason, the following should be added to the end of the article: 'This does not affect their duty to pay all outstanding remuneration and fulfil the obligations set out under Article 7'.

- A provision should be added stipulating that employers must respect employment procedures laid down by Member States. It is conceivable that employers might only check residence permits and ignore the work permits that are a requirement in many Member States. Thus undeclared employment of third country nationals could well grow, in spite of the fact that employers are complying with the directive's provisions.

## 6.5 Article 6

- In the sanctions listed under 2(a) it should be stipulated that the financial penalties should high enough to cover any gain made by the employer in relation to each illegally employed third-country national. Thus the financial penalty would add up to the amount stipulated for one illegally employed person, and would rise in line with the number of illegally employed third country nationals. There is a clear difference between the gains of private employers who employ workers illegally as home helps or on farms, and those employers who illegally employ three, four or more workers in activities specifically geared to making a profit.

- Provision should be made for increasing the financial penalty for employers who continue to employ third country nationals illegally or who reoffend. This penalty should be substantially increased each time such illegal employment is repeated or continued, in order to act as a deterrent.

- It would be unreasonable to expect employers to cover the costs of returning each illegally employed third-country national, as well as the financial penalties. This, in effect, would mean shifting the responsibility of individual countries' immigration authorities to employers. Employers should only have to pay these costs where a criminal offence has been committed, in line with Article 10.

## 6.6 Article 7

- It should also be stipulated that the obligation to pay applies from the day that the claim for payment is submitted, and not from the date the claim takes legal effect.
- The rights of workers under the employment contract should continue to apply, irrespective of whether or not they have a residence or work permit.
- Difficulties could be faced in practice in the payment of outstanding wages to a worker who has already returned home; this should be taken into account. Moreover, it is necessary to ensure that wages are paid to the right person.
- In addition, it should be made clear that employers must calculate any outstanding remuneration in accordance with the laws, regulations, administrative decisions and/or collective agreements that normally apply to such employment.

## 6.7 Article 8 refers to other measures to be adopted by Member States.

- It would be useful to include a compulsory list of such measures.
- The measure listed under point d), concerning the temporary or permanent closure of establishments that have been used to commit the infringement, seems unreasonable, especially since it could also affect legally employed workers. When implementing this measure, workers employed at the establishments concerned, and their representatives, should be consulted.

6.8 Article 9 defines the responsibility of the main contractors and any intermediate subcontractors for paying sanctions and back payments. It would be useful here to clarify under which circumstances this does and does not apply. In some sectors with long chains of subcontractors, such as the car industry, it would prove difficult to hold manufacturers and subcontractors who produce various parts in different locations and countries jointly liable. The Committee believes that main contractors should, by taking reasonable precautionary measures, be able to ensure that they are not held liable in this way.

## 6.9 Article 10

- Under this article an infringement constitutes a criminal offence (in line with Article 3) when committed 'intentionally'. However, since this is difficult to prove, a better defini-

tion of criminal offence would be to show that the employer 'knew' or 'could have known' about the criminal offence.

- With regard to the infringement set out under 1 (a), every repeat infringement of Article 3 should be deemed to be a criminal offence.
- In the case of an infringement deemed to be a deliberate criminal offence, as described in paragraph 1(a), it is important to take into account the possibility that legal proceedings will be time-consuming. There is the risk that the provision will not be applied at all if Member States decide that determining whether an infringement has occurred should be subject to a decision by a court or national authority within a period of two years. Because these processes can be so time-consuming, and because all legal remedies would be invoked to lodge an appeal, the provision may not be put into practice at all.
- In implementing this article in the Member States, a clear division of competences needs to be stipulated between the administrative bodies that impose sanctions, and individual competent courts, in order to avoid potential conflicts over competences.

## 6.10 Article 14

- Member States should be required to provide effective mechanisms that ensure procedures can be carried out quickly and without major costs.
- Likewise, Member States should guarantee that sanctioning bodies will provide information on the launch of procedures to the representatives concerned without delay.
- In paragraph 3, it would be useful to grant special status not only to third-country nationals who are or have been subjected to exploitative working conditions and are cooperating in criminal proceedings against the employer, but also to witnesses.

## 6.11 Article 15

This provision, stipulating that Member States ensure that at least 10 % of companies are inspected every year, is to be welcomed. However, the effectiveness of the proposed directive will depend on the actual implementation of this provision. In most Member States, extra staff and financial resources will be necessary to carry it out. Were this not to be provided, such additional obligations would undoubtedly give rise to unequal treatment of those concerned.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

## APPENDIX

**to the opinion of the European Economic and Social Committee**

The following amendments, which received at least a quarter of the votes cast, were rejected in the plenary session debate (Rule 54(3) of the Rules of Procedure):

**Point 1.7**

Amend as follows:

~~'International experience shows that the fight against undeclared work is at its most effective when based on a number of parallel and concurrent courses of action. Accordingly, in addition to allowing the legal migration of workers in those sectors of the economy with the highest numbers of illegal immigrant workers it is necessary to organise information and educational campaigns which highlight the impact of undeclared work. Furthermore, there should be a policy of uniform sanctions against employers — irrespective of the nationality of the undeclared workers. The proposed directive should, therefore, be part of a broader package of coordinated with measures to combat undeclared work — including among illegal immigrants — and not represent a fundamental policy instrument, as proposed by the Commission.'~~

*Outcome of the vote*

For: 64 Against: 101 Abstentions: 9

**Point 5.3**

Amend as follows:

~~'Legal migration and immigration within the and into the EU urgently needs to be regulated. Restrictions on migration in Member States have caused a number of problems, prevented the free movement of workers between certain Member States, and led to some third-country nationals, as well as EU citizens, being employed in breach of regulations and exploited by their employers. Steps to combat undeclared work in the EU and in individual Member States should deal with everyone employed in this way on the same basis, irrespective of whether they are EU citizens or third-country nationals. The Committee therefore urges the Commission to closely examine the possibility of extending the legal basis of the proposed directive to allow measures also to be taken against illegal work by any person who does not have the necessary permits or documents are now on the agenda of the Commission and of social partners and measures how to combat this negative phenomena are being discussed. The Committee recommends that the measures to eliminate the illegal migration and undeclared work are closely coordinated.'~~

*Outcome of the vote*

For: 56 Against: 102 Abstentions: 10

**Point 6.6**

Add as follows:

**'Article 7**

- It should also be stipulated that the obligation to pay applies from the day that the claim for payment is submitted, and not from the date the claim takes legal effect.
- The rights of workers under the employment contract should continue to apply, irrespective of whether or not they have a residence or work permit.
- Difficulties could be faced in practice in the payment of outstanding wages to a worker who has already returned home; this should be taken into account. Moreover, it is necessary to ensure that wages are paid to the right person.
- In addition, it should be made clear that employers must calculate any outstanding remuneration in accordance with the laws, regulations, administrative decisions and/or collective agreements that normally apply to such employment.
- In most Member States EU workers are required to lodge a complaint with the relevant bodies to secure outstanding payment. The stipulation in Article 7(2)(a), that there is no need for the illegally employed third country nationals to introduce a claim in order to trigger the necessary procedures to settle outstanding remuneration, would bring unjustified distinction between those third country nationals and other EU or legally employed third country nationals.
- However, the Committee accepts that the Member States may provide illegally staying third-country nationals with all the assistance they need to reclaim any outstanding remuneration, and that the article should contain a guarantee to this effect.

- The Committee believes that the presumption of a work relationship duration of (in this case) six months, as set out in Article 7(2)(b), may have the effect of stimulating irregular immigration into the EU and introduces unjustified distinction, insofar as it puts an irregular worker in a highly advantageous position compared to other workers. Moreover, this is clearly an inappropriate solution for short- and very short-term work relationships (seasonal farm work, for example).'

*Outcome of the vote*

For: 59, Against: 111, Abstentions: 11

#### **Point 6.8**

Add as follows:

'Article 9 defines the responsibility of the main contractors and any intermediate subcontractors for paying sanctions and back payments. It would be useful here to clarify under which circumstances this does and does not apply. The main contractor and subcontractors who are not directly employing the illegally staying third country nationals should be jointly and severally liable to the sanctions mentioned in Article 6 and Article 7 only in case that it should be proved that they knew that their subcontractor was employing illegally staying third country national. In some sectors with long chains of subcontractors, such as the car industry, it would prove difficult to hold manufacturers and subcontractors who produce various parts in different locations and countries jointly liable. The same applies to the constructions sector. The Committee believes that main contractors should, by taking reasonable precautionary measures, be able to ensure that they are not held liable in this way.'

*Outcome of the vote*

For: 57 Against: 106 Abstentions: 8

#### **Point 6.9**

Delete as follows:

##### **'Article 10**

- Under this article an infringement constitutes a criminal offence (in line with Article 3) when committed "intentionally". However, since this is difficult to prove, a better definition of criminal offence would be to show that the employer "knew" or "could have known" about the criminal offence.
- With regard to the infringement set out under 1 (a), every repeat infringement of Article 3 should be deemed to be a criminal offence.
- In the case of an infringement deemed to be a deliberate criminal offence, as described in paragraph 1(a), it is important to take into account the possibility that legal proceedings will be time-consuming. There is the risk that the provision will not be applied at all if Member States decide that determining whether an infringement has occurred should be subject to a decision by a court or national authority within a period of two years. Because these processes can be so time-consuming, and because all legal remedies would be invoked to lodge an appeal, the provision may not be put into practice at all.
- In implementing this article in the Member States, a clear division of competences needs to be stipulated between the administrative bodies that impose sanctions, and individual competent courts, in order to avoid potential conflicts over competences.'

*Outcome of the vote*

For: 66 Against: 100 Abstentions: 10

#### **Point 6.11**

Amend as follows:

##### **'Article 15**

This provision, The effectiveness of the proposed provision stipulating that Member States ensure that at least 10 % of companies are inspected every year, is to be welcomed. However, the effectiveness of the proposed directive will depend on the actual implementation of this provision. The Member States must choose which companies to inspect on the basis of a risk assessment that takes account, alongside other suitable criteria, of factors such as the degree of the sector's vulnerability to employment of illegally staying third-country nationals, or whether the companies have a past record in this area. The article should reflect these qualitative criteria, and state that it would be desirable for Member States to ensure that at least 3 % of the companies thus selected are inspected every year. In most Member States, extra staff and financial resources will may be necessary to carry it out. Were this not to be provided Without this, such additional obligations would undoubtedly could give rise to unequal treatment of those concerned.'

*Outcome of the vote*

For: 65 Against: 105 Abstentions: 8

## Opinion of the European Economic and Social Committee on the Green Paper on the future Common European Asylum System

COM(2007) 301 final

(2008/C 204/17)

On 6 June 2007 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*Green Paper on the future Common European Asylum System*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 February 2008. The rapporteur was Ms Le Nouail Marlière.

At its 443rd plenary session, held on 12 and 13 March 2008 (meeting of 12 March 2008), the European Economic and Social Committee adopted the following opinion by 118 votes to one, with nine abstentions.

### 1. Introduction to the consultation: Green Paper on the future Common European Asylum System

1.1 The future Common European Asylum System (CEAS) has its legal basis in Title IV — 'Visas, asylum, immigration and other policies related to free movement of persons' of the Treaty of Amsterdam (1999); the decisions of the Tampere Summit in Finland in 1999; and more recently, the Hague Summit. We should also recall its 'functional' basis, namely the Dublin I Regulation in 1997 and Dublin II in 2003, which came into force in 2006; the first Schengen agreement of 1985, recently extended to include a number of new Member States in 2007. We should not lose sight of the fact that the primary objective was the uniform implementation and transposition throughout the European Union of the 1951 Geneva Convention relating to the Status of Refugees, ratified by most Member States, in order to ensure that persons in need of international protection effectively receive such protection. The underpinning idea is to make the European Union a single protection area for refugees, based on the full and inclusive application of the Geneva Convention and on the common humanitarian values shared by all Member States. The Hague Programme Action Plan foresees the adoption of the proposal for CEAS by end 2010.

1.2 With a view to starting on the second stage, and prior to launching its action plan due to be published in July 2008, the Commission has launched a comprehensive consultation process through this Green Paper in order to identify what options are possible under the current EU legal framework.

1.3 The Tampere Programme, subsequently confirmed by the Hague Programme, consists in the establishment of a common procedure, a uniform status, a homogeneous framework, and a high level of harmonised protection in all Member States guaranteeing the consistent implementation of the Geneva Convention.

1.4 During the first stage between 1999 and 2006, the adoption of the four main legislative instruments created the current

acquis and laid the foundations for the CEAS. The Commission is monitoring the timely transposition and implementation of the legal instruments already adopted.

1.5 Although the process of evaluating the first stage instruments is still underway, given the need to come forward with the proposals for the second phase in time for their adoption in 2010, the Commission considers it essential to embark as of now on an in-depth reflection and debate on the future architecture of the CEAS.

1.6 The Commission's objectives include achieving a higher degree of solidarity between EU Member States, boosting the capacity of all stakeholders, improving the overall quality of the process, eliminating existing deficiencies and harmonising current practices through the implementation of a set of accompanying measures relating to practical cooperation between Member States.

1.7 The Commission has set out its consultation in four chapters and 35 questions: legislative instruments, implementation, solidarity and burden sharing, external dimension.

### 2. Summary of conclusions and recommendations

2.1 **The Committee**, bearing in mind its (numerous) previously adopted opinions on the subject, the recommendations of NGOs providing support to refugees and the UNHCR's <sup>(1)</sup> recommendations to the Portuguese and Slovenian presidencies of the European Union,

2.2 Recalling that asylum issues are already subject to qualified majority decisions in the Council whereas immigration is still subject to unanimity and should be made subject to qualified majority decisions under the Lisbon treaty, recommends that when implementing a common procedure the Commission and the Council ensure that the national exemption clauses ('opt outs') frequently used by some Member States are excluded or avoided.

<sup>(1)</sup> United Nations High Commissioner for Refugees.



2.3 The Committee supports the adoption of a fair asylum system, i.e. an asylum system with a human face that takes account of asylum seekers' need for protection as a genuine objective to be included among the objectives for building a Europe that is also social. The Committee recalls that these social objectives are not in conflict with and do not exclude the economic and security interests of host populations or Member States.

2.4 It calls for conditions to be created that promote the respect of international conventions, European directives in line with international law and humanitarian law and the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe; a better distribution of the responsibilities incumbent on Member States; the speedy resettlement and integration of people granted protection as refugees or subsidiary protection; a sincere cooperation and co-development policy that improves effective democracy in certain third countries and that contributes to international solidarity in response to asylum needs.

2.5 To this end, it recommends measures that are inseparable from and complementary with each other.

2.5.1 That those in need of international protection are always able to enter the territory of the European Union, irrespective of the level of strengthened controls in order to ensure that the right at least to submit an asylum application is respected, whatever the form, and that access to fair and efficient procedures is guaranteed.

2.5.2 That requests for recognition of refugee status should always be examined and the decision delivered and substantiated in writing by the decision-making authority before subsidiary protection is considered, including for applications submitted at the border.

2.5.3 That asylum seekers should be free to choose the country to which they submit their claim.

2.5.4 That unaccompanied minors and women, together with other vulnerable persons, are granted specific protection<sup>(2)</sup>: physically, mentally or socially disadvantaged persons who may be unable to meet their basic needs and may therefore require specific assistance (pregnant women, children, the elderly, infirm, disabled, etc.).

2.5.5 That persecution specific to certain women must be taken into consideration as a motive for protection on an individual basis and independently of any persons accompanying or accompanied by them (minors, or husbands, relatives, and others)<sup>(3)</sup>.

<sup>(2)</sup> As defined by the UNHCR (Master Glossary of Terms, June 2006).

<sup>(3)</sup> Rape, conflict-related rape, physical, mental or social abuse inflicted due to unwillingness to submit to an established male order. See point 2.5.1 of the EESC opinion on *Qualification*, rapporteur: Ms Le Nouail Marlière, (OJ C221, 17.9.2002): 'Although not explicitly covered by the 1951 Geneva Convention, the specific forms of gender prosecution — female genital mutilation, forced marriages, stoning to death for presumed adultery, and the systematic rape of women and young girls as a strategy of war, to name just a few — should be acknowledged as strong reasons for submitting an application for asylum and as legitimate grounds for granting asylum in Member States'.

2.5.6 That all asylum seekers, are entitled to an effective and case-by-case examination of their applications, access to an interpreter, free legal assistance and sufficient time to present their case.

2.5.7 That the fundamental principles applicable to asylum procedures should apply to all asylum claims, including manifestly unfounded claims.

2.5.8 That all appeals against decisions denying refugee status or subsidiary protections should always have the effect of suspending the execution of a repatriation order, especially for people who cannot be expelled without risk to their life, freedom or safety should they be returned to another country.

2.5.9 That integration and resettlement under normal and decent living conditions should be guaranteed in order to ensure self-sufficiency, the conditions for which should be met as soon as possible after arrival, and with the consent of the party concerned, in terms of health care, orientation and language training; contact with organisations providing support for refugees and the with the local population; training, including the evaluation and recognition of qualifications, access to legal employment, etc.

2.6 Recommends that NGOs and associations providing legal, material and humanitarian assistance to refugees always have access to holding and detention centres, whether open or closed. With respect to resettling recognised refugees within a burden-sharing framework for Member States, the Committee recalls its Opinion CESE 1643/2004 of 15 December 2004, and in particular point 2.4, which states that 'the conditions under which NGOs and refugee associations can work in reception centres should be improved through partnership agreements with the authorities in the host countries, or at least by clarifying their rights'.

2.6.1 That reception standards that respect human dignity should apply without distinction to all asylum seekers entitled to refugee status or subsidiary protection.

2.6.2 That alternative solutions (open reception centres) be preferred to the systematic detention of asylum seekers and holding centres that are totally closed and deny access to NGOs, and sometimes even the Red Cross.

2.7 Advises against the use of safe third country lists (compliance with procedures allowing for the case-by-case examination to which asylum seekers are entitled under the Geneva Convention) and recommends reviewing the 'safe third country' status of third countries of origin or transit that deprive asylum seekers of an examination of their specific case, and any ensuing rights<sup>(4)</sup>.

<sup>(4)</sup> EESC opinion of 15 December 2004 on the Communication from the Commission to the Council and the European Parliament on *A more efficient Common European Asylum System: The single procedure as the next step*, rapporteur: Ms Le Nouail Marlière (OJ C 157 of 28.6.2005), point 2.7.

2.8 Recommends, nevertheless, that if 'safe country' lists are to be maintained, then they should be common to all Member States and approved by national parliaments and the European Parliament, they should take account of information provided by duly consulted NGOs, and that under no circumstance should they continue to be used in the meantime.

2.9 Recommends that coast guards, public officials and agents of public or private services having contact with asylum seekers during the initial and subsequent stages (police, customs, health, education, employment) should be provided with training in asylum rights and humanitarian law.

2.10 Reiterates and stands by its recommendation to take proper account of the obligations of local and regional authorities with respect to providing frontline assistance and long-term integration for asylum seekers granted refugee status or international protection, and therefore to give them a fair share of involvement in drafting a common asylum policy, and to continue and clarify the use and allocation of funds under the European Refugee Fund (ERF), as specified below.

2.11 Approves the creation of a European support office for Member States provided that it complements the work of regional and local branches of the UNHCR and that it complies with the objective of improving the quality and consistency of decisions with a view to ensuring that those in need of international protection receive it irrespective of where they submit their claim in the European Union, and the objective of continually assessing European laws to ensure that they comply fully with international refugee law and humanitarian law. This support office could hold training courses for border guards on the distinctions between refugees and other migrants in cooperation with the UNHCR, which currently provides and participates in these courses, mainly but not solely on the EU's eastern borders since the expansion of the Schengen area (Hungary, Poland, Slovakia, Slovenia).

2.12 Recommends that measures taken to control immigration do not result in the violation of fundamental rights, namely the right to seek and obtain protection from persecution.

2.13 Calls for emphasis to be placed on the absolute obligation of ships' captains in cases of interception and rescue at sea to come to the assistance of persons in distress; and for steps to be taken to resolve the lack of recognition of their responsibilities relating to the disembarkation of persons rescued at sea and to provide for the immediate examination of claims and grant international protection if necessary.

2.14 With regard to the specific debate surrounding the establishment of a common European asylum procedure, the Committee recalls the recommendations and warnings set out in its opinion, CESE 1644/2004 of 15 December 2004,

concerning any lowering of protection standards liable to occur during the 2004-2008 period between the consultation on the single procedure and the Green Paper on the common asylum system.

2.15 Reminds Member States that, irrespective of the type of procedure (administrative or judicial), every stage must be governed by the logic of protection and not prosecution.

2.16 Recommends that the Commission and the Council ensure clarity and transparency in the allocation and use of the European Refugee Fund for 2008-2013, under the general programme 'Solidarity and Management of Migration Flows' as recommended in its opinion <sup>(5)</sup>, in which it 'calls for practical provisions to be included in the decisions setting up these various funds to ensure that non-state operators are associated at as early a stage as possible in the annual and multi-annual framework of guidelines drawn up by the Member States and by the Commission itself.

2.17 Recommends that the pro rata financial incentives in proportion to the considerable efforts of certain Member States — such as Sweden for instance — or the limited capacity (geographical size and pro rata to population) — such as Malta and Cyprus — do not lead other Member States to shirk certain of their responsibilities and obligations in terms of access to their territory and the processing of asylum claims, or resettlement of refugee groups, whether internal (solidarity and burden sharing) or external (contribution to extraregional efforts).

### 3. General comments

3.1 The Committee welcomes the public consultation on the future CEAS via the Green Paper. It is pleased that the Commission has taken this opportunity to draw attention to deficiencies in European legal provisions and the differences between European laws and the practices of Member States.

3.2 The Committee urges the Commission and the Council to ensure that discussions on the management of borders do not undermine the fundamental right to seek asylum or international protection, including land, air and maritime border measures, and especially in the case of interception and rescue at sea, both within and outside the territorial waters of Member States.

3.3 With regard to combating terrorism in particular, as well as crime and human trafficking, the Committee urges the Commission and the Council to ensure that insecurity around the world does not have a negative impact on public perceptions of refugees and asylum seekers, and does not jeopardise the integrity and nature of asylum.

<sup>(5)</sup> EESC opinion of 14 February 2006, rapporteur: Ms Le Nouail Marlière (OJ C 88 of 11.4.2006), point 2.4 and the Conclusions, fourth indent.

#### 4. Specific comments

##### 4.1 Legislative instruments; processing of asylum applications; national exemption clauses

According to the Commission, basing its opinion on many NGO and UNHCR reports, the 'Asylum Procedures Directive' provides for procedural standards based on common minimum criteria, leaving the Member States scope for national adaptations and exemption clauses. For this reason, persons seeking protection in the EU do not benefit from identical guarantees, which vary according to the country where they seek asylum; and sometimes, even according to the place in the country where they submit their asylum application. This flexibility has also led to a gradual decrease in respect for asylum seekers' rights, as can be seen from certain recent national legislative reforms.

The Committee supports the objective of setting up a common European asylum system with the fundamental aim of ensuring that every asylum seeker has access to fair and efficient procedures. For this reason, **the implementation of a common procedure hardly seems compatible with the national exemption clauses applied by Member States.** The Committee will be vigilant regarding the common nature of the procedures put forward in the Commission's action plan, as well as to ensure that the definition of procedural rules and common criteria is not harmonised according to the lowest common denominator for refugee protection.

##### 4.2 Safe countries of origin

The Committee is concerned about obstacles to some asylum seekers' access to fair procedures, in violation of the principle of non-discrimination as set out in the Geneva Convention (Article 3).

Thus people from countries considered as 'safe' or 'safe third party countries', whose claims may be deemed 'unfounded' under fast track, 'accelerated' or 'priority' procedures have no safeguards for their right of review and appeal. The fact that Member States have been unable to agree on a common list creates de facto inequalities, especially with regard to the application of the Dublin II regulation: the 'Member State responsible' may therefore declare an asylum claim to be inadmissible under its national list of safe countries, whereas this country may not feature on the list of the country returning the asylum seeker.

The Committee recommends that Member States rapidly draw up a single list.

Recalling that 'free and unrestricted access to their territory and asylum procedures constitutes a fundamental guarantee that the Member States must strive to provide' <sup>(6)</sup>, the Committee

<sup>(6)</sup> EESC opinion of 26.4.2001 on the Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, rapporteur Mr Melícias (OJ C 192 of 10.7.2001), point 3.2.2.

believes, moreover, that an 'application for asylum cannot be dismissed solely by invoking the concept of safe third country' <sup>(7)</sup>, but must be supported by a specific examination, in application of the Geneva Convention. Indeed, the obligation to examine applications for protection and asylum on a case-by-case basis excludes the concept that a country may be considered safe for each and every individual, and that a person cannot be subject to persecution due to his/her specific status (belonging to a social group, persecution by state- or non-state agents or for other reasons).

Furthermore, it would stress that the provisions set out make it impossible to guarantee that the country to which the asylum seeker is being returned can offer him effective and lasting protection.

##### 4.3 Review and appeal (suspending execution of decisions)

In application of the principles of effectiveness and equity, decisions rendered in this context should not be exempt from review by an impartial and independent authority or court. Noting that some Member States apply this right restrictively or artificially in many situations, the Committee stresses the fact that such appeals/reviews should always have the effect of suspending execution of the decision and calls on the Commission and Council to monitor the situation.

##### 4.4 Country of origin information

The EESC considers that the examination of applications for asylum must be accompanied by reliable data provided on the real risks presented in the countries of origin. In its opinion of 26 April 2001, the Committee stated that 'information regarding the asylum applicant's country of origin and the transit countries he has crossed [should] also be able to be provided by organisations which are recognised as representing civil society and which are active in the Member State examining the asylum application' <sup>(8)</sup>.

In view of setting up a common system for all Member States, the Committee believes that the quality and homogeneity of first instance decisions will depend largely on the quality and homogeneity of available country of origin information consulted by the Member States' authorities or judicial bodies.

##### 4.5 Asylum at the border

The Committee notes that Member States are called on to improve access to procedures but is concerned by the inadequacy of information to applicants regarding their rights and the guarantees to which they are entitled.

<sup>(7)</sup> Melícias, point 3.2.12.3.

<sup>(8)</sup> EESC opinion of 26.4.2001 on the Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, rapporteur Mr Melícias (OJ C 192 of 10.7.2001), point 2.3.

Contrary to what the press would have us believe, there is a steady fall in asylum applications made in the EU <sup>(9)</sup>. This leads the Committee to reiterate that all asylum seekers, **irrespective of their situation or location**, are entitled to an effective examination of their applications. **This means that they should have access to an interpreter, free legal assistance and sufficient time to present their case.** It recalls its previous proposal that asylum seekers should also be entitled 'to contact recognised NGOs which defend and promote the right of asylum' <sup>(10)</sup>.

In the same spirit, the Committee reiterates previously expressed reservations regarding the excessive application by Member States of the 'manifestly unfounded' concept to asylum claims. It notes an excessive increase in the application of this concept, which results from the unduly vague wording of Article 23(4) of the Asylum Procedure Directive, and considers it necessary to reframe this concept. In agreement with the UNHCR on this point, **the Committee reiterates its hope that 'the principles which are essential to a fair asylum procedure (...) apply to all asylum applications, including those which are manifestly unfounded'** <sup>(11)</sup>.

As a consequence, the Committee would like to express its interest in the Commission's proposal to strengthen 'the legal safeguards accompanying the crucial initial stage of border procedures and in particular the registration and screening process'.

#### 4.6 Single procedure

The Commission believes that '[s]ignificant progress (...) may furthermore be achieved by including as a mandatory element in the CEAS a single procedure for assessing applications for refugee status and for subsidiary protection' <sup>(12)</sup>. It would appear that where the single procedure has been implemented, it has indeed significantly reduced waiting times for decisions and, consequently, uncertainty for the asylum seeker.

This procedure means that the asylum seeker has to deal with a 'one-stop shop' and that the decision-making authority first reaches a decision on recognition of refugee status under the Geneva Convention and then, and only as a complementary measure, on subsidiary protection. **In order to fulfil this objective, such a procedure must apply everywhere, including to asylum applications submitted at the border** <sup>(13)</sup>.

<sup>(9)</sup> In 2006, 192 300 asylum applications were made in EU-27, i.e. 50 % less than in 2001 and 70 % less than in 1992 (EU-15) — Eurostat, *Statistics in Focus*, Issue No. 110/2007.

<sup>(10)</sup> Melicías, point 3.2.4.4.

<sup>(11)</sup> Melicías, point 3.2.15.2. UNHCR press conference, and UNHCR's Recommendations for Portugal's European Union Presidency, of 15 June and 11 December 2007.

<sup>(12)</sup> Green Paper, p. 4.

<sup>(13)</sup> **Asylum in the European Union, A study of the implementation of the Qualification Directive** UNHCR, November 2007.

The Committee nevertheless stresses that, as stated in its opinion of 29 May 2002, 'subsidiary protection cannot be a means of weakening the protection conferred by refugee status' <sup>(14)</sup>. The EESC also notes, as does the UNHCR <sup>(15)</sup>, that Member States make considerable use of subsidiary protection when this has little to do with developments in the country of origin, and do not invariably substantiate this in the decision, as asylum seekers are entitled to expect.

#### 4.7 Reception conditions for asylum seekers; standards

The Committee notes that reception conditions for asylum seekers vary considerably from one Member State to another. The EESC notes that some of them would prefer harmonisation to result in more restrictive laws, such as 'placing geographical constraints on applications and residence' <sup>(16)</sup>, in the belief that this makes some countries less attractive than others.

The Committee is aware that asymmetrical national laws result in secondary movements; it cannot however conclude from this fact that there is a need to lower the standard of rights for asylum seekers. To eliminate disparities, it is not necessary to demand a higher level of protection than necessary if these standards are common to all Member States and uniformly applied.

#### 4.8 Access to training and the labour market

Certain Member States put forward two reasons against giving asylum seekers access to the labour market: they want room for manoeuvre in order to respond to the employment situation in their countries; and the fact that since asylum claim rejection rates are expected to remain high and procedures more expeditious, access to the labour market would only be temporary.

The Committee believes that despite the objective of expediting asylum procedures, their number and the nature of many cases presented by claimants could cause substantial delays in the processing of claims in some countries. The Committee notes that, as a result, although the Reception Directive sets out that 'Member States shall make provisions on material reception

<sup>(14)</sup> EESC opinion of 29.5.2002 on the Proposal for a Council Directive on *minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*, rapporteur Ms Le Nouail-Marlière (OJ C 221 of 17.9.2002), point 2.3.5.

<sup>(15)</sup> **Same study**: The Committee also refers to the proposed amendments to the Qualifications Directive (Articles 8.3; 8.1; Recital 26 of Article.15c; Articles **12 and 14** (compliance with the 1951 Geneva Convention); 17 and 19; and the following recommendations to the European Commission: requesting interpretations and decisions from the European Court of Justice; quality assurance and control of decisions throughout the European Union; Training; Adoptions of guidelines for EU Member States: application of UNHCR guidelines; Preliminary decisions of national courts to the European Court of Justice; written submission or decisions; Quality control of decisions at national level; Analysis of the potential of agents involved in protection; on-site protection; access and eligibility; serious risks; reasons for exclusion, **UNHCR November 2007**.

<sup>(16)</sup> France: *Rapport d'information déposé par la délégation de l'Assemblée nationale pour l'UE*, presented by Mr Lequiller. No 105, 25 July 2007.

conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.' (Article 13), **the integration of refugees in the host country depends on their self-sufficiency and that the latter will be all the more effective if conditions for it are met as soon as possible after their arrival.**

**In its opinion of 28 November 2001, the Committee stated that the 'possibility of access to the labour market is clearly of material and moral benefit to both asylum seeker and host country' (17); the EESC reiterates this statement and stresses that asylum seekers must have access to training, language courses and health care in particular.**

The fact that some of them will not be allowed to remain in the country if their claims are rejected is not a valid argument against measures for increasing the self-sufficiency of asylum seekers as these are 'the best foundation for a successful integration process and, where appropriate, a fair system for returning asylum seekers to their countries of origin' (18). By contrast, there is every indication that excluding them from the labour market encourages undeclared work.

The Committee shares the Commission's view that **reception standards that respect human dignity could apply without distinction to all asylum seekers, irrespective of whether they are entitled to refugee status or subsidiary protection.**

#### 4.9 Detention

The Committee has expressed its concern that some Member States place asylum seekers in 'holding centres', which are not so much reception centres as detention centres.

Echoing the Council of Europe's recommendations, the EESC has already stated that **asylum seekers should only be detained in exceptional circumstances and only for the strictly necessary period (19). Alternative solutions should be preferred (20).**

(17) EESC opinion of 28.11.2001 on the Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States, rapporteurs: Mr Mengozzi and Mr Pariza Castaños (OJ C 48 of 21.2.2002), point 4.3.

(18) *Idem*, point 3.1.

(19) EESC opinions of 26.4.2001 on the Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, rapporteur Mr Melícias (OJ C 192 of 10.7.2001), point 3.2.11.

(20) Report of an international fact-finding mission: *Locking up foreigners, deterring refugees: controlling migratory flows in Malta*, International Federation for Human Rights, Catherine Teule, point 4-1.1. See also modernisation of monitored but open reception centres during the accession of Romania to the EU, observed during a mission carried out during the preparation of the EESC opinions of 15.12.2004 on the Communication from the Commission to the Council and the European Parliament on *the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin — Improving access to durable solutions* and on the Communication from the Commission to the Council and the European Parliament on *A more efficient Common European Asylum System: The single procedure as the next step*, rapporteur: Ms Le Nouail Marlière (OJ C 157 of 28.6.2005).

In any event, a claimant placed in such a situation should not be treated like 'a criminal' and should have the same access to free, impartial and qualified legal aid as any other asylum seeker. NGOs should be in a position to intervene in order to provide advice and assistance to asylum seekers. Vulnerable persons (21), including minors, and especially unaccompanied minors, must receive special protection.

Persecution specific to certain women must be taken into consideration as grounds for protection on an individual basis and independently of any persons accompanying or accompanied by them (minors, or husbands, relatives, and others).

The Committee further believes that 'holding centres' should be subject to regular monitoring by the European Committee for the Prevention of Torture (CPT).

#### 4.10 Granting protection

Persons who are not entitled to protection but cannot be expelled

The Commission intends to harmonise the status of persons who, for specific reasons, cannot be removed from the country even though their asylum claim has been rejected. This consists in applying the principles set out in international instruments on the rights of refugees and human rights, backed systematically by the case-law of the European Court of Human Rights.

The practices of Member States vary in this regard, and the Committee considers it necessary **for the grounds for this status to be defined uniformly throughout the EU**. It is particularly unacceptable that in some countries people are deemed to be 'without status', i.e. they have no residence permit but cannot be expelled, and therefore find themselves in a precarious legal, social and economic situation, which is incompatible with their human dignity. Thus they become subject to policies for the removal of persons in irregular situations. Without seeking to underplay the complexity of the issue, the Committee believes that **such circumstances should result in the issuance of temporary residence permits entitling the holder to work.**

#### 4.11 Solidarity and burden sharing

Responsibility sharing — the Dublin system

In an opinion dated 12 July 2001 on a common asylum procedure and a uniform status (22), the Committee delivered its opinion on the application of the Dublin Convention. It noted

(21) As defined by the UNHCR (*Master Glossary of Terms*, June 2006): physically, mentally or socially disadvantaged persons who may be unable to meet their basic needs and may therefore require specific assistance. (pregnant women, children, the elderly, infirm, disabled, etc.).

(22) EESC opinion of 12.7.2001 on the Communication from the Commission to the Council and the European Parliament: *Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum*, rapporteurs: Mr Mengozzi and Mr Pariza Castaños (OJ C 260 of 17.9.2001).

that the mechanism created more problems than it solved and its cost outweighed its results, without preventing asylum seekers from disappearing before they can be returned to the country of first entry.

Returning to these points, the Committee believes that the relevance of the Dublin system (Dublin and EURODAC Regulations) was that it raised the question of asylum procedures at EU level. However, the EESC also notes that the system, whose primary objective was to 'quickly establish which Member State is responsible for the examination of an asylum application', did not achieve its ancillary objective, which was to 'prevent secondary movements between Member States' <sup>(23)</sup>. Furthermore, it has created additional burdens, which are sometimes very onerous for certain Member States, and in particular, for those at the EU's external border.

Moreover, according to an evaluation carried out by the Commission <sup>(24)</sup>, some Member States transfer more or less the same number of asylum seekers between each other, so much so that it would be conceivable 'to allow Member States to conclude bilateral arrangements concerning' annulment 'of the exchange of equal numbers of asylum seekers in well-defined circumstances' <sup>(25)</sup>. Registering the fingerprints of asylum seekers with EURODAC should in itself be enough to further reduce asylum shopping and multiple applications.

**The Committee notes that the human cost of applying the Dublin system outweighs its technical objectives.** It believes that adopting common standards by minimising the differences in the way Member States process applications should reduce the importance of this criterion (vis-à-vis other criteria) in the minds of asylum seekers when they decide to apply for asylum in one country rather than another. On the other hand, cultural and social considerations will continue to play an undeniable role in a refugee's integration in the host country.

As a result, the Committee recommends, as it has already done in previous opinions <sup>(26)</sup>, that **asylum seekers should be free to choose in which country to submit their asylum applications and that, for this reason, Member States should apply forthwith the humanitarian clause set out in Article 15(1) of the Regulation.** Insofar as recognised refugee status confers the freedom to travel to countries other than the State having recognised such status, this would amount to no more than anticipating the implementation of this right.

In any event, the Committee believes that the **Regulation should not be applied to unaccompanied minors** unless this is the best interests of the child.

<sup>(23)</sup> Green Paper, point 12.

<sup>(24)</sup> Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system — COM(2007) 299 final — 6 June 2007.

<sup>(25)</sup> COM(2007) 299, page 8.

<sup>(26)</sup> EESC opinion of 12.7.2001 on the Communication from the Commission to the Council and the European Parliament: *Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum*, rapporteurs: Mr Mengozzi and Mr Pariza Castaños (OJ C 260 of 17.9.2001) and EESC opinion of 29.5.2002 on the Proposal for a Council Directive on *minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*, rapporteur: Ms Le Nouail Marlière (OJ C 221 of 17.9.2002).

#### 4.12 Financial solidarity

Reforming the Dublin system along these lines should significantly reduce the burden of Member States that are currently the first destinations of asylum seekers. It nevertheless remains that there are marked differences in the number of applications registered in individual Member States. An efficient burden-sharing system therefore seems necessary to help those States where the highest number of applications is registered.

So-called 'internal' resettlement (within the European Union) could also be a partial solution but it cannot become a rule or a single solution especially as **resettlement should only take place with the explicit and informed consent of the refugee concerned and subject to guarantees that the conditions for resettlement offer the refugee a high level of integration in the new host country.**

#### 4.13 External dimension of asylum

Supporting third countries to strengthen protection — Regional protection programmes

Based on experience gained through the regional protection programmes designed to provide protection for refugees in their own regions of origin or in transit countries, the Commission intends to consolidate them and put them on a permanent footing. This policy in line with the broad outlines of the Hague Programme.

The Committee supports all initiatives liable to improve reception conditions for asylum seekers in third countries. However, it queries the final objective underlying the establishment of reception centres in certain countries, such as the new independent States (Ukraine, Moldova, Belarus), which seem far from able to guarantee reception conditions for asylum seekers. The EESC therefore emphasises that these programmes would appear to be intended not so much to improve protection for refugees as to reduce their chances of presenting themselves at EU borders.

The Parliamentary Assembly of the Council of Europe <sup>(27)</sup> states that if such centres are to be established, **they should be created first within the European Union before extending the experiment outside the frontiers of the European Union or outside of Europe**. The Committee emphasises that countries that have not ratified the 1951 Convention Relating to the Status of Refugees (Geneva, 1951) should be excluded from these programmes. Nevertheless, the Committee is in favour of the European Union showing solidarity with certain third countries coping with mass or minor influxes.

<sup>(27)</sup> Council of Europe — Parliamentary Assembly: Assessment of transit and processing centres as a response to mixed flows of migrants and asylum seeker's — Doc. 11304, 15 June 2007.

#### 4.14 Mixed flows at the external borders

The Committee recalls that in its opinion on Frontex, it had stressed that efficiency in border control should not come into conflict with asylum rights. 'The Agency's tasks must also include co-ordinating rescue services — particularly sea rescue — to warn and help people who are in danger owing to the high-risk practices employed in illegal immigration' <sup>(28)</sup> and called for **coast guards to be trained in humanitarian law**.

With regard to maritime interception, the Committee notes that no procedures for examining applications to enter the territory, a fortiori asylum claims, exist. The EESC calls for steps to be taken to ensure that such procedures are implemented, namely so that asylum applications can be registered as close as possible to the point of interception.

#### 4.15 The role of the EU as a global player in refugee issues

The Committee believes that in framing a common asylum policy, the EU should also organise the future system in such a way that it also serves as an inspiration for other parts of the world by playing an exemplary role in the system of international protection for refugees, by ensuring that European laws are in full compliance with international refugee law and humanitarian law, and by assuming its own responsibilities.

Brussels, 12 March 2008.

#### 4.16 Monitoring instruments

The Committee notes that the Commission has asked it to deliver an opinion on the future framework for a common European system at a time when the instruments and initiatives of the first phase have not been evaluated, and the directives have yet to be transposed into all national legislations. In order to respect the 2010 deadline, it advocates identifying adaptation mechanisms for the purposes of future evaluations and recommends that the implementation of new instruments and/or the review of existing instruments should be accompanied by a monitoring system to analyse the effects of a common asylum system and the situation of refugees. This task could be delegated to the support office envisaged in the Green Paper, and the UNHCR, NGOs active in this field and the Fundamental Rights Agency of the European Union could be associated with the office. This work could also culminate in an annual report to be submitted to the EU institutions.

The Committee calls on the Commission to subsequently deliver an annual report on the implementation of the common system to the consultative committees (the EESC and the CoR) and the European Parliament.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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<sup>(28)</sup> EESC opinion of 29.1.2004 on the Proposal for a Council Regulation establishing a *European Agency for the Management of Operational Co-operation at the External Borders*, rapporteur: Mr. Pariza Castaños (OJ C 108 of 30.4.2004), point 3.2.

**Opinion of the European Economic and Social Committee on the Proposal for a decision of the European Parliament and of the Council establishing an action programme for the enhancement of quality in higher education and the promotion of intercultural understanding through cooperation with third countries (Erasmus Mundus) (2009-2013)**

COM(2007) 395 final

(2008/C 204/18)

On 10 September 2007 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*Proposal for a decision of the European Parliament and of the Council establishing an action programme for the enhancement of quality in higher education and the promotion of intercultural understanding through cooperation with third countries (Erasmus Mundus) (2009-2013)*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 February 2008. The rapporteur was **Mr Soares** and the co-rapporteur was **Mr Rodríguez García-Caro**.

At its 443rd plenary session, held on 12 and 13 March 2008 (meeting of 12 March), the European Economic and Social Committee adopted the following opinion by 125 votes, with no votes against and two abstentions.

## 1. Summary and recommendations

1.1 The European Economic and Social Committee welcomes the Proposal for a Decision of the European Parliament and of the Council establishing an action programme for the enhancement of quality in higher education and the promotion of intercultural understanding through co-operation with third countries (Erasmus Mundus) (2009-2013), which extends and improves the current Erasmus Mundus action programme, which the EESC also welcomed in its time.

1.2 In the Committee's view, the aim of making European universities centres of excellence attracting students from all over the world is of the utmost importance and should help to demonstrate the high quality of higher education and research in Europe. The EESC considers, however, that the programme should not contribute to the brain drain from third countries. To this end, it urges the Commission to study, in cooperation with third-country authorities and universities, strategies to encourage students and lecturers to take advantage of what Erasmus Mundus has to offer, and subsequently return to their countries of origin to contribute to sustainable development there. The Committee wishes to emphasise that, if this aim is to be achieved, EU development cooperation policies should be closely linked to programmes such as Erasmus Mundus.

1.3 The EESC notes the contribution that the new action programme will make to boosting mobility for lecturers by allocating teaching staff 40 % of all planned scholarships, as opposed to the 16.6 % under the current programme which is still in force. Such exchanges should be seen as a source of not only scientific but also cultural and educational enrichment. To this end, the Committee wishes to emphasise that the mobility of lecturers and students should no longer be an individual responsibility — as it is in many cases today — and increasingly become an institutional one.

1.4 The Committee urges Member States and the Commission to ensure that barriers arising from national legislation

affecting the mobility of lecturers and students, in terms of both access to the different EU Member States and the recognition and validation of qualifications acquired, are eliminated as quickly and effectively as possible, so that no one wishing to take part in the programme is prevented or discouraged from studying or teaching abroad.

1.5 The EESC considers that the selection procedures should provide for EU-level compensation measures in order to prevent serious imbalances between students' and academics' areas of study and regions of origin and the destination Member States. The Committee therefore endorses the wording in the Annex to Decision No 2317/2003, establishing the Erasmus Mundus Programme, and recommends that the European Parliament and Council also include this in the proposal under consideration.

## 2. Proposed decision

2.1 The overall aim of the decision is to enhance the quality of European higher education, to promote dialogue and understanding between different societies and cultures through cooperation with third countries, and to promote EU external policy objectives and contribute to the sustainable development of third countries in the field of higher education. The programme covers the 2009-2013 five-year period.

2.2 The specific objectives of the proposed decision are as follows:

- a) to foster structured cooperation between higher education institutions and academic staff in Europe and third countries [...];
- b) to contribute to the mutual enrichment of societies [...] by promoting mobility for the most talented students and academics from third countries to obtain qualifications and/or experience in the European Union and for the most talented European students and academics towards third countries;



- c) to contribute towards the development of human resources and the international cooperation capacity of higher education institutions in third countries [...];
- d) to improve accessibility and enhance the profile and visibility of European higher education in the world as well as its attractiveness for third-country nationals.

2.3 This initiative is to be implemented by means of the following measures:

- Erasmus Mundus joint masters programmes and joint doctoral programmes [...];
- partnerships between European and third-country higher education institutions [...];
- measures enhancing the attractiveness of Europe as an educational destination [...];
- support for the development of joint educational programmes and cooperation networks facilitating the exchange of experience and good practice;
- enhanced support for mobility, between the Community and third countries, of people in the field of higher education;
- promotion of language skills, preferably providing students with the possibility of learning at least two of the languages spoken in the various countries in which the higher education institutions are situated [...];
- support for pilot projects based on partnerships with an external dimension designed to develop innovation and quality in higher education;
- support for the analysis and follow-up of trends in, and evolution of, higher education in an international perspective.

2.4 This programme aims to pursue the activities of the first phase (2004-2008) <sup>(1)</sup>, but aims to be more ambitious by incorporating the External Cooperation Window more directly, extending its scope to all levels of higher education, improving funding opportunities for European students and offering enhanced possibilities for cooperation with HEIs located in third countries.

### 3. General comments

3.1 As it stated in its opinion on the Erasmus World programme (2004-2008) <sup>(2)</sup>, the Committee welcomes the proposed decision of the Parliament and the Council, together with the initiatives that have been and are being adopted to help enhance the quality of education in the European Union and boost cooperation with third countries, in line with Article 140 of the EC Treaty.

3.2 At that time, the Committee signalled 'its support for the adoption of specific initiatives which will pave the way for quality higher education based, *inter alia*, on cooperation with third countries, by working in partnership with top universities and attracting renowned scholars and the best qualified students from the countries

<sup>(1)</sup> See EESC Own-initiative Opinion of 26.2.2003 on the *Proposal for a European Parliament and Council Decision establishing a programme for the enhancement of quality in higher education and the promotion of intercultural understanding through cooperation with third countries (Erasmus World) (2004-2008)*, rapporteur: J.I. Rodríguez García-Caro (OJ C 95 of 23.4.2003).

<sup>(2)</sup> *Idem*.

*concerned. This mutually beneficial synergy will contribute to the development of closer links and lay the foundations for better understanding and cooperation in the future between the European Union and the participating countries' <sup>(3)</sup>.*

3.3 Bearing in mind that the same kind of programme is involved here, the EESC would reiterate the comments it made at that time, with slight but important changes, and add the following remarks:

3.3.1 The Erasmus Mundus programme is concurrent with steps to achieve the main aim of the Bologna process, which is designed to create a European area for higher education and research by the year 2010 through reforms aligning national higher education systems.

3.3.2 However, it also coincides with another, outward-looking goal, namely to promote Europe in the eyes of the world as an area where there is quality higher education and research. Hence it is essential for the Bologna process to succeed, so that more than just the current handful of European universities attract young students from third countries.

3.3.3 This the Commission has acknowledged by accepting the Bologna process as an integral part of its education and training policy, with the same status as research in the European Union.

3.3.4 The objective — creating a 'European area of higher education' — implies a further aim, namely to attract students and lecturers from third countries. Given that this is an important, even essential goal for enhancing Europe's position in the world, the EESC would once again alert those concerned to the need to stem the brain drain from developing countries.

3.3.5 Action 2 (Erasmus Mundus partnerships) is a good example of this because, as well as taking account of the specific development needs of the third country/countries, it provides for limited, short-term stays. The measures proposed should, in the Committee's view, allow both teachers and students from third countries to benefit from a valuable period teaching and studying at European universities, but those concerned should be strongly encouraged to return to their country of origin so that they can contribute to sustainable development and social cohesion in their homeland and, at the same time, bring the high quality of EU universities to public notice in countries outside the European Union.

3.3.6 The risk of the brain drain speeding up precisely from those countries where brain power is needed — particularly due to a lack of market opportunities or quite simply of proper conditions for continuing scientific work — may also be countered by developing masters degrees and doctorate programmes in third countries, which include courses and study programmes in European countries which do not last long enough for students to feel uprooted from their country of origin.

<sup>(3)</sup> See EESC Opinion of 12.12.2007 on *Migration and development: opportunities and challenges*, rapporteur: Sukhdev Sharma (CESE 1713/2007 — REX/236).

3.3.7 This risk could also be reduced by means of measures involving the universities themselves, incorporating return strategies in any agreement signed, possibly even including compensation measures.

3.3.8 The Erasmus Mundus programme, which forms part of a global approach in European Union policies and ties in with the Lisbon strategy to turn Europe into a knowledge-based economy which is the most dynamic and competitive economy in the world — be it in terms of cooperation with the countries with which it already has agreements or as part of a broader approach to strategic cooperation with third countries — should also view the issue of brain drain as a serious problem for balanced development in the countries with which it works <sup>(4)</sup>.

3.3.9 It is also important to stress that this programme has another objective, which is to promote the exchange of cultures through better quality education and scientific rigour <sup>(5)</sup>. Hence this programme should not serve as a pretext for introducing a commercial perspective into higher education, but rather should foster high quality education, independent research, respect for academic freedom and, as envisaged in the proposal, help step up the fight against all forms of social exclusion.

3.4 Lastly, along the same lines as the Bologna process, the internal and external assessment system for universities needs to be based on criteria that take account of the current academic situation and act as an incentive to reach high levels of excellence — a *sine qua non* if they are to succeed in attracting students and lecturers from third countries, whilst at the same time preserving their identities.

#### 4. Specific comments

4.1 One key aspect of the Erasmus Mundus programme relates to the mobility of students and lecturers. The Bologna experience has demonstrated that more attention has been paid to the mobility of students than to that of lecturers, despite the fact that the importance of lecturer mobility for guaranteeing success in the Bologna strategy has been underlined in several declarations. The Council of Europe also stressed this in 2006, stating that the strategy was incomplete and inconsistent.

4.1.1 With the above as a case in point, it is important that Erasmus Mundus constitute a factor propitious to such lecturer mobility and, as defined in one of the six main objectives of the Bologna process with regard to lecturers and researchers, it is also important to overcome the obstacles impeding effective lecturer mobility, paying particular attention to the recognition and development of skills and expertise gained in research, teaching and training during the period of absence from the lecturer's usual place of work.

4.1.2 It is essential to take into account the various aspects of the matter, which cannot be played down:

- discrepancies between the educational systems in the countries receiving and sending lecturers;

<sup>(4)</sup> See EESC Opinion of 25.10.2007 entitled 'EU immigration and cooperation policy with countries of origin to foster development', rapporteur: L.M. Pariza Castaños (OJ C 44 of 16.2.2008).

<sup>(5)</sup> See EESC opinion of 20.04.2006 entitled 'Proposal for a Decision of the European Parliament and of the Council concerning the European Year of Intercultural Dialogue (2008)', rapporteur: Agnes Cser (OJ C 185 of 8.8.2006).

- the need to recognise and capitalise on the training, and teaching and research experience of those concerned;

- recognition not only of scientific contributions but also of socio-cultural values;

- exchanges of lecturers and researchers, to be viewed as enhancing culture and education and not only as a way of selecting the best qualified lecturers, students and researchers from third countries, as if they were 'qualified' immigrants.

4.1.3 In this particular context, efforts must be made to ensure that lecturer exchange is a factor benefiting the countries receiving and sending lecturers, the students and also the universities themselves. Enabling people from third countries to acquire qualifications and knowledge through study visits to Europe could be one means of fostering the type of intellectual exchange that benefits both the countries sending their academics and students and those receiving them. Of the different forms of exchange, visits and short study programmes, sabbaticals and specific research programmes are the best known, but there is still a wide range of other possibilities in this domain.

4.2 The Communication mentions some aspects which the EESC fully supports and which, by virtue of their importance, should be underlined:

4.2.1 The challenge of achieving linguistic diversity in Europe, raised by this whole issue, should be viewed as an additional opportunity by those opting for Europe as a destination. Recognising that one particular language is in the process of becoming the 'language of science' does not mean ignoring the value for education and research in a globalised world of learning other languages; such learning ensures linguistic richness and more opportunities for all, including those citizens and residents of the European Union who only speak their mother tongue.

4.2.2 The complicated migration rules which are continually being changed (and becoming increasingly inflexible) constitute another problem to bear in mind in relation to academics and students from third countries. In no way can or should this constitute grounds for impeding the mobility of lecturers, researchers or students. In particular, the European Council resolution on granting visas to students and teachers involved in this type of programme should be finalised.

4.2.3 Erasmus Mundus must also fully meet another of the objectives proposed: it should be an instrument for combating all forms of exclusion, including racism and xenophobia, and should help smooth out inequalities between men and women.

4.3 The findings of a study carried out by the Academic Cooperation Association between 2004 and 2005 at the request of the Commission highlight the need to define a European strategy to establish a European area of higher education, in

order to counter the idea that in Europe only universities in the most highly developed countries, or those with the most illustrious university traditions, can offer quality.

4.3.1 This strategy was based on the requirement (already formalised in the current Erasmus Mundus programme) that partnerships must be established between at least 3 universities from at least 3 countries in order to be eligible to apply for the scheme. The 2009-2013 programme upholds this requirement, which the EESC fully endorses <sup>(6)</sup>.

4.3.2 Nevertheless, other elements are crucial to improving European universities' ability to attract students, relating to their international prestige, the quality of the teaching body, cost of studies, value of the scholarships awarded, prestige of the degrees, subsequent job opportunities, knowledge which people in third countries have about the different universities in EU countries, and also the cost of living and how easy or difficult it is to obtain an entry visa. Consideration of all of these factors, in particular the cost of living and tuition fees, should be decisive when deciding on the award of scholarships.

4.3.3 Hence this new phase in the Erasmus Mundus programme should present an opportunity for discussing with university representatives, lecturers and students measures which might help publicise the merits of other universities in other EU countries, with a view to encouraging students and lecturers from third countries to apply to a wider range of such institutions.

4.3.4 One way to achieve this is, taking the good example of the Bologna process, to raise the profile of the European University Area as a whole in the information sources currently consulted by those intending to study outside their country of origin (internet, websites, EU representations).

4.3.5 Thus it might be possible, through close institutional cooperation between Member States, the Commission and university authorities, i) to create a well prepared European university portal, permanently kept up to date, easily accessed, with attractive content and widely publicised, allowing access to the portals of the different European universities and ii) to create departments in EU representations specifically geared to providing information about the European University Area.

4.4 One element essential to the capacity of the European University Area to attract students and lecturers is the presence of a highly qualified, well paid and professionally recognised body of teachers.

4.5 The EESC reiterates its firm belief that the Erasmus Mundus programme offers an excellent opportunity for detecting the most promising young students, teachers and researchers from third countries, who will most certainly be of great value for the development of Europe itself. However, it feels it must point out that many young European graduates encounter serious difficulties in finding decent and appropriate work in their own countries. Rather than an observation about the Erasmus programme, this should be seen more as a call to launch a debate on that particular issue.

4.6 It is important to stress that, in many developing countries, only public universities have the capacity to democratise higher education, eradicating discrimination and inequality (one of the declared objectives of the Erasmus Mundus programme). To this end, and regardless of the fact that the programme should not draw any distinction between the public and private sectors, it should in such cases help consolidate and bolster public universities in third countries, helping them meet their goals to produce high quality education and research, with academic freedom.

4.7 Article 5f) of the text of the proposal should include a reference to the social dialogue partners (employees and employers' representatives), since the social partners are aware of what is happening on the ground, as well as the skills and qualifications which the labour market really requires. The economic and social development needs of third countries should also be taken into account when planning the content of masters degrees and doctorates.

4.8 In the Annex to Decision 2317/2003 establishing the current Erasmus Mundus programme, indent b) states that 'selection procedures shall provide for a clearing mechanism at European level, in order to prevent serious imbalances across fields of study and students' and scholars' regions of provenance and Member State of destination'. This reference has been left out of the annex to the proposal for the new Erasmus Mundus programme. If one of the priorities of the programme is to raise the profile of European universities and secure their participation in the programme, the Committee feels that implementing this principle in the selection of participating centres is a priority, in order to avoid a situation where support from the programme goes to the same Member States and the same universities.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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<sup>(6)</sup> Data published by the Commission show that over 350 universities from almost every EU country have to date been involved with the Erasmus Mundus programme, with universities from 12 of the 27 Member States having taken responsibility for coordinating the schemes. The data also shows that most of these schemes have involved partnerships with more than 4 universities from different countries.

**Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Action Plan on adult learning — It is always a good time to learn**

COM(2007) 558 final

(2008/C 204/19)

On 27 September 2007, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Action Plan on adult learning — It is always a good time to learn.*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 February 2008. The rapporteur was Ms Heinisch. The co-rapporteurs were Ms Le Nouail Marlière and Mr Rodríguez García-Caro.

At its 443rd plenary session, held on 12 and 13 March (meeting of 13 March), the European Economic and Social Committee adopted the following opinion by 117 votes to nil with one abstention.

## 1. Conclusions and recommendations

1.1 The Committee welcomes the European Commission's move to open up a new facet of its education and training work programme through its first action plan on adult learning *It is always a good time to learn*, covering the period 2007-2010. The Committee backs the plan, subject to the comments set out in this opinion.

1.2 The Committee is pleased that, thirteen years after their introduction, the European programmes designed to promote adult learning are, for the first time, to be given their own political working base. The Commission communication on adult learning <sup>(1)</sup> that preceded the action plan, did, as it itself indicates, have a twofold objective: to prepare the ground for the 'Grundtvig' <sup>(2)</sup> programme on the one hand, and to formulate a corresponding political action plan for adult learning on the other.

1.3 The Committee regrets that this first plan does not yet include among its priorities the expansion of non-vocational adult learning, i.e. the non-formal and informal learning opportunities that people — those in employment and others — need to further their overall personal development and strengthen democratic citizenship. It notes that the action plan devotes a great deal of attention to the familiar objectives — which the Committee also supports — of improving European cooperation in the field of vocational training.

1.4 The Committee urges that an attractive environment should also be created to meet the specific learning interests of people not in employment as a conduit to their 'active participation' in lifelong learning.

1.5 Against the backdrop of demographic change, the Committee feels that a major shift is needed in the way adult learning is organised and in the topics it covers.

1.6 The Committee would also urge that, across all areas of education and training, careful thought be given to why, in the way they divide up their work, various tiers of education policy continue to focus — sometimes with a degree of overlap — on young adults, and would instead suggest that specific adult learning structures be put in place in all Member States and at a European level.

1.7 The Committee urges that nothing be done that might further marginalise smaller adult learning initiatives and facilities — or indeed squeeze them out completely — but that, instead, steps be taken to bolster their position.

1.8 The Committee feels that the main task of adult learning must not be to 'compensate' for any shortcomings in a less-than-effective formal education system. It is concerned that the number of early school-leavers has risen to over 15 %. It calls on the Member States and on the Commission to draw on the many examples of good practice in Europe and the OECD countries to press forward with socially oriented reforms in the educational field.

1.9 The Committee would ask the European Commission to draw up an accompanying plan to foster gender mainstreaming.

1.10 The Committee regrets the absence of any clear statements on the investment required.

1.11 The Committee recommends that greater attention be paid to the territorial dimension of adult learning and its contribution to social cohesion, particularly in regions in decline.

<sup>(1)</sup> *Adult learning: It is never too late to learn* (COM(2006) 614 final).

<sup>(2)</sup> With his democratic and social ideas, the Danish adult educationalist N. F.S. Grundtvig, was, in the 19th century, the inspiration behind the movement towards residential adult education centres (German: *Heimvolkshochschulen*). From 2001, the European Commission named the second adult education scheme under the new Socrates programme (2001-2006) the Grundtvig Action in his honour.

1.12 The Committee regrets that no consideration has been given to the specific types of adult teaching and learning practised in supraregional and European residential adult education centres (German: *Heimvolkshochschulen*).

1.13 The Committee recommends that steps be taken to promote new-style, multifunctional local adult education centres incorporating new technologies and e-learning.

1.14 The Committee advocates decent working conditions for teaching and administrative staff in the adult learning sector and a decent, enabling learning environment for all adults.

1.15 The Committee would urge that a feasibility study be conducted with a view to establishing, as part of the action plan, dedicated European infrastructure for research and continuing education and training in the adult learning sector and points out that work is also needed on the specific methods of adult education and their dissemination.

1.16 The Committee asks that steps be taken to promote European learning festivals as part of the international learning festival movement, and advocates that European information and motivation campaigns be conducted in a bid to make adult learning more attractive.

1.17 The Committee would ask the European Commission to give greater attention in future to the international dimension of adult learning and to involve the Committee in developments in this area. The Committee asks to be involved in the European preparations for the next UN International Conference on Adult Education (CONFINTEA VI) due to take place in Brazil in 2009.

1.18 The Committee welcomes European Commission moves to establish a set of core European data and secure greater convergence in the language used, but regrets the absence in the planned indicators of priorities more clearly specific to adult learning.

## 2. Introduction

2.1 Many European countries can look back on a long tradition of adult learning. Given its close links with movements on social issues such as workers' and women's rights, and with national and suffrage movements, adult learning for a long time had its own social and emancipatory educational agenda. Adult learning centres and adult residential schools — designed to include both cultural and educational dimensions and to promote personal development and democratic citizenship for all — came to be established in many European countries. Over time, these were supplemented by second-chance schools, vocational training facilities and colleges deliberately aimed at, among others, hitherto disadvantaged sectors of the population.

2.2 At European level, the focus of interest was for a long time on vocational training, with the establishment of commit-

tees and specialised technical bodies such as CEDEFOP and the European Training Foundation (ETF). As early as the 1970s, European programmes started to be developed and implemented to foster education and training opportunities for people with disabilities, migrants, and young people with no school or vocational qualifications, and to promote equal opportunities for women on the labour market. CEDEFOP became a forum for exchanging and appraising examples of good practice in this area.

2.3 It was not until the introduction of lifelong learning into the political arena that the European Commission also opened the door to hitherto neglected areas such as adult learning, the poor relation of education and training policy. A new stage of wide-ranging political activity began with the adoption of specific programmes to improve quality and innovation in areas like adult learning (from 1995 onwards), the designation of 1996 as the European Year of Lifelong Learning, and the principles established in the Council conclusions of 20 December 1996 on a strategy for lifelong learning. On 30 October 2000, the European Commission published the Memorandum on Lifelong Learning which maps out a strategy for the development of a lifelong learning system and puts forward six key messages for discussion setting the broad objectives of this system<sup>(3)</sup>.

2.4 As part of the Lisbon strategy, the Council adopted decisions on lifelong learning<sup>(4)</sup> and drew up the *Education and Training 2010* work programme<sup>(5)</sup> which still failed, in its initial phase, to devote any specific attention to adult learning. In a bid to consolidate a common European vocational education and training policy, the *Education and Training 2010* work programme also kick-started the Copenhagen process, an initial outcome of which is reflected in the Helsinki Communiqué<sup>(6)</sup> published at the end of 2006.

2.5 Higher education policy was also part of the work programme but, from 1999 under the Bologna process, had also focused on major restructuring in a bid to create a European Higher Education Area. This initially marginalised moves to open up higher education institutions to disadvantaged target groups and relegated to the fringes the very remit of providing university-level continuing education and training.

2.6 In addition to activities under the *Education and Training 2010* work programme, the past few years have also seen European-level moves to secure the integrated promotion of 'young people's full participation in education, employment and society'<sup>(7)</sup>. No measures of this kind are yet in place for adults in different age groups.

2.7 The European Commission's *New Framework Strategy for Multilingualism*<sup>(8)</sup> and its communication on *a European agenda for culture in a globalising world*<sup>(9)</sup> also indirectly opened up new pathways for adult learning.

<sup>(3)</sup> SEC(2000) 1832, 30.10.2000.

<sup>(4)</sup> Council Resolution of 27 June 2002 on lifelong learning, OJ C 163, 9.7.2002.

<sup>(5)</sup> Detailed work programme published by the Council on 14 June 2002 on the follow-up of the objectives of education and training systems in Europe, OJ C 142, 14.6.2002.

<sup>(6)</sup> Communiqué to review the priorities and strategies of the Copenhagen Process, Helsinki, 5.12.2006, [http://www.minedu.fi/export/sites/default/vet2006/pdf/Helsinki\\_Communique\\_en.pdf](http://www.minedu.fi/export/sites/default/vet2006/pdf/Helsinki_Communique_en.pdf).

<sup>(7)</sup> COM(2007) 498 final.

<sup>(8)</sup> COM(2005) 596 final, see the EESC opinion on this subject in: OJ C 324, 30.12.2006. Rapporteur: Ms Le Nouail.

<sup>(9)</sup> SEC(2007) 570 final.

2.8 The Committee has, in principle, welcomed and supported European Commission activities over the past few years in the field of lifelong learning and has adopted dedicated opinions to back these activities up.

### 3. Summary of the action plan

3.1 The adult learning action plan *It is always a good time to learn* follows on from a Commission communication on the same subject *It is never too late to learn* <sup>(10)</sup>. The action plan seeks to lay down five European-level priorities: improving the structures for governance including quality, efficiency and accountability in the delivery of adult learning, learning support and recognition of learning outcomes.

3.2 The purpose of the action plan is to implement the objectives of the earlier Commission communication <sup>(11)</sup>: 'to remove barriers to participation; to increase the quality and efficiency of the sector; to speed up the process of validation and recognition; to ensure sufficient investment; and to monitor the sector'.

3.3 The action plan focuses on those who, because of their low level of education, inadequate vocational qualifications and/or skills, have little prospect of successful integration into society.

### 4. General comments

4.1 The Committee is pleased that the European Commission has drawn up a first action plan on adult learning covering the period 2007–2010. The Committee backs this plan wholeheartedly, subject to the comments set out in this opinion. As the action plan again makes clear, the purpose of the *Education and Training 2010* work programme is also to promote adult learning as a means of fostering social cohesion, encouraging active citizenship, facilitating a fulfilling private and professional life and securing greater adaptability and employability.

4.2 The Committee would warn against any inefficient overlap with vocational training objectives and projects under the Copenhagen process, the 2005–2008 European employment guidelines, the European Social Fund and the Leonardo da Vinci vocational education and training programme. Particular attention is already given in this context to expanding information and advice services, recognising informally acquired skills, building up and implementing the European Qualifications Framework (EQF) and furthering good governance in vocational training institutions.

4.3 The Committee continues to believe that all European citizens need lifelong access to modern adult learning opportunities. Throughout life, everyone should have the opportunity to acquire, refresh and update their skills. Demographic change, climate change, new information and communication technologies and the challenges and opportunities of globalisation are

altering our professional and private lives, necessitating completely new knowledge and skills which adults in different age groups had no opportunity to acquire when they were at school, in training or in higher education.

4.4 The Committee thus regrets the absence of an integrated, visionary concept that takes account of the learning opportunities and learning needs of all adults. Moreover, the Committee has consistently called for an enabling learning environment for all, including people with disabilities. This generates a range of synergies for all stakeholders, and also facilitates intergenerational, intercultural and multilingual learning.

4.5 As an adjunct to the action plan, the Committee would ask the Commission to assign to a group of adult learning experts the task of drawing up a gender mainstreaming plan that also includes positive action and takes due account of the need for lifelong learning.

4.6 The Committee would draw attention to the European reference framework for key competences <sup>(12)</sup> that every adult should be in a position to acquire. Reference is thereby consistently made to a range of pivotal concepts that can also underpin new organisational departures and innovative teaching methods in the field of adult learning: critical reflection, creativity, initiative, problem-solving, risk assessment, decision-making and emotional intelligence.

4.7 The Committee would encourage the Commission to consider whether the adult learning action plan might not be enriched by an attractively staged annual European learning festival and by information and motivation campaigns on lifelong learning in the press and on radio and television. The Committee calls on the Commission to address the need for outreach to encourage learning among people who have hitherto been remote from it. The Committee feels that this personal contact with socially disadvantaged people is a key element in moves to raise levels of education, boost adaptability skills for all, and secure greater equality of access to lifelong learning.

### 5. Specific comments

5.1 The Committee welcomes the fact that, at the outset (point 1), the action plan not only highlights the goal of a competitive, knowledge-based economy but also bases its approach on the vision of a knowledge society for all, that is mindful of social inclusion and social cohesion. The Committee thus also feels that any consideration of further education and training requirements and of pathways to integration through lifelong learning should also involve local players such as the social partners, businesses and civil society organisations, as well as adults placed at an educational disadvantage and their families.

<sup>(12)</sup> COM(2005) 548 final, see also the EESC opinion on the key competences in: OJ C195, 18.8.2006. Rapporteur: Ms Herczog. Alongside competence in communication both in the mother tongue and in foreign languages, alongside mathematical competence and competence in science and technology, alongside digital competence and learning to learn, other dimensions — social and civic competence, initiative and entrepreneurship, cultural awareness and cultural expression — are also equally valid.

<sup>(10)</sup> COM(2006) 614 final.

<sup>(11)</sup> Ibid.

5.1.1 The Committee stresses that the advancement of people whom the Commission terms 'low-skilled' requires not only that they themselves change, but also that steps be taken to break down the continuing barriers to learning. The Committee feels that, in the selection of target groups, the action plan fails to take due account of the barriers to learning facing people who are disadvantaged on a number of fronts, people living in poverty, in regions and localities in decline, and in homes, institutions and secure units.

5.1.2 The Committee would warn against the risk of further segregation as a result of local and supraregional 'trading' in services for such adults, for instance in cases where the work and welfare authorities contract out special education and training measures. It considers that adults would react even more positively to opportunities for training if they were given useful information on the state of the local and supraregional labour market as part of their studies and if, when applying for jobs, they were not likely to face age restrictions, either in practice or in law.

5.1.3 The Committee would stress that the linguistic and cultural richness brought to bear by migrants from both European and non-European countries is one of the Europe's key assets. Further steps should be taken to recognise degrees and other certificates from countries both inside and outside Europe. The Committee would point out that the highly diverse legal status of migrants (e.g. asylum seekers, recognised refugees, migrant workers from within Europe, third-country nationals etc.) often restricts these people's access to further education and training, although it also results in certain education and training measures — such as language courses — becoming mandatory.

5.1.4 The Committee feels that no clear conclusions are drawn from the impact of demographic change on opportunities for lifelong learning among the older generation who are no longer in paid employment. The Committee points to the many and varied recommendations set out in its own-initiative opinion on demographic change<sup>(13)</sup>. This opinion clearly states that that people of any age need to expand their knowledge base both in their private lives and at a professional level in order to help shape this development, to shoulder responsibility for others and to be able to live an independent life for as long as possible. In many professional fields, additional skills are needed, while in others, completely new service patterns are emerging for which initial and further training should be provided at an early stage.

5.1.5 For this action plan too, the Committee recommends 'making provision for learners with special needs, and actively taking into account the specific needs of people with disabilities,

<sup>(13)</sup> Cf. the EESC own-initiative opinion of 15.9.2004: *Towards the seventh Framework Programme for Research: Research needs in the area of demographic change — quality of life of elderly persons and technological requirements*. Rapporteur Ms Heinisch (OJ C 74, 23.3.2005).

in particular by helping to promote their integration into mainstream education and training'<sup>(14)</sup> and by stepping up access to distance learning (e-learning).

5.1.6 The Committee is critical that too little attention is paid to the personal learning needs of adults who, although not economically active, are committed members of their communities and of society. They often lack sufficient resources to access adult learning.

5.1.7 The Committee recommends opening up the entire formal education system more fully to the learning needs of adults. It would thus repeat its statement that the time is ripe 'to move beyond the age-related educational restrictions imposed on the European public by the European education and training systems'<sup>(15)</sup>. Satisfactory skills acquired earlier in life should be recognised within an open and more flexible formal education system. Access for all to IT equipment in educational institutions could help encourage lifelong learning and learning via the Internet.

5.1.8 Continuing learning at universities has taken a back seat in higher education policy. Universities must also assume responsibility for lifelong learning. The Committee notes that adult education provided by universities and continuing education for graduates should be closely linked to the development of adult education and be incorporated into lifelong learning arrangements.

5.2 The Committee notes that the overall objective of the adult learning action plan should be to put into practice the five key messages of the Commission communication *It is never too late to learn*. The Committee is unhappy that no action at all is proposed for the fourth key message (ensuring sufficient investment), and feels that a fourth action of this kind must at all costs be included in the plan.

5.2.1 The Committee would also recommend that industry and government put in place incentives to attract people into further learning. Expectations of a 'return' on investment by further education and training institutions (point 2.2 of the action plan) cannot be the only motivation in moves to secure greater equality of opportunity in access to lifelong learning.

5.2.2 The Committee feels that no sound estimate has yet been made of the costs involved in recognising informally acquired skills. In a pre-emptive move, the Committee would warn that this must not under any circumstances be taken as a reason for abandoning any further expansion of adult learning provision. As vectors for skills recognition, the European Qualifications Framework (EQF)<sup>(16)</sup> and the national qualifications frameworks will, in a number of Member States, remain in the early stages of development during the 2007-2010 period covered by the action plan.

<sup>(14)</sup> Cf. the EESC opinion of 10.2.2005 on the *Proposal for a Decision of the European Parliament and of the Council establishing an integrated action programme in the field of lifelong learning*. Rapporteur: Mr Koryfidis (OJ C 221, 8.9.2005).

<sup>(15)</sup> Ibid.

<sup>(16)</sup> COM(2006) 479 final, see the EESC opinion of 30.5.2007 on *Lifelong learning*. Rapporteur: Mr Rodríguez García-Caro (OJ C175, 27.7.2007).

5.2.3 The Committee also stresses the long-term social and economic costs of such large groups of people within society with such low levels of general and vocational education and training.

5.2.4 The Committee notes that indications of welcome moves for a potential opening of the ESF and the lifelong learning programme presuppose considerable shifts in emphasis at the expense of the priorities that have been in place to date, and will also require governments to use their own resources in the adult learning sector. It notes that only a few European countries and regions can draw on the ESF to any large degree to fund innovation but not as a rule to finance adult learning. The ongoing redistribution of ESF funding in the new Member States will also result in restrictions being imposed in other regions.

5.3 The Committee is pleased that the European social partners and non-governmental organisations, having been involved in the consultation process (point 1.1 of the action plan) during the preparatory stage, also have a role to play in the delivery of the action plan and are able to bring their specific expertise to bear. The EESC notes that particular attention should be paid to securing decent working conditions for service providers and a decent and enabling learning environment for adult learners, and to ensuring that such learners can also draw on their user rights, regardless of whether they pay for these services out of their own pockets or not.

5.4 For the continuing work on the action plan, the Committee also recommends the involvement of a number of European Commission directorates-general and the relevant European bodies. Cooperation of this kind would foster policy coherence between the objectives and activities of the individual directorates-general.

5.5 The Committee also welcomes the involvement in the consultation process of international organisations (point 1.1 of the action plan). As a next step, it would recommend that the European Commission, together with the directorates-general concerned, draw up an additional international adult learning action plan.

5.6 The Committee would ask that, in drawing up rules of good governance for adult learning facilities (point 2.2 of the action plan), sufficient scope be retained for diversity and plurality so that smaller, not-for-profit providers offering significant cultural added value and operating with innovative working methods also have the opportunity of securing support.

5.7 The Committee feels that modern, multifunctional local learning centres are vital to good governance (point 2.2 of the action plan).

5.7.1 The Committee welcomes the introductory reference to the 'partnership' desirable in cities and regions (point 2), but regrets the absence of any specific recommendations on the need for coordination in the systematic expansion of adult learning in a particular area. In this regard, the Committee would draw attention to the exemplary *Learning Cities and Learning Regions* movement in Europe<sup>(17)</sup>.

<sup>(17)</sup> Examples may be found in the paper published by the European Commission Directorate-General for Education and Culture *European Networks to promote the local and regional dimension of lifelong learning (The R3L Initiative)*, March 2003.

5.7.2 The Committee also recommends that, as part of the action plan, greater attention be paid to the construction of new, local, visionary and attractive learning centres for all adults across all regions of Europe. Much adult learning still has to be delivered in shared accommodation that was actually built for a different purpose and is only available at certain times.

5.7.3 The Committee regrets the lack of any express inclusion in the action plan of residential adult education centres (German: *Heimvolkshochschulen*) since, in terms of teaching methods, these, among others, shine out as beacons of European adult learning. The fact that these centres have boarding facilities makes them key meeting points for learners and teachers on the move from across Europe. Over the last ten years, subsidies to these centres have been cut considerably, and a number — including those with a high European profile — have closed in recent years.

5.8 The Committee feels that the opportunities and difficulties involved in new communications technologies should be more fully reflected in the implementation of the action plan and should also be factored into the action plan itself to a greater extent. Lack of IT access is a further dimension of social exclusion and is becoming an ever more acute problem. For instance, 46 % of all households in Europe have no home Internet access<sup>(18)</sup> and 40 % of Europeans admit to having no Internet skills<sup>(19)</sup>. Little progress has yet been forthcoming in opening up free Internet-based learning opportunities more fully to all adults, even although, at the same time, patents for appropriate learning concepts are under discussion and have already been applied for<sup>(20)</sup>.

5.9 The Committee recognises that employers provide a large portion of training to adults (point 2.2 of the action plan). However, trade unions also promote adult learning in their own facilities and at the workplace, for instance by providing local and transnational courses via their own organisations and by putting in place motivational advice and support services for learning provision at the workplace. It is important to ensure that the action plan strikes a balance between the learning opportunities on offer and fair access conditions for all learners.

5.10 The Committee attaches importance to the principle that, even where it is the state that provides basic and project-specific support to particular facilities, the freedom of continuing education and training providers to decide on their own curricula and on how they shape their programme — and their right to choose their own staff — must remain sacrosanct, although compliance with certain quality and efficiency standards is imperative.

<sup>(18)</sup> Households with at least one person between the ages of 16 and 74, EU-27 (Eurostat, as at 8.2.2008).

<sup>(19)</sup> Persons aged 16 to 74, EU-27 (Eurostat, as at 8.2.2008).

<sup>(20)</sup> At a basic policy level, key documents include the Council Resolution on *exploiting the opportunities of the information society for social inclusion* (OJ C 292, 18.10.2001, p. 6), but the outcomes of the follow-up activities were not appraised for the action plan.



5.11 The Committee endorses the key message that good governance among adult learning providers should be learner-focused and welcomes the recommendation to establish 'close relations' with learners' organisations. Within the adult learning context, however, it feels that this does not go far enough.

5.11.1 The Committee regrets the lack of any clear statement on the participation of adult learners and on bodies lobbying on their behalf within the adult learning sector. In most European countries, the democratic rights of young school children and students have, to date, been covered by considerably more effective legal safeguards than those of adult learners.

5.11.2 The Committee proposes that any evaluations should focus on learners' own assessments. In particular, there should be an exchange of demand-related and learner-based quality testing models, which should have priority over the introduction of new state measures to 'monitor' provider quality <sup>(21)</sup>.

5.11.3 The Committee would also propose that particular consideration be given to safeguarding the rights of adult users ('consumers') of paid education and training services. Steps should be taken to flesh out such rights, for instance in cases where participants are compelled to discontinue a course or are dissatisfied with it and withdraw, or in the event of timetabling changes or the cancellation of lessons. The recommendations for transport users' rights in Europe could serve as an example on which to draw.

5.12 The Committee agrees that the Member States and the Commission should pay more attention to initial and continuing training and to the status and payment of adult learning staff (point 3.2 of the action plan).

5.12.1 The Committee recognises that, being learner-focused, the adult learning sector requires highly flexible staff, but also

asks that high staff flexibility should be combined with a high level of social security. The social partners could adopt support measures to counter the insecure employment status of teachers in this sector and to improve their participatory rights.

5.12.2 The Committee recommends that, in moves to bring a greater degree of professionalism into the sector, the focus should not only be on the specific skills needed to teach adults but also on actual expertise in the subject being taught, as it is on that that learning achievement very much depends.

5.12.3 The Committee would also suggest that studies and recommendations be prepared on the status of civil society volunteers working within the adult learning sector.

5.13 The Committee notes the priority objective of having as many adults as possible attain a 'one level higher qualification' (point 3.3 of the action plan). Within the overall context of adult learning, there is but limited value in classifying people and their learning objectives on the basis of educational attainment levels, although, in individual courses, particular attention must obviously be paid to grouping together people with similar levels of prior knowledge. Moreover, there can be no guarantee that, having attained a new formal level of education, people will also secure greater social recognition or even thereby find a job. The meeting of a wide range of quite different learners is, if anything, what gives flavour to many adult learning courses, or, expressed in economic terms, what constitutes the 'social capital' inherent in them.

5.14 Information should be given as to the indicators planned for the additional inclusion of non-vocational adult learning, of area-based delivery and, to a greater extent than in the past, also of non-age-limited education and training opportunities for people not in employment.

Brussels, 13 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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<sup>(21)</sup> In Germany, support is given to the independent education and training testing foundation *Stiftung Bildungstest*.

## Opinion of the European Economic and Social Committee on the Role of the social partners in improving the situation of young people on the labour market (Exploratory opinion)

(2008/C 204/20)

On 19 September 2007, the European Economic and Social Committee received a referral from the future Slovenian presidency on the

*Role of the social partners in improving the situation of young people on the labour market (Exploratory Opinion).*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 February 2008. The rapporteur was Mr Soares and the co-rapporteur was Ms Päärendson.

At its 443rd plenary session, held on 12 and 13 March 2008 (meeting of 12 March), the European Economic and Social Committee adopted the following opinion by 119 votes to 1 with 2 abstentions:

### 1. Gist of the EESC proposals

1.1 The EESC welcomes the priority that the Slovenian presidency (1st half of 2008) has decided to attach to integrating young people into the world of work, which is one of the greatest challenges facing the European Union today.

1.2 This priority accurately reflects the aims of the revised Lisbon Strategy for Growth and Employment which, with the updated Guidelines for Employment has entered its second phase. By selecting full employment as a strategic objective, the Lisbon strategy gave an example of how economic and business competitiveness is not incompatible with people's well-being, job satisfaction and the provision of quality jobs and decent working conditions. Member States' national reform plans (NRPs) should, therefore, address the causes of youth unemployment more systematically and more comprehensively, taking account of the European Youth Pact.

1.3 The EESC agrees with the Commission's opinion that maintaining growth and prosperity in Europe, whilst promoting social cohesion and sustainable development, depends on all young people making a substantial contribution to the project and being fully involved in it. Young people must be guaranteed adequate conditions for active citizenship. This is all the more important because the number of young people in comparison to the population as a whole is falling.

1.4 Young people today are in situation that is critical at a number of levels but which most acutely affects their integration into the labour market since, according to European statistics, youth unemployment is 2.4 times higher in the 15-24 <sup>(1)</sup> age group than in the 25-54 age group, although the 2007 figures do show a slight improvement.

1.5 The EESC considers that work is not only a production factor that is essential to society's socio-economic development; it is today also one of the sources of human dignity and worth, and offers possibilities for socialisation.

1.6 The key to employment in the 21st century is the ability to learn and adapt throughout one's working life. The EESC has identified two main ways of improving the situation of young people on the labour market: providing young people with more and better education and ensuring a smoother transition between leaving school and starting working life proper.

1.7 The EESC is fully aware of the difficulty of the task and thus recommends a concerted effort by all of society to achieve it. This is all the more important because it is the youngest generation that could suffer most acutely from the consequences of a downward market trend.

1.8 Indeed, young people in the 15-24 age group not only have an unemployment rate more than twice that of adult workers; they also suffer the worst job instability, which in some countries affects more than 60 %, with far-reaching consequences for young people's independence, their being in a position to start a family, the decision as to when to have children and for the growth and funding of social security schemes.

1.9 Whilst the role of the social partners as the main players in the labour market, insofar as they understand its workings and needs, is crucial to developing approaches that encourage young people's integration into the world of work, the EESC considers it worth emphasising, once again, the equally essential role of education and vocational training in equipping young people — whilst taking account of their diversity — with the skills and competences needed to succeed in an ever-changing world.

1.10 Furthermore, if the social partners are to take action to integrate young people more effectively into the labour market, they will require the cooperation of national, regional and local governments and of the different civil society players, with a particular focus on the role of youth organisations and of universities as research and science centres. They will also need the active support of families and of social networks for young people with their wider outreach.

<sup>(1)</sup> It should be noted that in some Member States the minimum employment age for young people is over 15 years.

1.11 Bearing in mind the joint text drawn up by the European social partners entitled *Framework of Actions for the Lifelong Development of Competencies and Qualifications* <sup>(2)</sup> and recent studies of the greatest challenges facing the labour markets, which strengthen the Commission's efforts to make the labour markets more adaptable and also more inclusive, the EESC has identified a number of specific objectives and areas for action in which these should play a more decisive role.

1.12 The measures adopted by the social partners should be based on the following key objectives:

- persuading national governments to carry out appropriate reforms and to implement national policies that help to improve the situation of young people on the labour market;
- using all available means, in particular programmes supported by the European Structural Funds <sup>(3)</sup>, to give all young people the opportunity to achieve personal fulfilment through stable, high-quality and properly paid employment, making use of new and more progressive forms of work and working hours management, in conjunction with new forms of employment security, with the aim of ensuring smoother transitions, greater mobility and better balance between working life and private life;
- shortening the transition period between leaving school and starting working life proper, and giving young people their first work opportunity, with the prospect of future security during this transitional period;
- helping young people to make constructive use of periods of inactivity whilst unemployed or whilst looking for their first job;
- assisting the integration of the most vulnerable groups of young people (such as young people with social problems or disabilities, early school-leavers, young immigrants, etc.);
- ensuring that work can be reconciled with personal and family life;
- striking the appropriate balance between flexibility and security, distinguishing between those workers that can choose flexibility because they have security and those that are victims of flexibility because they have no security;
- ensuring better cooperation between businesses, secondary schools and universities;
- providing incentives for entrepreneurship, creativity and innovation and helping young people to understand their responsibilities to continue learning; in this context, public authorities must shoulder their share of the responsibility

for providing an effective link between the education system and the labour market;

- enhancing the quality of apprenticeships and making them more attractive;
- promoting measures to prevent long-term unemployment amongst the younger age-groups;
- informing young people of their economic and social rights and complying with and ensuring compliance with the principles of equality and non-discrimination.

1.13 The areas for action are many and varied, but can be divided into seven main groups:

- **Education:** working at the national, regional and local levels to alert schools and teachers to the importance of establishing closer links with the world of work, opening up businesses and trade unions to schools and promoting/participating in school initiatives to achieve this aim, and building partnerships with schools in order to give young people learning experiences in companies.
- **Vocational training:** taking part in the design and organisation of vocational training schemes, encouraging personal development and the acquisition of social skills, developing programmes to boost entrepreneurship, promoting and supporting training measures that help to anticipate market needs in terms of the skills and qualifications required, and informing young people about the technical occupations and their potential on the labour market.
- **Traineeships:** offering traineeships as part of the school curriculum, drawing up codes of conduct on working conditions and pay that prevent competition between businesses and also defining the concept of mentoring young people on traineeships and the relevant good practice.
- **Collective bargaining:** integrating the rights of young people as fully-fledged citizens into consultation and social dialogue, negotiating working practices that manage to give them secure prospects during their transition to working life, making it easier for young workers to continue/complete their studies.
- **Third-sector activities:** working together with youth organisations, promoting and publicising networks that facilitate contact between young people and the world of work, stimulating the third-sector approach amongst both young entrepreneurs and workers in their respective representative bodies, recognising their competences and skills gained through non-formal education.

<sup>(2)</sup> See [http://www.etuc.org/IMG/pdf/Fram\\_of\\_actions\\_LLL\\_evaluation\\_report\\_FINAL\\_2006.pdf](http://www.etuc.org/IMG/pdf/Fram_of_actions_LLL_evaluation_report_FINAL_2006.pdf) (text available only in English). See also, on European social dialogue in this area: [http://ec.europa.eu/employment\\_social/dsw/dspMain.do?lang=en](http://ec.europa.eu/employment_social/dsw/dspMain.do?lang=en).

<sup>(3)</sup> See [http://ec.europa.eu/employment\\_social/social\\_dialogue/docs/lf\\_070227\\_donnelly.pps](http://ec.europa.eu/employment_social/social_dialogue/docs/lf_070227_donnelly.pps); [http://ec.europa.eu/employment\\_social/esf/fields/education\\_en.htm](http://ec.europa.eu/employment_social/esf/fields/education_en.htm). A wide-ranging information paper will soon be made available at: [http://ec.europa.eu/employment\\_social/esf/fields/partnership\\_en.htm](http://ec.europa.eu/employment_social/esf/fields/partnership_en.htm).

- **Good practice:** promoting the exchange of good practice, in particular by creating platforms for swapping experience, good practice and information on projects carried out by businesses, universities and employers' associations and trade unions.
- **Mobility** (both in the European Union and in businesses): encouraging people to learn other languages <sup>(4)</sup>, providing exchanges of work experience on the basis of guaranteeing workers' rights. The social partners must pay particular attention to cross-border cooperation, where young people's mobility is most significant.

1.14 As the European institution representing organised civil society and in accordance with its remit, the EESC proposes holding a conference attended by representatives of businesses, trade unions, schools and NGOs representing young people, in the aim of facilitating an exchange of best practice in order to improve the integration of young people into the labour market.

## 2. The current situation

2.1 Given the current situation of young people on the labour market, the EESC welcomes the Slovenian Council presidency's request to draw up an exploratory opinion on of the *Role of the social partners in improving the situation of young people on the labour market*.

2.2 The problem of youth unemployment and of young people's inclusion in society more generally are issues of a global scale <sup>(5)</sup>.

2.3 Another global trend in industrialised society is population ageing, which tends to have damaging repercussions on stability, competitiveness and economic growth. It entails additional costs for health and pension schemes <sup>(6)</sup>, whilst the number of people paying into these schemes is falling <sup>(7)</sup>. There is consequently a need to implement measures not only to

<sup>(4)</sup> See, in this regard, the EESC opinion of 26.10.2006 on the *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — A new framework strategy for multilingualism*, rapporteur: A. Le Nouail (OJ C 324, 30.12.2006). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:324:0068:0073:EN:PDF>

<sup>(5)</sup> Comparing Europe with other industrialised countries, such as the USA, Canada or Japan, employment in the 15-24 age group stood at 35,9 % in 2006 in contrast to 54,2 % in the USA, 58,7 % in Canada and 41,4 % in Japan.

<sup>(6)</sup> Funding social security schemes will set a particularly significant challenge in the next 25 years, when 20 million people will be leaving the EU labour market.

<sup>(7)</sup> In Europe, the 2004 ratio of people of working age to the retired was four to one but this figure will soon halve. From 2015 onwards, the fall in the working population will form a barrier to the EU's potential economic growth, bringing the current rate of 2,6 % (in the euro zone) and 2,9 % (in the EU 27) to only 1,25 % by 2040. The impact of this will be felt even more acutely in the new Member States.

promote 'active ageing' in the population, but above all to encourage young people to enter the labour market and to provide measures supporting generation renewal, in which young people do not currently get involved, because they fear the lack of job security. This would need to be a joint effort at the European, national, regional and local levels, involving the public sector and the social partners, in order to place the issue of young people at the heart of economic, social, educational and demographic policies.

2.4 Although between 2005 and 2007 7 million jobs were created in the EU, the 'Lisbon cycle' has still failed to reduce youth unemployment. According to the Commission's figures, the average unemployment rate amongst young people between the ages of 15 and 24 reached 17.4 % in 2006. In other words, around 4.7 million young people were not in a stable socio-occupational situation. In some countries, the youth unemployment rate exceeded 25 % <sup>(8)</sup>. According to the latest quarterly EU Labour Market Review (Autumn 2007), in the third quarter of 2007, the youth unemployment rate fell to 15.2 %, but is still double the overall unemployment rate.

2.5 Furthermore, these 4.7 million young unemployed in the EU referred to above are not generally likely to find new work in their first six months of unemployment, which clearly shows that, despite the adoption in 2005 of the European Youth Pact, the Lisbon Strategy has not yet managed to improve the situation of young people on the labour market. A better on-the-ground implementation of the European Youth Pact is thus increasingly important.

2.6 However, youth employment and unemployment trends are not identical in all Member States <sup>(9)</sup>. With youth unemployment rates of less than 10 %, the Netherlands, Ireland and Denmark have successfully achieved reductions, but the situation is quite different in countries such as France, Italy, Spain, Greece, Belgium, Poland, Slovakia and even Sweden, where rates remain at around 20 % <sup>(10)</sup>.

2.7 Young adults' unemployment is highly likely to turn into long-term unemployment or even inactivity (around 1 in 3 for long-term unemployment) <sup>(11)</sup>, with women being affected particularly badly and this situation becomes more marked as people get older.

2.7.1 It is not surprising that young people who have left school early (one in six) or who have not completed secondary

<sup>(8)</sup> Eurostat study on the workforce in Europe, in *Employment in Europe 2007*, European Commission.

<sup>(9)</sup> The EESC is aware that the youth unemployment rate alone does not give a full picture of young people's situation on the labour market. Any analysis should also take into account the unemployment ratio of young people and a comparison of the youth unemployment rate in a particular country with the overall unemployment rate. The figures cited in point 2.6 are for illustrative purposes only; for a fuller discussion of the problem, see e.g. the report on 'Employment In Europe 2007'.

<sup>(10)</sup> *Economic Outlook*, Autumn 2007, BUSINESSEUROPE, p. 14.

<sup>(11)</sup> Eurostat study on the workforce in Europe, in *Employment in Europe 2007*, European Commission.

education (one in four young adults aged between 25 and 29 <sup>(12)</sup>) encounter greater difficulty in finding work than young people who are more highly qualified.

2.7.2 What is surprising is that highly qualified and skilled young people are also struggling to find work. In some Member States, the unemployment rate is higher among the most highly educated young people than among those with lower or intermediate levels of education <sup>(13)</sup>. The fact is that a level of education that is higher than in previous generations currently leads to greater difficulty in entering the labour market. It is worth emphasising that, whilst having a degree is a valuable weapon in combating unemployment, in this day and age it provides no guarantees.

2.7.3 Many young people are affected by the mismatch between their qualifications and their jobs (in the Member States, the percentage of young people under 35 working outside the area in which they are trained varies between 29 % and 47 %). The lower the level of education attained, the more worrying this situation becomes.

2.8 This state of affairs also encourages many young people to leave for other countries that offer better working conditions, pay that is four to five times higher, more attractive career prospects and greater opportunities for personal fulfilment <sup>(14)</sup>.

2.9 For many young people who do find work, their situation is extremely insecure, due to a lack of job stability. 41 % of young people between the ages of 15 and 24 <sup>(15)</sup> are on short-term contracts, and this rate exceeds 60 % in some countries <sup>(16)</sup>. In many cases this is a conscious choice by young people who are seeking short-term employment, but the number of young people who find themselves in this situation involuntarily is high (one in four) <sup>(17)</sup>.

2.10 The group comprising young workers also suffers the highest number of work-related accidents and injuries <sup>(18)</sup> and account should, therefore be taken of health and safety conditions in the workplace when considering the situation of youth labour.

2.11 It is young women who are worst affected by unemployment <sup>(19)</sup>, and who are more likely to hold low-quality, insecure and badly paid jobs, despite being generally better qualified

<sup>(12)</sup> See: *Promoting young people's full participation in education, employment and society* (COM(2007) 498 final).

<sup>(13)</sup> Commission staff working document accompanying the Communication on *Promoting young people's full participation in education, employment and society* (SEC(2007) 1093).

<sup>(14)</sup> It is worth stating, by way of example, that some 400 000 Europeans trained in science and technology live in the USA and that almost 10 % of the 1.45 million doctorate-holders in the US are EU graduates.

<sup>(15)</sup> It should be noted that in some Member States the minimum employment age for young people is over 15 years.

<sup>(16)</sup> Eurostat study on the workforce in Europe.

<sup>(17)</sup> *Idem*.

<sup>(18)</sup> See the draft EESC opinion on *Health and safety at work* SOC/258 (rapporteur: Ágnes Cser).

<sup>(19)</sup> The female employment rate is 15 % lower than the male.

than young men. Women — particularly those of child-bearing age — also face discrimination on the basis of their gender. In the EU, young women (under the age of 30) earn on average 6 % less than young men <sup>(20)</sup>.

2.12 All too frequently, young people still experience exclusion or poverty as a result of their low incomes (40 % of young people are classified as being on low pay) <sup>(21)</sup>.

2.13 Many young people today find themselves in situations that represent a step backwards for their social inclusion and especially for their personal and social independence. These situations can be summarised as follows:

- increasing financial dependence on their families and/or the state;
- increasingly lengthy periods of time spent living with parents or the development of half-way situations (using the parental home as a secondary place of residence, returning home having already left or living outside the family home but maintaining close links with the parents);
- young people starting their own family increasingly late in life (getting married or living together, deciding whether to have children ...);
- evident frustration and increases in stress caused by powerlessness, (as demonstrated by the increase in suicides and drug consumption).

### 3. Work as a factor for personal and collective dignity

3.1 As well as being a key factor for the economic development of society in general, work involves aspects rooted in the Universal Declaration of Human Rights itself. Young people's right to employment and to job security should, therefore, be seen as a universal right and as a means of securing their future as individuals.

3.2 There is, therefore, a need to (re)affirm work's central importance to society, analysing some of its current components, namely:

- decent work, as a source of income for living now and in the future and as an aspect of 'inter-generational' solidarity
- work as a universal right, a space in which to express human dignity and worth

<sup>(20)</sup> See the EESC opinion currently being drawn up entitled the *Pay gap between women and men* (SOC/284).

<sup>(21)</sup> Commission staff working document accompanying the Communication on *Promoting young people's full participation in education, employment and society* (SEC(2007) 1093).

- work as a factor of production
- work as active citizenship and a socially useful activity
- work as an essential factor for socialisation
- work as a reflection of people's qualifications and creativity
- work as a condition for access to consumer activity and life-styles
- work as a human activity that adapts and is valued in a society increasingly required to take care of the environment and ecological values
- work as a forum for self-discovery and development and for personal fulfilment.

in the labour market with as few problems as possible and stay in employment, with industry involved here alongside government;

- ensure early active support for young people seeking training course places or jobs (possibly after four months), special programmes and individual support and coaching for the integration of problem groups such as long-term unemployed young people and school and training course drop-outs, e.g. via community employment projects and promotion of training;
- develop generally available, easily accessible careers advice and information facilities for young men and women at all levels of training; a corresponding improvement in the quality of employment services and the provision of appropriate human resources;

3.3 We are today encountering new forms of work that are the product of fundamental changes in the world of labour and which do not necessarily take account of important social aspects or provide the required legal guarantees.

3.4 Job instability amongst young people, in conjunction with deregulated working patterns and hours, are factors that make it difficult to balance working, personal and family life. Against this backdrop, young women are particularly badly affected, often having to give up a rewarding career. Young parents should in particular be asked for their opinion on setting up infrastructure to support early childhood.

- reduce existing discrepancies between qualifications offered and those in demand on the labour market; raising the effectiveness of primary education systems (e.g. reduction of school drop-out rate <sup>(23)</sup>, literacy campaigns) and increasing the opportunities for moving between initial vocational and further training; gradual elimination of gender-specific segregation in careers counselling.'

3.5 Young people can make a major contribution to developing a more cohesive and democratic knowledge society. They need, however, to have prospects beyond the short term, and that are rooted in personal, family and collective security.

4.2 Although the main task of schools should remain that of training free, critically-minded, autonomous citizens, they should find new ways of doing things, especially as regards their links with the world of work and business, which are generally speaking not close. These links are today virtually an imperative in order to ensure a smoother transition from school to work.

#### **4. Education and training: essential factors for integration into the labour market and for successful integration into and participation in society**

4.1 In its opinion on the *Employment of priority categories* <sup>(22)</sup>, the EESC reaffirmed the importance of education and training, with particular reference to the need to:

- 'guarantee [...] quality from initial training to vocational and in-service training so as to enable workers to find their place

4.3 Furthermore, having the skills to deal with change means that entrepreneurship and initiative should form an integral part of the school mission to inculcate a sense of responsibility — at the personal level too — equipping young people to find solutions to the problems that they will inevitably face once they leave school. Of course, non-formal education also has a role to play in achieving this aim.

<sup>(22)</sup> EESC opinion of 12.7.2007 on the *Employment of priority categories (Lisbon Strategy)*, rapporteur: Mr Greif (OJ C 256, 27.10.2007, pp 93-101) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:256:0093:0101:EN:PDF>).

<sup>(23)</sup> Nearly 16 % of young people in the EU drop out of school, which is considerably higher than the 10 % seen in 2000. The percentage varies from Member State to Member State, being particularly high in the Mediterranean countries and lower in the Scandinavian countries and in some countries of Central and Eastern European.

4.4 Lifelong training is also of increasing importance to young people, because it can provide them with the tools they need to adapt to new situations and to acquire new skills and qualifications.

4.5 Vocational training models could also be updated and some countries offer experiences of integration into the labour market through traineeships in companies. In this area too, what is important is to establish models that are attractive to young people and which they and their families consider to be worthwhile <sup>(24)</sup>.

4.6 In the specific context of individual job coaching amongst the young long-term unemployed, it is worth referring to an Austrian project that has helped to reduce the long-term youth unemployment rate by 43.5 % in a specific target group <sup>(25)</sup>. Of the 2 000 young people who took part in the project, 820 found a job and 293 were offered apprenticeships in companies, which represents a success rate of 60 % <sup>(26)</sup>.

4.7 Furthermore, European research policies and programmes should coordinate their work at the national and European levels in the field of education, applying to both basic education and vocational/specific training.

## 5. The role of the social partners

5.1 A global approach to the different youth policies is required. To this end, the European Commission has drawn up a communication on *Promoting young people's full participation in education, employment and society*, which the EESC has endorsed <sup>(27)</sup>. Similarly, the Commission has reiterated the need to make use of the European Structural Fund, whose regulations explicitly provide for the funding of measures to improve the integration of young people into the labour market <sup>(28)</sup>.

5.2 The aim of improving the integration of young people into the labour market should be seen as a collective responsibility which requires the involvement of all of society, including the social partners, as well as other players such as the public authorities, national, regional and local governments, families and youth organisations.

<sup>(24)</sup> See the examples provided by the French projects to promote the scientific and technical sectors to young people (<http://halde-prod.gaya.fr/repertoire-bonnes-pratiques-initiatives-86/consulter-90/bonne-pratique-91/scientifiques-techniques-9109.html>), the 'Passport to employment' ([http://halde-prod.gaya.fr/repertoire-bonnes-pratiques-initiatives-86/consulter-90/initiatives-92/autres-95/emploi-pour-9154.html?var\\_recherche=d%E9favoris%E9s](http://halde-prod.gaya.fr/repertoire-bonnes-pratiques-initiatives-86/consulter-90/initiatives-92/autres-95/emploi-pour-9154.html?var_recherche=d%E9favoris%E9s)), 'Teaching through action' by the Dijon College of Business Studies (making educational establishments responsible for trainees ([www.halde.fr/repertoire-bonnes-pratiques-initiatives-86/consulter-90/bonne-pratique-91/action-ecole-9207.html](http://www.halde.fr/repertoire-bonnes-pratiques-initiatives-86/consulter-90/bonne-pratique-91/action-ecole-9207.html))), Employment forums to improve links between businesses and young graduates from disadvantaged areas (<http://halde-prod.gaya.fr/repertoire-bonnes-pratiques-initiatives-86/consulter-90/initiatives-92/autres-95/emploi-pour-9192.html>), or the Austrian projects for labour mediation for long-term unemployed young people ([http://portal.wko.at/wk/format\\_detail.wk?AngID=1&StID=314163&DstID=0](http://portal.wko.at/wk/format_detail.wk?AngID=1&StID=314163&DstID=0), or [http://portal.wko.at/wk/sn\\_detail.wk?AngID=1&DocID=729805&StID=345901](http://portal.wko.at/wk/sn_detail.wk?AngID=1&DocID=729805&StID=345901)).

<sup>(25)</sup> See: [http://portal.wko.at/wk/format\\_detail.wk?AngID=1&StID=314163&DstID=0](http://portal.wko.at/wk/format_detail.wk?AngID=1&StID=314163&DstID=0).

<sup>(26)</sup> See: [http://portal.wko.at/wk/sn\\_detail.wk?AngID=1&DocID=729805&StID=345901](http://portal.wko.at/wk/sn_detail.wk?AngID=1&DocID=729805&StID=345901)

<sup>(27)</sup> EESC opinion of 17.1.2008 on the *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Promoting young people's full participation in education, employment and society*. Rapporteur: Mr Trantina.

<sup>(28)</sup> See footnote 3.

5.3 In the specific case of integrating young people into the labour market, the role of the social partners is crucial, because they know how the market works and what it needs; they are familiar with the problems arising from these needs in relation to the current workforce; they know and have experience of the problems caused by developments in the market itself and in new working practices.

5.4 The social partners should further step up their efforts to increase youth employment, by enhancing and further developing their cooperation with organisations representing young people and educational establishments; focusing on the qualifications needed on the labour market at any given time; identifying the skills required for particular jobs and combining forces to create jobs for young people, having the courage to trust in their abilities without asking for prior experience, etc.

5.5 The involvement of the social partners should have specific aims, in particular, to:

- influence national governments to carry out the appropriate reforms and to implement national policies that help improve the situation of young people on the labour market.
- give all young people the opportunity to achieve personal fulfilment through stable and high-quality employment;
- shorten the transitional period between leaving school and entering working life proper;
- provide the prospect of future security during this transitional period;
- help young people to make constructive use of periods of inactivity whilst unemployed or looking for their first job;
- make integration easier for the most vulnerable groups of young people, in particular early school-leavers;
- ensure that working life can be reconciled with personal and family life;
- strike a good balance between flexibility and security;

and should cover a number of areas, such as:

### 5.5.1 Education

- Alerting education authorities, schools and teachers to the need for closer links with the world of work.

- At the local level, promoting a range of initiatives organised by schools or by businesses and trade unions that enable young people to experience the reality of working life.
- Establishing partnerships with schools, in order to give young people work experience within companies.
- Providing incentives for creativity and entrepreneurship, in cooperation with all the parties concerned (including business and trade unions) <sup>(29)</sup>
- Informing institutions of higher education of local employment requirements and the relevant training and qualification needs.
- Involving relevant youth organs and organisations at all levels in dialogue on integrating young people into the labour market.

#### 5.5.2 Vocational training

- Being actively involved in designing and organising vocational training schemes, in order to meet the needs for new skills and knowledge and thus anticipating lifelong training requirements.
- Considering, with regard to collective bargaining, global, regional and/or local vocational training agreements. There is, therefore, a need to ensure that Member States' tax systems support investment in human capital.
- Informing young people about the technical professions and their potential for the labour market.
- Helping to implement and assess the European Qualifications Framework <sup>(30)</sup> in order to facilitate recognition of young people's qualifications and their mobility within Europe.

#### 5.5.3 Traineeships

- Providing traineeships as part of the school curriculum, thus putting young people in contact with a company and workers at an early stage.
- Drawing up codes of conduct on job quality, working conditions and pay for trainees and establishing collective agreements to this end.

<sup>(29)</sup> See, in this regard, the EESC opinion of 25.10.2007 on *Entrepreneurship mindsets and the Lisbon Agenda* (own-initiative opinion). Rapporteur: Ms Sharma and co-rapporteur: Mr Olsson. (OJ C 44, 16.2.2008, pp 84-90) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:044:0084:0090:EN:PDF>).

<sup>(30)</sup> See the *Recommendation of the European Parliament and of the Council on the establishment of the European Qualifications Framework for lifelong learning* (COM(2006) 479 final).

- Establishing 'mentor-colleagues' who are responsible for supervising the young trainee, in order to make educational traineeships successful and help to draw up codes of good mentoring practice for each sector.

#### 5.5.4 Collective bargaining and young people's rights

- Considering, in collective bargaining at the European, national, regional, local or company-wide level, the need to establish practical policies to support the integration of young people into the labour market and to inform them about their rights.
- In discussions on the working practices and arrangements to be negotiated and included in contracts, pay particular attention to young workers, so that flexibility is governed by negotiated rules that guarantee the security that they need. The prospect of security in young people's transition to working life can and should be considered in collective bargaining.
- As part of the collective bargaining process, helping to negotiate working conditions for students that provide flexible working hours, appropriate pay, especially for traineeships, and time off for training.
- Also in this area, making it possible to reconcile work with personal life, especially as regards working conditions and working hours.

#### 5.5.5 Third-sector activities

- Playing a key role in supporting third-sector activity amongst young people, by supporting the setting-up of young entrepreneurs' associations or by integrating workers into their organisations covering the relevant sector.
- Promoting, publicising and supporting networks that facilitate communication between young people and the different social partners <sup>(31)</sup>.
- Cooperating with youth organisations to understand young people's fears and aspirations and of involving them in finding solutions, particularly as regards the labour market.

<sup>(31)</sup> Examples include: the European Confederation of Junior Enterprises (<http://www.jadenet.org/>) and the STARPRO initiative by EURO-CADRES (Council of European Professional and Managerial Staff) for students and young graduates ([http://www.eurocadres.org/en/p\\_ms\\_in\\_europe/students\\_and\\_young\\_graduates](http://www.eurocadres.org/en/p_ms_in_europe/students_and_young_graduates)).



- Recognising the competences and skills gained through non-formal education in youth organisations as an important part of qualification for entering the job market.

#### 5.5.6 *Good practice*

- Exchange information on good practice <sup>(32)</sup> by establishing national and European platforms for projects carried out by

Brussels, 12 March 2008.

businesses, universities, schools, local and regional authorities, business associations and unions.

#### 5.5.7 *Mobility*

- Support mobility both in the European Union and in businesses located in different European countries, inform young people of their rights related to mobility within Europe and, in this regard, encourage people to learn other languages, provide exchanges of professional experiences and provide exchanges of professional experience, accepting the importance of guaranteeing workers' rights <sup>(33)</sup>.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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<sup>(32)</sup> One example of good practice is the launch by *Businesseurope*, in conjunction with its working partners, of a 'laboratory' on 'Stimulating an entrepreneurial mindset and promoting entrepreneurship education'. This 'laboratory' not only provides examples of European good practice in this field; it also helps to achieve the objectives set out in the Strategy for Growth and Employment and in the European Commission communication entitled *Fostering entrepreneurial mindsets through education and learning* and in its Oslo recommendations.

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<sup>(33)</sup> The social partners have always stated their support for the principles of the Erasmus and Erasmus Mundus programmes and for the European Commission initiative entitled *ERASMUS for young entrepreneurs*.

## Opinion of the European Economic and Social Committee on Guaranteeing universal access to long-term care and the financial sustainability of long-term care systems for older people

(2008/C 204/21)

In a letter dated 19 September 2007 the future Slovenian Presidency asked the European Economic and Social Committee to draw up an opinion, under Article 262 of the Treaty establishing the European Community, on:

*Guaranteeing universal access to long-term care and the financial sustainability of long-term care systems for older people (exploratory opinion).*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 February 2008. The rapporteur was Ms Klasnic.

At its 443rd plenary session, held on 12 and 13 March 2008 (meeting of 13 March), the European Economic and Social Committee adopted the following opinion, with 99 votes in favour and one abstention.

### 1. Conclusions and recommendations

which require appropriate information and educational responses as well as policy measures <sup>(2)</sup>.

#### 1.1 Conclusions

1.1.5 The ultimate objective must be to make it possible for old and very old people in Europe to live their lives safely and with dignity, even if they are dependent on care, while at the same time ensuring that this does not impose unbearable burdens on the younger generations.

1.1.1 Dependency on care is one of life's risks, the impact of which is difficult for an individual to bear alone and which therefore calls for an intergenerational solidarity-based shared responsibility <sup>(1)</sup>.

#### 1.2 Recommendations

1.1.2 The form which this responsibility takes must be decided mainly at national or regional level, taking account of different family and tax structures, employment situations, mobility, housing, population density, established traditions and attitudes.

1.2.1 The European Economic and Social Committee calls on the European Council and the Commission, together with the Member States, to tackle the problems of an ageing population as a matter of urgency, in order to ensure that all older people receive the support and the quality of care that they need.

1.1.3 As there are similarities in this area in relation to the problems facing the individual Member States as well as issues which transcend national boundaries, it is both right and necessary for the subject to be dealt with by the EU institutions. The exchange of experience, through the open method of coordination for example, has a particularly important role to play here, and in some cases legislative measures are also needed.

1.2.2 In order to do justice to the challenges of long-term care, a number of measures are needed. Some key aspects of this are the following:

##### *Financing and affordability*

— universal access to high-quality care must also be guaranteed in practice for people with particular problems or low incomes;

1.1.4 As in the health care system, the bulk of the costs of long-term care arise in the last years of a person's life. Since current social security systems (health care and pensions systems) were established, life expectancy has increased considerably. Facing up to the resulting new needs requires tackling difficult questions of intergenerational justice and solidarity,

— sustainable financing systems must be developed which do not leave individuals to face this risk alone, while also ensuring that society can afford such services without placing an undue burden on future generations;

<sup>(1)</sup> See also the Joint Report by the Commission and the Council on *Supporting national strategies for the future of health care and care for the elderly*, CS 7166/03, March 2003.

<sup>(2)</sup> See EESC opinion of 13.12.2007 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 Promoting solidarity between the generations*, rapporteur: Mr Jahier (CESE 1711/2007 — SOC/277).

- the promotion of preventive measures should help to mitigate the rise in demand as far as possible. This will require a comprehensive preventive strategy bringing together aspects of health-related preventive measures, financial provision, social provision and measures to boost older people's ability to cope with everyday problems;
- incentives — e.g. tax incentives — for private financial provision should be considered when it appears necessary to achieve the general interest objective of public health.

#### *Care and supply of services*

- the development of tailored care services geared to needs must also be ensured in regions which are currently disadvantaged in this respect;
- existing family and neighbourhood networks, which currently provide the bulk of care, must be encouraged and strengthened, e.g. training of and support for family members;
- NGOs, social economy initiatives and cooperative structures should be involved to a greater extent in care work;
- special encouragement should be given to volunteering in the non-medical care sector, especially in the form of training for volunteers;
- healthy competition between different suppliers of care services should give care recipients more freedom of choice and help develop the supply of services in accordance with defined quality standards, objectives, tasks, specifications and an established social security system, under the responsibility of the legislator in each Member State, since these services fall within the scope of social services of general interest <sup>(3)</sup>;
- older people and those in need of care must be included to a greater extent in social networks, inter alia in order to prevent abuse and ill-treatment;
- best-practice models should be developed in palliative care in nursing homes and in home care;
- hospice work should be developed.

#### *Care workers*

- the human resources must be provided for care services, in particular by providing high-quality training and improved

working conditions for care workers and by upgrading the caring professions;

- the recognition of qualifications throughout the EU should be facilitated;
- the Commission is asked to review the arrangements for cross-border aspects of care, such as access to care services abroad and the migration of care workers;
- in order to prevent work being performed in the black economy, measures must be adopted to bring hitherto illegally provided care services into the framework of a legal employment relationship, taking account of the specific features of work performed in private households.

#### *Care in the family*

- there should be greater incentives for providing non-medical care services, either within the family or on a voluntary basis <sup>(4)</sup>;
- strategies and services must be developed to address the problems of dementia and depression in older people, which are among the main challenges facing families and the care system;
- it should be made easier to reconcile family and career through support and respite measures for working family carers (e.g. day-care facilities for older people in large companies, respite services, mobile care).

#### *Rules, standards and quality*

- quality standards should be developed for all areas of care of older people and effectively monitored by independent organisations or supervisory authorities and recognised by human rights institutions;
- in this way it should also be ensured that human rights and dignity are protected in both public and private care homes and that the limited capacity to act and dependence on services of those in need of care are not used to their disadvantage.

#### *Use of information and communication technologies*

- the use of information and communication technologies, telematics and technical aids should be encouraged in care work and for monitoring purposes, with due attention to ethical issues.

<sup>(3)</sup> See the EESC opinion of 14.2.2008 on *Services of general interest* (rapporteur: Mr Hencks) (TEN/289).

<sup>(4)</sup> On the promotion of volunteering, see the EESC opinion of 13.12.2006 entitled *Voluntary activity: its role in European society and its impact*, rapporteur: Ms Koller, OJ C 325, 30.12.2006.

## 2. Background

2.1 The Slovenian presidency hopes to carry on the Europe-wide debate on how to deal with demographic change, and will be placing particular emphasis on solidarity between the generations. The ratio between the younger, middle and older generations is changing. The proportion of older people continues to increase. In some places, today's young generation already accounts for only half the number of people born after the Second World War. These facts raise a number of new questions with regard to solidarity and co-existence between the generations. Today's way of life and division of labour, especially in the urban environment, hamper relations between the generations, weakening the ties between them and changing them significantly. There is a growing tendency to deal with the different generations separately, from the point of view of the rights they have acquired. The wrong kind of response here could even lead to conflict between the generations.

2.2 The Slovenian presidency intends to hold a conference (28/29 April 2008) on solidarity and co-existence between the generations, which will focus on:

- 1) solidarity between the generations on health care, family life and house building;
- 2) long-term care for older people.

2.3 In this connection, the Slovenian presidency has asked the European Economic and Social Committee to draw up an exploratory opinion on Guaranteeing universal access to long-term care and the financial sustainability of long-term care systems for older people.

## 3. Long-term care as a European challenge

3.1 Long-term care is one of the key social challenges facing all the countries of the European Union. It must therefore also have its place on the agenda of the European institutions.

3.2 The European institutions have — without prejudice to national competences — launched numerous initiatives<sup>(5)</sup> on the subject and have in particular promoted the reciprocal exchange of experience using the open method of coordination<sup>(6)</sup>. These efforts should be continued and stepped up; in

<sup>(5)</sup> e.g. Council of the European Union, Joint Report on Social Protection and Social Inclusion 2007, Conference on The Cross-Atlantic Exchange to Advance Long-Term Care, Brussels, 2006, Conference on *Long-term Care for Older Persons*, 2005, inter alia.

<sup>(6)</sup> See also Communication from The Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — *Modernising social protection for the development of high-quality, accessible and sustainable health care and long-term care: support for the national strategies using the open method of coordination*, 20.4.2004, COM(2004) 304 final, and the EESC opinion on the subject of 28.10.2004, rapporteur Mr Braghin (OJ C 120, 20.5.2005).

relation to the use of this method, the EESC attaches the highest importance to the involvement of the social partners and civil society players.

3.3 The reports drawn up by individual states in this connection show that, despite differing starting situations and conditions, many challenges are similar in most countries. A cooperative approach to seeking solutions would therefore make sense.

3.4 The objectives jointly agreed at EU level regarding universal access to services, high-quality services and sustainable financing of systems are also confirmed by these reports. These objectives are also the basis of this opinion.

## 4. The demographic and social background

4.1 The growing demands on the long-term care sector are the result of a number of trends, which compound the problem in a number of ways.

4.2 As a result of steadily increasing life expectancy the number of very old people (over 80) in our societies is rising sharply; their numbers are forecast to increase by 17.1 % between 2005 and 2010, and by 57 % between 2010 and 2030. Thus, by 2030, there will be almost 34.7 million people over 80 in Europe, compared with 18.8 million today. Whilst in 1975 the over-80s made up only 2.0 % of the total population in the EU states, in 2050 they will account for 11.8 %<sup>(7)</sup>.

4.3 Despite the common trends there are strikingly sharp differences within and between the Member States. Thus, life expectancy in the EU Member States varies from 65.4 to 77.9 years for men and from 75.4 to 83.8 years for women.

4.4 At the same time increasing numbers of older people live alone, because family members have moved away or because they are widowed. Mobility, including cross-border mobility, which is promoted in other areas of European and national policy, poses additional challenges for the care sector.

4.5 As a result of the low birth rate (in 1960 almost all EU states were above the replacement fertility rate of 2.1, whereas in 2003 all the EU states were below it) not only will the potential for intergenerational support (relationship between those

<sup>(7)</sup> Commission Communication — Green Paper — *Confronting demographic change: a new solidarity between the generations* 16.3.2005, COM (2005) 94 final.

needing care and potential carers) — and thus the potential for family care — decline, but it will also become increasingly difficult to meet the demand for professional carers on the labour market. Moreover, this trend will exacerbate the problem of financing long-term care.

4.6 Another aspect of social and demographic change, the change in family structures and the higher employment rate of women, means that, whereas in the past many care services were provided by the family, especially by the women of the family, this will not be possible, or at least not on the same scale, in the future <sup>(8)</sup>.

4.7 Improvements in medicine are another factor in the rise in life expectancy and improvements in the quality of life. Medical treatment can often significantly increase life expectancy without, however, ensuring a cure. Chronic and long-term illnesses needing continuing care are also on the increase.

4.8 An important challenge is the rising incidence of dementia, with sufferers requiring time-consuming care and incurring heavy costs, as well as the depression which is often associated with dementia; these conditions pose similar challenges for carers. Special services and establishments are needed in which patients may be treated with dignity and respect. This is particularly necessary because the chances of suffering from senile dementia increase as life expectancy increases. The rising incidence of suicide among older people is also a cause for concern.

4.9 Changes in social conditions are matched by changes in the attitudes, demands and capacities of those requiring care as successive generations become dependent on care. Future approaches to care must be designed with these trends in mind.

## 5. Ensuring access to tailored care service

5.1 Long-term care means supporting people who are no longer able to live independently and who are therefore dependent on the help of others in their everyday lives. Their needs range from mobility assistance and social care, through assistance with shopping, cooking and other housework to assistance with washing and eating. Medical qualifications are not essential for the provision of such services. This is therefore in many Member States often left to relatives, usually spouses or children, who continue to provide the bulk of long-term care services.

5.2 For the reasons outlined above family members cannot in future be expected to be available for the provision of care to the same extent as in the past. A rising number of frail older people will therefore be dependent on professional carers, who

must undergo training that leads to a qualification, providing their services in older person's own home or in specialised institutions.

5.3 Long-term care can be provided in various ways. Apart from family care, professional care can be provided at home, at day centres, through neighbourhood schemes, in special care institutions or in hospitals. Persons in need of care normally require several forms of medical and non-medical care, which necessitates effective cooperation between families, professional carers and medical staff. Coordination of these services is important (interface management, case management).

5.4 A 'one size fits all' strategy does not make sense in the provision of long-term care. The different needs of older recipients of care require a broad range of services. This makes it particularly important to make use of experience from other countries of the nature, organisation and effect of services.

5.5 Ideally the individual ought to have freedom of choice in terms of the form of the care provided and the choice of the provider. This requires not only a wide range of available services but also the creation of appropriate conditions for competition between a number of private, not-for-profit and public providers and the promotion of competition between these organisations with a view to a steady improvement in supply. This competition needs to take place within a framework of defined quality standards, which must be appropriately monitored, in order to ensure that it is not at the expense of care recipients and, as a social service of general interest, it need to be placed under the responsibility of the legislator, who will decide on the tasks to be undertaken and the objective to be achieved, and who will evaluate the results.

5.6 The different social protection mechanisms existing in individual countries affect the way in which care is provided. If, for example, more funding is provided for care institutions than for care in the home, more people will tend to live in institutions of this kind.

5.7 There are good arguments for giving preference to home care. Many people want to continue living at home, even if they are old and ill. Home care services, using family carers, are less expensive than care in specialised institutions. This must not, however, lead to a situation where family members — particularly women — are put under pressure to bear this burden alone.

5.8 The aim should be to find the best form of care for each individual situation — taking account of the interests of all concerned. In some cases, however, there is no alternative to moving the older person to a care home.

<sup>(8)</sup> See EESC opinion of 14.3.2007 on *The family and demographic change*, rapporteur: Mr Buffetaut (OJ C 161, 13.7.2007).

## 6. Financing care systems

6.1 Methods of financing care systems vary considerably between Member States and sometimes within Member States too. The reasons for this are that long-term care is often split between different public-sector bodies and budgets, that it is often provided at local level and that there are different systems of social insurance, taxation and private insurance.

6.2 Because of their dependence on national and regional conditions and policy strategies, financing systems for long-term care will continue to differ for the foreseeable future. Because these systems are being held up to public scrutiny in many countries, the exchange of experience on the organisation and operation of individual financing instruments (such as insurance systems and tax incentives) and service provision systems (e.g. personal care budgets, financial and material contributions) is both useful and important.

6.3 The key question with regard to the long-term financing of care is: how can rising costs in this area be contained? Possible measures and strategies are listed below:

- maintenance and strengthening of family care, in particular through incentive mechanisms and respite services (e.g. short-term care, holiday care, day-care facilities);
- ongoing development and improvement of the supply of care services, e.g. with regard to choice, cost, quality and efficiency;
- establishment of competitive structures (where possible and appropriate), in order to encourage cost-awareness and development by means of competition;
- a comprehensive preventive strategy. This should range from preventive health measures and the prevention of accidents (e.g. falls in the home) via private financial provision to the development of new social networks in old age which can provide support services, and boosting older people's ability to cope with everyday problems (e.g. ability to run the household);
- increased involvement of volunteers in care services (e.g. neighbourhood schemes, visiting and mobility services, assistance with care, hospice care), including cross-generational discussions with schoolchildren and young people;

- the increased use of technical aids in care work and the use of information and communication technologies (e.g. smart housing, distance monitoring and older people learning to communicate via IT tools).

## 7. Quality of long-term care

7.1 People in need of help also have a right to service quality. To this end the European Union has set the objective of ensuring access to high-quality and sustainable care <sup>(9)</sup>.

7.2 According to the reports drawn up by individual Member States, there are at present major differences in the quality standards used in the care sector, in terms of their legal force and also to the extent that standards may be applied either nationally or regionally. The responses from most countries indicate that there were too few standards and inadequate regulations.

7.3 As is the case in relation to financing, national and regional arrangements will continue to apply in this area too. In this area in particular, EU-wide exchange could provide individual Member States with valuable ideas and benchmarks for national and regional arrangements. The EESC therefore proposes that, in the framework of a joint EU-wide project, quality criteria be drawn up for long-term care, which could assist individual states as a guideline for drawing up their own standards and which take account of the increasing mobility of care workers and those in need of care.

## 8. The long-term care labour market

8.1 The health care and long-term care sector accounts for a significant proportion of total employment in the European Union (9.7 % of total employment in the EU in 2001), and between 1997 and 2002 the sector created 1.7 million new jobs in the EU 15. There is a significant European labour market in the care sector, part of it legal, but with some areas falling within the informal sector.

8.2 The care sector offers opportunities to groups which often experience difficulties finding employment (e.g. people rejoining the labour market, immigrants). The EESC suggests

<sup>(9)</sup> See Programme of Community Action in the Field of Health 2008-2013.

that this fact be reflected in the programmes of the national employment agencies as well as in the European employment programs (retraining, skills acquisition).

8.3 Personal services in the private household are a growth market. In a society based on the division of labour they in many cases offer the opportunity for the exercise of freedom of choice when selecting an area of employment and for some people when seeking to combine career and family. Household employment is a form of work which tends to fall outside the traditional employer/employee relationship. Black economy work needs to be eliminated and suitable conditions established for legal employment relationships.

8.4 The EESC recommends that use be made of the European Social Fund to finance training programmes, partly so as to raise the quality standards of jobs in the health care and long-term care sectors in the long-term, to prevent workers from leaving the employment market prematurely and to improve the quality, flexibility and thus the efficiency of the supply chain. Volunteers should also be involved in these training programmes.

8.5 The rapid, non-bureaucratic reciprocal recognition of relevant qualifications, which would be beneficial to the European labour market, should be an objective.

8.6 Personal care, whether medical or non-medical, is a physically and mentally demanding form of work, and it is therefore important that care workers have sufficient support and rest, to ensure not only that care is of high quality but also that care workers continue working in the sector. Overwork is a significant danger in this area. Care work is demanding and requires optimum working conditions, fair pay and social recognition.

8.7 In the overwhelming majority of cases care work is performed by women and it must therefore be included in EU measures in favour of women and gender mainstreaming.

## 9. Reconciling care, family and career

9.1 In its opinion entitled *The family and demographic change* <sup>(10)</sup> the EESC looked in detail at demographic change in

<sup>(10)</sup> See the EESC exploratory opinion on *The family and demographic change* of 14.3.2007, rapporteur Mr Buffetaut (OJ C 161, 13.7.2007).

the European Union and its impact on families. Demographic trends mean that in future more people will have to look after elderly relatives while also working. The development of care services should therefore also be seen as a way of lightening the burden on family carers and possibly making it easier to reconcile career and care obligations.

9.2 The social partners could promote an exchange on measures for the relief of family carers which have proved their practical worth <sup>(11)</sup>.

## 10. Hospice work and dying with dignity

10.1 The natural end of life should not be excluded from the debate on the ageing society. In accordance with the UN principles for older people, everybody should have the right to die in the most dignified circumstances possible, which should also be in keeping with the individual's system of cultural values.

10.2 The EESC discussed this subject in its opinion entitled *Hospice work — an example of voluntary activities in Europe* <sup>(12)</sup>. Attention is drawn to the proposals made in that connection <sup>(13)</sup>.

## 11. Care and abuse

11.1 In its recent opinion on *Elder abuse* <sup>(14)</sup> the EESC looked at the problem of abuse in connection with care in the home and in specialised institutions and put forward various suggestions, to which attention is drawn here.

## 12. Exchange of experience through open coordination, research projects and additional activities

12.1 In view of the fact that a Community policy on long-term care is not legally possible, the EESC stresses that the open method of coordination is an extremely important way of supporting the objectives of modernisation and development of high-quality, sustainable and universally available long-term care.

12.2 In an earlier opinion <sup>(15)</sup> the EESC suggested which subjects should be the focus of analysis and exchange of experience.

<sup>(11)</sup> See the EESC exploratory opinion on *The role of the social partners in reconciling working, family and private life* of 11.7.2007, rapporteur Mr Clever (OJ C 256, 27.10.2007).

<sup>(12)</sup> See EESC own-initiative opinion on *Hospice work — an example of voluntary activities in Europe* of 20.3.2002, rapporteur: Ms Eulenburg (OJ C 125, 27.5.2002).

<sup>(13)</sup> See the Communication from the Commission to the Council and the European Parliament — *Europe's response to world ageing — Promoting economic and social progress in an ageing world — A contribution of the European Commission to the 2nd World Assembly on Ageing* of 18.3.2002, COM(2002) 143 final.

<sup>(14)</sup> See EESC exploratory opinion on *Elder abuse* of 24.10.2007, rapporteur: Ms Heinisch (SOC/279 — CESE 1465/2007).

<sup>(15)</sup> See footnote 3.

12.3 In its opinion entitled *Research needs in the area of demographic change — quality of life of elderly persons and technological requirements* <sup>(16)</sup> the EESC identified significant research needs in the areas of prevention and treatment, qualifications in the care professions, availability of care services, and technical solutions and support for family members. The research issues addressed in the opinion are just as relevant today, as is the call set out in the opinion for the development of pan-European coordinated definitions for the care sector.

12.4 In addition, workshops, conferences and the like need to be organised to support the European exchange of experience in the development of action strategies.

12.5 Cooperation with international organisations like the OECD and the WHO should also be encouraged.

### 13. European law

13.1 Although long-term care does not fall directly under the remit of European law, it is significantly influenced by it via

other areas of the law. While the consequences of the Directive on services in the internal market, especially for social services of general interest, are unclear, the Court of Justice nevertheless interprets the freedom to provide services strictly (\*). Service providers and their employees and people receiving long-term care may find themselves in situations of legal uncertainty although the need for this type of care will increase throughout the EU. There will be considerable disparities in supply and cost between Member States, which, at least in border areas, may well result in a rise in the already-established phenomenon of medical tourism and poses major problems for the local authorities concerned. The impact on long-term care should therefore be considered when these areas of the law are being developed.

13.2 The care sector is particularly subject to the conflicting demands of competition and guaranteed availability. It should therefore be given appropriate consideration in any discussion of cross-border services, labour law and services of general interest.

Brussels, 13 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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<sup>(16)</sup> See EESC own-initiative opinion entitled *Towards the seventh Framework Programme for Research: Research needs in the area of demographic change — quality of life of elderly persons and technological requirements* of 15.9.2004, rapporteur: Ms Heinisch (OJ C 74, 23.3.2005).

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(\*) Judgment of the ECJ C-341/05 of 18.12.2007 (Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet et alii).



**Opinion of the European Economic and Social Committee on the Proposal for a directive of the European Parliament and of the Council amending Directive 2004/40/EC on minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (eighteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)**

COM(2007) 669 final — 007/0230 (COD)

(2008/C 204/22)

On 21 November 2007 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 amending Directive 2004/40/EC on minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (eighteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 February 2008. The rapporteur was Mr Pater.

At its plenary session, held on 12 and 13 March 2008 (meeting of 12 March 2008), the European Economic and Social Committee adopted the following opinion by 66 votes to 1 with 11 abstentions.

## 1. Conclusions

1.1 The EESC believes that the protection of workers' health against the negative direct and indirect impact of electromagnetic fields should be covered by the provisions of a European directive as soon as possible. Nonetheless, taking into account the arguments put forward by the Commission and those presented in this opinion, the EESC takes a positive view of the Commission's proposal.

1.2 Simply postponing the transposition of Directive 2004/40/EC will not solve the problems arising from the practical implementation of its provisions. The EESC therefore agrees with the Commission on the need to undertake urgent work on improving this directive.

1.3 The EESC emphasises that the postponement by four years of the date on which the current directive will enter into force and the planned amendments to its content will give workers and employers an unclear message about the Commission's legislative plans. The EESC therefore expects the Commission to take urgent action to mitigate the negative effects of this uncertainty within the EU legal system.

1.4 The Committee recommends that the Commission take into account in its future work the detailed comments and proposals contained in this opinion.

## 2. Background to the opinion

2.1 The purpose of the Commission's proposal is to postpone by four years, until 30 April 2012, the transposition of Directive 2004/40/EC on minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields).

2.2 The main justification for the Commission's proposal is the concern that the exposure limit values for workers laid down in the directive may impede the development of medical diagnosis using magnetic resonance imaging (MRI). The Commission also wishes to have more time to carry out a detailed assessment of the impact of the directive on the safety of other categories of worker and on the development of other sectors of the economy which use electromagnetic fields.

2.3 At the same time, the Commission has announced that it will propose changes to Directive 2004/40/EC in connection with the scheduled publication in 2008 and 2009 of the results of new scientific research, including the ICNIRP<sup>(1)</sup> and WHO<sup>(2)</sup> recommendations, which the Commission expects to propose exposure limit values different from those currently stipulated in the Directive.

2.4 The Commission's proposal has not been the subject of an opinion by the European social partners.

2.5 The proposal amending Directive 2004/40/EC is the eighteenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC; it concerns the protection of all

<sup>(1)</sup> ICNIRP — International Commission on Non-Ionizing Radiation Protection.

<sup>(2)</sup> WHO — World Health Organisation.

categories of worker against the risk of exposure to electromagnetic fields in the workplace <sup>(3)</sup>. The original draft Directive <sup>(4)</sup> was not submitted to the EESC for its opinion, as the EESC opinion of 1993 <sup>(5)</sup> on the directive relating to the four physical agents in the work place was considered to be sufficient for this purpose.

2.6 Protection against excessive exposure to electromagnetic fields currently varies significantly among the Member States — seven countries have already informed the Commission that they have completed the implementation of the directives in their national law (Austria, Czech Republic, Slovakia, Lithuania, Latvia, Estonia and Italy <sup>(6)</sup>); in other countries, older provisions continue to apply (Sweden, Finland, Poland, Bulgaria, Romania, United Kingdom, France etc.); finally, there are some countries which lack any detailed provisions in this area <sup>(7)</sup>.

### 3. General comments

3.1 Taking into account the provisions of the Framework Directive 89/391/EC and the extensive scientific data available, these issues clearly must be covered by a European directive in order to ensure the appropriate protection of workers' health taking into special consideration potential mothers against the direct and indirect negative impact of electromagnetic fields and to enable workers to carry out their professional duties correctly.

3.2 Nonetheless, taking into account the arguments put forward by the Commission and those presented in this opinion, the EESC takes a positive view of the Commission's proposal.

3.3 The EESC agrees with the Commission that improvements to the directive are urgently needed in order to ensure practical implementation of provisions from the Directive. The EESC believes that the improved directive should take a more

<sup>(3)</sup> Sources of electromagnetic fields in general use in various sectors of the economy include: electrothermal industrial appliances (induction heaters and stoves), dielectric and resistance sealers, welding equipment, electrolytic apparatus, industrial/distribution sector electrical power appliances, radio and TV transmitters, wireless telecommunications equipment, including cellular telephone network base stations, radar apparatus, diagnostic and therapeutic medical equipment for use in fields such as electrosurgery, physiotherapeutic diathermy, magnetic resonance tomography, trans-cranial magnetic stimulation, etc.

<sup>(4)</sup> Council Directive on the minimum health and safety requirements regarding the exposure of workers to the risk arising from physical agents — OJ No C 77, 18.3.1993, p.77.

<sup>(5)</sup> Opinion on the proposal for a Council Directive on the minimum health and safety requirements regarding the exposure of workers to the risk arising from physical agents — OJ No C 249, 13.9.1993, p.28.

<sup>(6)</sup> Based on information from DG Empl.

<sup>(7)</sup> Based on information from the WHO website: <http://www.who.int/docstore/peh-emf/EMFstandards/who-0102/Worldmap5.htm>.

sophisticated approach to the issue of protection against the risk of exposure to electromagnetic fields, and take account of the detailed comments outlined below.

3.4 The Committee notes with regret that the European Commission has, for the first time in its history, significantly delayed the entry into force of the provisions of a binding directive concerning minimum safety requirements for workers and their protection against risks in the workplace.

3.5 The Commission's announcement that changes are needed to the contents of the directive and its call to the Member States to halt transposition <sup>(8)</sup>, effectively means the withdrawal of the directive in its current form. Yet, formally, all that will happen will be the postponement of the date of entry into force. This will lead to legal inconsistencies, as the parties concerned will receive conflicting signals as to the scope of the action needed to limit European workers' exposure to electromagnetic fields. The EESC would therefore stress the importance of establishing consistent rules as soon as possible.

3.6 An analysis of the provisions of Directive 2004/40/EC carried out in a number of Member States in preparation for transposition revealed a number of shortcomings which made full transposition difficult. The Committee expects the draft version of the improved directive, which the Commission hopes to have ready in 2009, to be submitted for its opinion, and any comments it may make to be given serious consideration.

3.7 The Committee notes that the current levels of protection for workers against the risks of exposure to electromagnetic fields vary between individual Member States. The urgent preparation of an improved text for the directive, providing all workers with an appropriate level of safety during exposure to electromagnetic fields, should be treated as a matter of priority.

### 4. Specific comments

4.1 The Commission's reasons for postponing the deadline for the transposition of the directive would appear somewhat one-sided, focusing on only a very small group of workers (several hundred individuals across Europe) who are particularly exposed to such risks, i.e. MRI equipment operators. The Commission does not take account of the effect of postponing

<sup>(8)</sup> IP/07/1610 of 26.10.2007.

action on a much larger group of workers exposed to electromagnetic fields used in various economic sectors (welding, electrolytic equipment, transmitter aerials, power installations etc.), at least to number in millions Europe-wide.

4.2 The EESC emphasizes that the postponement of the transposition deadline will not, on its own, solve the recently identified problems, which are related to imprecise definitions. This would be necessary to create a level playing field for both sides of industry.

4.3 The EESC believes that it is important that the rules that are laid down have a solid scientific foundation. The history of scientific research into the effects of exposure to electromagnetic fields dates back to the mid 20th century, giving well established scientific background for minimum health and safety limits of workers' exposure. The EESC therefore believes that the adoption of the improved directive should be executed without a longer delay than the four years proposed by the Commission.

4.4 The EESC believes that the European Commission should show more initiative and independence by actively drawing up a policy for protecting workers against excessive exposure to electromagnetic fields in the workplace (particularly, given that the general public already enjoys such protection under Recommendation 519/1999<sup>(9)</sup>), and some countries already created the legal systems for protection of workers against electromagnetic fields exposure<sup>(10)</sup>.

4.5 The Committee believes that, by Europe-wide consultation of scientific and legal experts and institutions, from all 27 Member States, the Commission will be able to make effective use of their practical experience and take account of the specific legislative solutions adopted in various regions to solve recently identified problems which are now preventing the transposition and effective application of Directive 2004/40/EC.

4.6 The EESC calls on the Commission, like in its opinion of 1993<sup>(11)</sup> to conduct research to identify the risks to workers'

<sup>(9)</sup> Council Recommendation 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) (OJ L 199, 30.7.1999, p. 59).

<sup>(10)</sup> The ICNIRP, referred to above, which has played an important role in developing EU regulations in this field for many years, bases its work on studies drawn up by a group of a dozen or so experts from 9 EU countries, without the participation of social partners and experts from those countries which joined the EU from 2004.

<sup>(11)</sup> Opinion on the proposal for a Council Directive on the minimum health and safety requirements regarding the exposure of workers to the risk arising from physical agents — OJ No C 249, 13.9.1993, p.28.

health caused by conditions in the workplace such as exposure to static magnetic fields or intermediate frequency electromagnetic fields (including exposure over many years).

4.7 Taking into account the Commission's planned improvements to Directive 2004/40/EC and its call to the Member States to cease all work on the formal implementation of the provisions of the Directive, published CENELEC<sup>(12)</sup> standards should not include references to their 'harmonisation with Directive 2004/40/EC' until such time as the improved text has been drawn up. This will make it possible to maintain an appropriate level of consistency within the EU legal system.

4.8 Bringing the conditions of exposure of workers into line with the provisions of the directive may, in certain cases, involve significant technical adjustments (including the replacement of equipment), and the implementation of the directive by businesses should therefore, to a certain extent, take into account economic considerations. In this context, it is worth examining past experience of implementing the provisions of the work equipment directive<sup>(13)</sup>, which included an appropriate period for adapting work stations to the directive's requirements.

4.9 From the employers' perspective, provisions on new equipment are most urgently needed, as the cheapest and most effective approach to the problem is for manufacturers to produce technical solutions that reduce or completely eliminate the risk to workers. The EESC stresses that such action also protects from exposure persons who use such equipment for independent economic activity and who are not formally covered by the employee protection provisions of the directive (e.g. during welding work in family craft firms, or on farms).

4.10 Furthermore, the provision by manufacturers or suppliers of documentation on the nature and extent of the electromagnetic fields generated by various appliances will, in future, make it possible to significantly cut the cost of assessing work-related exposure risks. At present, the absence of any

<sup>(12)</sup> CENELEC — European Committee for Electrotechnical Standardisation.

<sup>(13)</sup> Council directive of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (89/655/EEC), as amended: 95/63/EC and 2001/45/EC.

effective regulations at European level means that such documentation is often not provided. This is particularly burdensome for SMEs, which can often ill afford to carry out professional risk assessments.

4.11 The access to the adequate manufacturers' documentation would enable trade unions and insurance companies to undertake various activities aimed at protecting workers, irre-

spective of the deadline for the implementation of the directive and its future provisions (in line with the universally recommended practice of avoiding unnecessary risk, where possible).

4.12 The EESC is concerned that the postponement of the transposition deadline may lead to new equipment entering into service which lacks any documentation on the risks arising during use or repair.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

### **Opinion of the European Economic and Social Committee on EU budget reform and future financing**

(2008/C 204/23)

On 25 September 2007 the European Economic and Social Committee decided to draw up an own-initiative opinion, under Rule 29(2) of its Rules of Procedure, on

*EU budget reform and future financing.*

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 20 February 2008. The rapporteur was Ms Florio.

At its 443rd plenary session, on 12 March 2008, the European Economic and Social Committee adopted the following opinion by 113 votes to 18 with 15 abstentions.

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

1.1 The radical changes of recent decades have led the European Union to launch a new political agenda whose priorities include climate change, energy and immigration: new issues requiring a rapid response. The EESC is keen to take part in the debate opened up by the Commission on budget policy, the key to rising to the above challenges.

1.2 The review of the European budget comes in the context of the sensitive ratification period of the Lisbon Treaty and is directly connected to the debate on cohesion and research policy and the CAP 'health check'. Moreover, the elections to the European Parliament and the installation of the new Commission are in sight. For this reason, the EESC would stress the difficulty of holding such an important debate at a time when two major institutions are undergoing renewal. The EESC also hopes that the governments of the 27 Member States will be prepared to take bold strategic decisions. The Committee urges the

Commission to clarify which instruments it intends to use in the consultation procedure.

1.3 There is a fundamental choice to be made when shaping budget policy: federalism or an intergovernmental system. Clearly, the arrangements for financing the budget are one measure of the level of advancement of European integration.

1.4 Before assessing what economic resources are needed and what methods will be used to locate them, it will be necessary to ensure that the Community's policies are up to date, in particular those that have a long history and which, despite having had a positive impact on development and economic growth, will need to be adjusted and bolstered if they are to respond to the new challenges. An in-depth, courageous analysis of the Structural Funds, cohesion funds, regional policies etc. needs to be carried out, to analyse in particular their impact and effectiveness in the new Member States, taking into account the Fourth report on economic and social cohesion (COM(2007) 273 final) on which the EESC recently issued an opinion <sup>(1)</sup>.

<sup>(1)</sup> See EESC opinion on the *Fourth Report on Economic and Social Cohesion*, CESE 1712/2007.

1.5 The review should be guided by the principles governing European integration, starting from the principle of sustainable development: solidarity, proportionality, peace, prosperity, freedom, security, general wellbeing, fairness and redistribution. The frame of reference for any proposal regarding the future financial perspectives must be the need to provide an effective response to the serious dangers associated with climate change. Meanwhile, a major effort is needed to deliver indispensable additional information, transparency and clarity regarding the ways European taxpayers' money is collected and spent, not least to combat Euroscepticism.

1.6 It is time to consider the case for doing away once and for all with all the rebates, prerogatives and derogations that mark the current budget. The reform must take a real step forward, away from these provisions that run counter to the European integration spirit of solidarity.

1.7 The EESC believes that Community budget financing should be reviewed in line with Treaty Article 269 <sup>(?)</sup>. Looking at the various reform options, the Committee would stress that whatever solution is chosen it will have to be applied gradually. A broad consensus will have to be sought with national parliaments and local and regional authorities and above all, priority should be given to the principle of each Member State's fiscal capacity, also taking into account the increased scale of spending objectives. On this note, the EESC would reiterate the position already stated in its opinion on *Building our common future: Policy challenges and budgetary means of the enlarged Union 2007-2013* <sup>(?)</sup>.

1.8 In the light of the widespread renationalisation of policies, the budget's implementation phase is becoming increasingly delicate with regard to the relationship between Community institutions and the public, as well as the public perception of Community action. Greater sharing of responsibility between the Commission and Member States in budget implementation is an important element, not least in involving all the economic and social players (as set out in the new Article 274 of the Lisbon Treaty). The EESC believes that long-term strategies should be pursued with financial continuity, whereas some room for manoeuvre might prove necessary in the event of changed circumstances or the need for a rapid response.

1.9 The principle of participation and contribution that underpins the tax systems of many EU countries, based on fairness and redistribution, seems to have proved most effective and efficient.

1.10 All stakeholders at every level, from national governments to individual members of the public, are both responsible for and benefit from Community funds.

1.11 In order to properly adjust new and old policies to international challenges, and thus be in a better position to look

at the level of resources needed, the entire system of ex-ante and ex-post evaluation needs to be beefed up. The independence and transparency of the evaluating body must be ensured.

1.12 Such evaluation must take account of the efficacy and the interaction of the various systems of public spending: EU, national and regional, as well as the possibility that several bodies may interact in the process (European Investment Bank, public-private partnerships, etc.).

1.13 Consistency with macroeconomic policy instruments will need to be ensured. For example, the Stability and Growth Pact sets out strict stability criteria, but says almost nothing about growth and thus about public investment. Improved coordination of national budget policies will also be needed.

1.14 New economic and financial phenomena have appeared on the world stage in recent years: there is greater international competition, and employment in the European Union is more vulnerable. Funds such as the Globalisation Adjustment Fund are an example of the instruments that are needed, but not yet adequate, to address this kind of phenomenon.

## 2. Introduction

2.1 The Communication from the Commission SEC(2007) 1188 launched a public consultation for all interested parties in view of the 2008/2009 budget review. On the basis of the outcome of this preliminary consultation process, which will end on 15 April 2008, the Commission will, presumably either at the end of 2008 or in early 2009, present a text (it is not yet clear whether this is to be a white paper) that will form a proposal for assessing, reviewing and amending the EU's own resources system and the financing and spending arrangements for Community activities.

2.2 After the end of the consultation, scheduled for 15 April 2008, the conclusions will be presented by the Commission at a conference (27 May 2008). By the end of 2008/early 2009, the Commission will present a new review document; the specific proposal will be presented during the third and final phase (2010/2011).

2.3 The EESC has the duty and opportunity to answer the questions raised by the Commission's consultation paper and to give its opinion on the concrete proposals put forward by the other institutions on the reform of the EU budget system.

2.4 The need for a thorough reform of the EU budget is of fundamental and primary importance not only to ensure the functioning and fair and transparent financing of the EU and its policies, but also to move beyond the recent institutional crisis and make the best of the results achieved by the Lisbon Treaty.

<sup>(?)</sup> The first paragraph of Article 269 states that 'Without prejudice to other revenue, the budget shall be financed wholly from own resources.'

<sup>(?)</sup> See EESC opinion on *Building our common future: Policy challenges and budgetary means of the enlarged Union 2007-2013*, OJ C 74 of 23.5.2005, p. 32.

### 3. A brief history of the EU budget

3.1 The EU budget should be viewed as one of the key instruments for achieving EU policy objectives. Although substantial in absolute terms, as a percentage the EU budget is quite modest and despite the enlargement of the EU to include 27 countries, it has gone down steadily in recent years <sup>(4)</sup>.

3.2 Some EU policies, such as cohesion policy, need financial support for their implementation, whereas other policies, such as competition, benefit from other instruments for achieving their goals. The financing and functioning of the budget must therefore be such that the policy objectives which have their fundamental basis in the budget can be achieved.

3.3 The EU budget has from the very beginning been amended and adapted to reflect the successive stages of European integration: the single market, enlargements, and, in particular, the widening scope of EU policies. Traditionally, a considerable part of the budget has been allocated to a relatively small number of policies, while policy objectives themselves have also undergone changes and developments that justify a budget review.

3.4 The European Coal and Steel Community (ECSC), set up in 1952, was genuinely financed by its own system of own resources derived from fixed quotas based on steel production in tonnes, which the coal and steel industries paid directly to the Community budget. In accordance with the principle of solidarity and in order to guarantee independence from national interests, the EC Treaty stipulates that 'without prejudice to other revenue, the budget shall be financed wholly from own resources' (Article 269).

3.5 The Luxembourg Council Decision of 21 April 1970 introduced an authentic financing system based on own resources, in the form of revenue specifically allocated to the Community to finance its budget and due to it by right without need for further decisions by the Member States. At present, the EU's funds consist of its own resources, made up of **agricultural and customs duties** on imports from non-EU countries, a resource levied from the harmonised value added tax (VAT) base, and a rate to be levied on Gross National Income (GNI) if and when the first three resources are not enough to cover the Communities' financial commitments.

3.6 Calculating the VAT resource by applying an average weighted rate on the total net revenue (the so-called 'revenue method') transformed the VAT resource from a 'genuine' own resource to a statistical device for calculating the contribution of each Member State, which is far removed from the spirit in which it was introduced.

3.7 The provenance of the EU's own resources has changed radically over time. The Commission's consultation paper itself <sup>(5)</sup> points out that whereas in 1988 the GNI resource made up less than 11 % of EU financing, compared to 28 % provided by custom duties and agricultural levies and 57 % by

the VAT-based own resource, in 2013 the GNI resource will provide about 74 % of EU financing, against 13 % for customs and agricultural levies and 12 % for the VAT-based resource.

3.8 This means that the majority of resources are currently derived, and will increasingly be derived in the near future, from the budgets of individual Member States, and are sometimes presented as 'expenditure items'. We need only consider that in 2013, own resources as such will be reduced to 12 %, thereby resulting in a total dissociation between the financing of the budget and the letter and spirit of the Treaty.

3.9 The structure of budget expenditure, as well as its financing resources, has changed considerably over time. Payments for the Common Agricultural Policy (CAP), for instance, reached a peak of 70.8 % in 1985 and went down to 60 % of total expenditure in 1988; in 2013 CAP expenditure will be virtually halved to 32 %. Cohesion policy has, on the other hand, experienced an opposite trend: whereas in 1965 expenditure on this policy amounted to only 6 %, it rose to 10.8 % in 1985, 17.2 % in 1988, and will amount to 35.7 % of the EU budget in 2013. The planned CAP review will have to take account not only of support for farming, but also of the benefits that it has secured for the EU public particularly in terms of quality and control.

3.10 A problem with coherence has emerged particularly since the Maastricht treaty: the European Union has gained new powers and, little by little, new objectives have been announced (for instance, recently, the commitment regarding environmental issues), but these have not been reflected in the size of the EU's budget, which has remained essentially unchanged.

3.11 There are a series of instruments including, for instance, the recently introduced European Globalisation Adjustment Fund, which are not written into the budget. These are not accounted for financially in any specific way, but their operation and subsequent use are dependent on surpluses in other budget headings and other Community funds that have been released. In practice, this system means that such instruments are of minor importance and their financing and running is in essence marginal.

3.12 Other aspects including the introduction of the UK rebate in 1985, which was subsequently extended to other states, not to mention the numerous derogations and imbalances that make the budget so complex and lacking in transparency, add to the urgency and importance of reviewing the budget and how it is operated and financed.

### 4. The need for a budget review to prepare the European Union for future challenges

4.1 The EESC considers that the characteristics of the budget of such a unique entity as the European Union should reflect the fundamental principles of European integration as enshrined in the treaties, and the founding treaties in particular. The objectives of peace, prosperity, freedom, security, general wellbeing,

<sup>(4)</sup> See diagrams attached.

<sup>(5)</sup> SEC(2007) 1188 — Communication from the Commission — Reforming the budget, changing Europe — a public consultation paper in view of the 2008/2009 budget review.

fairness and redistribution should be the main reference points when it comes to adopting decisions. Considering challenges such as climate change and environmental degradation, sustainability should also be included as a strong guiding principle for all expenditure in the future budget.

4.2 The solutions adopted should be geared towards making the overall framework for managing the budget more transparent and easy to understand, thereby establishing a more direct link between the EU public and the EU institutions.

4.3 The budget review should ensure respect for the principle of equity among Member States, moving beyond any derogations, concessions or prerogatives. Each Member State's contribution to financing the budget should reflect its general level of prosperity and principles of solidarity.

4.4 In keeping with the principle of non-discrimination and equality for all EU citizens, the budget review should provide for special measures to move beyond the system of derogations, privileges and exceptions enjoyed by some Member States.

## 5. Moving on from the present financing system

5.1 The European Commission's consultation paper should provide an opportunity for all stakeholders, be they institutional, political or social, to hold serious discussions aimed at overcoming the contradictions that characterise the EU budget and, above all, the way it is financed.

5.2 The EESC underlines that, given the sensitivity of the issue, broad consensus among all interested parties, i.e. ranging from national parliaments to the social partners, should be sought; and that during the implementation process, the amendments adopted should be phased in gradually in order to ensure widespread adherence to the reform, thereby avoiding preferential treatment among Member States.

5.3 On the basis of the new Lisbon Treaty, the EESC believes that the budget review should result in a budget financing system involving new forms of own resources. In particular, two inconsistencies that characterise the present situation must be remedied: the fact that 70 % of resources come from Gross National Income, which, on paper at least, should only play a residual role, and the situation whereby approximately 85 % of the total derives from resources that are not actually 'own resources' and therefore allocated directly to the EU.

5.4 For these reasons, the EESC hopes for a return to the letter and spirit of Article 269 of the Treaty, which unequivocally establishes the primacy of own resources for financing the

EU budget. It welcomes the debate launched by the European Parliament's Lamassoure report <sup>(6)</sup>, which includes ideas for a review of the own resources system:

- VAT
- excise duties on transport fuel and other energy taxes;
- excise duties on tobacco and alcohol;
- tax on company profits.

5.5 European citizens should be able to benefit from more and better information, and transparency and efficiency in the system. Moreover, they should be given the means to verify and assess how their contributions to the EU are spent on its functioning and policies, participating as knowledgeably as possible. Such arrangements are fundamental to all democratic governments.

5.6 Clearly, the arrangements for financing the budget are one measure of the level of advancement of European integration. In a more federal system, a European tax would be a fair method, and would be more transparent. However, to suggest that in the current situation European economists might fail to find a solution is wrong and demonstrates a lack of political will.

## 6. Policies and role of the European Union

6.1 In Communication SEC(2007) 1188, the Commission lists a series of factors <sup>(7)</sup> that have a direct and indirect impact on the Union's strategic choices and political agenda. These factors range from an ageing population to scientific and technological progress, the competitiveness of global markets, climate change, Europe's commitment to solidarity, and rural development policies.

6.2 As the budget is an essential tool for meeting the objectives that underpin EU progress, its review should be conducted in the light of a full and in-depth discussion of the role and aims of the 27-member EU.

6.3 For this reason, the EESC would argue that during this consultation phase, there is a need to build a consensus, both within and outside the institutions, around the policies that are deemed to be of fundamental importance for Europe's future. It will then be necessary to determine how the European Union has strengthened its role and sphere of influence in those sectors. This makes it all the more necessary that the process be conducted in the light of the new treaty.

6.4 When decisions are taken on the policies that will form the linchpins of the EU's activities in the coming years, a careful analysis should be made of all the inconsistencies and delays of the past, particularly in the financing system, so as to avoid repeating the same mistakes.

<sup>(6)</sup> European Parliament, *Report on the future of the European Union's own resources* (A6-0066/2007), of 13 March 2007, rapporteur: Alain Lamassoure.

<sup>(7)</sup> See point 2.1 of Communication SEC(2007) 1188.

6.5 In the various areas of activity and more specific policies described by the Commission in the consultation paper as future challenges, special emphasis, not least in financial terms, should be placed on action in support of economic and social cohesion. Disparities have grown, particularly since the recent enlargement of the EU. The budget review must be used as an opportunity to continue promoting the development of less developed regions, for the obvious reason that economic and social progress in the less wealthy regions of the Union will have a positive impact on all the Member States and their economies.

6.6 Furthermore, as has already been mentioned, the EU's work must continue to be guided by the values of solidarity and social justice. In the face of challenges such as immigration, the EU must learn how to project its role and social model beyond its borders, by having instruments to hand, of a financial nature in particular, aimed at tackling the causes of immigration in the countries of origin.

6.7 Dealing with the challenge of climate change is becoming an increasingly important priority for Europe and should be reflected in spending priorities in the future. Additional funds need to be committed to research and development in breakthrough technologies in the energy and transport field and for the development of methods for carbon capture and storage. Major funds should also be allocated to supporting adaptation and mitigation measures in the least developed countries and to support low carbon investments in the emerging economies.

## 7. Explaining budget policies to the public

7.1 The European Union's institutional crisis has been due in part to the budget structure itself, which is in serious need of reform. In the present situation, the short-sighted debate of recent years on the EU's own resources contributes to the EU's poor image. Complexity, lack of transparency and derogations and exceptions are all factors that distance us from the principles of European integration and perpetuate Euroscepticism.

7.2 Given the difficulties encountered during the constitutional (and subsequently Lisbon) treaty process, the budget and its necessary reform should not contribute further to the idea that the EU citizen's money is being poured into a 'bottomless pit'. For this reason, the link between spending and outcomes has to be more explicitly spelt out.

## 8. What future for the EU's own resources?

8.1 The debate on EU financing provisions is one of the most controversial aspects of the discussion on budget reform. The budget's current financing framework (outlined in point 3.7) is quite distinct from financing based mainly on own resources. The options for reform range from the introduction of a new own resources system replacing what went before, to options favouring Member States' GNI.

8.2 The European Parliament's report on the future of the European Union's own resources, adopted in March 2007

(rapporteur: Mr Lamassoure)<sup>(8)</sup> criticises the current budget system and its financing and advocates a reform to be introduced in two stages but which should form part of a single decision. The transitional first phase would lead to an improvement of the current system of national contributions while the second, in the view of the EP, should lead to the creation of a genuine own resource for the European Union to replace the existing mechanisms.

8.3 In emphasising that a European tax would not be in the least revolutionary insofar as it would not change the tax burden for citizens, the EP sets out the criteria for the new system: sufficiency, stability, visibility and simplicity, low operating costs, efficient allocation of resources, vertical equity (redistribution), horizontal equity (equal impact on all EU taxpayers), and fair contributions (in line with the wealth and prosperity of each Member State).

8.4 Working from the observation it has made on a number of occasions regarding the European budget's insufficiency to meet the objectives pursued and challenges faced by the EU, the EESC would like to launch a debate on the possibility of a European tax. By examining the various degrees of importance of Community legislation, one idea might be to use possible sanctions against countries failing to transpose certain fundamentally important directives to finance projects of European interest.

8.5 The EESC appreciates the rigour of the report and its wealth of proposals, and agrees with the EP's analysis of the budget's present state of health and the need to reform it. Nevertheless, it would draw attention to the difficulties involved in introducing a system such as the one described. The introduction of financing based on a 'European tax' would undoubtedly be met with considerable resistance, first and foremost due to problems in putting the idea across to the public.

8.6 On this note, the European Union ought to put more effort into fully developing the protection and promotion of cohesion, the environment, employment and the European social model, in addition to support for competitiveness.

8.7 The EESC hopes that the decisions to be taken on the reform of EU budget financing will take greater account of the fiscal capacity of each Member State, in a spirit of fairness, equality and solidarity, doing away with derogations and exceptions. Furthermore, the EESC would argue that the debate on resources, though of primary importance, must not be allowed to overshadow or upstage the discussion on the Union's strategic choices, its role and its policies.

## 9. Transparent and effective budget implementation methods

9.1 Budget implementation is another important subject up for review. Transparency, reliability and clarity are the key criteria at this stage. It is at the implementation phase in particular that the European public comes face to face with EU action

<sup>(8)</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0066+0+DOC+WORD+V0//EN>.



and can judge its practical results. In addition, it will be necessary to ensure that the budgetary cycle is synchronised with the terms of office of the European Parliament, the Commission, and the European Council.

9.2 The EESC would argue that further efforts are needed in the area of public information on the results of European policies and funds, for two main reasons: 1) in the interests of transparency; 2) to combat Euroscepticism and frequently biased reporting that focuses on failures rather than the more common success stories.

9.3 As regards the stability of the financial frameworks and their internal flexibility, the EESC would argue that the EU's long-term strategies (for instance, employment, research and development, environment and energy) must be boosted by an assurance of continuity, whereas for short-term priorities a margin of flexibility should be allowed, with a view to adjusting to changing circumstances and ensuring a rapid reaction, above all leaving room for action by Member States.

9.4 Inevitably, the debate on budget implementation must also look at budget management and accountability. Currently, 80 % of the budget is managed directly by the Member States, while the remaining 20 % is managed by the European Commission, which however has responsibility for overall budget implementation. The EESC would argue that there is a case for discussing the relevance of this division of responsibilities.

9.5 In this respect, the utmost consideration must be given to the new treaty, which amends Article 274 as follows: in the first paragraph, the words at the beginning 'The Commission shall implement the budget' are replaced by 'The Commission shall implement the budget in cooperation with the Member States'; the second paragraph is replaced by the following: 'The regulations shall lay down the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities. They shall also lay down the responsibilities and detailed rules for each institution concerning its part in effecting its own expenditure.'

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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APPENDIX

**to the opinion of the European Economic and Social Committee**

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate (Rule 54(3) of the Rules of Procedure):

**Point 1.3**

Delete point 1.3:

~~'There is a fundamental choice to be made when shaping budget policy: federalism or an intergovernmental system. Clearly, the arrangements for financing the budget are one measure of the level of advancement of European integration.'~~

Voting

For: 40 Against: 87 Abstentions: 10

**Point 7.3**

After current point 7.2 insert a new point 7.3 as follows:

'One of the major concerns about the present system of EU finances is the inability to manage them in such a way that the Auditors will sign off the accounts. The annual charade whereby the Auditors decline to sign off most of the expenditure gives rise to very adverse publicity in the Member States. Any new system must resolve this problem.'

Voting

For: 37 Against: 94 Abstentions: 12

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**Opinion of the European Economic and Social Committee on the Proposal for a Council Directive amending VAT Directive 2006/112/EC of 28 November 2006 on the common system of value added tax**

COM(2007) 677 final

(2008/C 204/24)

On 22 November 2007 the Council decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the

*Proposal for a Council Directive amending VAT Directive 2006/112/EC of 28 November 2006 on the common system of value added tax*

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 20 February 2008. The rapporteur working alone was Mr Burani.

At its 443rd plenary session, held on 12 and 13 March 2008 (meeting of 12 March), the European Economic and Social Committee adopted the following opinion by 123 votes to one with six abstentions.

## 1. Introduction

1.1 The VAT Directive <sup>(1)</sup> that came into force in 2007 brought together VAT provisions introduced and amended over the years into a single text. Implementation has thrown up a number of practical difficulties or aspects on which businesses and some Member States have commented or made proposals. The Commission has examined these and has decided to present some suggestions for amendment in the present proposal.

1.2 Since the amendments vary in kind and concern different issues, and in order to reduce red tape and accelerate procedures, the Commission has chosen — rightly, in the Committee's view — to group them under a single proposal.

## 2. Contents of the proposal

2.1 Certain amendments concern the energy sector, whose tax scheme was originally based on a 2003 directive <sup>(2)</sup> and subsequently transposed into the VAT Directive. As a result of the technical terms used, its scope proved to be too narrow, and failed to reflect economic realities. More specifically, among the 'energy products' subject to excise duty it included natural gas supplied by pipeline and vessels for transporting gas, electricity and heat or refrigeration supplied by heat and refrigeration networks ('remote supply'). The Commission proposes that these products be exempted from the scope of the duty.

2.2 Under the proposal, these sources of energy would be taxed in the Member States where the service is provided in terms of supply or access. It also simplifies the procedure whereby the Member States may apply a reduced VAT rate.

2.3 In the area of derogations, at the time of accession Bulgaria and Romania were authorised to grant tax exemptions to small businesses, and to continue exempting international passenger transport from VAT. Nothing has changed in this respect: it has simply been considered helpful to incorporate these derogations into the text of the VAT Directive, as was done previously for other Member States.

2.4 Regarding the right of deduction, the proposal introduces — or rather clarifies — a prominent principle, inherent to the original thinking behind VAT: to restrict the initial exercise of the deduction to the proportion of effective business use when mixed-use immovable property is included in a company's assets and liabilities. Provision is also made for an adjustment system to reflect the varying proportions over time of business and non-business use.

## 3. Comments and conclusions

3.1 The proposals mentioned in points 2.3 and 2.4 above require no particular comment: regarding the former, the aim is to correct a previous omission, and in the latter, to spell out — necessarily, albeit obviously — a basic principle which is widely known and implemented.

3.2 The EESC approves the proposal as described in points 2.1 and 2.2, aiming to bring legislation into line with economic realities, and ensuring equal treatment for different energy sources.

3.3 The EESC therefore supports the Commission's proposal.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

<sup>(1)</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

<sup>(2)</sup> Council Directive 2003/92/EC of 7 October 2003.

## Opinion of the European Economic and Social Committee on Relations between the European Union and the Former Yugoslav Republic of Macedonia: the role of civil society

(2008/C 204/25)

On 16 February 2007 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

*Relations between the European Union and the Former Yugoslav Republic of Macedonia: 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 30 January 2008. The rapporteur was Mr Miklós Barabás.

At its 443rd plenary session, held on 12 and 13 March 2008 (meeting of 12 March 2008), the European Economic and Social Committee adopted the following opinion by 125 votes to one with three abstentions.

### 1. Executive summary and main conclusions

1.1 The European Economic and Social Committee (EESC) recognises the important advances made by the Former Yugoslav Republic of Macedonia in terms of developing and stabilising its relations with the European Union (EU) with the ultimate objective of joining the EU. The candidate country status is an acknowledgement of the progress made so far. The EESC appreciates these positive developments against the background of the political, economic and social consequences of the conflicts in the region, the challenges of the transition period as well as the implementation of the Ohrid Framework Agreement.

1.2 The EESC is ready to support the Former Yugoslav Republic of Macedonia in its efforts to start the accession negotiations with the EU as soon as possible, preferably in 2008.

1.3 Taking into account the commitment of the EESC and representatives of Former Yugoslav Republic of Macedonia economic and social interest groups to strengthen dialogue and cooperation between organised civil society in the EU and the FYROM, there is a need to prepare the ground for the accession of the Former Yugoslav Republic of Macedonia to the EU. In this process the creation of a Joint Consultative Committee with the EESC plays a highly important role. The identification of the Former Yugoslav Republic of Macedonia members of this joint body should be the result of an open, transparent and democratic process.

1.4 Within the context of accession to the EU, the EESC highlights the key role of Former Yugoslav Republic of Macedonia civil society in the formulation, implementation and monitoring of public policies and legislation (reform agenda) aimed at preparing the adoption of the EU acquis. To promote this process, Former Yugoslav Republic of Macedonia civil society should be involved in accession negotiations.

1.5 Different trade union federations should coexist on an equal footing. In order to create a favourable environment for

achieving this goal, there is a need for specific legislation on trade unions and to reconsider and reduce the present requirement (of 33 % of the workforce) for becoming a contractual partner in collective bargaining. This would be an important contribution to a strengthened social dialogue and to the full respect of trade union rights.

1.6 The development of and collaboration between existing employers' associations should be facilitated and the legislative framework revised in order to establish clear criteria for their participation in the Economic and Social Council (ESC).

1.7 The role of the ESC of the Former Yugoslav Republic of Macedonia should be strengthened; it should be made more representative with the participation of all stakeholders including civil society organisations. This would create a firm institutional base for conducting a meaningful dialogue on economic and social issues in genuine partnership. For such a development to take place, a new legal framework should be prepared with the involvement of the parties concerned and then promptly adopted.

1.8 The EESC expresses serious concern over the extremely high poverty and unemployment rates and calls on the Government of the Former Yugoslav Republic of Macedonia to provide for efficient policies to combat poverty and strengthen social cohesion.

1.9 The distribution of State resources as well as EU funds should be more pro-poor oriented and based on solidarity and social cohesion so as to reduce existing regional and ethnic disparities. Specific measures are needed to improve the situation of Romas.

1.10 The EESC welcomes the efforts and the adoption of the Strategy of the Government for Cooperation with Civil Society as a step towards providing a supportive environment for the development of organised civil society, and as a contribution for a meaningful and constructive civil dialogue.

1.11 Parallel to increased civic participation, the capacity of social and civil partners should be strengthened. An important aspect in this regard is the direct and indirect financial support mechanism of the Former Yugoslav Republic of Macedonia Government. Furthermore, specific educational programmes on the role of civil society should be introduced at school.

## 2. Introduction

2.1 On 9 April 2001, the Former Yugoslav Republic of Macedonia was the first country in the Western Balkans to sign, by an exchange of letters, a Stabilisation and Association Agreement, which entered into force on 1 April 2004.

2.2 The Former Yugoslav Republic of Macedonia officially applied for EU membership on 22 March 2004. On 9 November 2005, the European Commission issued a positive opinion on this application, and on 16 December 2005 the European Council decided to grant candidate country status to the Former Yugoslav Republic of Macedonia.

2.3 At the fourth meeting of the EU-Former Yugoslav Republic of Macedonia Stabilisation and Association (SA) Council on 24 July 2007, strong commitment to advancing the pace of reforms was noted. The SA Council also supported the creation of Joint Consultative Committees with the EESC and the Committee of the Regions.

2.4 The latest Progress Report on the Former Yugoslav Republic of Macedonia, released on 6 November 2007, evaluates the progress made in several fields but also enumerates the remaining serious challenges that the country has to face.

2.5 Within the context of the expected start of the accession negotiations, the EESC highlights the key role of civil society. Therefore, this opinion will focus on Former Yugoslav Republic of Macedonia civil society and its environment, opportunities and challenges; the social and civil dialogue in the country; the relations with the EU and the countries of the Western Balkans.

## 3. Some specific features of civil society in the Former Yugoslav Republic of Macedonia

3.1 Civil society emerged in the late 19th and early 20th century and exerted a strong influence on the entire social development. The literary and cultural circles, charities and other citizens' initiatives provided for a basis for developing cultural, sport and various professional organisations. They were kept under political control during the Socialist period. Independence in 1990 and the transition period to parliamentary

democracy have been a powerful incentive to strengthen the role of civil society in the country.

3.2 The re-emergence of Former Yugoslav Republic of Macedonia civil society in the early 1990s was strongly and positively influenced by the political developments of the country, paving the way for the creation of an independent, multi-faceted and service-oriented civil society. The other specific feature is the value-driven nature of the country's civil society that is largely regulated by a strong normative approach.

3.3 Civil society in the Former Yugoslav Republic of Macedonia is characterised by limited breadth and depth of citizen's participation. While there is an increase in non-partisan political action by citizens of the Former Yugoslav Republic of Macedonia, still only a minority of citizens (less than 30 %) participate in civil society activities (charitable giving, membership of civil society organisations, volunteering, collective community action, etc.).

## 4. General context

### 4.1 *Political Context: the Ohrid Framework Agreement and the Rule of Law*

4.1.1 The Ohrid Framework Agreement<sup>(1)</sup> concluded in August 2001 and the rule of law are among the key factors for the political stability of the country. The Ohrid Framework Agreement has contributed to facing the challenges related to diversity in the Former Yugoslav Republic of Macedonia. It has also contributed towards establishing the foundations for stability and development, and has set the tempo for political, social, economic and inter-ethnic life.

4.1.2 After the parliamentary elections in 2006 and the formation of the new centre-right government, a new balance was needed. There is a need for the Government to dedicate itself to political dialogue and to securing the support of all political forces in the implementation of the EU agenda for the Former Yugoslav Republic of Macedonia. There is progress in constructive political dialogue on issues of fundamental national importance. However, this process might be hampered by continued political tensions preventing better governance and the establishment of well-functioning democratic institutions.

4.1.3 Significant progress has been made with the implementation of the legislative part of the Ohrid Framework Agreement, whose provisions have been included in the Constitution following the adoption of amendments by the Parliament, as well as for the equitable representation of communities in public administration. The perception within the population

<sup>(1)</sup> In the beginning of 2001, the Former Yugoslav Republic of Macedonia faced armed clashes and crisis in its inter-ethnic relations. The political solution for the crises was the Framework Agreement (also known as Ohrid Agreement), agreed upon by the four leading political parties and guaranteed by the President of the Republic and the international community (EU and USA), on 13 August 2001 in Ohrid. The Framework Agreement has the aim to preserve the integrity and the unitary character of the State, to promote democracy and develop civil society; to promote Euro-Atlantic integration; and to develop a multi-cultural society, with an equitable inclusion of the ethnic communities. The legislative part of the Framework Agreement has been fulfilled in about four years, in July 2005.

that inter-ethnic relations represent the most important problem in their country has decreased from 41.4 % in July 2001 to 1.4 % in March 2007. 19.7 % of the citizens assessed inter-ethnic relations as 'very bad' in January 2005, compared to 7.6 % in March 2007 <sup>(2)</sup>.

4.1.4 Progress in education for communities, equitable representation and decentralisation has been registered. Since the Agreement represents 'a framework', it allows room for interpretation and possible demands for supplementing measures. New challenges could be faced regarding the use of languages (Law on Languages, bilingualism of Skopje), the status of ethnic-Albanian ex-combatants, territorial organisation (Kičevo, 2008) and position of smaller and dispersed communities like Turks, Romas, Serbs, Bosniaks and Vlachs who form 10.6 % of the population.

4.1.5 The situation of the Roma community continues to cause concern, even if the country is one of the committed participants in the 'Decade for Inclusion of Roma 2005-2015'.

4.1.6 In the past, the Former Yugoslav Republic of Macedonia has been taking (too) slow steps towards strengthening the rule of law, mostly because of the structural weaknesses in the implementation of the laws and in the courts, politicised and weak public administration, corruption and organised crime. Today one can witness certain progress in these fields. The legal framework for strengthening the independence and the effectiveness of the judiciary is largely in place, since amendments were made to the Constitution in December 2005. The fight against corruption is high on the agenda of the Government of the Former Yugoslav Republic of Macedonia. In May 2007 the new State Programme for Prevention and Repression of the Corruption was enacted. Still, strong political will is required to step up efforts to combat corruption effectively.

#### 4.2 Socio-economic Context: Jobless Growth

4.2.1 The Former Yugoslav Republic of Macedonia was less developed compared to the other republics in the former Yugoslav Federation and its economy was in a downturn for six years before independence. The first years of independence were marked by their macroeconomic instability and an increase in the fiscal deficit. The crisis in the region, the Greek embargo, UN sanctions against the Federal Republic of Yugoslavia and the Kosovo crisis negatively influenced the economic and political situation in the Former Yugoslav Republic of Macedonia and contributed directly to the country's inability to focus on its own political and economic reforms.

4.2.2 Today the Former Yugoslav Republic of Macedonia enjoys relative macroeconomic stability based on a broad consensus on economic policies and is moving towards a larger degree of trade liberalisation (member of WTO and CEFTA). Still there is no proper economic development.

<sup>(2)</sup> Early Warning Report — Former Yugoslav Republic of Macedonia, UNDP, Skopje, June 2007.

4.2.3 As a result there is a high degree of poverty in the country, with 29.8 % of the population of the Former Yugoslav Republic of Macedonia living below the poverty line. Poverty is directly related to an extremely high unemployment rate (36 %).

4.2.4 Poverty, social exclusion and high unemployment with poorly functioning labour markets are (negative) results of low economic growth (around 4 %), inappropriate corporate structure (especially SME underperformance), rigid labour market, a weak education system and strong population growth. So far the Government has often used social welfare measures to handle poverty without an active employment policy.

4.2.5 Nevertheless the GDP growth of 7 % registered in the first quarter of 2007 could be the long expected start of a more dynamic economic development cycle.

#### 4.3 Socio-Cultural Context: Widespread Lack of Trust

4.3.1 Social relations are characterised by a widespread lack of trust, tolerance and public spiritedness. There is a low level of trust in public institutions. However, last year there was an increase in trust in the Government.

4.3.2 Tolerance according to the World Values Survey has the indicator of 2.08, which means that Former Yugoslav Republic of Macedonia society is characterised with a low level of tolerance. Intolerance is very high towards marginalised groups like drug users, alcoholics, homosexuals and Romas. Public spiritedness, measured through non-payment of public utilities (transport, water, etc.), taxes, or use of government benefits, is also at a low level.

### 5. Civil society in the Former Yugoslav Republic of Macedonia

#### 5.1 Legal Environment

5.1.1 Freedom of association is guaranteed by the Constitution (art. 20) and regulated by the Law on Citizen Associations and Foundations adopted in 1998.

5.1.2 Trade unions and association of employers lack regulations, since they are only covered by a few articles of the Labour Law and the Trade Company Law. There is a pressing need for the creation of a level playing field for social partners, especially in order to guarantee their independence. The chambers of commerce are regulated by a separate law.

5.1.3 Even with the recent improvements (Law on donations and sponsorships, etc.), the tax laws on civil society organisations (CSOs) and tax benefits for philanthropy are obstacles to further development.

5.1.4 A new Law on Citizen Associations and Foundations is under preparation. The major expected changes are: further improvement of the rights to set up CSOs, regulation of their economic activities and introduction of the status of public benefit organisation.

## 5.2 Snapshot of Civil Society in the Former Yugoslav Republic of Macedonia

### 5.2.1 Diversity and Representativeness of Civil Society Organisations (CSOs)

5.2.1.1 Former Yugoslav Republic of Macedonia organised civil society is composed of trade unions, citizen's organisations, and chambers of commerce, together with churches and religious communities. The associations of employers are a new phenomenon for the country and chambers of commerce (two of them exist at the national level: the *Economic Chamber of Macedonia*, SKM, and the *Union of Chambers of Commerce*, USKM) are still seen as representatives of the private sector.

5.2.1.2 The relationship between organisations of employers is made more complicated by the fact that only one of them (the *Association of Employers of Macedonia*, ZRM) is a member of the Economic and Social Council (ESC) of the Former Yugoslav Republic of Macedonia. The other one, the *Confederation of Employers of the Republic of Macedonia* (KRM), strives for a more open and inclusive attitude of the Former Yugoslav Republic of Macedonia's ESC.

5.2.1.3 The trade unions are grouped in four confederations: the *Federation of Trade Unions of Macedonia* (SSM), the *Confederation of Independent Unions* (KNS), the *Confederation of Trade Union Organisations of Macedonia* (KSS) and the *Union of Free and Autonomous Trade Unions* (UNS). Rivalry and sometimes even hostile attitudes, with personal motivations, towards each other are characteristic features of their relations. This significantly weakens their negotiation position, especially vis-à-vis the government.

5.2.1.4 There are 5 289 CSOs registered in the country (2003). Almost all social groups are represented as components of civil society, with weaker participation of the poor, rural communities and ethnic communities, especially ethnic Albanians. A significant number of organisations (43 %) are concentrated in the capital Skopje and CSOs are nearly non-existent in the rural areas.

### 5.2.2 Level of Organisation and Relations

5.2.2.1 There are around 200 umbrella bodies of CSOs in the Former Yugoslav Republic of Macedonia. The majority of organisations are members of a union, federation, platform or other umbrella body, based on type of CSOs or target group. These umbrella bodies play a significant role in consolidating the civil sector of the country.

5.2.2.2 Former Yugoslav Republic of Macedonia civil society is challenged to focus on communication, coordination and

cooperation. Interaction/dialogue among employers, trade unions and other CSOs is practically nonexistent. However, the *Civil Platform of Macedonia*, with its 29 members, has set a positive example in this field.

## 5.3 Strengths and Weaknesses of Civil Society in the Former Yugoslav Republic of Macedonia

5.3.1 Strengths of Former Yugoslav Republic of Macedonia civil society are empowerment of citizens and high values of peace, gender equality and environmental sustainability.

5.3.2 The most significant impact of civil society is achieved in the area of empowering citizens, especially women and marginalised groups. There has been an increased participation of women in public life (Parliament, municipalities and CSOs).

5.3.3 Environmental organisations were a flagship in the period from 1996 to 2001, when as a result of their advocacy work, environmental sustainability was successfully mainstreamed by the Government. They still have a real potential for playing a positive role in the future.

5.3.4 Pluralism is in place among and practised by all major stakeholders in Former Yugoslav Republic of Macedonia organised civil society, even though the ability of an intra-sectoral dialogue should be developed and strengthened.

5.3.5 The weaknesses of civil society in the Former Yugoslav Republic of Macedonia are: poverty eradication, transparency and self-regulation, practicing democracy, mutually indifferent civil society and private sector relations and insufficient resources and lack of diversification of financial resources (today there is a strong foreign donor dependency).

5.3.6 The legacy of the past combined with different positioning and attitudes towards each other (and the state), frequently with emotional 'flavour', poses a significant obstacle to dialogue and action.

5.3.7 Churches and religious communities enjoy high public trust; trust is moderate as regards citizens' organisations, and trust is low as regards chambers of commerce and trade unions, the latter because of perceived worsening position of working people and lack of action.

## 6. Social and civil dialogue and the establishment of a Joint Consultative Committee with the EESC

### 6.1 Social Dialogue

#### 6.1.1 The framework

The Former Yugoslav Republic of Macedonia is a member of ILO and has ratified most of its Conventions. Some recently ratified cases are: Worst Forms of Child Labour Convention (C182) ratified in 2002 and Tripartite Consultation (International Labour Standards) Convention (C144) ratified in 2005.

### 6.1.2 The Economic and Social Council of the Former Yugoslav Republic of Macedonia

The institutional framework for social dialogue, especially the tripartite dialogue practiced through the Economic and Social Council of the Former Yugoslav Republic of Macedonia, is at an early stage of development. The Economic and Social Council established in 1996 manages tripartite dialogue (trade unions and employers as partners of the Government) on the national level. However, the Council has limited scope for participation because it consists only of representatives of the *Federation of Trade Unions of Macedonia* (SSM), the *Association of Employers of Macedonia* and is chaired by the Minister of Labour and Social Policy.

6.1.3 This situation is seriously challenged by those organisations of employers and trade unions that are not members of the ESC and strongly criticise its work. There seems to be a general agreement, including from the point of view of the government, that the current legal framework should be amended and made clearer in identifying the criteria for participating in the ESC. However a protracted discussion can be foreseen to find a satisfactory solution and a new legal framework for the ESC.

### 6.1.4 Collective bargaining

There are two general collective agreements for the public and private sector, and about 24 collective agreements for different sectors. The present requirement of the trade unions is to organise 33 % of the relevant workforce to become social partners in collective bargaining. This provision is seriously criticised by several trade unions who call for a substantial reduction of this threshold. Moreover, it proved to be difficult to provide clear evidence that an organisation had actually reached this threshold.

## 6.2 Civil Dialogue in light of the new Government Strategy

6.2.1 The first period in Government-CSOs relations was characterised by ad-hoc contacts and arrangements. The first step towards institutionalised relations was made in November 2004 with the creation of a Civil Society Unit within the Government.

6.2.2 In January 2007 a Strategy for Cooperation of the Government with the Civil Sector was adopted along with the Action Plan for its implementation. This document was the result of a proper consultation process.

6.2.3 The main strategic goals of the Strategy are: participation of the civil society sector in the process of policy making; inclusion of civil society in the process of EU integration; creation of more favourable conditions for the functioning of civil society; upgrading and enhancing the legal framework to improve the conditions of civil society; establishment of inter-institutional and cross-sectional cooperation.

## 6.3 Establishment of a Joint Consultative Committee (JCC) with the EESC

6.3.1 All stakeholders in the Former Yugoslav Republic of Macedonia attach great importance to the JCC with the EESC and urge its earliest possible setting up.

6.3.2 A properly composed JCC can be an effective instrument not only in bringing the Former Yugoslav Republic of Macedonia and its organised civil society closer to the EU but also in promoting dialogue among civil society organisations at the national level.

6.3.3 Serious efforts are needed from all the concerned parties to make sure that Former Yugoslav Republic of Macedonia members of the JCC are selected in an open, transparent and democratic manner and that they are legitimate and representative.

## 7. The Former Yugoslav Republic of Macedonia, the EU and the Balkans

### 7.1 State of EU — Former Yugoslav Republic of Macedonia Relations

#### 7.1.1 Candidate country

The Former Yugoslav Republic of Macedonia is a candidate country and is preparing for the accession negotiations with the EU. It was the first country in the Western Balkans to sign a Stabilisation and Association Agreement (SAA) in April 2001. The Thessaloniki Summit held on 19-21 June 2003 introduced enhanced support for the accession to the EU of the Western Balkans countries. The Government of the Former Yugoslav Republic of Macedonia submitted its answers to the questionnaire of the European Commission on 14 February 2005, which formed a basis for the positive opinion issued by the Commission on 9 November 2005 and subsequently, for the decision of the European Council on 16 December 2005 granting the candidate status to the Former Yugoslav Republic of Macedonia.

#### 7.1.2 Trade with EU

In 2006 total exports reached EUR 1.43 billion, and total imports EUR 2.25 billion. Trade with the EU was 51.85 % of exports and 44 % of imports came from EU member states. The top five EU trade partners are Germany, Greece, Italy, Slovenia and Poland.

Some of the trade issues to be tackled are: lack of integration of border services, lack of new technologies and paperless customs, products declaration and lack of referential laboratories for certificates (esp. in agriculture).

#### 7.1.3 Visas

The mobility of people, especially in the field of business contacts, education and cultural exchanges are of key importance for the country building bridges to the EU. A visa facilitation and readmission agreement with the EU was signed on 18 September, 2007 as a transitional step towards a mutual visa-free travel regime. A dialogue on visa-free travel was launched on 20 February 2008.

#### 7.1.4 EU Aid

EU aid to the Former Yugoslav Republic of Macedonia from 1992 to 2006 totalled EUR 800 million. The commitment for 2007–2009 is EUR 210 million.

#### 7.2 *The role of civil society in the EU integration process*

7.2.1 European integration is an important challenge for civil society in the Former Yugoslav Republic of Macedonia. With the accession process, European integration is a powerful moving force for the further development of civil society. Civil society organisations are carriers of the new values, such as participatory democracy, inclusion, equality, transparency and accountability. CSOs also play an important role in mediating a traditional, multi-cultural and multi-ethnic Balkan society with post-modern Europe.

7.2.2 The Government of the Former Yugoslav Republic of Macedonia started to recognise the role of civil society in the EU integration process by including it as one of its strategic objectives.

7.2.3 EU support for civil society increased after the introduction of CARDS in 2001. A number of civil initiatives were

supported, among them technical assistance for the elaboration of a Government Strategy for Cooperation with Civil Society and support to the *Civic Platform of Macedonia*.

#### 7.3 *Balkan neighbourhood and networking*

7.3.1. The Former Yugoslav Republic of Macedonia plays an active role in the field of regional cooperation with its commitment to the development of bilateral relations and good neighbourhood policy. It is an active player in such regional processes as the establishment of the Regional Cooperation Council (the Southeast European Cooperation Process (SEEC), the Energy Community Treaty, the European Common Aviation Area, the Southeast European Cooperative Initiative (SECI) and the Central European Free Trade Agreement (CEFTA). Within this context, national and local press has a special responsibility for playing a positive role in the development of those processes.

7.3.2. Networking and interaction at regional level is also increasing in other spheres, including civil society. There are positive cases of joint actions, with active participation by employers' organisations, trade unions and other CSOs of the Former Yugoslav Republic of Macedonia.

Brussels, 12 March 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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