



European Economic and Social Committee

SOC/210
Fundamental Rights and
Justice

Brussels, 19 January 2006

OPINION

of the

European Economic and Social Committee

on the

Proposal for a Decision of the European Parliament and of the Council establishing for the period 2007-2013 the specific programme "Fight against violence (Daphne) and drugs prevention and information" as part of the General programme

"Fundamental Rights and Justice"

Proposal for a Council Decision establishing for the period 2007-2013 the specific programme

"Fundamental rights and citizenship" as part of the General programme

"Fundamental Rights and Justice"

Proposal for a Decision of the European Parliament and of the Council establishing for the period 2007-2013 the specific programme "Civil justice" as part of the General programme

"Fundamental Rights and Justice"

COM(2005) 122 final – 2005/0037 (COD) – 2005/0038 (CNS) – 2005/0040 (COD)

On 19 July 2005 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 Decision of the European Parliament and of the Council establishing for the period 2007-2013 the specific programme "Fight against violence (Daphne) and drugs prevention and information" as part of the General programme "Fundamental Rights and Justice"

Proposal for a Council Decision establishing for the period 2007-2013 the specific programme "Fundamental rights and citizenship" as part of the General programme "Fundamental Rights and Justice"

Proposal for a Decision of the European Parliament and of the Council establishing for the period 2007-2013 the specific programme "Civil justice" as part of the General programme "Fundamental Rights and Justice"

COM(2005) 122 final – 2005/0037 (COD) – 2005/0038 (CNS) – 2005/0040 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 December 2005. The rapporteur was Ms King.

At its 423rd plenary session, held on 18 and 19 January 2006 (meeting of 19 January 2006), the European Economic and Social Committee adopted the following opinion by 122 votes to 2 with 2 abstentions.

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1. **Background**

1.1 The Council and Commission have adopted a 5-year Action Plan implementing The Hague Programme on strengthening the area of freedom, security and justice.

1.2 The EESC is currently drafting its opinion on the *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*¹. The opinion states that the Hague Programme "has the difficult task of consolidating and promoting the creation of a common area of Freedom, Security and Justice". This opinion stresses the importance of achieving a "fair balance between the three dimensions of

¹ EESC Opinion on the Communication from the Commission to the Council and the European Parliament: The Hague Programme: Ten priorities for the next five years – The Partnership for European renewal in the field of Freedom, Security and Justice (COM(2005) 184 final – Rapporteur: Mr Pariza) (CESE 1151/2005).

freedom, security and justice ... so as not to encroach on the fundamental values (human rights and civil liberties) and democratic principles (rule of law) shared throughout the Union. The Committee concluded that this balance has not been achieved as there is a disproportionate amount of legislation focussed on Security.

- 1.3 The financial framework, for the period 2007-2013, underpinning The Hague Programme consists of the following:
 - 1.3.1 Solidarity and Management of Migration Flows²
 - 1.3.2 Security and Safeguarding Liberties³
 - 1.3.3 Fundamental Rights and Justice⁴
- 1.4 The EESC believes that the imbalance between the three dimensions of freedom, security and justice is also reflected in the financial perspectives as Security accounts for most of the budget.
- 1.5 The 5-year Action Plan is closely linked to other plans and proposals in the field of freedom, security and justice, such as the recent EU Drugs Action Plan.
- 1.6 The EESC plans to respond to The Hague Programme and the three framework programmes as a package in an attempt to influence the final content of the programme.
- 1.7 The emphasis is on improved intergovernmental cooperation between Member States, and between the latter and the competent agencies and services of the Union involved with internal security. The Commission has the task of monitoring the effectiveness of the various plans, programmes and proposals. This is consistent with the principles of subsidiarity as set out in Article 5 of the EC Treaty.

2. General Comments

- 2.1 The EESC notes the Commission's proposal to establish a Framework programme on "Fundamental Rights and Justice" is part of a coherent set of proposals which aim to provide an adequate support to the Hague Programme under the financial perspectives 2007.

² CESE 783/2005 (Rapporteur: Ms Le Nouail-Marlière).

³ CESE 822/2005 (Rapporteur: Mr Cabra de Luna).

⁴ CESE 782/2005 (Rapporteur: Ms King).

- 2.2 The EESC also notes the Commission's focus on simplifying and rationalising existing financial support in the area of freedom, justice and security, with the aim of allowing for greater flexibility in the allocation of priorities and increasing overall transparency.
- 2.3 The EESC believes it is important that there is consistency across Member States when it comes to the principles of democracy, respect for fundamental rights and freedoms, and the rule of law. This is especially important as the EU progresses with enlargement as it negotiates with candidate countries.
- 2.4 The EESC however is concerned that the Commission's proposal is being presented during a period of great uncertainty in the EU. Given that the Constitutional Treaty is to underpin the Hague Programme, there must be consequences arising from the current situation which will need to be addressed.
- 2.5 In addition the general programme consists of four specific programmes. It is debatable whether any one directorate in the Commission has an overview of all aspects of this particular policy area. The EESC therefore questions whether all the appropriate monitoring, control and evaluation systems are in place to assess the programme effectively.
- 2.6 The Financial Perspectives for the period 2007-2013 has been agreed but the overall budget (Heading 3A – Freedom, Security and Justice) has been reduced by EUR 524 million from EUR 7 154 million to EUR 6 630 million. The EESC believes that this places uncertainty over the Commission's stated budget of EUR 543 million over this period for the "Fundamental Rights and Justice" programme and on the distribution of the budget between the three framework programmes that has yet to be finalised. The EESC is therefore uncertain on the final impact on the specific programmes and activities within the overall programme.
- 2.7 The EESC is not convinced that the Commission's proposal has been sufficiently designed to respect the principles of subsidiarity as set out in Article 5 of the EC Treaty as there does not appear to be sufficient recognition of the areas that are best addressed at the national, regional and/or local level, in cooperation with the relevant social partners.
- 2.8 The EESC strongly recommends that this proposal is placed on hold until the legal and financial bases are clarified. In the interim the Committee suggests a continuation of the current programme approach to the field of freedom, security and justice until the current situation has been resolved.

3. **Specific Comments on Financials and the Programmes**

3.1 **Financial Resources**

In the text of the Commission proposal there is a lack of consistency with regard to the financials, as illustrated in the table below. The Commission has explained that the figures are

correct but have been presented differently. The Committee notes that there is no explanation of this difference in the text. There is however an error on page 38 of the English language text. The EESC believes that there should be consistency and clarity when presenting the financials. These inconsistencies need to be rectified, as accuracy and consistency are as important as simplification and transparency, which are the stated goals of the Commission in its proposal.

Financial Resources 2007-2013	Page 9	Pages 18/28	Page 38	Page 55	Pages 72/80
Overall	543		5 439		
Fundamental Rights and Citizenship	93.8		96.5		
Civil Justice	106.5				109.3
Criminal Justice	196.2			199	
Fight against violence	135.4	138.2			
Administration	11.1				

3.2 General Programme on Fundamental Rights and Justice

- 3.2.1 The EESC is pleased the Commission acknowledges the tension between guaranteeing the core rights of the individual and the core responsibilities of the Member States within the Union in the area of freedom, security and justice as the debate around these issues is being held at every level from the individual citizen to EU bureaucrat.
- 3.2.2 In terms of Fundamental Rights the Commission refers to more concerted action against racism, xenophobia and anti-semitism and suggests greater support to interfaith and multicultural forms of dialogue to fight them.
- 3.2.3 The EESC commends the Commission on this statement but feels it does not sufficiently reflect the contemporary context of the EU. The International Helsinki Federation for Human Rights (IHF) released a report in March 2005 which stated that Muslims in Europe have faced increased discrimination since the September 11 attacks. To quote its Executive Director Aaron Rhodes, "In the aftermath of September 11, Muslim minorities in the EU have experienced growing distrust and hostility. As the fight against terrorism has been stepped up and the perceived threat of religious extremism has become a major focus of public debate, pre-existing patterns of prejudice and discrimination have been reinforced and Muslims have increasingly felt that they are stigmatized because of their beliefs"⁵.

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The IHF report, *Intolerance and Discrimination against Muslims in the EU – Developments since September 11* covers developments in eleven EU member states: Austria, Belgium, Denmark, France, Germany, Greece, Italy, the Netherlands, Spain, Sweden and the United Kingdom.

- 3.2.4 The EESC therefore recommends that islamophobia be added to reinforce the need to address this particular form of racism where culture intersects with religion.
- 3.2.5 The EESC notes that Combating Violence is the only area that does not have an agency to share synergies with. The EESC therefore recommends the Commission investigate what system should be put in place to ensure that Combating Violence, in all its forms, is not overlooked as a priority.
- 3.2.6 The EESC also believes that it is a major oversight that the programme on Fundamental Rights and Justice will not be coordinated with the new European Institute for Gender Equality. The Committee therefore recommends that a specific objective should be included to reflect that this will be the case when the Institute opens in 2007.

3.3 **Fight against Violence and drugs prevention and information**

- 3.3.1 The European Council meeting in June 2005 specifically welcomed the Drugs Action Plan (2005-2008) in the framework of the Drug Strategy (2005-2012). This meeting reflected the focus on the Drugs Action Plan and Fight against Terrorism.
- 3.3.2 The EESC welcomes this focus but feels there is a risk that violence against children, women and young persons and trafficking for sexual exploitation will be downgraded as this is combined with the fight against drug use and trafficking, especially as the overall budget and allocation of the budget between the programmes has not yet been ratified.
- 3.3.3 The EESC recommends that a separate objective and budget line be developed for combating violence. This should ensure the appropriate allocation of priorities and will increase transparency.
- 3.3.4 The Committee welcomes the recognition that the fight against violence isn't just a public health problem but is a recognised part of the protection of fundamental rights as set out in the Charter of Fundamental Rights.
- 3.3.5 The EESC recommends that it is made clear within the specific objective for the overall programme that the fight against violence in all its forms explicitly includes Trafficking of Human Beings for sexual exploitation. This is important because combating trafficking has a cross-border dimension and therefore an EU Strategy and Action Plan in this area is necessary and appropriate.
- 3.3.6 The definition of target groups (Article 6) with regards to combating violence needs to be more specific especially when making the argument for EU added value, otherwise there is a risk of contravening the principles of subsidiarity.

3.3.7 The EESC believes that it is important that border control officials are included as a target group, as they are important in the fight to disrupt the distribution channels used to smuggle in people and drugs.

3.3.8 The EESC is unhappy that the combating violence against women, young people and children, appears to be left largely to the NGOs supported through the Daphne programme. The Committee feels that there should be clearer ownership by the Member States of these issues with all their legislative and budgetary resources, without this impacting on the resources of NGOs. Cooperation between NGOs, EU and Member State authorities continues to be vital to see the eradication of sexual exploitation and sexual abuse. The EESC would like to see Member States and NGO agencies working together to raise public awareness and exchange best practice.

3.4 **Fundamental Rights and Citizenship**

3.4.1 The EESC welcomes the ambition of "promoting a fundamental rights culture among all the peoples of Europe", which is aimed at supporting the Charter of Fundamental Rights and informing all citizens about their rights, including those arising from European Union citizenship.

3.4.2 The EESC welcomes the recognition of the special role for civil society players in connection with fundamental rights and their promotion. It also sees the promotion of civil society in the new EU Member States as a priority. Against this background, the EESC reaffirms its readiness to play an active part in this field.

3.5 **Specific Programmes – Criminal Justice and Civil Justice**

3.5.1 The EESC supports and encourages judicial cooperation in areas that EU Member States have agreed priorities, for example, the fight against terrorism. It therefore urges the Commission to continue its solidarity and harmonisation drive with a view to the establishment of a European area of justice, notwithstanding the degree of incompatibility between Member States' legal systems.

3.5.2 Although for example in civil matters, understandings and delimitations of concepts such as negligence, as well as both duty and breach of care, good faith, contractual fault or responsibility vary across Member States, this should not be viewed as a reason for not continuing steps to approximate legislations, on condition that such approximation is compatible with the principles of solidarity and proportionality. The Commission has been accomplishing this very successfully, and the Committee has always expressly supported it.

3.5.3 Also the role of Member States' respective judiciaries can be quite different as some operate under a federal framework with a codified constitution whereas others do not. The EESC encourages the Commission to continue its efforts to strengthen existing civil law

mechanisms and create new ones, with a view to harmonisation, for both crossborder and domestic disputes.

- 3.5.4 Although the above matters are problematic this does not stop the criminal justice agencies in Member States from the imperative to cooperate very closely in the struggle to combat serious crime such as drug trafficking, the trafficking of human beings for sexual exploitation, and the trafficking of human beings for labour exploitation.
- 3.5.5 There are many good examples of cooperative working currently taking place between investigators, prosecutors and members of the judiciary. The EESC encourages resources being placed with these agencies to further this joint work.

Brussels, 19 January 2006.

The President
of the
European Economic and Social Committee

The Secretary-General
of the
European Economic and Social Committee

Anne-Marie Sigmund

Patrick Venturini
