



European Economic and Social Committee

SOC/454
Justice Programme

Brussels, 11 July 2012

OPINION

of the

European Economic and Social Committee

on the

Proposal for a Regulation of the European Parliament and of the Council establishing for the period 2014 to 2020 the Justice programme

COM(2011) 759 final - 2011/0369 (COD)

Rapporteur: **Edouard de Lamaze**

On 9 February 2012 the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council establishing for the period 2014 to 2020 the Justice programme
COM(2011) 759 final - 2011/0369 (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 28 June 2012.

At its 482nd plenary session, held on 11 and 12 July 2012 (meeting of 11 July), the European Economic and Social Committee adopted the following opinion by 126 votes to 1 with 5 abstentions.

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1. **Conclusions and recommendations**

- 1.1 The EESC welcomes this proposal's aim of simplification and rationalisation and supports the Commission's preference for option B. Merging the Civil Justice and Criminal justice programmes is justified by the fact that the objectives, stakeholders and types of action funded are very close.
- 1.2 However, in the context of the new Justice programme for the period 2014-2020, despite the legal reasons given in the proposal, the EESC continues to question the advisability of adding a third objective, i.e. to prevent and reduce drug demand and supply, to the first two "specific objectives", i.e. to promote proper application of Union legislation in the areas of judicial cooperation in civil and criminal matters and to facilitate access to justice. In addition to the fact that it seems merely to be an extension of the first objective, the EESC draws attention to the consequences, in terms of the impression it would give, if such an objective were to be included in a regulation, and therefore the strong, immediate and direct repercussions it would have for the parties involved in proceedings, associations, NGOs and other potential grant beneficiaries: it could give the impression that other equally vital issues, such as fighting human trafficking, for instance, were not of equal concern to the Commission.
- 1.3 At a more fundamental level, the EESC is concerned by the message the Commission is sending out. It reiterates its frequently-expressed opinion that anti-drug measures should

focus more on prevention through an educational, health and social approach, and less on a punitive approach¹.

- 1.4 The EESC shares the Commission's views that the management of funds for this programme should be as flexible as possible, in order to ensure optimum adaptability to the needs of civil society and to allow potential candidates as much freedom as possible, to promote the creativity of projects and to take future policy orientations into account.
- 1.5 However, if it is impossible to pre-establish amounts for the different priorities, the EESC emphasises the importance of having access to a prior, albeit indicative, breakdown of the budget according to the different objectives.
- 1.6 The EESC takes note of the Commission's intention not to allocate more funds to the drug prevention objective than the budget share assigned to it. It urges the Commission to hold firm to its commitments and suggests in this regard that funds retrieved by freezing and confiscating the proceeds of drug trafficking should go towards funding this objective, as foreseen in the future directive on the freezing and confiscation of the proceeds of crime.
- 1.7 Despite the complexity of the financial regulation in place, the EESC stresses the importance of educating all citizens concerned on the conditions for access to funding, providing them with clear information in all EU languages. This would undoubtedly go some way towards making projects more relevant, thereby encouraging them, including in Member States which have so far been under-represented in the selected programmes. Indeed, the EESC stresses the need to promote equal access to these programmes for all EU citizens.
- 1.8 It believes that the concept of European added value, which is one of the fundamental criteria for selecting programmes, should also be better framed. Since the financial envelope for this programme is, in essence, small (although increasing, which the EESC welcomes), the EESC stresses the importance of focusing grants more rigorously on projects with clearly established European added value. Transnational projects must be encouraged.
- 1.9 Since the annual work programmes will have to provide details on certain essential aspects of the programme's implementation (mainly on how the budget is broken down), the EESC believes that if the Commission is to adopt them in the form of implementing acts, then they should be adopted in accordance with the examination procedure and not, as currently foreseen in the proposal, with the advisory procedure. This will ensure that these programmes are not adopted by the Commission unless they comply with the opinion of the committee established under Regulation (EU) No 182/2011 (composed of the Member States' representatives).

¹ Cf. EESC opinion on the *Communication from the Commission to the European Parliament and the Council – Towards a stronger European response to drugs*, adopted on 24 May 2012 (OJ data still unavailable).

- 1.10 Regarding the need to pick out the priorities from among the actions eligible for funding (Article 6), the EESC believes, in particular, that the emphasis should be put more clearly on justice, where a lot remains to be done to facilitate access.
- 1.11 The EESC welcomes the new direction taken in this proposal, which seeks to include all legal professionals and, in particular, lawyers in European judicial training. Like judges and magistrates, lawyers contribute to the proper application of EU law. They are also the first port of call for the parties involved in legal proceedings. They are the ones who institute proceedings.
- 1.12 Similarly, the EESC stresses the urgency of including all types of law practitioners in transnational judicial cooperation networks by providing the necessary funds. In the interests of consistency with recent policy initiatives to strengthen the rights of the defence, the EESC calls, in particular, for action to be taken as soon as possible to redress a situation it considers unacceptable, namely the exclusion of lawyers, in fact or in law, from most transnational judicial cooperation networks.
- 1.13 In order to create a common rights framework, particularly with respect to family law, the EESC stresses the need to look upon the Charter of Fundamental Rights, as a basis for harmonisation. In a context that is still characterised by widely differing cultures and legal concepts, the EESC, has frequently reiterated, and has recently stressed in the context of matrimonial property regimes² the importance of promoting the use of an optional European alternative (a so-called 28th regime).

2. **Gist of the Communication**

- 2.1 In the interests of simplification and rationalisation, the Commission has decided to reduce the number of funding programmes for developing the area of rights and justice by ensuring that everyone - the general public, partners and law practitioners - is aware of their rights and knows how to exercise or apply them. Alongside the Rights and Citizenship Programme³, the 2014-2020 Justice Programme will bring together the Civil justice, Criminal justice and Drug prevention and information programmes.
- 2.2 This Proposal for a Regulation grants an envelope of EUR 472 million, which should cover the activities where the EU's intervention can bring added value compared with Member States acting alone. The overall objective is to contribute to the European area of justice by promoting judicial cooperation in civil and criminal matters. This objective is broken down into specific objectives, namely to promote the correct application of EU law in this area (on the basis of Articles 81 and 82 TFEU), to facilitate access to justice and to prevent and reduce

² [OJ C 376, 22.12.2011, p. 87-91.](#)

³ [OJ C 191, 29.6.2012, p. 108-110.](#)

the demand for drugs. This last aspect is no longer being approached from the health perspective but from the perspective of crime prevention (on the basis of Article 84 TFEU).

- 2.3 These objectives justify support for training for judiciary and judicial staff, including lawyers and notaries, for cooperation through networks designed to build mutual knowledge and trust, and for raising public awareness.
- 2.4 The funding envelope will also be used to finance an analytical basis to support EU policymaking. In order to achieve greater flexibility, the proposal does not make provision for the allocation of specific amounts for each policy area.
- 2.5 The programme's annual priorities will be adopted by the Commission in the form of implementing acts, in accordance with the advisory procedure.
- 2.6 The proposal sets out requirements for monitoring and evaluation (including "interim evaluation").

3. **General comments**

- 3.1 The establishment of a European area of justice is an EU public good with appreciable benefits for everyone - both the general public and partners. In fact, it affects all basic aspects of life and everyday matters (divorce, overnight visitation and visitation rights, succession, guardianship, business litigation, consumer litigation, etc. as well as rights in criminal matters). It also contributes to improving security within the European area by promoting cooperation in the field of crime prevention.
- 3.2 Recalling the functional complementarity between the Justice Programme and the Rights and Citizenship Programme, the EESC believes that the European area of justice and freedom will only have meaning in terms of the rights that all EU citizens can enjoy in practice, wherever they are. This programme must therefore be evaluated in that light.
- 3.3 In order to create a common rights framework, particularly with respect to family law, the EESC stresses the need to look upon the Charter of Fundamental Rights, as a basis for harmonisation. In a context that is characterised by widely differing cultures and legal concepts, the EESC, has frequently reiterated, and recently stressed in the context of matrimonial property regimes⁴, the importance of promoting the use of an optional European alternative (a so-called 28th regime). The establishment of this regime would advance the recognition of the rights of EU citizens by efficiently counteracting any discrimination they might suffer because the laws of their Member State grant them fewer rights than those of other Member States.

⁴ See footnote 2.

- 3.4 Respect for rights, and in particular fundamental rights, in the EU, to which judicial cooperation in civil and criminal matters should contribute, is an end in itself. Nevertheless, the knock-on effect it could have on the single market in terms of growth and jobs may be significant and should be enhanced, in particular by supporting training efforts on behalf of legal professionals⁵. The EESC points out that better cooperation in civil matters and, therefore, a more expeditious settlement of transnational disputes, would generate substantial growth in businesses' transnational activities.
- 3.5 Whereas evaluations have revealed the efficiency of the previous programmes (Civil justice, Criminal justice, and Drug prevention and information for 2007-2013), reducing their number, and therefore their implementing procedures, is a good thing in itself. It will make it easier to achieve the various objectives. In addition to harmonising procedures, the EESC stresses the importance of reducing their inherent complexity.
- 3.6 In particular, the EESC welcomes the simplification and rationalisation measure which consists in merging the Civil justice and Criminal justice programmes. This is justified by the abolition of the third pillar in the Lisbon Treaty and the fact that the objectives, stakeholders and types of action funded in these two areas (i.e. e-justice and training) are very close.
- 3.7 The EESC advocates promoting the criminal justice projects, especially in Member States that have so far benefited very little from available support. Since this is a relatively new dimension, the EU approach is still unclear and is worth developing.
- 3.8 However, the EESC is more circumspect about the Drug prevention and information programme, which has its legal basis in public health. It has concerns regarding the continued coverage of the public health aspects as a priority. It also draws attention to duplication with activities funded by the future Internal Security Fund, which will certainly result in a purely punitive approach. It reiterates its message on the importance of developing a primarily preventive approach to drug prevention, offering people with drug dependencies the opportunity to seek assistance and treatment. Efforts must be made to raise the awareness of the Courts and of lawyers on this issue.
- 3.9 Furthermore, in order to ensure that the drug prevention objective does not absorb a disproportionate share of the global budget, the EESC recommends using the funds retrieved by freezing and confiscating the proceeds of drug trafficking to partly fund this objective, as foreseen in the future directive on the freezing and confiscation of the proceeds of crime⁶.

⁵ In his report *A new Strategy for the Single Market* (9 May 2010), Mario Monti stressed the importance of the correct application of EU law and training for the judiciary, to improve the efficiency of the single market.

⁶ Cf. EESC opinion adopted on 11.7.2012 (OJ not yet available).

- 3.10 Although the EESC remains unsure about what precise actions will be funded in the context of preventing crimes associated with illicit drug trafficking, it is satisfied to note that the EUR 472 million envelope for implementing this programme seems to mark a substantial increase in the Commission's support.
- 3.11 In order to ensure that the EU budget is genuinely "used to finance EU public goods" and "actions [...] where it can secure better results"⁷, the EESC reiterates the need to improve the focus of resources on projects with European added value (Article 3), especially in criminal matters, an area where Member States still have reservations about the intervention of EU law.
- 3.12 In order to ensure the efficient allocation of funds under the EU budget, the EESC also emphasises the importance of ensuring consistency, complementarity and synergies between the various funding programmes and, in particular, with the Rights and Citizenship Programme. In contrast, more vigilance is required with regard to the risks of duplication.
- 3.13 The EESC notes with satisfaction that although the projects are selected in the framework of the annual work programmes, they can last several years. This gives them time to develop and meet their objectives. While the EESC believes that co-financing is a good idea, it questions whether the possibility of modulation is justified⁸.
- 3.14 Despite the complexity of the financial regulation in place, the EESC stresses the importance of educating all citizens concerned on the conditions for access to funding, providing them with clear information in all EU languages. The EESC believes that the concept of European added value would benefit from better framing. This would undoubtedly go some way towards making projects more relevant, thereby encouraging them, including in Member States which have so far been under-represented in the selected programmes. Indeed, the EESC stresses the need to promote equal access to these programmes for all EU citizens.
- 3.15 The EESC is similarly perplexed that the legislative financial statement does not even specify an indicative breakdown of funds according to the specific objectives. Without questioning the legitimate need for flexibility in the management of funds, it emphasises the importance of providing some prior indication on this point.

4. **Specific comments**

4.1 European judicial training

- 4.1.1 Since there can be no real progress without mutual trust, the EESC encourages support for measures designed to establish a shared European culture, resolutely directed towards the

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COM(2010) 700 final.

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At present a 20% contribution is needed to obtain the remaining 80% of funding in the form of grants.

practice and exercise of rights and supported by an awareness and understanding of national judicial systems. For mutual assistance within the EU to work, it is essential that people involved in litigation in another national system can be sure that their procedural rights are protected.

- 4.1.2 The EESC considers European judicial training for law practitioners to be a vital aspect of the new programme, which deserves more prominence. European law suffers from the fact that there are too many differences in its application, depending on the Member State. This is often due to lack of interest or awareness among practitioners. This is flagrant in the case of customs law. The EESC reiterates in this context the need for a substantial increase in support for European judicial training. This is all the more important in view of the Commission's goal to train 20 000 law practitioners a year until 2020, i.e. 700 000, in total⁹. As the Commission has rightly emphasised, language training is a prerequisite for improving communication between law practitioners within the European area of justice and freedom.
- 4.1.3 The EESC considers it indispensable to include lawyers in these training activities, in particular. This is all the more justified by the fact that in some Member States they follow the same training as magistrates. Lawyers are the first port of call in the legal system. Their well-informed advice will determine the access that people charged with a crime will have to the courts. They should be able to benefit from EU-funded initiatives, alongside judges and public prosecutors. The quality of access to justice in the area of European law depends on it. Their participation is also indispensable in the interests of a better balance in favour of the rights of the defence.
- 4.1.4 The EESC regrets the confusion created by the term "judicial staff"¹⁰ and is grateful to the Commission for specifying in this Proposal that the term covers all law professionals, including solicitors and notaries, who effectively make an essential contribution to the correct application of EU law. The EESC welcomes the fact that the Commission seems determined to take this approach in its European judicial training pilot project, due to be launched this year.
- 4.1.5 The EESC also sees a need to define objective criteria that judicial training programmes would have to comply with in order to be eligible. It is imperative for the course criteria to include a reference to the Charter of Fundamental Rights. The programmes' compliance with these criteria would have to be regularly and closely monitored and checked. The EESC stresses the need for support to be made conditional on the inherent quality of the programmes, which should be subject to rigorous evaluation.

⁹ COM(2011) 551 final.

¹⁰ In accordance with Article 81(2)(h) and Article 82(1)(c) TFEU regarding judicial cooperation in civil matters and in criminal matters, respectively, which both refer to "the judiciary and judicial staff".

- 4.1.6 The EESC attaches particular importance to ensuring that judicial training for judges and lawyers addresses the specific aspects of drug dependency and makes it possible to develop a judicial approach that fits in with a health and social approach, aimed at preventing repeat offences.
- 4.2 Cross-border judicial cooperation
- 4.2.1 The EESC calls for action to be taken as soon as possible to redress a situation it considers unacceptable, namely the exclusion of lawyers from the judicial cooperation networks. Although the judicial network in criminal matters falls within the remit of Eurojust and is not covered by this programme, it is nonetheless significant that lawyers have no access to it. Financial constraints cannot be used to justify the current imbalance in favour of the prosecution. Even if they are only limited, resources must be used in such a way as to respect the principle of equality of arms in cross-border cases.
- 4.2.2 This requirement presupposes, especially with regard to the implementation of the European arrest warrant, that lawyers are in a position to identify a qualified lawyer in another Member State who can gain access to the case file and provide advice on aspects of that Member State's procedural law, and, more generally, on the local aspects of the case. The new provisions introduced by the Proposal for a Directive on the right of access to a lawyer in criminal proceedings, which establish the right to two lawyers in European Arrest Warrant proceedings (one in the executing Member State and another in the issuing Member State) constitute additional grounds – should any be needed – for the full participation of lawyers in European judicial cooperation networks. For this reason, the EESC welcomes the support that the future cross-border network of defence lawyers is likely to provide for lawyers involved in these cross-border situations. In the interests of consistency and efficiency, it calls on the Commission to make financial commitments, commensurate with needs, for this purpose.
- 4.2.3 Similarly, the EESC deplores the fact that, in practice, lawyers and notaries are sidelined from the Judicial Network in civil and commercial matters, whereas on paper, the network should have been open to these professions and to bailiffs since January 2011. All these professions play a direct role in the application of EU acts and international instruments. Here, too, the proper functioning of the network depends on adequate financial support.
- 4.2.4 Due to the proliferation of initiatives from many legal professions, in the form of small, often onerous structures, the EESC recommends improving consistency and coordination between these networks in order to create "circles of coherence"¹¹ on which it will be possible to build a genuine European judicial structure.

¹¹ Cf. European Parliament resolution of 14 March 2012 on judicial training (2012/2575(RSP)).

4.3 e-Justice

- 4.3.1 The dematerialisation of justice is a key factor which the EESC does not consider to have been sufficiently emphasised in this proposal. Its impact on access to justice, including for the socially-disadvantaged or those with disabilities, needs to be studied very thoroughly. In the common interest of the parties involved in legal proceedings and of law practitioners, significant progress is still needed in this area.
- 4.3.2 The EESC expects clearer direction on this issue from the Commission. At present, the promotion of available e-justice tools seems more targeted towards the public than towards professionals. However, in order to ensure the quality of court decisions and their compliance with EU law, it is vital to facilitate and encourage the use of these tools among law practitioners, who need training to this end.
- 4.3.3 The EESC notes with satisfaction the fact that the financial envelope provided for in this proposal may also be used to improve IT networks in this area (Article 8(2)). The EESC mostly has in mind the e-Justice portal project for a lawyers' search engine and the e-Codex project to make national e-justice systems interoperable. The EESC draws attention to the fact that to ensure the security and efficiency of these networks, it has to be possible for the bars to certify the professional identity of lawyers.

4.4 Indicators

- 4.4.1 Clearly, the indicators must be discussed in greater detail. The EESC welcomes the fact that, in the meantime, the Commission has launched this discussion with respect to both annual monitoring and to intermediate and final evaluation. More specifically, with regard to accessing justice, the purely subjective criterion of the "European perception of access to justice" has to be complemented. For the purposes of training, it seems important to make good use of public-private partnerships by involving universities and law and bar training institutes. Although set to decrease during the programme's implementation, the EESC believes that the cost of control measures (used in the broad sense of the expression), estimated at 3 to 6% of the total budget in the legislative financial statement, should be capped.

4.5 Procedures for adopting the annual work programmes

- 4.5.1 With regard to the annual programmes, which the Commission is to adopt in the form of implementing acts, the EESC questions whether the advisory procedure is the right choice. The EESC believes that it would be more appropriate to opt for the examination procedure, which ensures that these are not adopted by the Commission unless they comply with the opinion of the committee established under Regulation (EU) No 182/2011 (composed of the Member States' representatives).

Brussels, 11 July 2012.

The President
of the
European Economic and Social Committee

Staffan Nilsson
