



European Economic and Social Committee

INT/271
Health and consumer
protection

Brussels, 14 February 2006

OPINION

of the

European Economic and Social Committee

on the

**Proposal for a Decision of the European Parliament and of the Council establishing a
Programme of Community action in the field of health and consumer protection 2007-2013**
COM(2005) 115 final – 2005/0042 (COD)

On 2 June 2005 the Council decided to consult the European Economic and Social Committee, under Articles 152 and 153 of the Treaty establishing the European Community, on the

Proposal for a Decision of the European Parliament and of the Council establishing a Programme of Community action in the field of health and consumer protection 2007-2013
COM(2005) 115 final – 2005/0042 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 January 2006. The rapporteur was Mr Pegado Liz.

At its 424th plenary session, held on 14 and 15 February 2006 (meeting of 14 February 2006), the European Economic and Social Committee adopted the following opinion by 130 votes to two with one abstention.

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1. **Summary**

- 1.1 The Commission has submitted a proposal for a decision on a "single integrated programme" at Community level in the fields of public health and consumer protection 2007-2013. The proposal is backed up by a strategy paper contained in a Communication and an extended impact study contained in an appended working paper.
- 1.2 This is the first time that the Commission has defined a joint strategy for public health and consumer protection policies and is doing so for such a long period (seven years). The EESC acknowledges the Commission's efforts to give fresh impetus to these two policies, which are now overseen jointly by a single Directorate-General.
- 1.3 The Commission seeks to justify this innovation on legal, economic, social and political grounds. The EESC welcomes all of the information provided and the care taken in the impact study to give a detailed explanation of the various options possible.
- 1.4 An extensive hearing organised by the EESC and various initiatives carried out in the meantime by the Commission and in the European Parliament have given a broad range of accredited representatives of the main stakeholders the opportunity to air their points of view on the wording, content and presentation of and the basis for the proposals from the Commission.
- 1.5 The Committee has studied the documents submitted and the exhaustive additional information provided by the Commission, and has considered the contributions made by the

civil society representatives directly involved in the fields of public health and consumer protection. In the light of these, and taking account of the various written contributions sent to it by a wide range of representative organisations working in these areas, the EESC has formed the broad opinion that the proposed decision establishing a joint programme for Community action on health and consumer protection is not sufficiently justified or elucidated in many respects: the reasons given do not seem convincing enough to make this a valid option.

- 1.6 In particular, the EESC takes the view that although there are common and complementary points between health and consumer policy, this is not proof of the synergies referred to. These points could be developed and implemented by means of specific cooperation and coordination measures, focusing on the fundamentally horizontal nature of the two policies, as is the case with environmental policy, for example.
- 1.7 The legal bases of the two policies, which are defined respectively in Articles 152 and 153 of the Treaty, are of a very different nature. It is therefore important to avoid the perverse effect of bringing consumer protection policy into line with the strict complementarity and subsidiarity criteria that underpin public health policy, to the detriment of the EU's own powers in this field. This could also result in an unwanted "consumerisation" of public health, confusing the concepts of "user" and "consumer" and lumping them together as common aspects of "citizenship".
- 1.8 The EESC also considers that consumer policy could lose out in a general budget calculation with a single basis. A separate decision on each EU policy, as has been the case to date, would have advantages for both strands, especially given the current institutional crisis and grave doubts about the financial perspective.
- 1.9 The EESC considers that the proposed decision not only fails to cover some of the basic aspects of the two policies, not ensuring that it is properly funded, but that it perhaps also sidesteps some genuinely crucial and topical aspects. The proposed arrangements for implementation, monitoring and evaluation should focus more on innovation, commitment and rigour.
- 1.10 The EESC requests that the powers and responsibilities of the Consumer Institute be better defined, and that it not be considered as a mere "department" of the Executive Agency for Public Health with no powers of its own. This is the only way to make the decisive contribution that would be desirable to ensure that current legislation is implemented more effectively and to better inform, educate and protect consumers.

2. Introduction: Gist of the communication and of the Commission's proposal for a decision

2.1 In a Communication entitled *Healthier, safer, more confident citizens: a health and consumer protection strategy*, the Commission proposes that Parliament and the Council adopt a Decision with a view to establishing a Programme of Community action in the field of Health and Consumer protection 2007-2013.

2.2 The Commission has, for the first time, presented a new strategy and a Community action programme for 2007-2013 which brings together public health policy and consumer protection policy.

2.3 In its communication, the Commission explains the reasons for this new approach, indicating the common objectives of the two policies and the role they play in people's daily lives. The Commission also presents the advantages of the new combined programme in terms of synergies that could lead to both budgetary and administrative savings, resulting in greater efficiency.

2.4 Its chosen strategy is based on the need to create synergies between the two policies, which would help to achieve economies of scale and savings in financial management and would lead to administrative efficiency. This would also ensure greater consistency between measures and give these issues greater visibility on the political agenda.

2.5 According to the Commission, the common aims of this joint policy should be:

- to protect citizens from risks and threats which are beyond the control of individuals;
- to enable them to take better decisions about their health and their interests as consumers;
- to mainstream health and consumer policy objectives across all Community policies.

2.6 Relating to health policy, the objectives would be to:

- protect citizens against health threats;
- promote policies that lead to a healthier way of life;
- contribute to reducing the incidence of major diseases;
- make healthcare systems more efficient and effective;
- provide more and better information on health.

2.7 As regards consumer policy, the objectives would be to:

- ensure an equally high level of protection for all EU consumers;
- empower consumers to defend their own interests;
- broaden the scope of the Executive Agency for Health to accommodate a Consumer Institute.

3. **Assessment of the Commission communication and proposal**

3.1 **The joint programme: an overview**

- 3.1.1 The legal bases of Community public health and consumer protection policies are of a completely different nature. Health policy is essentially the responsibility of the Member States, with EU action being allowed only where it complements national policies, as regards the specific aspects set out in Article 152¹. However, consumer policy, as set out in the Treaty, especially following Amsterdam, has largely been subject to a common approach, with a view to promoting consumers' rights and protecting their interests, in particular when this concerns the completion of the internal market².
- 3.1.2 There is thus no legal basis for referring to a supposed shared legal 'identity' between Articles 152 and 153 on which to base a strategy and an integrated programme for action in the fields of public health and consumer protection.
- 3.1.3 Furthermore, in the Member States, the legal and constitutional nature of the right to healthcare is completely distinct from that of consumers' rights, and protection of these rights also takes very different forms.
- 3.1.4 This does not mean that the EESC fails to acknowledge the crucial importance today of public health-related issues, which are in themselves reason enough for developing a strong European public health policy that could also be seen as an instrument with which to combat poverty and exclusion. It is a matter of regret that the failure to approve the constitutional treaty may have contributed to the lack of real progress in this area.
- 3.1.5 The EESC must emphasise that the concepts of "consumer" and "patient" are not synonymous, and their motivations are not the same. "Consumers" are not exclusively private individuals and take their decisions in relation to the market, for mainly economic reasons. Patients cannot be considered as mere consumers of medicines and of medical care, because their rights are not purely economic, and are comparable only with the right to justice or the right to education, which states uphold by providing services of general interest.

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As pointed out by the Director-General of DG SANCO, Robert Madelin, at the opening of the Open Health Forum 2005 (held in Brussels on 7 and 8 November 2005) and by MEPs Miroslav Mikolasik (EPP) and Dorette Corbey (PES), in their remarks at parallel session 1 of that forum.

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See, for example, the explanation of Vandersenden, Dubois, Latham, Van den Abeele, Capouet, Van Ackere-Pietry, Gérard and Ayral, in Mègret's Commentary on EEC Law, Vol VIII, 2^a ed, 1996 pp 16 et seq and 41 et seq; the situation has become even clearer in the draft Constitution (OJ C 169 of 18 July 2003), if one compares the provisions of Article III-132 on consumer protection, incorporated into Chapter III of Title III on "policies in other areas", on a completely even footing with social policy, agricultural or environmental policy and Article III-179, on public health, which appears in Chapter V, on areas in which the EU may only "take coordinating, complementary or supporting action" in relation to the actions of Member States, alongside policies on culture, youth, sport, or civil protection.

- 3.1.6 The Committee acknowledges that while these two policies do have aspects in common, the same is true (possibly even to a greater extent) of other policy areas³. Furthermore, the Commission has not incontrovertibly demonstrated that the common aspects of actions to be carried out under the two policies can only be achieved through a single integrated programme, or even that this is the most appropriate or beneficial way⁴.
- 3.1.7 Some consumer organisations believe that this integrated approach entails various problems, and the EESC agrees in some cases, including:
- the possibility that consumer policy will become less visible and will be further eroded as a result of being brought into line with and/or subordinated to health policy and that it would be relegated to merely complementing Member States' policies⁵;
 - greater difficulties in organising dialogue and coordination with the responsible national organisations and bodies which, in the vast majority of cases, do not deal with these two areas jointly;
 - potentially greater difficulties for NGOs that work in either sector in accessing funding and negotiating co-financing for actions in their particular fields as a result of limited resources or resources being channelled towards other players.
- 3.1.8 In contrast, none of the six basic reasons given in the impact assessment (pp. 5-6) provides a cast-iron argument for treating the two policies jointly. Proper policy coordination, as set out in the excellent Commission initiative on administrative cooperation between national authorities⁶, could be just as effective.
- 3.1.9 The Commission has also failed to demonstrate the long-term real, fundamental synergies that this harmonisation could create. Nor does it quantify the economies of scale it would generate; on the contrary, its impact assessment gives the impression that this solution is cost-

³ There are overlaps between consumer policy and public health policy and other areas such as the environment, competition, the single market and justice which could in theory also justify a joint approach.

⁴ Simply referring to the content of the "financial perspective 2007-2013" (COM(2004) 487 final of 14.07.2004, point 3.3, page 24) is not in itself a persuasive argument, given the current deadlock in negotiations – it simply shows that the Commission is being consistent in its proposal. This is not the same as providing justification or proof of the soundness of its decision. It was, as a matter of fact, precisely the opposite view that emerged clearly from the Open Health Forum 2005, which accepted the need to strengthen an independent European-level public health policy.

⁵ As the Commission in fact clearly admits when it states "The proposed strategy and programme aim to implement articles 152 and 153 of the Treaty by complementing national action with value-added measures which cannot be taken at national level" (Legislative Financial Statement, p. 41).

⁶ Regulation 2006/2004 in OJ L 364 of 09.12.2004.

neutral, because simply adding the two policies together would produce exactly the same financial framework⁷.

- 3.1.10 Instead, at such a critical time for the EU's financial perspective, keeping the two policies separate could have the advantage of opening up two fronts for negotiation and of making the relevant aspects of each one more visible. This could help to achieve better results for the resources allocated to both policies, according to the representative organisations in these areas.
- 3.1.11 The EESC is in fact extremely concerned at the idea that the financial perspectives 2007-2013 might suffer swingeing cuts. Whilst not necessarily rendering the programme - which already has such limited resources – completely unviable, such cuts would at the very least result in it having to be completely redrafted and submitted once again, with a new set of priorities and actions. For practical reasons, it would make no sense simply to cut the budget by a certain percentage, in proportion to the overall reduction in the budget as a whole.
- 3.1.12 Lastly, the various aspects that are rightly highlighted as being common to the two policies can be subject to joint and concerted actions at both Community and national level, just as in other Community policy fields such as the environment, competition, education and culture. The horizontal nature of the two policies means that they must automatically be considered in all other policies, as the Commission itself has at last acknowledged in the set of examples given in Annex 2 to its communication (p. 15).

3.2 Specific comments

- 3.2.1 The study group held a public hearing with the main civil society representatives directly concerned by the Commission programme. The hearing, which brought together around 70 participants, made an invaluable contribution to the analysis of the Commission communication and proposal, although logistical constraints make it very difficult to carry out an in-depth analysis of all the various aspects at stake. However, the aim has been to assess the programme's objectives and targets, its resources and their appropriate use, and the measures to be implemented with these resources to achieve the stated aims.

3.2.2 Consumers

- 3.2.2.1 The Commission correctly highlights various measures that should be adopted to make consumer protection in the EU more equitable: it does so, however, with a view to providing a minimum level of protection. This confirms the line taken in its recent legislative initiatives, which give priority to total across-the-board harmonisation, offering a low level of protection. Furthermore, the EESC wishes to express its concern at the systematic adherence to the

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Point 4.4 of the Impact assessment (p. 32) indeed states that "from a purely financial point of view, the advantages of increasing budgetary spending allocated to the two programmes individually or to a single combined programme are practically identical".

principle of applying the law of the country of origin, and warns against the danger of adopting a narrow approach to consumer protection that consists of merely providing information about goods and services⁸.

3.2.2.2 The EESC considers that the Commission could have been more innovative⁹ and that the new proposals could have been better developed¹⁰. The EESC drew the Commission's attention to a number of shortcomings, which still exist, when it drew up its opinion on Consumer Policy Strategy 2002-2006¹¹. More recently, it adopted an own-initiative opinion which explored and expanded on this issue, to the conclusions of which the reader is referred¹².

3.2.2.2.1 The EESC therefore proposes to include certain issues in the current programme specifically:

- the issue of household overindebtedness;
- the revision of the arrangements for producer liability, concluding the revision of the directive on unfair terms in consumer contracts and reviving the CLAB;
- revisiting the issue of the liability of providers of faulty services;
- improving security in e-commerce;
- the need to ensure better access to justice and, in particular, collective mechanisms to protect consumer rights;
- promoting synergies between consumer organisations in the "old" and "new" Member States;
- taking account of the particular situation of the new Member States and of the countries that will certainly join before the programme ends¹³;
- setting the entire programme in the context of sustainable consumption and fair trade.

3.2.2.3 As regards the initiatives which are planned (and which the Committee welcomes and supports), there is in many cases a lack of practical information on how and when they are to be implemented. This applies, for example, to:

⁸ Typical of this approach is the directive on unfair commercial practices, as was the proposal on consumer credit (although this was duly reworked and replaced by a better proposal) and, to a certain extent, the directive on the sale of consumer goods and associated guarantees.

⁹ As the Commission itself acknowledges, stating "indeed, there will be no major changes in these objectives compared to the Consumer Policy Strategy 2002-2006" (Legislative Financial Statement, p. 58).

¹⁰ A reference must be made to two particularly important subjects in this field, one positive: the fact that a new proposal for a directive on consumer credit has finally been published [COM(2005) 483 final of 07.10.2005], and the other negative: the decision to withdraw the proposal for a regulation on sales promotions [COM(2005) 462 final of 27.09.2005].

¹¹ OJ C 95 of 23.04.2003.

¹² OJ C 221 of 08.09.2005.

¹³ This is the subject of an interesting draft EP report, rapporteur: Henrik Dam Kristensen [2004/2157(INI) of 31.05.2005].

- developing a Common Frame of Reference for European contract law, set out in 4.2.2;
- creating an early warning system to identify rogue traders, set out in 4.2.3;
- guaranteeing that consumers' voices will be heard and developing their organisational capacities, set out in 4.2.2 and 4.2.4;
- mainstreaming consumer policy into other policies. This is referred to in points 4.1 and 4.2.2, but nothing is said about how it is to be achieved.

3.2.2.4 The EESC notes that, as regards the aims of increasing the participation of civil society and stakeholders in policy-making and of incorporating consumer policy into other Community policies, the indicators put forward for monitoring and assessing the programme's synergies, except for the first one, are inappropriate for consumer policy.

3.2.2.5 The EESC also considers that it would be useful to define other indicators for assessing consumer policy in order to ensure that they are more reliable and tie in more closely with the objectives outlined in the programme's annex 3.

3.2.2.6 Moreover, although "annual work plans" are to be drawn up for the implementation of the new seven-year programme, it appears that no use will be made of the instrument featured in the 2002-2006 plan, namely the review of the rolling programme of actions¹⁴. Such a review is all the more necessary now that the programme has been increased to seven years.

3.2.2.7 The EESC points out that the organisational structure and operational methods of the Consumer Institute within the Executive Health Agency have yet to be defined. It therefore recommends that its independence be guaranteed, with clearly defined responsibilities and powers to stop it simply constituting more red tape.

3.2.2.8 Lastly, the funds set aside for consumer policy represent less than 20% of the total, and account for no more than seven euro cents per consumer per year for the seven years of the programme. The funding may appear to have doubled since the previous programme, but the programme has almost doubled in length – from four to seven years.

3.2.2.9 It should be added that the simple fact of the forthcoming accession of new Member States should have resulted in a budgetary proposal that reflects more than just the programme's duration. This is already inadequate for the actions to be carried out, with a substantial proportion being taken up by the Institute's running costs.

¹⁴ Carried out on 15 September 2003 [SEC(2003) 1387, of 27.11.2003].

3.2.3 Public health

- 3.2.3.1 The EESC wishes to highlight the positive aspects of the Commission programme, specifically the aim of boosting public health policy by viewing it as a priority and giving it greater visibility and more effective instruments, for which there is an urgent need. Without even mentioning the bird-flu pandemic threat, there is a clear need for Community-level cooperation on important aspects of public health - something that the Commission rightly emphasises¹⁵.
- 3.2.3.2 The EESC therefore welcomes the broad guidelines relating to public health, in particular the idea of incorporating concerns in this field into other Community policies, and the commitment to prevention, information analysis, closer cooperation, the exchange of knowledge and better dissemination of information.
- 3.2.3.3 The EESC also welcomes the priority the Commission attaches to combating inequalities in access to health care, to the need to promote children's health and to the situations created by active ageing in the labour market.
- 3.2.3.4 The Committee shares the Commission's concerns regarding global health threats and the increasing prevalence of lifestyle-related diseases, and welcomes the proposed strategy for improving action on health determinants.
- 3.2.3.5 The EESC supports the Commission's commitment to encouraging organisations working in the health sector and to giving them more of a say on consultative bodies. It welcomes the concern for patient mobility, and for supporting cooperation between national health systems with a view to overcoming the challenges they face and to strengthening mechanisms for exchanging information on public health issues.
- 3.2.3.6 The EESC thus acknowledges that the Commission's treatment of the public health strand has more closely matched the needs of the sector, in terms of defining objectives, of planning actions and of the resources allocated – almost three times the amount scheduled in the previous programme and more than four times the amount set aside for the consumer strand.

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This is clearly demonstrated in the set of decisions that the Commission has adopted and published in this field [Decisions EC(2005) 3704 and 3705 of 6 October, 4068 of 13 October, 3877 and 3920 of 17 October, 4135 and 4163 of 19 October and 4176 of 20 October, 4197 and 4199 of 21 October, in, respectively, OJ L 263 of 8 October, 269 of 14 October, 274 of 20 October, 276 of 21 October and 279 of 22 October].

- 3.2.3.7 Nevertheless, even here, the EESC can see no significant innovations¹⁶ in relation to the substance of the previous programmes. Its comments on the 2001-2006 programme and on the European Environment and Health Plan 2004-2010 thus remain entirely valid, in particular as regards the persistent lack of practical and objectively assessable targets and of a precise timetable for achieving them¹⁷.
- 3.2.3.8 The EESC would have liked to see the inclusion of specific goals to be achieved in respect of strands of the previous programme which have been left out of the current one, such as action to combat inequality in health, especially gender inequality, the situation facing older people, the most disadvantaged and communities at the margins of society, the confidentiality of personal data, personal and biological factors, the adverse effects of radiation and noise, and resistance to antibiotics.
- 3.2.3.9 The EESC would also have liked the programme to have addressed, in a consistent manner, some extremely important issues, such as obesity, HIV/Aids, mental health¹⁸, child health and childhood diseases and ageing, which, whilst mentioned in the programme's description, are not given equal coverage in the proposed decision itself.
- 3.2.3.10 The Committee is also surprised that the Commission proposal overlooks some of today's major public health issues, such as dental health, people's sight, palliative care and pain management.
- 3.2.3.11 On a more general note, the Committee would have liked the Commission to demonstrate greater commitment to aspects such as the quality of information at all levels and in all areas, overall risk prevention, public-private partnerships and cooperation between Member States and at international level.

¹⁶ A comparative analysis of the 2007-2013 and the 2001-2006 programmes shows that the content of points 1.1, 1.2, 1.3, 1.4, 1.6, 3.1, 3.2, 3.3, 3.4, 5.4, 5.6, 5.7 and 6 of the current proposal matches that of the previous programme and is simply numbered differently. Point 1.5 contains a degree of innovation, as does the detail of point 2, although health emergencies already featured in the previous programme; points 3.5, 3.6, and 3.7; all of point 4, which was only vaguely sketched out in the Commission communication supporting the previous programme; points 5.1, 5.2, 5.3, 5.5 and 5.8. In contrast, the reference to actions in the field of cooperation with candidate countries and third countries has disappeared from the current programme and is only mentioned in point 2.2 of the Commission communication supporting the programme.

¹⁷ OJ C 116 of 20.04.2001 and OJ C 157 of 28.06.2005.

¹⁸ This is all the more surprising because the Commission has just published an excellent Green Paper on a mental health strategy for the European Union [COM(2005) 484 final of 14 October 2005]. The Green Paper follows on from a range of activities carried out in this field since 1997, which are described in the report drawn up by Professor Ville Lehtinen in December 2004. It shows that the Commission can, on its own initiative, carry out highly relevant actions in important areas of public health that have nothing to do with consumer policy.

3.2.3.12 Lastly, the EESC would prefer the programme to have set out practical actions facilitating a comparison of health systems in the EU¹⁹, encouraging the protection of patients when they are in another Member State ("EU health insurance"), more energetically promoting the adoption of codes of good practice, and creating and developing centres of excellence and an epidemiology centre.

Brussels, 14 February 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

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The need for this was clearly demonstrated by the WHO's Dr Yves Charpak at the Open Health Forum 2005.