

ABSTRACTS FROM EESC OPINIONS REFERRING TO GOLD-PLATING AND TRANSPOSITION

Abstracts from various EESC opinions related to the broader issue of better law-making using search keywords "gold-plating" and "transposition".

INT/489 - CESE 1160/2010 Better Regulation – Third strategic review of Better Regulation in the European Union
Rapporteur: Mr CAPPELLINI Co-rapporteur: Ms ANGELOVA
The success of regulatory reform has increased the demand for regulation to manage non-economic risks. While the use of regulation to achieve social goals is not new in the Member States, the development of EU level regulatory behaviour presents problems of implementation, overlapping, gold-plating and misunderstanding. Regulations may also hinder the use of non-regulatory tools. The credibility of the EU depends on the coordinate delivery of its policies so a Better Regulation-strategy is now vital.
INT/499 - CESE 758/2010 The 28th regime – an alternative allowing less law-making at Community level (own-initiative opinion)
Rapporteur: Mr PEGADO LIZ
Firstly, an Optional Instrument leaves the decision on its application to the market. It makes sure that it will only be applied where parties to a contract consider it an advantage. It is to be expected that Optional Instruments will be used by international players in the market whereas local players will save transposition costs, especially the redrafting of their contract terms in order to adapt them to a new European Regime.
INT/492 - CESE 632/2010 25th Annual report from the Commission on monitoring the application of Community law (2007)
Rapporteur: Mr LECHNER
Some Member States still encounter difficulties when it comes to drafting rules that transpose the provisions of Directives. When it comes to implementation, Directives permit various degrees of latitude, from non-explicit provisions leaving Member States fairly extensive leeway in choosing national transposition measures, to explicit or prescriptive provisions. The right balance has to be found here between blind copying and excessive leeway.
The Committee would suggest a more pro-active approach, e.g.:
<ul style="list-style-type: none"> • Drawing up "easier to transpose" Community legislation; • Establishing an accurate and constantly updated correlation table from the outset; • Allowing transposition by means of a specific reference to prescriptive or explicit provisions in a Directive.
However, the Committee would also draw attention to those areas in which planning, drafting and transposition of legislation should be based on the pro-active law approach; in this connection the EESC notes that provisions and rules are not always the only, and certainly not always the best, way of achieving the desired objectives.
Although transposition may appear to be simple in theory, in practice there are instances where Community law concepts, which seem clear and precise, have no equivalent in national legal terminology, or where the Community law concept does not include referral to Member States' law to determine its meaning and scope.
Moreover, when it comes to implementation, Directives permit various degrees of latitude, from non-explicit provisions leaving Member States fairly extensive leeway in choosing national

transposition measures, to explicit or prescriptive provisions such as definitions, lists or tables detailing substances, objects, or products which require that Member States enact "simple transposition measures" to comply with the provisions of the Directive.

However, transposition is not only a matter of drafting Community law legal concepts into national law; it is also matter of concrete process. In this respect, once a Directive has been published in the Official Journal of the European Union, Member States should speed up their transposition processes by entrusting national implementation authorities - which could and should have an updated database established for this purpose - to cooperate with the authorities of other Member States via a network where they could exchange experiences and explain their difficulties in transposing particular provisions.

INT/452 - CESE 865/2009 The impact of legislative barriers in the Member States on the competitiveness of the EU (exploratory opinion requested by the Czech presidency)

Rapporteur: **Mr van IERSEL**

A first category includes simply existing obstacles facing both citizens and companies that wish to operate in another Member State. This type of barriers can originate from national legislation, regulations or administrative procedures that do not depend on EU legislation and its transposition *per se*, and are thus difficult to predict *ex ante* by a business planning to operate trans-border.

Even in the presence of a full and correct transposition (of the Services directive), European institutions and Member States should keep the sector under close watch to address pending issues and prevent new obstacles from emerging. As most progress in creating a level playing field has been achieved in the market for goods, lessons learned in that field can offer valuable insights on how it is best to proceed for tackling remaining barriers in services.

A correct and timely implementation and enforcement on the ground is an inextricable aspect of better law-making. Practical evidence shows those unsatisfactory and excessive implementation (gold-plating and cherry picking) are a main source of legal barriers, trans-border problems and protectionism. Therefore the resources and tools needed to monitor and enforce EU legislation at the Member State level should also be carefully appraised.

INT/415 - CESE 1905/2008 The proactive law approach: a further step towards better regulation at EU level (own-initiative opinion)

Rapporteur: **Mr PEGADO LIZ**

While the transposition and implementation of laws are important steps towards better regulation at EU level, regulatory success should be measured by how the goals are achieved at the level of the users of the law, EU citizens and businesses.

INT/384 - CESE 482/2008 A Europe of results – applying Community law

Rapporteur: **Mr RETUREAU**

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.

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.

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.

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.

<p>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.</p>
<p>Thus, proper transposition requires the adoption of binding national rules, which must be published in an official publication. The Court can thus censure mere references to Community law masquerading as transposition.</p>
<p>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.</p>
<p>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.</p>
<p>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.</p>
<p>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:</p> <ul style="list-style-type: none"> • 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.
<p>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.</p>
<p>The choice of techniques for drafting transposition measures varies according to whether the provisions to be transposed are non-explicit or prescriptive/explicit.</p>
<p>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.</p>
<p>Examples of national transposition procedures:</p>
<p>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.</p>
<p>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.</p>
<p>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.</p>
<p>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.</p>
<p>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.</p>
<p>Solutions to be recommended for more effective transposition of directives include:</p>

- 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. **The Netherlands, Slovakia, Austria, Finland and Estonia** are champions of this method of transposing the technical annexes to directives;
- 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.

INT/296 – CESE 952/2006 **Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment**

Rapporteur: **Mr CASSIDY**

The Committee believes that Member States have a heavy responsibility to ensure that EU measures are properly transposed into their national law and enforced. The Committee recognises that the Interinstitutional Agreement on Better Lawmaking provides a "code of conduct" for Member States in better transposition and application of EC directives. What is important is that the resulting regulatory framework at national level is both as balanced in terms of content and as simple as possible for business, employees, consumers and all civil society players.

The Commission's Communication recognises that it can only succeed with support from other EU Institutions and above all of Member States. An important part would be the recognition by the latter of the need to keep the implementation of EU legislation as close as possible to the original directives agreed under the co-decision procedure and not to add on (or "gold-plate").

The Communication takes account of the findings of the widespread consultation process with the Member States and stakeholders. The conclusion of the process is that EU proposals should:

- Clarify and improve the legibility of legislation;
- Update and modernize the regulatory framework;
- Reduce administrative costs;
- Reinforce the consistency of the *acquis*;
- Improve the proportionality of the *acquis*.

The last is probably the most far-reaching concern of stakeholders.

INT/265 - CESE 1068/2005 Better law-making, exploratory opinion on behalf of the UK Presidency
Rapporteur: Mr RETUREAU
Legislating is a political action which – beyond the EU institutions and governments – also affects organised civil society and all Europeans. There is a great deal of criticism of the opaqueness and complexity of procedures for drawing up European law and their lack of transparency, as well as the useless, unnecessary introduction of requirements or procedures during the transposition of a directive (gold-plating). These are convoluted administrative procedures which multiply the obstacles, paperwork and costs for law end-users (red tape). Moreover, NGOs and the social partners often complain about the formal nature and the limitations of prior consultation procedures, even though these require large-scale and costly investment in terms of both time and expertise.
There are problems of institutional profile, governance and democracy – as much for the institutions as for the Member States; Europe’s image and that of its institutions is at stake; the institutions need to find quick and effective solutions; at the same time the task is better to meet the challenges of growth, employment and competitiveness in Europe. The Member States must also consider a reform of the state and its administration, as they are also the target of criticism and as their active contribution to better global governance is vital.
The quality of the adopted text at the end of the legislative procedure and that of the transposition of directives also have consequences in terms of disputes and the need for the intervention of national and Community judicial authorities, additional costs for national administrations and parties to the proceedings, if there are deficiencies or lead to difficulties of interpretation.
Legislative assessment, both <i>ex ante</i> and <i>ex post</i> , must be an inclusive and participatory exercise if it is to have undisputed political and practical legitimacy. While <i>ex ante</i> assessment precedes, then accompanies the drafting process, <i>ex post</i> assessment takes place in two stages: first during the transposition of directives or enforcement of regulations, during which the first acceptance and enforcement difficulties become apparent; then during the actual impact assessment which takes place after a predetermined period of implementation on the ground and which may highlight unforeseeable or undesirable consequences. Impact assessments may involve feedback on legislation and the ways in which it is implemented.
1.1 Negative or unforeseen consequences can differ widely: their evaluation in terms of excessive costs on the part of administration or users must be complemented by a study of their social, economic and environmental impact, or in the light of fundamental rights.
A policy for coordination, information and exchange of national best practice, the regular publication of transposition tables, as stipulated in the Commission decision, as well as the scoreboard showing the progress of the internal market, will permit effective follow-up and corrections.
The method proposed here differs from that of the Commission, which plans to carry out impact assessments essentially during the planning and drafting of legislation. The EESC believes that a participatory assessment of national transpositions and of the real impact of the legislation after being implemented for some time could complement and strengthen the assessment system, by providing better information about the situation on the ground. It will thus be possible to establish whether the legislative action has achieved its intended objectives.
INT/262, CESE 1069/2005 Improving the implementation of EU legislation (own-initiative opinion)
Rapporteur: Mr van IERSEL
Effective application of EU law boosts public confidence in European policies and processes and makes the EU more relevant to the concerns of citizens and businesses. This implies however a timely and correct transposition of EU law at national level.
Moreover, European legislation that aims to remove barriers of any kind to creating a level playing field, must be applied promptly and coherently across the EU and enforced effectively by all relevant authorities: national and regional.
The internal market functions properly and becomes a source of growth and prosperity only when there are no discriminatory or covert barriers to citizens or businesses, including cumbersome or lengthy administrative procedures. Numerous complaints lodged by citizens and businesses every year result from national measures which often tend to be too restrictive, or too complex and disproportional. This is partly due to so-called gold-plating, which takes place during transposition of EU law into national law. Gold-plating adds national

regulations which may obfuscate the objectives of the EU.

The EESC considers that the EU has an implementation and compliance problem. Statistics on the state of implementation of EU law show that Member States experience delays in the timely transposition of directives. Statistics of infringement proceedings reveal that often transposition is incorrect or incomplete. Indeed, 78% of the cases initiated by the European Commission against Member States during 2002-5 concern transposition and application of directives. This suggests that Member States experience problems in determining the national method of implementation to give effect to directives.

(The) broad set of Community-based instruments that require transposition, implementation and enforcement in the Member States often gives cause to national and thus different interpretations of what is to be implemented and enforced at national level and how this is to be done.

The great complexity and the confusing developments in carrying out correctly approved directives at EU level demand an overall SWOT-analysis of the system as it functions:

- Where do we stand?
- What about the causes of the problems?
- What challenges are Member States facing?
- What are the Member States aiming at: what is the desirable relation and interaction between subsidiarity and EU monitoring?
- In other words: who is in charge of measuring what, and what are the criteria?
- To what extent do the legal instruments and the current practices correspond with the objectives of European integration?
- How are the EU and the Member States going to respond to the complaints of companies and citizens about the incomplete and sometimes counter-productive way of transposing, implementing and enforcing EU rules in national regulations and practices?

In addition to discussions on improvements in Member States, these intriguing questions have to be put to endorse a broad and open debate between policy makers and officials as well as the private sector and civil society on desirable adaptations in procedures and practices in the EU and in the Member States. It must raise awareness about the impact of correct transposition, implementation and enforcement for all agreed EU policies.

A particular way of implementing EU law is gold-plating and cherry picking. The EESC considers that a general rule could be introduced whereby Member States, in notifying national implementing measures, justify formally with transposition tables to the Commission that these are in complete and full conformity with Community law.

There must be particular focus on the operation of the courts, which are specifically responsible for interpreting and directly implementing Community legislation (regulations) and the legislation resulting from its transposition (directives). Substantial difficulties have been encountered in standardising interpretation of these instruments and implementing them rapidly in practical cases. There is therefore a particular need for judges and lawyers to receive training in Community law, especially in the fields of competition, health and consumer protection.

INT/187 CESE 500/2004 **Updating and simplifying the Community acquis**

Rapporteur: **Mr RETUREAU**

The rule of *nemo censitur* (ignorance of the law is no defence) has become a real legal fiction owing to the huge number and complexity of directives and regulations, and this despite welcome codification initiatives that allow for a more consistent approach in certain areas of European law. Nonetheless, diversity in transposing directives at national level can lead to annoying discrepancies and different procedures. Member States and national legislators therefore have the important responsibility of transposing Community directives logically, accessibly and clearly, respecting both the letter and the aims of the legislation: convergence and harmonisation of national law.

The impact in terms of cost for those to whom the legislation is addressed, particularly businesses, must also be evaluated. There is no doubt that Community legislation or transposing a directive into domestic law can be expensive for businesses or individuals, especially if it lacks legal precision, or if the presentation of the draft does not provide a clear and precise explanation of the exact scope and the aims of the proposal. If the courts are needed to interpret the legislation or regulation, the end result will be disproportionate expense for those to whom the law is addressed.

It is clear that the users of Community law, which today accounts for a significant proportion if not most of the legal texts applicable in the Member States, are calling for wording that is less complex, devoid of ambiguity and easier to transpose and implement. The proliferation of legislation has an adverse effect on businesses, in particular smaller enterprises that lack their own legal services, and consumers, who seek certainty regarding their rights and the remedies open to them.

INT/156 CESE 318/2003 **Simplification** (Additional Own-Initiative Opinion)

Rapporteur: **Mr SIMPSON**

The second source of complexity comes from the widespread differences in the regulatory regimes of the Member States, which have the effect of fragmenting the supposedly single market into fifteen discrete legal jurisdictions. This results:

- Partly from delays by the Member States in the transposing of Community legislation into national law;
- Partly from the fact that, in the process of transposition, Member States interpret the legislation in the light of their own legal customs and usage, in other words they put a national “spin” on it;
- Partly from variations between Member States in the level of enforcement of enacted legislation;
- Partly from the derogations and exemptions which Member States extract from the negotiating process which precedes the enactment of much Community legislation; and
- Partly from the insistence by Member States on the observance of national agency regulations, established business practices and traditions which, while they may not have the force of law, are nevertheless treated as mandatory.

(...) The vast majority of legislation is composed of a hierarchy of national laws, government ordinances, agency regulations, collectively-agreed regulations and byelaws at regional, municipal and local levels. This hierarchy is pyramidal in shape; the further down one goes, so the volume of legislation increases, the transparency diminishes and the consistency declines.

In the context of the single market it is preferable that European legislation should be promulgated by way of Regulations rather than Directives because the former, being binding, are not susceptible to mutation in the transposition process and therefore do not give rise to distortions in intra-Community trade, as is the case with Directives. The EESC is aware that it is frequently more difficult and protracted to secure agreement in the Council for Regulations, because of their binding nature, but considers that the measure of success is not the speed of passing legislation but its impact on the real economy.

A major source of complication is the varying levels of transposition and enforcement of European legislation in the Member States; Member States should transpose EU Directives into national law correctly and within the set deadlines; given the disappointing performance to date in this area, it would be advisable for the Commission to use Regulations in preference to Directives, wherever possible.

INT/134 CESE 364/2002 **Simplifying and improving the regulatory environment**

Rapporteur: **Mr WALKER**

Appoint transposition/application correspondents to improve communications between the Commission and the Member States (N.B.: see the IMI system, see EESC opinion INT/481 – CESE 1694/2009, rapp. Mr Hernández Bataller).

The different regulatory regimes created in the Member States by variations in the timing and incidence of transposing Community legislation into national law, by national interpretations of EU legal instruments, by the “filling-in” of EU framework legislation at national level and by the existence of subsidiary legislation created by national agencies, regional governments and local authorities, are fragmenting the Single Market and creating serious distortions of competition.

INT/104 CESE 146/2001 **Simplification**

Rapporteur: **Mr WALKER**

As matters stand, the transposition and implementation of Directives in the Member States are a source of additional complexities, divergences and delays. There is a manifest need for a parallel approach to simplification in the Member States if the process is to succeed at the European level.

Careful attention must be paid to the interplay between EU and national institutions; for the EU, an ability to foresee the effects of new regulations in various national systems is important. New regulations can have massive repercussions at national level if they are transposed into national law with excessive zeal, the "gold-plating" effect. This is particularly true of regulations which lay down a "minimum standard", leaving Member States free to impose stricter requirements at will.

INT/037 CESE 1174/2000 **Simplifying rules in the Single Market**

Rapporteur: **Mr VEVER**

Simplifying rules is now, more than ever, a matter of public concern in Europe for a number of reasons: (...) the continued existence of superfluous specific provisions - and even the addition of further such provisions by the Member States when they transpose EU provisions into national law - not to mention the delays and difficulties in transforming these provisions into national law.

(...) opinion is equally divided between those who see harmonisation, a priori, in terms of its contribution to simplification, and those who are concerned about the frequent overlap of European and national provisions, which is felt to result as much from over-intervention on the part of the EU as, conversely, from the maintenance or even introduction of superfluous national provisions when EU Directives are transposed into national law.

There are frequently problems of alignment between EU rules and national rules. The increasing recourse to Directives, rather than Regulations, means that the provisions agreed at Brussels are often simply "tacked onto" national laws without changing them in a substantial way, let alone taking their place. Sometimes Member States also bolt on much more far-reaching national provisions when transposing EU Directives.

In addition to a number of proposals for the redrafting of several technical rules, the report (N.B.: the Molitor report, 1995) sets out 18 general recommendations. Many of these have since been largely put on the backburner and it is worth recapping them:

- To speed up the consolidation of rules at both EU and national level;
- To set in train a programme of simplification covering all existing EU laws and their incorporation into national law;
- To ask the European Commission to submit reports on the rules which should be retained, amended or withdrawn;
- To raise a number of questions prior to the introduction of draft rules (whether the proposals are appropriate, whether the subsidiarity principle has been respected, the cost-benefit ratio, alternatives to public action, proportionality, time restrictions);
- To ask the European Commission to carry out public investigations into the incorporation of EU measures into national law;
- To observe a series of criteria for the introduction of all new measures: the need for provisions to be readily understandable, to have well-defined objectives, be consistent with existing laws, the need to define the field of application, to set a realistic timetable, and to make provisions for review procedures;
- To publish prior studies;
- To consult interested parties (consumers, businesses, workers) in an effective and systematic way and in good time;
- To set out explanatory memoranda in respect of employment, competitiveness, costs and innovation;
- To make public the reasons why Member States support or oppose the proposed measure;
- To introduce systematic, public procedures for assessing the outcome of the measures;
- To pursue simplification at national and local levels, and also when transposing EU law into national law;
- To monitor enforcement of the provisions by the national authorities more closely;
- To fine Member States which drag their feet over the enforcement of EU rules;

- To make use of Regulations rather than Directives if this can further the goal of simplification;
- To apply mutual recognition wherever possible;
- To ask the European Commission to give advance notice of its proposals and to make increased use of green papers and white papers;
- To ask the Commission to present progress reports on simplification; this could involve giving one of the Commissioners responsibilities for simplification and setting up a small central coordinating unit to provide backup.

INT/480 CESE 251/2010 **The Lisbon Agenda and the Internal Market**

Rapporteur: **Mr CALLEJA**

- **Better rules:** It is fundamental to have more transparent and unequivocal regulation that can be administered better at a low cost and without a loss of time for business and the citizen at large. These principles need to be followed to facilitate cross-border activities. At the same time it is obvious that the problems in the financial markets, the need of a greener economy and a strengthening of the industrial and service sectors to take into account demographic change, require a new approach. Better rules do not mean automatically less rules or de-regulated markets, but they must create the necessary conditions to help remove protectionist attitudes and competing regimes that give unfair advantage to some Member States. The rules should take into account economic and social conditions whilst achieving a level playing field for enterprises, ensuring more cohesion and guaranteeing social justice and encouragement for the free movement of human and financial resources;
- **Better implementation:** Rules should be transposed uniformly in all Member States with one consistent interpretation and the least exceptions. Mutual recognition in non-harmonised areas must be improved;
- **Better supervision:** As the guardian of the Single Market, the EU Commission's authority should be strengthened. Supervision and enforcement could be better coordinated by the creation of a single point of reference in each Member State to exercise authority and be held responsible to the EU Commission for uniform application of Single Market rules;
- **The continuation and strengthening of the Single Market monitoring exercise:** The best ways of approaching the design and implementation of better regulation and policy are expected to come out of this exercise. These approaches will be pragmatic and address specific issues at country and market levels. This exercise should also investigate and tackle reported barriers to trade within the Single Market;
- **Prioritising Single Market issues:** EU priorities should be reviewed for the coming years because outstanding matters in the Single Market agenda might be hampering progress on the Lisbon goals.

INT/332 CESE 89/2007 **Review of the Single Market** (exploratory opinion at the request of the European Commission)

Rapporteur: **Mr CASSIDY**

There is abundant evidence both from the Commission's own consultation and from Member States that directives are frequently made more onerous by national administrations when implementing them into national law (i.e. *gold plating*). This bears more heavily on SMEs than on large companies. SME owners frequently have to combine all of the tasks which large organisations can delegate to specialists.

INT/544 CESE 984/2011 **Smart Regulation in the European Union**

Rapporteur: **Mr PEGADO LIZ**

(...) The Commission fails to mention any of the root causes of the widespread inadequate implementation of the Community acquis in the Member States, a matter on which the EESC has commented on many occasions, which can only be explained by the fact that this is merely a policy document. Nevertheless, because of its importance within the framework of

smarter regulation, it is worth highlighting the following aspects:

- a) The incorrect or incomplete incorporation of Community rules into national legislation, where they are often deemed to be undesirable or to run contrary to national customs and interests;
- b) The lack of political will on the part of national authorities to comply and ensure compliance with rules which are not seen as fitting in with the body of national law and national traditions;
- c) The persistent tendency to add new, unnecessary regulatory mechanisms to Community rules or to choose only some parts of these rules (*gold-plating* and *cherry-picking*) even making it advisable, in addition to the "correlation tables" that the Member States have to produce, as set out in the Interinstitutional Agreement and the Framework Agreement between the Commission and the European Parliament, for Member States also to be required to specify what provisions of their transposed legislation constitute over-regulation;
- d) A degree of inadequate specific preparation on the part of national authorities in order to understand and ensure application of the Community *acquis*;
- e) The sometimes insufficiently specific training of some judges and other players in the judicial system (lawyers, court officials, etc), in certain areas of Community law, which sometimes leads to erroneous application or lack of application of transposed laws and to the application of parallel rules under national legislation;
- f) The need to extend administrative cooperation measures to involve civil society organisations, particularly consumer protection associations;
- g) The lack of foresight and harmonisation of punitive law, which has been left up to Member States.

The current Community legislative landscape requires an in-depth consideration of the design, drafting, transposal and implementation of laws, and the same consideration should be given to revision and streamlining.

The EESC therefore considers it useful to restate the positions it has put forward on this subject:

- a) A stricter application of the "better regulation" principles;
- b) Greater transparency at all levels of drafting legislation;
- c) A better selection of legal instruments, including mechanisms for self-regulation and co-regulation;
- d) The development of a more systematic monitoring system for the transposal of directives at national level;
- e) The new role and greater powers of national parliaments conferred by the Treaty of Lisbon should not be overlooked;
- f) The Commission should also make more regular use of its interpretative communications;
- g) Greater efforts will also be needed in terms of streamlining and codifying legislation.

1.2 INT/692 CESE 2819/2013 **Smart regulation - Responding to the needs of small and medium-sized enterprises**

Rapporteur: **Ms DARMANIN** Co-rapporteur: **Mr BURNS**

The EESC welcomes the European Commission's efforts over the year to promote the design and application of better regulatory tools, including impact assessments (IAs) and stakeholder involvement.

The Committee therefore:

- a) Notes that, while smart regulation is necessary for businesses of any size, red tape has a disproportionate impact on small companies, especially on micro-enterprises;
- b) Reminds all Commission services that the SME test is an integral part of IAs. It invites the European legislator to take into account the specific characteristics of the small and micro companies within the SME group when preparing impact assessments and drawing up legislative texts;
- c) Welcomes the REFIT programme which will identify burdens and ineffective measures for SMEs. This programme should be used to identify and propose withdrawal of existing regulations that are no longer fit for purpose and the consolidation of existing legislation. We propose that the Commission launches new fitness checks as soon as possible by prioritising those arising from the "top ten" most burdensome regulations presented in the current Communication, with a specific focus on micro-enterprises;

- d) Points to one principle of that programme which mentions that IAs are made more user-friendly by using a standard template and having a clear executive summary highlighting the main issues, including implementation costs, especially as regards micro businesses;
- e) Supports the creation, in the long term, of a single independent assessment board (IAB) operating across all EU institutions. This independent IAB should make use of external experts to provide additional scrutiny of Commission proposals to ensure that the different concepts involved are properly understood;
- f) Agrees that micro-enterprises should not be given blanket exemptions but rather that a case-by-case approach on legislative proposals should be adopted, following a thorough impact assessment exercise;
- g) Reminds the Commission to attach details of what changes were made and the reasons for the changes, as a result of the consultation process;
- h) Considers that the European Commission should constantly monitor the SME scoreboard that is set up through a centralised coordinating service in close cooperation with SME organisations;
- i) Asks for a new programme for reducing the unnecessary burden of regulation and ensuring that smarter regulation does not exempt businesses from regulation on worker protection, gender equality standards or environmental standards. It therefore strongly advocates a new mandate until 2020 for the *Stoiber Group* that will monitor and implement policies, especially relating to micro and small businesses in cooperation with SMEs organisations;
- j) Asks the Council and the Parliament to limit the administrative burden on businesses also when dealing with EU legislation policy-making;
- k) Proposes that Member States exchange best practices in the area of Smart Regulation in order to avoid gold-plating.

At Member State level:

- The EESC is of the opinion that the principle of Smart Regulation will only work if there is also smart implementation. The Committee calls on Member States to avoid undermining simplification measures taken at EU level when enacting them in national laws. This "gold plating" clearly hampers entrepreneurial development. Our Committee therefore suggests that specific training be mandatory for politicians, ministry officials and others involved in enacting legislation in national law;
- However, this does not preclude any Member States for having higher standards if they so wish;
- The EESC invites the Commission to provide assistance to Member States in the form of meetings and workshops with public authorities to smooth the implementation process. The EESC considers that the Commission should carefully coordinate follow-up of implementation in close cooperation with the various DGs and with Member States. The EESC proposes that the Commission and Member States work more closely together to share examples of best IA practice, with a view to developing comparable, transparent and flexible procedures. Member States are also invited to step up exchange of examples of best practice in simplifying SME regulation (for example, e-government solutions for businesses to comply with and understand rules).

INT/688 CESE **The Single Market Act - identifying missing measures** (additional opinion)

Rapporteur: **Ms FEDERSPIEL** Co-rapporteurs: **Mr SIECKER** and **Mr VOLEŠ**

Transposition, implementation and enforcement

A new challenge for enforcement of consumer rights comes from big international companies or associations who apply Europe-wide marketing strategies which can no longer be tackled by national enforcement concepts. Better cooperation between national enforcement authorities and a more prominent role for the European Commission in jointly coordinating these actions should be aimed at. Synergies between public and private enforcement players, such as consumer organisations, should be better exploited.

The cooperation between national enforcement authorities has become a key issue but has not been very successful to date. The European Commission should have a stronger role in coordinating national enforcement activities in cases with a Europe-wide dimension of infringement of consumer law. Furthermore, giving the European Commission powers for the enforcement of EU consumer law (as in competition law) should be further debated.

INT/750 CESE **REFIT programme**

Rapporteur: **Mr MEYNENT**

Le CESE salue les efforts de la Commission pour accompagner et contrôler la transposition effective des Directives au niveau des Etats membres. Il souligne les constats dont fait état le 30^e rapport annuel sur le contrôle de l'application du droit de l'UE. Le rapport mentionne que les retards et infractions touchent plus particulièrement les domaines de l'environnement, des transports et de la fiscalité. Le CESE s'inquiète du fait que pour 2012, les problèmes se situent essentiellement, et en ordre décroissant, au niveau des transports, de la santé, des consommateurs, de l'environnement, du marché intérieur et des services.
