3.4.3. Such appropriate projects can show very clearly that environmental protection is not a luxury that only rich societies can afford, but a sine qua non for ensuring global environmental and economic stability.

Brussels, 19 October 2000.

The President
of the Economic and Social Committee
Göke FRERICHS

Opinion of the Economic and Social Committee on the ‘Strengthening of the law governing concessions and public/private partnership (PPP) contracts’

(2001/C 14/19)

On 2 March 2000 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an opinion on ‘Strengthening of the law governing concessions and public/private partnership (PPP) contracts’.

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 1 September 2000. The rapporteur was Mr Levaux.

At its 376th plenary session of 19 October 2000 the Committee adopted the following opinion by 72 votes to 2 with 7 abstentions.

1. Introduction

1.1. At its meeting on 14 December 1999, the Section for the Single Market, Production and Consumption decided to apply to the Bureau for authorisation to draw up an own-initiative opinion on Strengthening the law governing concessions and public-private partnership (PPP) contracts as tools to revive growth in Europe for the benefit of EU citizens and to aid market integration. Community public-purchasing law does not cover all PPP contracts. Directive 93/37/EEC(1) provides a definition and framework for the award of public works contracts, but not a general framework for public-private partnership contracts. The Commission acknowledges this need in a number of ways:

— The high-level group set up by Mr Kinnock proposed recommendations which were fully adopted by the Commission, but have remained a dead letter as far as European legislation or the legal situation in several countries is concerned.

— The Commission Interpretative Communication on concessions under Community law(2) published after the January 1997 Green Paper on public contracts, and the March 1998 note for guidance, make a number of points which raise several fundamental questions. The Commission has recognised the variety of contractual relationships falling within the ambit of PPP and has focused its analysis on concessions alone.

1.2. The Committee intends to focus its deliberations on two main groups of questions.

1.2.1. Economic, social and strategic questions

— Should there be a harmonised framework for such contracts, bearing in mind the slow development of the trans-European networks (TENs), which were to have been created with the aid of these contracts?


(2) OJ C 121, 29.4.2000.
Should account not be taken of the strategic value of such contracts:

— with specific reference to the provision of services of general interest (social, environmental)?

— for achieving consolidation aimed at growth and creating a real market for private infrastructure capital? Greater use of these contracts is being held back by the uncertainty surrounding present European contract law.

— Should a gap be allowed to develop between Europe and those other regions of the world which are rapidly pressing ahead with this type of contract? If the EU lags behind in this field Europe’s longer-term economic development could slow down.

2.1.1.2. There are other inconsistencies of definition and scope between these directives, where clarification is required with regard to concession and PPP contracts.

2.1.2. The definition of public works concessions in European law is open to criticism. The criticism is that the definition equates concessions with works contracts, which makes no sense, and the fact that in most Member States the law makes no provision for private-sector proposals for concessions.

2.1.1. Although public works concessions — involving both the execution of the works and the provision of the associated service — are clearly governed by Directive 93/37/EEC, the same does not apply to telecommunications, transport, water or energy concessions. Directive 92/50/EEC relating to the coordination of procedures for the award of public service contracts does not define concessions or the procedure for their award. The same is true of Directive 93/38/EEC, which deals with procurement by holders of concessions or exclusive rights in telecommunications, water and energy.

1.2.2. Questions concerning legal harmonisation and the clarification of European law:

— Should the rules governing these contracts be harmonised in line with the UNCITRAL proposal (1)?

— Should public procurement law be adjusted to take account of the marked growth of new types of PPP contracts and the reorganisation taking place in some Member States involving infrastructure management by private operators?

1.3. This opinion sets out to define, by reference to previous work done on the subject at European level, a clearer approach conducive to the establishment of a body of European law on concessions. A clear definition of concessions and a suitable framework for these contracts are needed in order to enable them to develop. By studying the difficulties encountered with regard to infrastructure concessions, the opinion will put forward proposals for Europe.

1.2.1. Unclear framework for concessions in European directives. Community law on concessions derives, on the one hand, from the principles and rules laid down in the Treaty, and on the other hand from the six directives implementing these principles. The purpose of the directives drawn up by the European Union is to ensure transparent competition throughout the field of public procurement (2), and their scope is sometimes unclear in relation to public/private partnership. To date only Directive 93/37/EEC concerning the coordination of procedures for the award of public works contracts defines the concession contract [in article 1(d)]; and only public works concessions are defined. Prior publication in the Official Journal of the European Communities (OJ) is required. This is unfortunately by analogy with straightforward public works contracts (3).

2. Obstacles to PPP and an account of previous European initiatives on the subject

2.1. Legal obstacles

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(1) United Nations Commission on International Trade Law


(3) "Public works concession" is a contract of the same type as that indicated in (a) except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with payment."
2.1.2. A public works concession is a complex contract by which a public authority delegates to a private organisation the responsibility for financing, executing and maintaining a project in return for the right to operate the facility for an extended period, thus enabling its investment to be amortised. This entails the transfer of responsibility from the awarding authority to the concessionaire and a global contract which includes numerous functions (construction, financing, operation), whatever the means of payment of the concessionaire. The remuneration of capital and of the investor’s risk must strike a fair balance with the service provided to the consumer or user.

2.1.2.2. Following the publication of the European Commission’s green paper in November 1996 (1), the Committee adopted an opinion on 28 May 1997 (2) in which it asked the Commission to revise its approach on concessions and define them separately from public works:

— ‘The question of concessions should also be examined in depth, given that their award must be transparent and subject to objective criteria. There are fundamental differences between a concession and a contract: object, duration, terms for financing, management methods and the extent of liability. To encourage the spread of such contracts the Commission could study what form of legal tool should be used for their implementation.’

Other points from the opinion are worth quoting:

— ‘3.7 The use of long-term contracts to provide private financing for public works is growing in several countries. These are not the same as public procurement contracts. Such methods should be promoted and used more widely as they help states save public money. The Commission should draw up a communication on interpretation which safeguards the negotiated status of such contracts while ensuring they have the necessary publicity.’;

— ‘8.3.6 [The ESC] desires that concessions be the subject of a specific regime, especially as regards trans-European networks.’;

‘8.3.7 [The ESC] proposes that the Commission encourage the promotion of new contractual arrange-

ments based on private investment in public infrastructures.’.

2.1.3. Current European law does not ensure equality of treatment for concessions under national law. The Commission, aware of the problems posed by the current legal framework, has published a Commission Interpretative Communication on concessions under Community law (29 April 2000).

2.1.3.1. The final version of this communication was published following a consultation at European level; the ESC was not, however, consulted. The draft deals with the inclusion of concessions in the Treaty, the concept of concessions and its field of application. Whilst this work is useful, it is nonetheless only a step in the right direction and there have been many expressions of support for a European directive on the subject aimed at ending unnecessary legal ambiguities and creating a harmonised legal basis for these contracts in line with practice in the rest of the world. National laws are not at present harmonised, and the rights and obligations they provide and their treatment of concessions and PPP vary very widely. It is not acceptable that the award and execution of this kind of contract should vary to such an extent within the Member States whilst the European authorities constantly remind us that recourse to PPP would make it possible to build Europe’s infrastructure. The concepts of public/private partnership and concession must be clearly spelt out in European law to prevent any disincentive to private investment in public facilities.

2.1.3.1.1. The interpretative communication contains a useful reminder of the rules applied by the Treaty to all service or works concessions and to the granting of exclusive rights (3). It rightly stresses the need to make public and quasi-public bodies compete with the private sector over the granting of contracts or unilateral acts tantamount to concession. In the name of equal treatment the Commission considers that provisions ‘reserving public contracts only to companies in which the State or the public sector has a majority or complete participation’ are contrary to the rules of the Treaty referred to above and to the principle of equal treatment.

(3) Bodies must respect the principles of transparency, proportionality and mutual recognition. Directive 93/37/EEC requires a preliminary advertisement for all contracts for public works concessions, irrespective of whether the potential concessionaire is private or public. The communication does not express any view on the granting of service concessions.
2.1.3.2. And yet the communication does not regulate all the problems, either with regard to the content of concession contracts or in relation to the law applicable. The Commission uses ‘the right to exploit the construction or this right together with payment’ as the sole criterion for distinguishing between public purchasing and concessions; the Commission states that the right to exploit the construction confers the right to charge fees to users, it considers that payment in the form of user fees distinguishes concessions from public purchasing, and it equates exploitation with risk of use, which is not in fact the case in some concession contracts, or in relation to the works directive, still less the services directive.

2.1.3.3. Risks vary greatly, depending on the nature of the service to be provided, and are not restricted solely to risks related to traffic (hospitals, car parks, water networks etc.). Before the operating phase the concessionaire is responsible for planning, financing, the execution of works and maintenance services over many years. The concession cannot therefore be reduced to a single criterion, the payment risk; it is a much broader concept and all its components need to be identified and ranked in order of importance if the concept is to be effectively clarified. Moreover, the contractual transfer of risk is negotiated on a case-by-case basis.

2.1.4. Different applications of European law give rise to legal distinctions. The Committee notes that the legal treatment of concession contracts varies significantly from one Member State to another. For example, in Belgium, Spain, the United Kingdom and Portugal only long-term works concessions involving payments by the public sector qualify as public works concession contracts. The situation is different, however, in Germany, France and Italy. And yet these are the same types of contract, which are moreover at present gaining ground rapidly in Europe and throughout the world.

2.1.4.1. These different approaches to public-sector contracts in Europe are a source of disunity. The same contract would be considered a works contract in one Member State and a concession in another, with different award procedures. The interpretative communication does not seem likely to change this: British Private Finance Initiative (PFI) contracts are of very long duration, they are fully negotiated and they entail payment in full by the public sector following the transfer of risks of varying degree to the private sector. These contracts can be considered either as public purchasing arrangements, or as concessions in the light of the interpretative communication.

2.1.5. Many countries throughout the world have introduced specific laws covering proposals put forward by the private sector outside the public-sector consultation process, giving private-sector operators the right to propose a project to the responsible public authorities. If the proposal is accepted by the public authorities, a competitive call for tenders will be issued, with rights reserved for the originator of the idea(1).

2.2. Economic obstacles

2.2.1. Gaps in European law are hindering the proper development of the private financing of public infrastructure

2.2.1.1. Investors stress the uncertainties inherent in the law, which provides few rights, creating an environment which is hardly conducive to the private financing of infrastructure. This is all the more regrettable, given that PPP law has made remarkable progress in the rest of the world, as demonstrated by the work of the United Nations Commission on International Trade Law (UNCITRAL)(2). The UN Commission established that national law contains provisions not only regarding the award of concessions but also laying down procedures for execution. The question was touched on in part at the time of the publication of the Green Paper on public procurement by the European Commission in November 1996. There has so far been no response. A law which focuses exclusively on the award of contracts is inadequate, even a disincentive, as the Kinnock report stated.

2.2.2. The inadequate progress of the trans-European transport network programme has for some time given rise to questions as to the effectiveness of the current approach to concession law in Europe. The question was studied in depth by the Kinnock group, which in May 1997 published the Final Report of the high-level group of personal representatives on public-private partnership financing of priority trans-European transport network projects.

— Numerous proposals were put forward by the working parties concerned with the various aspects of the law on concessions. Few of them have so far been followed up, however, and very few transport infrastructure projects have been carried out with resort to genuine public-private partnership. This is of course one of the causes of the delays noted in the programme adopted at Essen for 14 priority projects.

(1) This practice is followed in Italy, and there is no reason why other Member States should not also adopt similar procedures. UNCITRAL has also recently published recommendations for legislation to this end.
(2) See the report on privately financed infrastructure projects, 2 March 1998 — UNCITRAL, 31st session.
2.2.3. Summary of the proposals of the report of the high-level group on the obstacles to private/public partnership in Europe (points 2.2.3.1 and 2.2.3.3)

2.2.3.1. A European strategy on concessions

- PPP needs to have a clear policy structure. Projects need certainty and structured solutions to initial problems.

- There is a lack of coordination and motivation on the part of the public-sector players.

- Sizeable initial public funding will be needed, with project agencies studying financial viability at a very early stage. Soil studies will also be needed. The idea has been mooted of a European agency to ensure cooperation capacity and continuity on trans-frontier projects.

- A European company statute will be needed for trans-frontier concessions, as will the development of public interest groupings.

- Common methods will need to be developed for the evaluation and presentation of projects, based on transparent cost-benefit analyses and including measurements of externalities and future tax revenues.

- The task of demonstrating the financial viability of projects should be entrusted to the private sector.

- The ability of the public authorities to set up concession projects will need to be developed.

- The key problem of an evolving tax situation will need to dealt with in a harmonised way.

- Long-term tax guarantees will need to be established. This is an obstacle to investment (e.g. 20% VAT in France).

- Construction companies will assume the main risk of planning and putting together a project on time and on budget.

2.2.3.2. Developing ad hoc financial methods

- Develop repayable advances (when traffic targets are met).

- Enable repayments to be reinvested.

- Create a long-term financing market and provide access to near-equity.

- Encourage private investors (reimbursement in the event of repurchase).

- Create a zero-coupon bond.

- Permit joint concession of additional activities to balance the main concession.

- Develop recourse to pension funds.

- Develop harmonised risk assessment on a fair and reasonable basis.

- Affirm the principle of the financial balance of concession contracts.

- Ensure that the concessionaire carries only the risk relating to the cost of works, and operating and maintenance costs. The public sector should assume the environmental risk and the cost of the initial guaranteed phase.

- Cut the cost of studies and the associated risk.

- Cut negotiating costs by taking care over the drawing up of specifications.

- Develop minimum revenue guarantees in return for profit-sharing. The Commission should make use of publicly-funded concession contracts.

2.2.3.3. Adopting common contract award methods

- In order to reduce the cost of the contract award procedure, the public authorities should be more closely involved in the preparation of projects: traffic studies, geological studies — safeguarding the proposals put forward by unsuccessful bidders.

- Develop negotiating procedures following restricted tenders — selection of best bid.

- Limit detail in specifications for construction work. The Commission would help to simplify procedures.

- Prohibit changes to programme once construction has started.

- Calls for tender should be issued only after land has been purchased, plans approved, feasibility studies carried out and subsidies determined.
— Develop procedures for the pre-selection of concessionnaires.

— Permit the submission of proposals on the initiative of the private sector.

2.2.4. The legal situation in Europe has not changed since publication of the Kinnock report. The Committee also thinks that the procedures should be used to ensure that the three ‘pillars’ (economy, environment and social aspects) are taken into account.

2.2.5. Maintenance of monopolies in major projects

2.2.5.1. Despite the Commission’s repeated injunctions to the Member States to make use of PPP contracts, the use of PPP has in some cases actually declined in certain projects (e.g. Barcelona-Perpignan link); the private sector is totally excluded from some projects, such as the Lyon-Turin link, although it would be able to propose innovative or alternative solutions.

2.2.5.2. Although economic balancing criteria may justify a derogation to Article 90(2) of the Treaty(1) (see the report on privately financed infrastructure projects, 2 March 1998, UNCITRAL, 31st session), or else the taking into account of spatial-planning or public-policy considerations(2), the objectives of the Maastricht Treaty and the competition rules do apply. The Treaty requires the Member States to conduct their activities in accordance with the principle of an open market economy with free competition(3).

2.2.5.3. The interpretative communication clearly and rightly stresses that public and quasi-public entities are subject to current law governing competition between the public and private sectors, as set out in the Treaty and the relevant directives.

2.2.6. Europe faces wide-ranging challenges, both in the short term in relation to infrastructure and in the medium and long term in relation to the maintenance of European firms’ competitiveness and export capacity. The financing problem arising from government’s limited resources can be solved by use of PPP agreements. Europe currently makes less use of PPP than other parts of the world and should therefore try to learn from their experience. The impact on consumers should in particular be analysed.

2.2.7. Lack of diversification of modes of public management

2.2.7.1. Maintaining the balance of public budgets in some cases suggests the use of procedures for assigning this expenditure to the private sector in the form of public/private partnerships.

2.2.7.2. A number of states have decided to make PPP a central instrument of government policy. The British government has established the principle that restricting government’s activities to the essentials leaves it free to concentrate on the quality of its services. PPP does not just mean having recourse to the private sector for the financing of investment projects but also making use of the skills and management know-how of the private sector for carrying out and operating public projects more effectively over an extended period.

2.2.8. Absence of firm and uniform principles at European level for development of PPP

2.2.8.1. The huge TEN project will only get off the ground if the Member States also decide to take the necessary measures to promote it, if they cease assigning all the business to public or quasi-public corporations and if they make a coordinated call to the competition, with a view to pressing ahead with these major projects, welcoming alternative ideas and varied proposals from the private sector.

2.2.8.2. It is up to the Commission to encourage the development of projects and to remind the Member States that these TEN projects are not the exclusive preserve of public-sector entities. But, in more general terms, the role of the Commission is to provide a more satisfactory legal framework for these contracts so that investment funding will be forthcoming on a non-discriminatory basis compared with other forms of investment.

2.2.8.3. The Commission needs to adopt the strategic view: either Europe adopts the right methods of public-sector management for the new millennium, which would be in keeping with its tradition, or else it remains trapped in a regulatory straitjacket which involves additional costs both for consumers and for private-sector investors who have a higher financing cost.

(3) See The strategy for Europe’s Internal Market and Recommendations for the Review of Target Actions, own-initiative opinion — rapporteur Mr Little, OJ C 140, 18.5.2000, p. 36.
3. The main achievements of PPP in Europe and the world

3.1. All European countries have either had recourse to the system of concessions in the past or are doing so at present. It should not be forgotten that the ‘first Europe’, in the time of the Romans, was already using the concession system in many areas of services and infrastructure 2000 years ago. Today these contracts are used in many European countries (France, United Kingdom, Netherlands, Portugal, Italy, Spain) and elsewhere for the construction not only of motorways and car parks, but also of water networks, museums, airports, tram networks and underground railways, as well as for urban renewal and the renovation of schools, hospitals etc.

4. The Committee’s proposals for improving and unifying concession law

4.1. Definition of concession

4.1.1. So far only public works concessions have been defined, and even then only sketchily, or regulated at Community level — in Directive 93/37/EEC of 14 June 1993. There appears to be no existing definition of concession or PPP contracts; the primary need is for their content and scope to be defined.

4.1.2. Concessions, or delegation in the broader sense, cannot be summed up in terms of a single criterion, such as risk or payment, the line taken in Directive 93/37/EEC, nor in terms of a single payment characteristic; rather they have to be defined in terms of a number of elements.

4.1.3. A public works concession is an act (whether by contract or unilateral) whereby a public authority delegates to a private organisation the task of designing, constructing, financing, maintaining and operating an infrastructure and/or service for a predetermined extended period. Generally it is a contract by which the public authority instructs a firm to carry out at its own expense the necessary investment for the creation of a service and to operate this over an extended period; the firm may be remunerated by means of a user-fee and/or by the public authority; the form of remuneration does not alter the nature of the concession.

4.2. A harmonised framework for the development of concessions and other PPP contracts

4.2.1. An overall legal framework

4.2.1.1. Maintenance of the liberal approach to concessions: an approach favouring competition must be maintained in the wording of Directive 93/37/EEC.

4.2.1.2. A European financial framework: an appropriate legal framework is needed for the establishment of long-term financing, particularly as the funds involved are sizeable and require resort to international financial markets and certainty as to the conditions of implementation of the contracts. However, recourse to financing by pension funds would be ill-suited to most Member States in the light of their existing social protection arrangements.

4.2.1.3. Using the capital and experience of the EIB: this bank, founded by the Member States, finances a large number of programmes subsidised by Europe and has a wealth of experience in the field of partnership.

4.2.1.4. A harmonised legal framework for concessions in Europe: rules need to be drawn up applicable to the Member States guaranteeing an appropriate and equal distribution of rights and obligations between concessionaire and awarding body in contracts.

4.2.2. Harmonised and transparent award

4.2.2.1. Transparent award: the public authorities must protect themselves against any criticisms which might be levelled at the award of these contracts. To this end a European web site should be established containing legal information on this kind of contract. The competent assemblies in the countries concerned could then, having consulted the social partners, express their views with complete transparency and better monitor the award procedure.

4.2.2.2. Final choice of concessionaire: the public authority must define in advance the objectives of the project, leaving to the private-sector entity the technical and economic responsibility for the solutions set out in its proposal (concessionaires not being in favour of the competitions envisaged by the Commission).
4.2.2.3. Selection criteria: the selection of tenderers purely on the basis of quantitative criteria is not suitable for such large and complex projects. The competition procedure must be governed by the principle of transparent criteria. Selection should be based on a combination of suitable criteria: qualitative, quantitative and realistic criteria using the most transparent procedure, including perusal of the references provided by each of the candidates.

4.2.2.4. Cost of studies: feasibility studies for a concession being long drawn-out and costly, it is important that firms be encouraged to participate in the competition by making provision for compensation for a significant proportion of the costs incurred in preparing the tender.

4.2.2.5. Respect for innovation: a candidate's bid for a concession may be original, involving major and essential technical, financial or commercial innovations. It must at all costs be ensured that the candidate's bid is not made available to the other competitors. Ownership of the concept must remain with its author. This is a question of ethics and this guarantee must be offered to the tenderer, as original proposals cannot generally be protected by patent (the solution suggested by the Commission). In the absence of such protection of intellectual property, candidates would undoubtedly be unwilling to reveal original ideas, thus depriving the local authority of an opportunity for progress.

4.2.2.6. Respect for sustainable development: in view of the scale of these projects, the public authorities need to take account of social and environmental issues.

4.2.2.7. Negotiated procedure: a proposal for a concession contract must meet the service objective, which must be clearly spelt out by the awarding authority. The concessionaire must have every freedom in deciding how to obtain that objective: project design, scheduling of work, assumption of technical risks etc. This implies that, once proposals have been submitted by one or more candidates, a dialogue should be entered into with the potential concessionaires with the awarding authority showing flexibility in the definitive drafting of a concession contract reflecting the awarding authority's needs.

4.2.2.8. Need for flexibility. No other procedure should be followed, as this would not include the dialogue phase which is essential to the awarding authority in choosing the tender best suited to its needs. The provisions of Directive 93/37/EEC do not require the awarding authority to choose between the open/restricted or negotiated procedure for the purposes of the award of public works concessions. It should therefore be stipulated that the negotiated procedure must be used in concluding contracts of this type.

4.3. The need to adopt a directive

4.3.1. The directive must define concessions and other forms of PPP contract in terms of their long-term character and fundamental constituent parts (planning, execution, financing, maintenance and management of works). In the case of works concessions including associated services, the directive must reaffirm the role assigned to the concessionaire in the design, financing and execution of the work and subsequent maintenance. A uniform framework is needed for contracts for car parks, motorways, ports, airports, sewage systems etc.

4.3.2. A legal framework appropriate to concessions is essential for the execution of concession or PPP contracts. Partnership contracts will be possible only if contractual balance can be established and observed; without this no operator would be willing to undertake a concession contract. Principles must therefore be established enabling risks to be fairly shared between the awarding authority and concessionaire, both for works and services concessions. The following principles should be incorporated into European law:

4.3.2.1. The risks of an infrastructure concession must be identified, quantified and clearly assigned to the party better able to assume them.

4.3.2.2. The concessionaire and its financiers must receive guarantees that the contract will continue for its whole term without change. Any change to the financial conditions of the initial contract would require renegotiation. There must be contingency arrangements for government action risk and force majeure (principle of contractual stability).

4.3.2.3. Rules must be drawn up by the awarding body to cover exceptional risks: sudden, unforeseeable events which increase the cost of the contract, e.g. changes to administrative requirements.

4.3.2.4. The concessionaire must enjoy sufficient flexibility in carrying out the task delegated to it by the awarding authority. The awarding authority must not unduly interfere in the execution of the contract. Its role must be restricted to questions of prerogative, security or public policy, maintaining and taking into account its policy-making function and social responsibility.
4.3.3. Clear rules should be drawn up at European level on access to essential resources, i.e. infrastructure constructed in the past by monopolies using public resources which ought to be made accessible to all. This issue has been well regulated in relation to transport by Directive 91/440/EEC on the exploitation of railway infrastructure, but not in other areas. For example, firms entering into competition with the old monopolies should be allowed to benefit from past public investment in Hertzian radio.

4.3.4. The Commission must propose a clear legislative text, to be adopted at European level as soon as possible, establishing a basis for partnership between the public and private sectors in order to develop the infrastructures and services which Europe needs.

Brussels, 19 October 2000.

The President
of the Economic and Social Committee
Göke FRERICHS

Opinion of the Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on unbundled access to the local loop’

(2001/C 14/20)

On 20 September 2000 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

On 11 July 2000, the Bureau of the Economic and Social Committee instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee’s work on the subject.

At its 376th plenary session of 19 October 2000, the Economic and Social Committee, in view of the urgency of the matter, appointed Mr Cambus rapporteur-general and adopted the following opinion by 77 votes to one.

1. Introduction

1.1. Telecommunications technology is evolving all the time — and at an ever increasing pace since the most modern computer technologies are used in the main to run the physical and virtual networks and the services which make up this sector. This sector makes a key contribution to the spread of new information technologies and thus to meeting the Union’s objectives for a society based on knowledge and innovation.

1.2. This is why telecommunications operators have been explicitly asked to offer quick, easy and cheap Internet access both to the corporate sector and to private individuals before the end of 2000. To this end, Member States are required under the Lisbon and Feira Council conclusions to open up local loops to competition by 1 January 2001 at the latest.

1.3. In legal terms the telecommunications sector has been open to full competition since the enactment of the 1996 directive, which had to be implemented by 1 January 1998. Hence, any new operator can now enter this sector and compete with incumbent operators. Moreover, the new technologies have been both a reason and a vehicle for broadening competition; the GSM system, for example, has enabled new operators to build up a customer base at a reasonable level of investment. On the other hand, the objective of opening up