# Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and amending Regulations (EEC) No 1017/68, (EEC) No 2988/74, (EEC) No 4056/86 and (EEC) No 3975/87 ("Regulation implementing Articles 81 and 82 of the Treaty")'

(2001/C 155/14)

On 17 October 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.

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 14 March 2001. The rapporteur was Mr Bagliano.

At its 380th plenary session (meeting of 29 March 2001), the Economic and Social Committee adopted the following opinion with 83 votes in favour and one abstention.

## 1. Introduction

1.1. In April 1999, the Commission published a White Paper on the 'Modernisation of the rules implementing Articles 81 and 82 of the EC Treaty' [1], setting out the reasons for a radical reform. It went on to initiate a broad debate, in which all the interested parties — companies, associations, jurists, economists, lawyers, members of the judiciary and national governments — were offered an opportunity to express their views, both positive and negative, to make proposals, and to look further into the issues at stake.

### 1.2. *Brief summary*

1.2.1. The reform does away with the compulsory notification of restrictive agreements [prohibited under Article 81(1)], which was necessary (under paragraph 3 of the same Article) in order to secure exemption from the prohibition (paragraph 1). At present, this procedure is managed by the Commission, which has exclusive power to grant exemptions (the current system is therefore known as the 'exemption system'). The Commission is thus giving up its exclusive power to grant exemptions [under Article 81(3)], in order to give more time and resources to the most serious problems, namely large monopolies and international cartels.

1.2.2. The Commission will be decentralising the whole Article 81 system (i.e. including paragraph 3, with no compulsory notification) to the national competition authorities and courts, which may intervene only ex-post, in the event of a dispute.

1.2.3. It will be up to companies to interpret Article 81 (including paragraph 3) in order to assess the legitimacy of their agreements.

1.2.4. The Commission:

— will retain a guiding and monitoring role, not least through its notices, regulations, and decisions on specific cases, and

— will have responsibility for coordinating the national competition authorities, with the understanding that all parties (authorities and courts) will have to cooperate.

### 1.3. *The Committee opinion on the White Paper*

1.3.1. The Economic and Social Committee was consulted by the Commission, under Article 262 of the Treaty establishing the European Community, and adopted an opinion almost unanimously (only two abstentions) [2] on 8 December 1999. The Committee opinion defined the White Paper reform of the system for applying Articles 81 and 82 as 'courageous and ground-breaking'.

1.3.2. However, while stating that the reform was 'both justified and valid', the Committee also stressed the 'difficulties and dangers' that only a 'programme of preliminary and accompanying measures' could overcome. The opinion defined these measures as essential and necessary.

1.3.3. The opinion was welcomed for its essentially positive and constructive approach, and the ideas and suggestions it raised were referred to in numerous fora.

---

[1] COM(1999) 101 final — OJ C 132, 12.5.1999.

[2] OJ C 51, 23.2.2000, p. 55.

1.3.4. The Committee's main concerns were:

— legal certainty (paragraph 2.3.6 contains a number of important practical suggestions and proposals),

— the right to a defence (2.3.5.7),

— uniformity of interpretation (2.3.5.10),

— the precedence of Community law (1.5.5),

— preservation of the unity and coherence of the system (2.3.5),

— insufficient measures to prevent forum shopping (2.3.2.8),

— and the need to involve the national authorities and courts in the debate (2.3.2 and 2.3.3).

2. **Comments**

2.1. The Regulation proposed by the Commission is a first step in the right direction as regards implementing the reform. The Committee obviously supports the Commission in this bold and innovative undertaking.

2.2. It should however be stated at the outset that although the Commission's proposal contains the basic principles underpinning the reform, it does not provide a complete legislative framework and no proper and effective global assessment can therefore be made. Certain major elements of the reform are missing. The text of the articles and the Explanatory Memorandum contain numerous references to future Commission documents (regulations, notices, guidelines etc.) on key aspects, but without providing sufficient indication of content, criteria, limits or time-scales.

2.3. As regards the Committee's concerns (see 1.3.4 above), the proposal does not take into account certain basic observations made by the Committee, in particular regarding legal certainty (points 2.3.6.3 to 2.3.6.8 of the 1999 opinion) and the need to preserve the unity of the Community competition system (see the 13 subparagraphs in point 2.3.5 of the 1999 opinion).

2.4. Moreover, the proposal

— neither contains nor makes provision for any of the accompanying measures that the Committee believes to be an essential preliminary step (see point 3 — Conclusions of the 1999 opinion);

— does not provide for the additional measures that are made necessary by the rules stipulated in the proposal itself (for instance, notices on the burden of proof and on the law applicable).

2.5. The Committee nevertheless welcomes the Commission's work to date following the wide-ranging debate on the White Paper, and in particular welcomes this initial legislative initiative.

2.6. Article 1 states the principle of the direct applicability of Articles 81 and 82 — 'no prior decision to that effect being required' — and as such defines the reform, i.e. the transition from the notification and authorisation system to the directly applicable exception system.

2.6.1. Article 3 — Relationship between Articles 81 and 82 and national competition laws — is clear and remarkably bold in its concision and brevity, and it should remove one of the main causes for concern.

2.6.2. In its opinion of December 1999 [1], the Committee highlighted the importance of this issue, which 'cannot fall solely to the discretion of the [national] courts and authorities responsible' (point 2.3.5.12). Article 83 of the Treaty of Rome — in other words, from the EU's inception — explicitly includes among the 'appropriate regulations or directives to give effect to the principles set out in Articles 81 and 82' [Article 83(1)] those designed 'to determine the relationship between national laws' and Community law [Article 83(2)(e)].

2.6.3. The Committee agrees that mandatory application of Community law (provided for under Article 3) — when the facts or practices 'may affect trade between Member States' — is the most appropriate response to concerns about the renationalisation of competition rules. Once the regulation enters into force, however, the importance of this rule will require the immediate adoption of an interpretive notice to clarify when trade is affected.

2.7. Under Article 2, the burden of proof is shared between the prosecution [infringement of Article 81(1)] and the defence [fulfilment of the conditions set out in Article 81(3)].

[1] OJ C 51, 23.2.2000, p. 55.

2.7.1. However, to enable this principle to be applied, the Commission must provide further guidelines regarding the real content of Article 81(1) and (3), because, as the Commission itself accepts in the White Paper (points 56 and 57) there have been various interpretations (by both the Commission and the Court of Justice) of the relationship between Article 81(1) and Article 81(3).

2.8. *Commission powers*

2.8.1. In some detail (albeit quite inadequate), Article 4(2) (Chapter II — powers) grants the Commission the specific power to determine, by regulation, the 'types of agreements, decisions of associations of undertakings and concerted practices ... which must be registered'. The types of agreement, the 'procedures for such registration and the penalties applicable' are also to be determined by a specific regulation (see also Article 34(a) of the regulation).

2.8.1.1. This compulsory registration certainly constitutes a novel element, and at first sight would appear to be in contradiction with the ending of notification (which is crucial to the reform). Since the idea of the reform is to reduce, remove and simplify red tape, the potential administrative cost and burden should not be underestimated. It will obviously be necessary to avoid overlaps in those cases where Member States already have registers.

2.8.1.2. The Commission considers such registration to be 'expedient, in order to improve transparency' (10th recital), although it 'shall confer no entitlement on the (...) undertakings'. With no knowledge of the future regulation, a provision introducing an obligation (with penalties for non-compliance) without any corresponding right seems on the face of it unacceptable. Admittedly, Article 4(2) does begin with the words 'The Commission may', but even if this is strictly speaking only a potential provision, a Council regulation couched in such terms would nevertheless hand the Commission almost unlimited powers (including penalties). With no knowledge of the implementing provisions that the Commission will adopt in order to exercise this power, it is impossible and would be irresponsible to attempt a conclusive assessment.

2.8.2. The powers attributed to the Commission also include that of imposing 'any obligations necessary, including remedies of a structural nature' [Article 7(1)], in order to bring an identified infringement to an end.

2.8.2.1. Although the relevant recital (11) adds nothing in this respect, the commentary on this article in the Explanatory Memorandum that precedes the text of the regulation is quite clear: 'Structural remedies can be necessary in order to bring an infringement effectively to an end. This may in particular be the case with regard to cooperation agreements and abuses of a dominant position, where divestiture of certain assets may be necessary'.

2.8.2.2. The White Paper made no reference to such a remedy. If it is designed to address existing situations, it seems completely incompatible with the machinery and the spirit of both existing Community competition law and the planned reform, and would introduce a new policy instrument without sufficient preliminary debate or the necessary clarifications from the Commission.

2.8.2.3. In this respect, the Committee would stress that structural remedies are by their very nature extremely costly — both economically and socially — difficult to implement, and often of uncertain and limited success regarding competitiveness and overall economic efficiency. The experience acquired by the Commission and economic and social operators in the application of the merger control rules has clearly demonstrated that proper preventive procedures are the best means of solving structural competition problems. For these reasons, the White Paper (point 79) stated that it would be 'desirable to maintain the prior authorisation requirement for partial-function production joint ventures'. In its opinion of December 1999 (points 2.3.6.3 to 2.6.3.7), the Committee hoped that the prior authorisation system would be extended to other cases as well.

The Regulation makes no provisions on this matter. The Commission makes just one reference — and then only to partial-function production joint ventures — in the last sentence of the Explanatory Memorandum's brief first section, postponing the issue to be dealt with 'in the context of forthcoming reflections on the revision of that regulation' (on mergers).

2.8.2.4. Experience in implementing Community competition rules over the last forty years has shown that — aside from the application of the merger Regulation — a number of extremely important initiatives have been judged by the interested parties to be unfeasible in the absence of formal or informal authorisation from the Commission. In point 2.3.6.9 of its 1999 opinion, the Committee stated that 'in any event, it must be made clear and a guarantee given that the abolition of the prior notification system shall not in any way prevent — but rather should encourage — prior dialogue between the companies, the Commission and the national authorities, should the companies so wish. Obviously, this dialogue will not replace the 'decision' or offer legal certainty, but it could

provide an indispensable, preliminary, informal and non-binding indication for important cases, and as such could become a routine means of operating in mutual trust and openness'. The Commission itself, when commenting on Article 4 (Powers of the Commission) admits that 'in the new system (...) undertakings must, as a general rule, assess for themselves whether their behaviour complies with the law'. (fourth paragraph of comments on Article 4).

2.8.2.5. Whilst the 'general rule' will obviously remain so, the concept of the 'reasoned opinion', appears to give proper recognition to company rights, although it is only mentioned in the Explanatory Memorandum (at the end of section II) in the following terms:

> 'Finally, the Commission will remain open to discuss specific cases with the undertakings where appropriate. In particular, it will provide guidance regarding agreements, decisions or concerted practices that raise an unresolved, genuinely new question of interpretation. To that effect, the Commission will publish a notice in which it will set out the conditions under which it may issue reasoned opinions. Any such system of opinions must not, however, lead to companies being entitled to obtain an opinion, as this would reintroduce a kind of notification system.'

The end of point 3 (last indent) of the Impact Assessment Form is possibly more precise inasmuch as it makes reference to 'rare cases' that 'raise new or unresolved questions'. The Commission must at all events be ready to give an opinion not only in rare cases, but also in the event of major investments and major or irreversible structural changes.

2.8.3. Chapter III assigns a number of other powers to the Commission which, by means of decisions, thus retains a highly effective practical role:

— in bringing infringements to an end [Article 7(1)];

— in ordering interim measures [Article 8(1)];

— in cases where undertakings offer commitments 'such as to meet the Commission's objections', the Commission may make such commitments binding [Article 9(1)];

— where appropriate, the Commission may reopen proceedings by means of a decision [Article 9(3)];

— in establishing whether Article 81 (and Article 82) is inapplicable to a particular agreement (Article 10).

2.8.3.1. On the subject of Article 10, the legal certainty offered to companies would be significantly greater if the Commission were to decide that Article 81 can be inapplicable not only for reasons of public interest but also when this is in the legitimate interest of the companies concerned, particularly in the event of major investments or structural changes.

2.8.3.2. The Commission may deploy the wide-ranging practical powers provided by Article 7 'acting on a complaint or on its own initiative' [Article 7(1) and Article 10(1)], and may adopt interim measures 'in cases of urgency' [Article 8(1)]. Further hypotheses should be added, along the lines proposed in point 2.8.3.1.

2.8.4. In its opinion on the White Paper, the Committee approved the guiding and monitoring role which the Commission should also retain in a decentralised system, with a view to ensuring the uniform application of Community competition law and providing companies with legal certainty. The Committee therefore believes that further clarification is needed to give a clearer understanding of the powers of the Commission.

2.8.5. For both the adoption of decisions (Chapter III) and the conduct of investigations (Chapter V), the proposal accords the Commission more wide-ranging and stronger powers than at present, stating that:

> 'The detection of infringements of the competition rules is growing ever more difficult, and, in order to protect competition effectively, the Commission's powers of investigation need to be supplemented' (21st recital).

In particular, this concerns:

— the conduct of inquiries into sectors of the economy (Article 17);

— requests for information (Article 18);

— the taking of statements (Article 19);

— the conduct of inspections (Article 20).

Here too, the Committee thinks that the Regulation should clearly spell out the limits of these powers.

2.8.5.1. The Committee has taken due note of the 29th recital, which states that 'In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, this Regulation confines itself to the minimum required in order to achieve its objective, which is to allow the Community competition rules to be applied effectively, and

does not go beyond what is necessary for that purpose.' However, the Committee is firmly convinced that this principle should be binding not only in theory. For this reason, it calls on the Commission to give it practical application in the many executive acts it is to adopt when implementing this radical reform regulation.

2.9. *Block exemptions*

In its opinion of December 1999 the Committee 'accepts the role given by the White Paper to interpretative notices and block exemption regulations' (2.3.4.1), which the Commission reserved the right to adopt 'in order to enable it to adapt and clarify the legislative framework' (9th recital), also in the new decentralised system. These Community regulations create 'safe harbours for defined categories of agreements' [Explanatory Memorandum, first paragraph of 2.C.2(b)].

2.9.1. The Commission also states in the Explanatory Memorandum (fifth paragraph of 2.C.3): 'In the field of Community competition law, companies' task of assessing their behaviour is facilitated by block exemptions and Commission notices and guidelines clarifying the application of the rules. As a complementary element of the current reform, the Commission commits itself to an even greater effort in this area. Article 28 of the proposed Regulation confers on the Commission a general power to adopt block exemption rules. This power will ensure that it is in a position to react with sufficient speed to new developments and changing market conditions.'

2.9.2. This general power gives the Commission an instrument with which it can simplify procedures and improve transparency, as well as shape and direct Community competition policy in the new, decentralised system. The Committee supports this proposal, but stresses that this 'general power' should be subject to certain conditions.

2.10. *Cooperation with national authorities and courts*

2.10.1. Chapter IV of the Regulation is crucial to the new system because it concerns cooperation:

— between the Commission and the competition authorities of the Member States, and

— between the Commission and the courts of the Member States.

2.10.1.1. Article 11(1) provides for 'close cooperation' with the competition authorities of the Member States so as to establish a network that will form the essential infrastructure for exchanging information and providing assistance. This principle of a network, of information and consultation mechanisms, of transferring files and even cases, is certainly a move in the right direction, but it should be complemented by the principle of protecting the rights of those affected by the new, decentralised system (businesses and consumers).

2.10.1.2. The Explanatory Memorandum (comments on Article 11, first paragraph) explicitly states that:

> '... the detailed rules will be laid down in an implementing Commission regulation in accordance with Article 34 and in a notice on cooperation between competition authorities'.

This clarification goes only some of the way towards addressing the ESC's comment that while these mechanisms for cooperation between the Commission and the national authorities (vertical cooperation) are to be welcomed, nothing is said about cooperation between the national authorities themselves (horizontal cooperation), which is just as essential and requires clear and binding rules. Article 13 provides for a (partial) cooperation mechanism between the national authorities (right to suspend proceedings if the same case has been dealt with by another authority), but this is optional. Article 11 seems to be more binding than Article 13, and than Article 12.

2.10.1.3. Article 11 should determine the system of responsibilities and the assignment of cases, as provided under Article 5. Individual cases can be assigned to a national authority if the restriction on competition principally affects that particular Member State. The Commission may also decide, on the basis of specific criteria, which national authority should be responsible for assessing an agreement that has an impact on competition. It is important to ensure that powers and responsibilities are not confused within the network but are clearly determined and understood by companies. The aim is to create an instrument that can ensure — in combination with other instruments and mechanisms — the uniform application of Community competition law in a network of competition authorities.

2.10.2. Cooperation with national courts certainly raises awkward questions that are in any case difficult to regulate with binding provisions. Article 15 is virtually optional (for both national courts and the Commission), with the exception

of point 2, which provides an essentially 'binding', though not categorical, requirement that:

> 'Courts of the Member States shall send the Commission copies of any judgements applying Article 81 or Article 82 of the Treaty within one month of the date on which the judgement is delivered.'

2.10.2.1. The Commission [Article 15(3)] may also ask the national courts to transmit to it 'any documents necessary'. In addition, it may submit observations and have itself represented. However, nothing is said in this article about the rights of the businesses concerned (to be informed of their rights, raise objections, etc.).

2.10.2.2. In cases where Community competition law applies and a complaint has been brought before a court, the parties should have the right to request the opinion of a validating competition authority. The submission of observations for reasons of the public interest [Article 15(3)] is not enough. Only the right of parties to the opinion of the validating competition authorities will confirm the jurisdiction of those authorities over the markets concerned and ensure Community competition law is applied in legal proceedings. This would significantly reduce the risk of contradictory decisions by national courts.

2.10.3. Cooperation between the Commission and the competition authorities of the Member States, and cooperation between the Commission and the national courts, was addressed in two notices which appeared in 1996 and 1993.

2.10.3.1. In its opinion [1] on the more recent of these notices (1996), the Committee concluded:

> 'The notice is undoubtedly well intentioned. It has been under discussion for many years. The result, however, seems inadequate and unconvincing, its only likely benefit being to improve relations between the Commission and national authorities, and it is to be hoped that the speed of the procedure will improve rather than worsen. An efficient and workable decentralisation would require more incisive action, such as:
>
> — a revision of Regulation (EEC) No 17/62; and
>
> — harmonisation of national competition law, with the early adoption of procedural rules'.

2.10.4. Things are moving in the direction the Committee had hoped for, except however with respect to aligning national competition legislation with Community competition legislation. In its Explanatory Memorandum [second paragraph of 2.C.2(a)], the Commission recognises that although 'several national systems of competition law have been modelled on Articles 81 and 82 ... no formal harmonisation is in place, and differences remain both in law and practice' and that 'such differences lead to different treatment of agreements and practices that affect trade between Member States'. But it also believes that Article 3 'ensures in a simple and effective way that all transactions with a cross-border effect are subject to a single body of law'.

2.10.5. The importance of procedural provisions cannot be ignored, however, and the Committee cannot support the Commission's position on this matter. The last paragraph of point 3 of the Explanatory Memorandum reads:

> 'Thus, the proposal does not purport to harmonise national procedural law, except that it grants the Commission and the national competition authorities the power to make submissions on their own initiative.'

2.10.6. The Committee can only reiterate its concern that consistent application of the principles, which all parties agreed on, will be compromised owing to the wide discrepancies in practice between the Member States. Procedures (or, at least, administrative procedures) should to a certain extent reflect the unity of the principles. In this regard the Committee would also recommend that the Commission bear in mind that Article 83 of the Treaty also provides for directives to be used as an instrument 'to give effect to the principles set out in Articles 81 and 82'. A directive is a more flexible instrument because it generally offers the choice of different options and allows a suitable period of time for provisions to be implemented. It is thus an instrument which can be adopted in order to start taking practical legislative steps — albeit only prospective ones — to harmonise complex fields such as procedures.

2.11. *Advisory Committee*

2.11.1. Article 14 makes the Advisory Committee pivotal to the cooperation mechanism (Chapter IV) and strengthens its role by providing for both a written procedure and the option of discussing cases being dealt with by the national authorities. In its opinion on the White Paper, the Economic and Social Committee expressed its full approval of the Advisory Committee's strengthened role with a view to 'coordinating the decisions of the Commission and the competition authorities' (point 1.5.4.2).

---

[1] CES 1510/96 of 19.12.1996, point 11, OJ C 75, 10.3.1997, p. 22.

2.11.2. However, the Committee considers that the Advisory Committee's role would still be inadequate in the regulatory framework provided by the new Council Regulation. It hopes that the Advisory Committee's opinions will be publicised more widely and promptly, and that its remit will be broadened to include notices and guidelines and perhaps also regulations, while avoiding procedural red tape or delays.

2.12. *Rights of defence*

2.12.1. Article 26(1) only partly satisfies concerns about rights of defence. Thus 'the Commission shall give the undertakings or associations of undertakings which are the subject of the proceedings the opportunity of being heard on the matters to which the Commission has taken objection', but this is limited to decisions related to finding and terminating infringements (Article 7) and interim measures (Article 8), as well as fines (Article 22) and penalty payments (Article 23). Article 26(2) also refers back to these articles, although it is worded in general terms: 'The rights of defence of the parties concerned shall be fully respected in the proceedings.'

2.12.2. The Committee believes that this principle — which in essence is a guarantee of cross examination — is a general principle and should therefore be given explicit recognition of a general nature in the regulation.

2.12.3. This guarantee should also be offered in national proceedings associated with Community proceedings. For instance, before proceedings are suspended or transferred from one authority to another, undertakings must at least be heard and they must have an opportunity to express their own views on the suspension or transfer.

2.13. *Decentralisation, coherence of legal proceedings and appeal procedures*

2.13.1. Appeals pose another basic problem, because in a decentralised system without a single appeal authority it is difficult to guarantee not only the right of defence, but also coherent and consistent application of Community competition rules across the EU. The Commission's powers under its close cooperation with national authorities and courts are definitely not great enough to reach this objective.

2.13.2. In its 1999 opinion on the White Paper (2.3.5.11), the Committee stressed that to give the best guarantees of consistent decisions and evaluations and a unified system, the instrument should be based on a Community appeal system. The Commission's powers of coordination (including that of issuing opinions) and management, and the power to refer a matter to the Court of Justice, are not sufficient to resolve these issues.

2.13.3. The Committee appreciates the complexity and difficulty of this problem in relation to both Community and national law, but it believes that, given the far-reaching nature of this reform decentralising the application of the competition rules, the issue must be addressed. What is needed is a 'legislative perspective' which, over the medium to long term, also considers further revisions of the Treaty. In the meantime, and partly by means of small steps, the Community legislator must seek and find appropriate solutions which are consistent with the spirit and purpose of the reform.

2.13.4. Naturally, any Community appeal system would have to have appropriate parameters and, in principle, concern national decisions taken at the highest level. The body responsible for appeals should be the Court of Justice, or the Court of First Instance, subject to the necessary changes to their respective remits.

2.14. The current authority of the Court of Justice to give a preliminary ruling is considerable, but not sufficient. With decentralisation, many cases which previously went before the Court of First Instance (because the decision had been taken by the Commission) may now only be contested before the national authorities (as the decision will have been taken by those authorities); it is inconceivable that problems arising, including matters of substance, could be settled solely through preliminary rulings.

2.14.1. Article 32 of the new regulation simply proposes review by the Court of Justice using the exact text of Article 17 of Regulation 17/62. Substantive review by the Court of Justice thus remains limited to 'decisions whereby the Commission has fixed a fine or periodic penalty payment'.

2.14.2. The question of establishing a European appeal level is unavoidable; it is in any case imperative to address the issue of the necessary adjustments in the Court of Justice's remit.

## 3. Conclusion

3.1. The Committee wholeheartedly supports the reform of the system for applying competition rules. This initial legislative instrument establishes essential machinery, and the Committee appreciates the clear and bold wording used.

3.2. However, in view of the complexity of the topic, and also in order to match the laudable commitment shown by the Commission, the Committee cannot hide the fact that it would have liked further clarifications and information, in the form of official accompanying measures, as stated in its December 1999 opinion.

3.3. The Committee will follow the Commission's future work with keen interest, particularly as regards the important additional measures announced. The Committee promises to offer the Commission its usual constructive collaboration.

Brussels, 29 March 2001.

*The President*

*of the Economic and Social Committee*

Göke FRERICHS

---

# Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation on the Community patent'

(2001/C 155/15)

On 7 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.

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 14 March 2001. The rapporteur was Mr Simpson.

At its 380th plenary session (meeting of 29 March 2001) the Economic and Social Committee adopted the following Opinion by 77 votes to 22 and with eight abstentions:

## 1. Summary and recommendations

1.1. The Committee welcomes and supports the initiative of the Commission in proposing a Regulation to facilitate the establishing of a Community patent.

1.2. The Committee endorses the proposal that the Community should become a member of the Munich Convention as a method of introducing the Community patent.

1.3. The Committee hopes that the European Patent Organisation will welcome this proposal and co-operate on its implementation and thus provide extra encouragement of innovation and research in the European Community.

1.4. The Committee agrees that there are strong and valid reasons to introduce the Community patent by way of an appropriate Regulation.

1.5. The Committee accepts that the proposal to use the procedures of the European Patent Office to register a Community patent is both logical and simpler than any proposal for a parallel system.

1.6. The Committee believes that it is a crucial feature of the proposal for a Community patent application procedure that it should co-exist readily with the existing arrangements for national and European patent application procedures.

1.7. The Committee regards the prospect of lower cost for a Community patent as a crucial requirement of the proposed system. The Commission proposal offers the prospect that the cost of a Community patent might be considerably lower than those incurred when a European patent is registered for several countries within the Community.